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STEPHANIE A. HOFF
ADMINISTRATIVE CODE EDITOR

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

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

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

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

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

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

Administrative Services Department[11]

Replace Chapter 63

Agriculture and Land Stewardship Department[21]

Replace Analysis

Replace Chapter 36

Replace Chapter 45

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Replace Chapter 68

Soil Conservation and Water Quality Division[27]

Replace Analysis

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Accountancy Examining Board[193A]

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Homeland Security and Emergency Management Department[605]

Replace Analysis

Replace Chapter 10

Public Health Department[641]

Replace Analysis

Replace Chapter 42

Replace Chapter 134

Replace Chapter 137

Pharmacy Board[657]

Replace Analysis

Replace Chapter 8

Replace Reserved Chapter 13 with Chapter 13

Replace Chapters 19 and 20

Remove Reserved Chapters 41 to 99

Insert Chapter 41 and Reserved Chapters 42 to 99

Regents Board[681]

Replace Chapter 3

Transportation Department[761]

Replace Chapter 111

Workforce Development Department[871]

Replace Analysis

Replace Chapters 21 to 25

CHAPTER 63

LEAVE

[Prior to 11/5/86, Merit Employment Department[570]]

[Prior to 1/7/04, see 581—Ch 14]

11—63.1(8A) Attendance. Appointing authorities shall establish the working schedules, regulations, and required hours of work for employees under their direction. All regulations and schedules shall be made known to the affected employees by appointing authorities. All absences of probationary and permanent employees shall be charged to one of the leave categories provided for in this chapter.

11—63.2(8A) Vacation leave.

63.2(1) Nontemporary employees shall earn vacation for continuous state employment as follows:

- a. Two unscheduled holidays to be added to the vacation accrual each year.
- b. Two weeks of vacation during the first and through the fourth year of employment.
- c. Three weeks of vacation during the fifth and through the eleventh year of employment.
- d. Four weeks of vacation during the twelfth year and through the nineteenth year of employment.
- e. Four and four-tenths weeks of vacation during the twentieth year and through the twenty-fourth year of employment.
- f. Five weeks of vacation during the twenty-fifth and all subsequent years of employment.

63.2(2) Vacation is subject to the following conditions:

a. Vacation shall be subject to the approval of the appointing authority. The appointing authority shall approve vacation so as to maintain the efficient operation of the agency; take into consideration the vacation preferences and needs of the employee; and make every reasonable effort to provide vacation to prevent any loss of vacation accrual.

b. Probationary and permanent part-time employees shall accrue vacation in an amount proportionate to that which would be accrued under full-time employment.

c. Vacation shall not accrue during any absence without pay.

d. An employee who is transferred, promoted, or demoted from one state agency to another shall be credited with the vacation accrued.

e. Employees, including employees who are paid from a pay plan having annual salary rates, who leave state employment for any reason shall be paid, or have payment made according to law, for all accrued vacation. Payment shall be included with the employee's final paycheck and shall be based on the employee's total biweekly regular rate of pay at the time of separation. When other pay is to be included in the calculation, that other pay must have been in effect for at least three pay periods. Vacation shall not be granted after the employee's last day of work.

f. An employee may, at the appointing authority's discretion, be required to use all accrued vacation before being granted any leave without pay, except as otherwise provided in these rules.

g. Vacation shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's vacation shall not be counted against the employee's accrued vacation.

h. In the event of an illness or disability while on vacation, that portion of the vacation spent under the care of a physician shall be switched retroactively to and charged against the employee's accrued sick leave upon satisfactory proof from the physician of the illness or disability and its duration.

i. Vacation shall not be used in excess of the amount accrued, and shall not be used until the pay period after it is accrued.

j. Vacation shall be cumulative to a maximum of twice the employee's annual rate of accrual, including sick leave conversion. An appointing authority may require an employee to take vacation whenever it would be in the best interests of the agency. The employee shall be given reasonable notice of the appointing authority's decision to require the use of accrued vacation. However, an employee shall not be required to reduce accrued vacation to less than 80 hours.

k. One week of vacation shall be equal to the number of hours in the employee's normal, regular workweek.

l. Any employee who is laid off, or an employee who separated due to qualification for long-term disability benefits or an on-the-job injury or illness and subsequently returns to state employment within

two years following the date of separation, shall have previous continuous service and the period of separation counted toward the vacation accrual rate.

m. Reserved.

n. Time spent in military service, within the specified time limits of the military training and service Act, shall be considered continuous service for the purpose of computing vacation accrual, provided the employee returns to state service within 90 calendar days following discharge from military duty. Vacation shall not accrue to an employee while on military leave without pay.

o. If on June 1 an employee has a balance of 160 or more hours of accrued leave, the employer may, with the approval of the employee, pay the employee for up to 40 hours of the accrued annual leave. This amount will be paid on the payday which represents the last pay period of the fiscal year. Decisions regarding these payments will be made by each department director and are not subject to the grievance procedure provided for in these rules.

[ARC 3215C, IAB 7/19/17, effective 7/1/17]

11—63.3(8A) Sick leave with pay. Probationary and permanent full-time employees, except peace officer employees of the department of natural resources and the department of public safety, shall accrue sick leave as set forth in this paragraph. If the employee's accrued sick leave balance is 750 hours or less, the employee shall accrue one and one-half days of sick leave per month, which is 5.538462 hours per pay period. If the employee's accrued sick leave balance is 1500 hours or less but more than 750 hours, the employee shall accrue one day of sick leave per month, which is 3.692308 hours per pay period. If the employee's accrued sick leave balance is more than 1500 hours, the employee shall accrue one-half day of sick leave per month, which is 1.846154 hours per pay period. Peace officer employees of the department of natural resources and department of public safety shall accrue sick leave at the same rate as the rate provided under the State Police Officers Council collective bargaining agreement. The use of sick leave with pay shall be subject to the following conditions:

63.3(1) Accrued sick leave may be used during a period when an employee is unable to work because of medically related disabilities; for physical or mental illness; medical, dental or optical examination, surgery or treatment; or when performance of assigned duties would jeopardize the employee's health or recovery. Medically related disabilities caused by pregnancy or recovery from childbirth shall be covered by sick leave.

63.3(2) Sick leave shall not be used as vacation.

63.3(3) Sick leave shall not be granted in excess of the amount accrued.

63.3(4) There is no limit on the accumulation of sick leave. An employee who has accrued at least 240 hours of sick leave may elect to accrue additional vacation in lieu of the normal sick leave accrual. An employee who has made an election to convert sick leave to vacation will be credited with four hours of vacation for each full month when sick leave is not used during that month. A conversion shall not be made if the accrued sick leave is less than 240 hours in the pay period in which the conversion would be made. The conversion of sick leave shall be prorated for employees who are normally scheduled to work less than full-time (40 hours per week). An employee's maximum vacation accrual may be increased under this subrule up to 96 hours.

63.3(5) In all cases when an employee has been absent on sick leave, the employee shall immediately upon return to work submit a statement that the absence was due to illness or other reasons stated in this rule. Where absence exceeds three working days, the reasons for the absence shall be verified by a physician or other authorized practitioner if required by the appointing authority. An appointing authority may require verification for lesser periods of absence and at any time during an absence. In all cases, sick leave shall not be deducted from that accrued until authorized by the appointing authority.

63.3(6) Sick leave shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's sick leave shall not be counted against the employee's accrued sick leave.

63.3(7) Sick leave shall not accrue during any absence without pay.

63.3(8) Probationary and permanent part-time employees shall accrue sick leave in an amount proportionate to that which would be accrued under full-time employment.

63.3(9) An employee who is transferred, promoted, or demoted from one agency to another shall be credited with the sick leave accrued.

63.3(10) All accrued sick leave shall be canceled on the date of separation, and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 70A.23, or the applicable collective bargaining agreement. However, if an employee is laid off and is reemployed by any state agency within two years following the date of layoff, or an employee is separated due to an on-the-job injury or illness and is reemployed by any state agency within two years following the date of medical release, the employee's unused accrued sick leave shall be restored, except to the extent that the sick leave hours have been credited to a sick leave bank pursuant to Iowa Code section 70A.23 and the provisions of 11—64.16(8A). Employees participating in the sick leave insurance program who return to permanent employment will not have prior sick leave amounts restored.

63.3(11) Employees may also use accrued sick leave, not to exceed a total of 40 hours per fiscal year, for the following purposes:

- a. When a death occurs in the immediate family;
- b. For the temporary care of, or necessary attention to, members of the immediate family.

For purposes of this subrule, "immediate family" means the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse and other persons who are members of the employee's household.

This leave shall be granted at the convenience of the employee whenever possible and consistent with the staffing needs of the appointing authority.

63.3(12) If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave. Employees shall, upon request, be paid accrued compensatory leave in a lump sum. When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4).

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—63.4(8A) Family and Medical Leave Act leave. An employee who has been employed for a cumulative total of 12 months or more in the most recent seven-year period and who has worked at least 1,250 hours during the 12-month period immediately preceding the date leave is to begin shall be eligible for family and medical leave in accordance with the federal Family and Medical Leave Act (FMLA) and 29 CFR Part 825, these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. The FMLA leave year begins on the first day of each fiscal year. Eligible employees are entitled to FMLA leave subject to the following conditions:

63.4(1) It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous 12 months. Leave may be for one or more of the following reasons:

- a. The birth or placement with the employee of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) for adoption or foster care provided the leave is taken within 12 months following any such birth, adoption or foster placement;
- b. The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;

c. The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;

d. A serious health condition that makes an employee unable to work at all or perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12101 et seq., and the regulations at 29 CFR Section 1630.2(n).

e. A qualifying exigency, as defined in federal FMLA regulations, arising out of the fact that the employee's spouse, son, daughter or parent is a covered servicemember on covered active duty, or has been notified of an impending call or order to covered active duty, in a foreign country.

f. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember, pursuant to the FMLA regulations.

63.4(2) Leave may be taken on an intermittent basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph "a" of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph "b," "c," "d," "e," or "f" of subrule 63.4(1) is mandatory if certified by a health care provider or proper military authority.

63.4(3) Use of sick leave shall be in accordance with rule 11—63.3(8A). When FMLA leave is taken pursuant to paragraph "a," "b," "c," "e," or "f" of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

When FMLA leave is taken pursuant to paragraph "d" of subrule 63.4(1), an employee must exhaust all paid sick leave, compensatory leave, and vacation before unpaid leave is granted.

63.4(4) An employee shall submit a written request, using forms prescribed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice as soon as practicable after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline of the employee.

The appointing authority shall provide the employee with all notices required by the federal Family and Medical Leave Act and the policies of the department. Notices shall be provided to employees within the time frames prescribed by the federal regulations and the policies of the department. The appointing authority shall notify the employee using forms prescribed by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within five workdays.

63.4(5) The appointing authority may, at the agency's expense, require a second opinion. The appointing authority will designate the health care provider to furnish the second opinion. In making the designation, the appointing authority shall select a provider that is not employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency's expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

63.4(6) During the period of leave, the appointing authority shall pay the state's share of the employee's health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee's share of the premiums will result in a loss of coverage. The appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have

dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to the same level of benefits as prior to the commencement of leave upon completion of the necessary insurance applications and other forms required by the department.

63.4(7) Upon returning from FMLA leave, an employee is entitled to no more rights or benefits than the employee would have received had the leave not been taken. If an employee does not return from leave because of the continuation, reoccurrence or onset of a serious health condition, the appointing authority shall require written certification from the health care provider. If the reason for the employee's failure to return is not a certified serious health condition or other circumstances beyond the control of the employee, the state may recover its share of health and dental benefit insurance premiums paid during the period of leave.

63.4(8) The appointing authority may request periodic reports concerning the employee's medical status, and the date the employee may return to work. Requests for periodic reports will be made no more often than necessary depending on the facts and circumstances of each case and shall not exceed one request every 30 days absent extenuating circumstances.

The appointing authority shall require written certification from the health care provider that the employee is able to resume work before allowing an employee with a serious health condition to return from FMLA leave. Upon return from FMLA leave, the employee shall be placed in a position in the same class held prior to the leave, or a class in the same pay grade for which the employee qualifies, with the same pay, benefits, terms and conditions of employment, and geographical proximate location, except that if a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with 11—Chapter 60.

63.4(9) If an employee unequivocally advises the employer that the employee does not intend to return to work, the employee's entitlement to FMLA leave and associated benefits cease. The failure to return to work upon the expiration of FMLA leave may be considered to be job abandonment.

63.4(10) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority's obligations may be governed by the Americans with Disabilities Act.

63.4(11) An employee remains a participant in the deferred compensation and dependent care programs while on FMLA leave as authorized by these rules and the policies of the department.

63.4(12) FMLA leave runs concurrently with other leave programs administered by the department to the extent the leave qualifies as FMLA leave.

63.4(13) FMLA leave runs concurrently with a workers' compensation absence when the workers' compensation absence is one that meets the FMLA criteria.

An employee can be offered "restricted light duty," and if such restricted duty is refused, it may result in the loss of workers' compensation benefits. Under the FMLA, the appointing authority may offer restricted duty; however, if the employee refuses, the employee shall lose workers' compensation benefits but is still protected by the FMLA.

Employees on workers' compensation who are on FMLA leave concurrently and who are unable to return to work after the exhaustion of FMLA leave are subject to state workers' compensation laws and will have no job restoration rights under the FMLA.

63.4(14) Retention of vacation leave. Notwithstanding subrule 63.4(3), employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, using forms prescribed by the department, to retain vacation by submitting the form to the employer no later than seven calendar days from the date it is determined that the employee's leave is covered by FMLA. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 8979B, IAB 8/11/10, effective 9/15/10; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

11—63.5(8A) Leave without pay. A permanent or probationary employee, on written request and written approval by the appointing authority, may be granted leave without pay for any reason deemed satisfactory to the appointing authority, subject to the following conditions:

63.5(1) Leave without pay shall not originally be granted for more than 12 consecutive months. Accrued leave need not be exhausted before leave without pay is granted except that accrued sick leave must be exhausted if the reason for leave without pay is due to a medically related disability. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority except as provided in subrule 63.5(4). On written request, prior to the expiration of a granted leave, the appointing authority may, in writing, grant an extension of the leave without pay. The approved leave without pay extension may not be for more than an additional 12 consecutive months, unless otherwise approved by the director.

63.5(2) Failure by the employee to report back to work on the date specified in the written request shall be considered a voluntary resignation unless otherwise approved by the appointing authority. A written statement accepting the resignation shall be sent to the employee by the appointing authority and a copy sent to the director.

63.5(3) Employees who do not supplement workers' compensation with sick leave, vacation or compensatory leave, and who are kept on the payroll in a nonpay status for more than 30 calendar days, shall be placed on leave without pay for purposes of probationary periods and other benefits. A written statement to this effect shall be sent to the employee within three days following the action by the appointing authority.

63.5(4) When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted sick leave for at least an eight-week period when the purpose is to provide recovery from a medically related disability. If the employee's accrued sick leave is exhausted prior to completion of the eight-week period, the employee shall be granted additional leave, paid or unpaid, for the remainder of the period, in accordance with these rules. The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave, the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

- a. The employee fails or refuses to supply the requested verification of continued disability.
- b. The verification does not clearly show sufficient continuing reason that would prevent the performance of the employee's regular work duties.
- c. The employee is shown to be performing work which is incompatible with the purpose for which the leave without pay was granted.

63.5(5) If an employee applies for leave under the Family and Medical Leave Act, any leave without pay under the Family and Medical Leave Act shall run concurrently with the leave granted under this rule.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

11—63.6(8A) Rights upon return from leave.

63.6(1) An employee who is on approved leave without pay, disaster service volunteer leave or educational leave must notify the appointing authority from which the employee is on leave of the intent to exercise return from leave rights. Upon return from leave, the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. An employee on leave without pay, disaster service volunteer leave, or educational leave may request permission from the appointing authority to return to work sooner than the original approved leave expiration date. Employees on leave without pay for more than 30 calendar days, except for military leave, shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

63.6(2) An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

63.6(3) At the conclusion of a period of military service, an employee who is on approved military service leave must notify the appointing authority of the intent to return to employment. Upon return from military leave, the employee shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—63.7(8A) Compensatory leave. Compensatory leave accrued in accordance with 11—subrule 53.11(5) shall be granted at the request of the employee whenever possible. However, the appointing authority need not grant a request for compensatory leave if granting the leave would cause an undue disruption.

11—63.8(8A) Holiday leave. Holidays shall be granted in accordance with statutory provisions to employees who are eligible to accrue vacation and sick leave.

63.8(1) The value of a holiday for full-time employees shall be eight hours or the number of hours the employee is scheduled to work on that day, whichever is greater. The value of a holiday that falls on a full-time employee's scheduled day off shall be eight hours. Employees who are normally scheduled to work full-time shall not have their holiday compensation prorated for time on leave without pay during the pay period if the employee meets the conditions of subrule 63.8(3).

Compensation for holidays shall be prorated for employees who are normally scheduled to work less than 80 hours in a pay period. Compensation shall be based on the number of hours in pay status during the pay period in which the holiday falls plus the hours that would normally be scheduled for the holiday which shall be included when determining the number of pro-rata holiday hours.

Leave accrued under Iowa Code section 1C.2 as vacation shall be based on the employee's hours in pay status.

Compensation for holidays under this rule shall be either in pay or compensatory leave. The decision to pay or grant compensatory leave shall be made by the appointing authority.

63.8(2) For employees who work Monday through Friday, a holiday falling on Sunday shall be observed on the following Monday and a holiday falling on Saturday shall be observed on the preceding Friday. For all other employees, the designated holiday shall be observed on the day it occurs.

63.8(3) To be eligible for holiday compensation an employee must be in pay status the last scheduled workday before and the first scheduled workday after the holiday.

An employee who separates from employment and whose last day in pay status precedes a holiday shall not be eligible for payment for that holiday.

63.8(4) When the holiday falls on an overtime-covered employee's scheduled workday, and the employee does not get the day off, the employee shall be compensated for the holiday in accordance with subrule 63.8(1) in addition to a premium rate for time worked. The premium rate shall be paid for hours worked during the 24-hour period from 12 a.m. through 11:59 p.m. on the holiday. However, hours compensated at the premium rate shall not be counted as part of the 40 hours when calculating overtime pay.

When the holiday falls on an overtime-covered employee's day off, the employee shall be compensated for the holiday to a maximum of eight hours.

63.8(5) When an overtime exempt employee is required to work on a holiday, the employee may be compensated for the time worked in addition to regular holiday pay at the discretion of the appointing authority. When granted, compensation shall be at the employee's regular rate of pay for all hours worked.

11—63.9(8A) Military leave. For purposes of subrules 63.9(1) and 63.9(3) and as applied to nontemporary employees whose regularly scheduled work shift is 16 hours or less, "30 days" means 30

work days. For nontemporary employees whose regularly scheduled work shift is more than 16 hours, “30 days” in subrules 63.9(1) and 63.9(3) shall be defined in accordance with the provisions of Iowa Code section 29A.28.

63.9(1) A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in each calendar year. Any amount of military leave taken during any part of an employee’s scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee’s work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

63.9(2) A nontemporary employee who is ordered by proper authority to military duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll.

63.9(3) Nontemporary employees who elect to separate from employment when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when ordered by proper authority to military duty shall continue to receive regular pay and benefits for 30 days. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

63.9(4) At the conclusion of military service, the employee must notify the employee’s appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344.

63.9(5) An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa’s benefits program policies and procedures. Upon return to employment, the employee’s accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.

63.9(6) An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee’s share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

63.9(7) A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person’s period of service in the uniformed services.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 3115C, IAB 6/7/17, effective 5/17/17; ARC 3231C, IAB 8/2/17, effective 9/6/17]

11—63.10(8A) Educational leave. Educational leave, with or without pay, may be granted at the discretion of the appointing authority for the purpose of assisting state employees to develop skills that will improve their ability to perform their present job responsibilities or to provide training and developmental opportunities for employees that will enable the agency to better meet staffing needs. Education financial assistance shall be in accordance with rule 11—64.10(8A).

63.10(1) Length of leave. Educational leave shall be requested for a period not to exceed 12 consecutive months. Accrued vacation or compensatory leave need not be exhausted before educational leave is granted. The determination to require the exhaustion of any or all accrued leave shall rest with

the appointing authority. The appointing authority may grant an extension of the original leave for an additional 12 months.

63.10(2) *Selection of applicants.* While the selection of applicants is at the discretion of the appointing authority, it is the express policy of the state to offer all qualified employees an equal opportunity to be considered for educational leave within the limitations imposed by agency staffing requirements.

63.10(3) *Educational institutions.* An employee on educational leave may take course work at any accredited educational institution within the state. Attendance at out-of-state institutions may be approved provided there are geographical or educational considerations which make attendance at institutions within the state impractical.

63.10(4) *Agency report.* Rescinded IAB 5/27/15, effective 7/1/15.
[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 2000C, IAB 5/27/15, effective 7/1/15]

11—63.11(8A) Election leave. An employee who is not covered by the federal Hatch Act and who becomes a candidate for paid, partisan elective office shall, upon the employee's request, be granted leave 30 calendar days before a contested primary, special, or general election. The employee may choose to use accrued vacation or compensatory leave, or leave without pay to cover these periods.

An employee who is elected to a paid, partisan office or appointed to an elective paid, partisan office shall, upon written request to the appointing authority, be granted leave to serve in that office, except where prohibited by federal law. The use of accrued vacation or compensatory leave, or leave without pay to cover this period shall be at the discretion of the employee. The leave provided for in this rule need not exceed six years. An employee shall not be prohibited from returning to employment before the expiration of the period for which the leave was granted.

11—63.12(8A) Court appearances and jury duty. When in obedience to a subpoena, summons, or direction by proper authority, an employee appears as a witness or a jury member in any public or private litigation in which the employee is not a party to the proceedings, the employee shall be entitled to time off during regularly scheduled work hours with regular compensation, provided the employee gives to the appointing authority any payments received for court appearance or jury service, other than reimbursement for necessary travel or personal expenses. If the employee is directed to appear as a witness by the appointing authority, all time spent shall be considered to be worktime.

63.12(1) Hours spent on court or jury leave by an employee outside the employee's scheduled work hours are not subject to this rule, nor shall any payments received for court appearance or jury service be remitted to the appointing authority.

63.12(2) The employee shall notify the appointing authority immediately upon receipt of a subpoena, summons, or direction by proper authority to appear.

63.12(3) An employee may be required to report to work if there will be at least two hours in the workday, following necessary travel time, during which the employee is not needed for jury service or as a witness.

63.12(4) Upon return to work, the employee shall present evidence to the appointing authority of any payments received for court appearance or jury service.

11—63.13(8A) Voting leave. An employee who is eligible to vote in a public election in the state of Iowa may request time off from work with regular pay for a period not to exceed three hours for the purpose of voting. Leave shall be granted only to the extent that the employee's work hours do not allow a period of three consecutive hours outside the employee's scheduled work hours during which the voting polls are open.

A request for voting leave must be made to the appointing authority on or before the employee's last scheduled shift prior to election day. The time to be taken off shall be designated by the appointing authority.

11—63.14(8A) Disaster service volunteer leave. Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request

of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for the purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

11—63.15(8A) Absences due to emergency conditions. When a proper management authority closes a state office or building or directs employees to vacate a state office or building premises, employees may elect to use compensatory leave, vacation, or leave without pay to cover the absence. Employees may, with the approval of the appointing authority, elect to work their scheduled hours even though the state office or building is closed to the general public. Employees may, with the approval of the appointing authority, be permitted to make up lost time within the same workweek.

Employees who are unable to report to work as scheduled or who choose to leave work due to severe weather or other emergency conditions may, with the approval of the appointing authority, use compensatory leave, vacation, or leave without pay to cover the absence.

11—63.16(8A) Particular contracts governing. Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreements shall prevail for the employees covered by those agreements.

11—63.17(8A) Examination and interviewing leave.

63.17(1) Employees may be granted leave to take examinations for positions covered by merit system provisions. Employees may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

63.17(2) Employees may be granted the use of paid work time to attend interviews during scheduled work hours for jobs within their agency. For agencies that have statewide operations, the appointing authority may restrict the use of paid time to interviews within the central office, institution, county, region, or district office. A reasonable time limit for interviews may be designated by the appointing authority. Employees may be granted leave for interviews outside the agency, central office, institution, county, region, or district office in which case they may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

63.17(3) Appointing authorities shall post and make known to employees the provisions of this rule.

11—63.18(8A) Service on committees, boards, and commissions. State employees who are appointed to serve on committees, boards, commissions, or similar appointments for Iowa state government shall be entitled to regular compensation for such service. Employees shall be paid in accordance with these rules for time spent.

Pursuant to Iowa Code section 70A.1, employees shall not be entitled to additional compensation for such service.

Employees shall have actual and necessary expenses paid.

Employees shall notify the appointing authority at the time of the appointment.

11—63.19(8A) Donated leave for catastrophic illnesses of employees and family members. Employees are eligible to donate or receive donated leave hours for catastrophic illnesses of the employee or an immediate family member. Contributions shall be designated as "donated leave" and shall be subject to the rules, policies and procedures of the department.

63.19(1) Definitions:

"*Catastrophic illness*" means a physical or mental illness or injury of the employee, as certified by a licensed physician, that will result in the inability of the employee to work for more than 30 workdays on a consecutive or intermittent basis; or that will result in the inability of the employee to report to work for more than 30 workdays due to the need to attend to an immediate family member on a consecutive or intermittent basis.

“Donated leave” means vacation leave (hours) donated to employees as a monetary benefit only. Recipient employees will not accrue vacation or sick leave benefits on donated leave hours.

“Employee” means a full-time or part-time executive branch employee who is eligible to accrue vacation.

“Immediate family member” means the employee’s spouse, parent, son, or daughter, as defined in the federal Family and Medical Leave Act.

63.19(2) Program eligibility for employee illness. In order to receive donated leave for a catastrophic illness, an employee must:

- a. Have a catastrophic illness as defined by subrule 63.19(1); and
- b. Have exhausted all paid leave; and
- c. Not be supplementing workers’ compensation to the extent that it exceeds more than 100 percent of the employee’s pay for the employee’s regularly scheduled work hours on a pay-period-by-pay-period basis; and
- d. Not be receiving long-term disability benefits; and
- e. Be approved for and using or have exhausted Family and Medical Leave Act (FMLA) leave hours if eligible; and
- f. Be on approved leave without pay for medical reasons during any hours for which the employee will receive donated leave.

63.19(3) Program eligibility for immediate family member illness. In order to receive donated leave for a catastrophic illness of an immediate family member, the immediate family member must have a catastrophic illness as defined in subrule 63.19(1). The employee must:

- a. Have exhausted all paid leave for which eligible; and
- b. Be approved for and using or have exhausted Family and Medical Leave Act leave hours if eligible; and
- c. Be on approved leave without pay for the medical reasons of an immediate family member during any hours for which the employee will receive donated leave.

63.19(4) Certification requirements. The employee shall submit an application for donated leave on forms developed by the department. Appointing authorities may, at their department’s expense, seek second medical opinions or updates from physicians regarding the status of an employee’s or employee’s immediate family member’s illness or injury. If the employee is receiving FMLA leave, a second opinion must be obtained from a physician who is not regularly employed by the state.

63.19(5) Program requirements.

a. Vacation hours shall be donated in whole-hour increments; however, they may be credited to the recipient in other than whole-hour increments. All of the recipient’s accrued leave must be used before donations will be credited to the recipient. Hours will be credited in increments not to exceed the employee’s regularly scheduled work hours on a pay-period-by-pay-period basis. Recipients will not accrue vacation and sick leave on donated leave hours.

b. Approval of use of donated leave shall be for a period not to exceed one year either on an intermittent or continuous basis for each occurrence.

c. Donated leave shall be irrevocable after it is credited to the recipient. Donated hours not credited to the recipient will not be deducted from the donor’s vacation leave balance. Donated leave shall be credited on a first-in/first-out basis.

d. Donated leave for catastrophic illness will not restrict the right to terminate probationary employees. The period of probationary status and the pay increase eligibility date, if in excess of 30 days, will be extended by the amount of time the employee received donated leave.

e. Appointing authorities shall post a form developed by the department indicating that the employee is eligible to receive donated leave and the name of the person to contact for the donation. The appointing authority is not responsible for posting outside the employing department; however, donated leave hours can be received from executive branch employees outside the employing department.

f. Leave without pay rules and procedures shall apply to the following benefits: health, dental, life, and long-term disability insurances; pretax; deferred compensation; holiday pay, sick leave and vacation leave accrual, shift differential pay, longevity pay and cash payments. In addition, employees

receiving donated leave for catastrophic illness for themselves or their immediate family member will not be eligible for leadworker pay, extraordinary duty pay or special duty pay. If FMLA leave and donated leave for a catastrophic illness are used concurrently, the state is obligated to pay its share of health and dental insurance premiums. The state also maintains an employee's basic life and long-term disability insurances during periods of FMLA leave.

g. Employees may choose to continue or terminate optional deductions (e.g., miscellaneous insurance, savings bonds, charitable contributions, or credit union deductions) while using donated leave. Mandatory deductions are taken from gross pay first, then optional deductions as funds are available and as authorized by the employee. Union dues deductions will continue as long as the employee has sufficient earnings to cover the dollar amount certified to the employer after deductions for social security, federal taxes, state taxes, retirement, health and dental insurance, and life insurance.

h. Contributions to the employee's dependent care account will not be allowed during a period of leave without pay. Claims will not be paid for dependent care while an employee is on leave without pay.

i. If an employee applies for and is approved to receive long-term disability, the employee may continue to receive leave contributions for up to one year on an intermittent or continuous basis or the effective date of the employee's long-term disability, whichever comes first. Donated leave hours not used are not credited to the recipient and are not deducted from the donor's vacation leave balance.

11—63.20(8A,70A) Bone marrow and organ donation leave. Employees, excluding employees covered by a collective bargaining agreement that provides otherwise, shall be granted leave pursuant to Iowa Code section 70A.39. An employee who is granted a leave of absence under Iowa Code section 70A.39 shall receive leave without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under Iowa Code section 70A.39 shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of the Iowa tort claims Act.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapter 70A.

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¹ Effective date of subrule 14.2(12) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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

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CHAPTER 36
EGG HANDLERS
[Prior to 5/30/12, see 481—Chapter 36]

21—36.1(196) Definitions.

“Capable of use as human food” means any egg or egg product, unless it is denatured or otherwise identified as required by federal regulation to deter its use as human food.

“Check” means an egg that has a broken shell or crack in the shell but has its membranes intact and contents not leaking.

“Department” means the department of agriculture and land stewardship.

“Dirty” means an egg that has a shell that is unbroken and has adhering dirt or foreign material, prominent stains or moderate stains covering more than 1/32 of the shell surface if localized or 1/16 of the shell surface if scattered.

“Egg handler” or *“handler”* means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food. An egg handler does not include a food establishment or home food establishment if either establishment obtains eggs from a licensed egg handler or supplier which meets standards referred to in rule 481—31.2(137F). Producers who sell eggs produced exclusively from their own flocks directly to egg handlers or to consumer customers are exempt from regulation as egg handlers.

“Inedible” means any egg of the following description: black rot, yellow rot, white rot, mixed rot (addled egg), sour egg, egg with a green white, egg with a stuck yolk, moldy egg, musty egg, egg showing a blood ring, and an egg containing any embryo chick (at or beyond the blood ring stage), and any egg that is adulterated as such term is defined pursuant to the federal Food, Drug and Cosmetic Act.

“Leaker” means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

“License holder” means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued pursuant to Iowa Code chapter 196.

“Loss” means an egg that is unfit for human food because the egg is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

“Official plant” means any establishment at which inspection of the processing of egg products is maintained by the department under the authority of Iowa Code chapter 196 or by the United States Department of Agriculture under the authority of the federal Egg Products Inspection Act.

“Restricted egg” means any check, dirty, incubator reject, inedible, leaker, or loss.
[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.2(196) Licensing. An egg handler’s license shall be obtained from the department for each location at which eggs will be candled and graded. In order to obtain an egg handler’s license, the applicant shall comply with the standards contained in Iowa Code chapter 196 and this chapter.

36.2(1) A license is not transferable. License fees are not refundable unless the license is surrendered to the department prior to the effective date of the license.

36.2(2) A license is valid for two years, is renewable, and expires on October 1.

36.2(3) A valid license and the most recent inspection report, along with any current complaint or reinspection reports, shall be posted no higher than eye level where the public can see them. For the purpose of this subrule, only founded complaint reports shall be considered a complaint. Founded complaints shall be posted until either the mail-in recheck form has been submitted to the regulatory authority or a recheck inspection has been conducted to verify that the violations have been corrected.

36.2(4) Any change in business ownership or business location requires a new license. Multiple locations operated simultaneously each require a separate license.

36.2(5) The regulatory authority may require documentation from a license holder.

36.2(6) A delinquent license shall only be renewed if it is renewed within 60 days of its expiration. If a delinquent license is not renewed within 60 days, an establishment must apply for a new license and

meet all the requirements for licensure. Establishments that have not renewed the license within 60 days of the expiration of the license shall be closed by the department or a contractor. The establishment shall not be reopened until a new license application has been submitted and approved.

36.2(7) License fees for egg handlers are based on the total number of cases of eggs purchased or handled during the month of April (Iowa Code section 196.3) and are charged as follows:

- a. For less than 125 cases—\$40.40;
- b. For 125 to 249 cases—\$94.50;
- c. For 250 to 999 cases—\$135.00;
- d. For 1,000 to 4,999 cases—\$270.00;
- e. For 5,000 to 9,999 cases—\$472.50;
- f. For 10,000 or more cases—\$675.00.

For the purpose of determining fees, each case shall be 30 dozen eggs.

36.2(8) The department shall charge a voluntary inspection fee of \$100 when a voluntary inspection is requested.

[ARC 0138C, IAB 5/30/12, effective 7/4/12; ARC 3232C, IAB 8/2/17, effective 9/6/17]

21—36.3(196) Minimum sanitation and operating requirements.

36.3(1) Buildings shall be of sound construction so as to prevent the entrance or harboring of insects, rodents, or vermin. Floors shall be of washable materials and kept clean and floor drains provided where necessary. Walls and ceilings shall be of cleanable material and be kept clean and in good repair.

36.3(2) All areas and rooms in which eggs are handled, graded, and packed shall be kept reasonably clean during working hours and shall be thoroughly cleaned at the end of each operating day. Cartons and cases shall be stored off the floor and storage areas kept clean and dry.

36.3(3) Cooler rooms shall be free from objectionable odors, such as mustiness or a rotten odor, and shall be maintained in a clean, sanitary condition.

36.3(4) Egg cleaning equipment shall be kept in good repair and shall be thoroughly cleaned after each day's use or more often if necessary to maintain a sanitary condition. The wash water shall be potable and maintained at a temperature of 90°F minimum. The wash water temperature must be at least 20°F greater than the egg temperature. The wash water shall be replaced frequently, and the detergent and sanitizer shall be kept at an effective level at all times. During any rest period, or at any time when the equipment is not in operation, the eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat.

36.3(5) All eggs not cleaned as stated in subrule 36.3(4) must be properly washed and sanitized prior to placement in a carton or container for distribution in a site or operation that provides or prepares food for human consumption.

36.3(6) Facilities for hand washing, complete with hot and cold potable water under pressure, shall be provided. Hand soap, sanitary towels, or a hand-drying device providing heated air shall be conveniently located near the hand-washing area.

36.3(7) Live animals shall be excluded from the plant or portion of the plant in which shell eggs or egg products are handled or stored.

36.3(8) Only United States Department of Agriculture (USDA) or federally approved cleaning compounds and sanitizers may be used. The following substances used in the plant shall be approved and handled in accordance with the manufacturer's instructions: pesticides, insecticides, rodenticides, cleaning compounds, foam control compounds, sanitizers, and inks and oils coming into contact with the product. These products shall be properly stored and segregated.

36.3(9) A separate refuse room or a designated area for the accumulation of trash must be provided. There shall be a sufficient number of containers to hold trash, which must be maintained in good repair, kept covered when not in use, and cleaned at a frequency to prevent insect and rodent attraction.

36.3(10) Washed eggs must be reasonably dry before being placed in cartons or cases.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.4(196) Egg grading or candling area.

36.4(1) The egg grading or candling area shall be adequately darkened to make possible the accurate quality determination of the candled appearance of eggs.

36.4(2) Egg-weighing equipment shall be provided, constructed to permit easy cleaning, and capable of ready adjustment.

36.4(3) A candling device with adequate light and capable of accurate determination of Iowa grade standards in rule 21—36.13(196) shall be maintained in good working order.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.5(196) Water supply.

36.5(1) Adequate potable water shall be provided from a source constructed, maintained, and operated according to Iowa law.

36.5(2) Water from a private water system shall be sampled at least annually for coliform.

36.5(3) Records of water tests must be maintained by license holders not served by a public water system. These records must be available to the department upon request.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.6(196) Egg storage.

36.6(1) From the time of candling and grading until they reach the consumer, all eggs designated for human consumption shall be held at an ambient temperature not to exceed 45°F or 7°C. Each refrigerated unit shall be provided with an accurate numerically scaled indicating thermometer which is located at a place that is representative of the air temperature in the unit. This ambient temperature requirement applies to any place or room where eggs are stored, except in a vehicle during transportation.

36.6(2) Eggs in transport vehicles may be stored at an ambient temperature above 45°F or 7°C, provided the vehicle is equipped with refrigeration units capable of delivering air at that temperature and capable of cooling the vehicle to that temperature.

36.6(3) All shell eggs shall be kept from freezing.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.7(196) Eggs used in food preparation. Restaurants, institutional consumers, and food manufacturers shall receive and use only clean, sound shell eggs of Grade B quality or better. Dried, frozen, or liquid eggs may be bought only if such products are prepared and pasteurized in a plant under USDA continuous inspection.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.8(196) Labeling and packaging.

36.8(1) All cases of loose-packed eggs sold in this state shall identify:

- a. The egg handler's name or license number or USDA plant number; and
- b. The grade of eggs contained in the case.

36.8(2) Each carton containing eggs for retail sale in Iowa which have been candled and graded shall be marked with:

- a. The grade and size of the eggs contained;
- b. The date the eggs were packed; and
- c. The name and address of the distributor or packer.

36.8(3) Labeling shall be printed in letters not less than ¼ inch in height, or plainly and conspicuously stamped or marked in letters not less than ½ inch in height.

36.8(4) Eggs sold to retailers must be prepacked in new cartons.

36.8(5) No person shall use any label which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this chapter.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.9(196) Restricted eggs.

36.9(1) No egg handler may possess and handle restricted eggs unless they are capable of use as human food, or destroyed, or identified and labeled for animal food.

36.9(2) Except for the producer exemption as provided in subrule 36.9(3), checks and dirties may be used for human food provided they are processed and pasteurized in an official plant.

36.9(3) Checks and dirties shall be sold directly or indirectly only to an official plant. However, a producer may sell checks and dirties on the producer's own premises where eggs are produced directly to household consumers for the personal use of the consumer and the consumer's nonpaying guests.

36.9(4) Producer-dealers, packers, handlers, distributors, or retailers shall not sell on or off the premises within the state any restricted eggs to any person, including consumers, institutional consumers or employees.

36.9(5) Restricted eggs shall not be given free to any person, including but not limited to institutional consumers, charitable organizations, or any employee whereby the restricted eggs may be used for human food.

36.9(6) Restricted eggs may be designated for animal food only when properly decharacterized or denatured to preclude their use in food for human consumption. Each container or receptacle shall be labeled "Restricted eggs, Not to be used as human food". However, restricted eggs which are not decharacterized or denatured may be moved from one USDA-licensed plant to another USDA-licensed plant.

36.9(7) Inedible and loss eggs must be denatured at the point and time of segregation. If the liquid is removed from the shells, approved denaturant must be placed in the receptacle provided before the liquid is added. If loss eggs are placed on filler-flats or in flats and fillers, or in any other manner, each layer of eggs must be denatured before another layer is started. However, inedible and loss eggs under USDA inspection and control shall be handled in accordance with USDA recommendations.

36.9(8) Checks and dirties must be conspicuously labeled at the point and time of segregation with a placard or other device. Full or partial master cases containing checks and dirties must be labeled before transfer to the cooler.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.10(196) Inspections and records. Egg handlers shall be inspected regularly. Egg handlers shall keep a record for each purchase and sale of eggs, including the date of the transaction, the names of the parties, the grade or nest run, and the quantity of eggs being purchased or sold. Records shall be maintained for three years and must be available to the department upon request.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.11(196) Enforcement. Violation of these rules or any provision of Iowa Code chapter 196 is a simple misdemeanor. The department may employ various remedies if violations are discovered including, but not limited to, revocation or suspension of a license.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.12(196) Health and hygiene of personnel.

36.12(1) No person known to be affected by a communicable or infectious disease shall be permitted to come in contact with the product.

36.12(2) Personnel engaged in egg handling operations shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods. Personnel engaged in egg handling and warewashing operations shall thoroughly wash their hands and the exposed portion of their arms with soap or detergent and warm water before starting to work; after smoking, eating, or using the toilet; and as often as necessary during work to keep their hands and arms clean. Personnel shall keep their fingernails trimmed and clean.

36.12(3) Personnel shall wear clean outer clothing and effective hair restraints where necessary to prevent the contamination of the product.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

21—36.13(196) Iowa grades. The Iowa standards for consumer grades, quality, and weight classes for shell eggs are as follows:

IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

TABLE 1
IOWA SPECIFICATIONS

QUALITY FACTOR	AA QUALITY	A QUALITY	B QUALITY
Shell	Clean Unbroken Practically normal	Clean Unbroken Practically normal	Clean to slightly stained* Unbroken Abnormal
Air Cell	1/8 inch or less in depth Unlimited movement and free or bubbly	3/16 inch or less in depth Unlimited movement and free or bubbly	Over 3/16 inch in depth Unlimited movement and free or bubbly
White	Clear Firm	Clear Reasonably firm	Weak and watery Small blood and meatspots present**
Yolk	Outline slightly defined Practically free from defects	Outline fairly well defined Practically free from defects	Outline plainly visible Enlarged and flattened Clearly visible germ development but no blood Other serious defects
<p>* Moderately stained areas permitted (1/32 of surface if localized, or 1/16 if scattered). ** If they are small (aggregating not more than 1/8 inch in diameter).</p> <p>For eggs with dirty or broken shells, the standards of quality provide two additional qualities. These are:</p>			
Dirty		Check	
Unbroken Adhering dirt or foreign material, prominent stains, moderate stained areas in excess of B quality		Broken or cracked shell but membranes intact, not leaking***	
*** Leaker has broken or cracked shell and membranes and contents leaking or free to leak.			

IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

TABLE 2
SUMMARY OF IOWA CONSUMER GRADES FOR SHELL EGGS

U.S. CONSUMER GRADE (ORIGIN)	QUALITY REQUIRED ¹	TOLERANCE PERMITTED ²	
		Percent	Quality
Grade AA	87 percent AA	Up to 13 Not over 5 checks ⁶	A or B ⁵
Grade A	87 percent A or better	Up to 13 Not over 5 checks ⁶	B ⁵
Grade B	90 percent B or better	Not over 10 checks	

U.S. CONSUMER GRADE (DESTINATION)	QUALITY REQUIRED ¹	TOLERANCE PERMITTED ³	
		Percent	Quality
Grade AA	72 percent AA	Up to 28 ⁴ Not over 7 checks ⁶	A or B ⁵
Grade A	82 percent A or better	Up to 18 Not over 7 checks ⁶	B ⁵
Grade B	90 percent B or better	Not over 10 checks	

- ¹ In lots of two or more cases, see Table 3 of this rule for tolerances for an individual case within a lot.
- ² For the U.S. Consumer Grades (at origin), a tolerance of 0.50 percent leakers, dirties, or loss (due to meat or blood spots) in any combination is permitted, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted.
- ³ For the U.S. Consumer Grades (destination), a tolerance of 1 percent leakers, dirties, or loss (due to meat or blood spots) in any combination is permitted, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted.
- ⁴ For U.S. Grade AA at destination, at least 10 percent must be A quality or better.
- ⁵ For U.S. Grade AA and A at origin and destination within the tolerances permitted for B quality, not more than 1 percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects.
- ⁶ For U.S. Grades AA and A jumbo size eggs, the tolerance for checks at origin and destination is 7 percent and 9 percent, respectively.

IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

TABLE 3
TOLERANCE FOR INDIVIDUAL CASE WITHIN A LOT

U.S. CONSUMER GRADE	CASE QUALITY	ORIGIN (Percent)	DESTINATION (Percent)
Grade AA	AA (Minimum)	77	62
	A or B	13	28
	Checks (Maximum)	10	10
Grade A	A (Minimum)	77	72
	B	13	18
	Checks (Maximum)	10	10
Grade B	B (Minimum)	80	80
	Checks (Maximum)	20	20

NOTE: Substitution of higher qualities for lower qualities is permitted.

TABLE 4
IOWA WEIGHT CLASSES FOR CONSUMER GRADES FOR SHELL EGGS

SIZE OR WEIGHT CLASS	MINIMUM NET WEIGHT PER DOZEN	MINIMUM NET WEIGHT PER 30 DOZEN	MINIMUM WEIGHT FOR INDIVIDUAL EGGS AT RATE PER DOZEN
	<i>OUNCES</i>	<i>POUNDS</i>	<i>OUNCES</i>
Jumbo	30	56	29
Extra Large	27	50½	26
Large	24	45	23
Medium	21	39½	20
Small	18	34	17
Peewee	15	28	–

These rules are intended to implement Iowa Code chapter 196 as amended by 2011 Iowa Acts, House File 453.

[ARC 0138C, IAB 5/30/12, effective 7/4/12]

[Filed ARC 0138C (Notice ARC 0078C, IAB 4/4/12), IAB 5/30/12, effective 7/4/12]

[Filed ARC 3232C (Notice ARC 3091C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 45
PESTICIDES

[Appeared as Ch 9, 1973 IDR]

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

DIVISION I

21—45.1(206) Definitions and standards.

45.1(1) The following definitions are hereby adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“*Sensitive crop registry*” means the sensitive crop registry designated by the department, which may include but is not limited to the FieldWatch™, Inc. program.

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

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

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

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

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

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

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

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

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

[ARC 7556B, IAB 2/11/09, effective 2/1/09; ARC 8704B, IAB 4/21/10, effective 5/26/10; ARC 2881C, IAB 1/4/17, effective 2/8/17]

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

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

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

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

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

Registration renewal fees for pesticide products registered for sale and use in Iowa shall be based on one-fifth of 1 percent of the dollar amount of the total sales for each pesticide product sold. Registration renewal fees shall be a minimum of \$250 and a maximum of \$3000 per pesticide product for each registration period.

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

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

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

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

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

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

45.3(4) Penalty for nonregistered pesticides.

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

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

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

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

This rule is intended to implement Iowa Code section 206.12.

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

21—45.4(206) Registration of products. One exact copy of the labeling of each proposed product shall be submitted with the application. Also, there shall be submitted an ingredient statement, which shall comply with the provisions of 21—45.13(206) herein, the proposed directions for use of the product, and a list of the specific pests that the product to be sold is intended to control, if such information is not

contained in the labeling. Other pertinent information concerning ingredients and physical properties of the product shall also be included on request by the secretary.

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

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

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

1. If the labeling bears any statement, design or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;
2. If the product is found to be an imitation of, or illegally offered for sale under the name of another pesticide;
3. If the labeling bears reference to Iowa registration number;
4. If the labeling accompanying the pesticide does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;
5. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to humans and other vertebrate animals;
6. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read under customary conditions of purchase. Provided, however, the secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is displayed;
7. If any word, statement or other information required to appear on the label or labeling is omitted or not prominently placed thereon and in such terms as to render it likely to be read and understood under customary conditions of purchase and use;
8. If an insecticide, nematocide, antibiotic, bactericide, fungicide or herbicide is found to be injurious to humans or other useful vertebrate animals or to vegetation (except weeds), to which it is applied or to the person applying such pesticide when used as directed or in accordance with commonly recognized safe practice; or if a plant regulator, defoliant or desiccant when used as directed is found to be injurious to humans or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide; provided, however, that physical or physiological effect on plants or parts thereof shall not be deemed to be injurious, when this is the purpose for which the plant regulator, defoliant or desiccant was applied in accordance with label claims and recommendations;
9. If the pesticide is misbranded;
10. If the registrant has been guilty of fraudulent and deceptive practices in the evasion or attempted evasion of the pesticide Act or any rules promulgated thereunder; provided, however, that no registration shall be revoked until the registrant shall have been given an opportunity for a hearing by the secretary.

Special local need registrations and permits. State registration of pesticides pursuant to Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by Public Law 92-516 October 21, 1972, Public Law 94-140 November 28, 1975, and Public Law 95-396 September 30, 1978, or any special use permit issued pursuant to revisions of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by Public Law 92-516 October 21, 1972, Public Law 94-140 November 28, 1975, and Public Law 95-396 September 30, 1978, or the Pesticide Control Act, Iowa Code chapter 206, may be denied, amended or revoked when the secretary has made a determination as follows: That such action is necessary to prevent unreasonable adverse effects to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide; or that "special local

need” which necessitated the registration or permit no longer exists. Expiration of 24(c) registrations and all special use permits shall be governed by Iowa Code section 206.12.

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

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

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

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

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

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

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

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

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

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

21—45.12(206) Brand names, duplication of, or infringement on. A brand name is distinctive with reference to the material to which it applies and the registration of a pesticide under the same brand name by two or more manufacturers or shippers should be denied or refused. This principle applies also to the registration of brand names so similar in character as to be likely to be confused by the purchaser. In the event the same name or a closely similar one is offered by another manufacturer, the secretary may decline the said name a second time, for registration unless required to do so by an order of court.

21—45.13(206) Ingredient statement.

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

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

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

45.13(4) Designation of ingredients.

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

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

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

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

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

45.15(1) The coloring agent must produce a uniformly colored product not subject to change in color beyond the minimum requirements during ordinary conditions of marketing and storage and must not

cause the product to become less effective or cause damage when used as directed or in accordance with commonly recognized safe practice.

45.15(2) Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than eight or a chroma of not less than four or shall be discolored to a neutral lightness value not over seven.

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

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

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

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

This rule is intended to implement Iowa Code section 206.11.

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

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

21—45.17(206) Guarantee of pesticide.

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

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

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

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

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

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

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

21—45.19(206) Enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Separate examinations shall be taken and passed for each classification or category in which the commercial, noncommercial or public applicator intends to become certified, including the following: #1a—Agriculture Weed Control, #1b—Agriculture Insect Control, #1c—Agriculture

Crop Disease Control, #1d—Fruit and Vegetable Pest Control, #1e—Animal Pest Control, #2—Forest Pest Control, #3ot—Ornamental and Turf Pest Control, #3t—Turf Pest Control, #3o—Ornamental Pest Control, #3g—Greenhouse Pest Control, #4—Seed Treatment, #5—Aquatic Pest Control, #6—Right-of-Way Pest Control, #7a—General and Household Pest Control, #7b—Termite Control, #7c—Fumigation, #7d—Community Insect Control, #7e—Wood Preservatives, #8—Public Health Pest Control, #9—Regulatory Pest Control, #10—Demonstration and Research Pest Control, and #11—Aerial Application.

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

45.22(3) Certification of private applicators.

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

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

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

45.22(4) Renewal of license classification and certification.

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

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

for each certification category in which the person is seeking recertification. A two-hour continuing instructional course may be approved for more than one certification category. A commercial, noncommercial or public applicator failing to complete the required two hours of approved instruction for each year during the renewal period shall be required to pass an examination prior to recertification.

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

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

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

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

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

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

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

45.22(6) Report of licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45.22(15) Certified handler.

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

b. A certified handler shall demonstrate a fundamental knowledge of the potential for pesticides contaminating groundwater aquifers or surface waters and proper handling practices that will aid

in preventing the contamination of groundwater aquifers or surface waters, adverse effects on the environment and any other personal or public hazards associated with the use of pesticides by passing a fundamental examination administered by the secretary covering interpretation of label and labeling information, mixing and application of pesticides in accordance with label instructions including proper concentration of pesticides to be used and local environmental situations that shall be considered during handling of pesticides to avoid contamination, specific procedures to be used in disposing of pesticides and containers, recognition of poisoning symptoms, procedures to follow in case of a pesticide accident, safe handling of pesticides and the effects on groundwater and surface water, the proper use of personal safety equipment and related legal responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This rule is intended to implement Iowa Code sections 206.2, 206.4, 206.5, 206.7, and 206.31 and Iowa Code section 206.6 as amended by 2008 Iowa Acts, House File 2551.

[ARC 7556B, IAB 2/11/09, effective 2/1/09; ARC 0392C, IAB 10/17/12, effective 11/21/12]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Label which I have read, indicates:

Brand name of pesticide: _____

Federal Registration Number: _____

Name of Active Ingredient(s): _____

Percentage of Active Ingredient(s): _____

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

Application rate per acre: _____

Name pest to be controlled: _____

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

State degree of hazard (signal word): _____

Describe safety equipment required: _____

What is the recommended antidote for this product: _____

List environmental precaution shown on label: _____

Length of time until re-entry, if given: _____

Preharvest interval days required: _____

Describe method of container disposal: _____

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

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

(name of private applicator)

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

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

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

This rule is intended to implement Iowa Code section 206.20.

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

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

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

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

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

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

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

21—45.33(206) Use of inorganic arsenic.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45.37(3) Hearings, when held.

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

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

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

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

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

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

21—45.38 to 45.44 Reserved.

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

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

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

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

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

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

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

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

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

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

21—45.48(206) Dealer license fees. A dealer license fee for a dealer with less than \$100,000 in gross retail pesticide sales shall be \$10 if the annual gross retail sales are less than \$10,000; \$25 if the annual gross retail sales are \$10,000 or more but less than \$25,000; \$50 if the annual gross retail sales are \$25,000 or more but less than \$50,000; \$75 if the annual gross retail sales are \$50,000 or more but less than \$75,000; and \$100 if the annual gross retail sales are \$75,000 or more but less than \$100,000. The annual dealer license fee for a dealer with \$100,000 or more in gross retail pesticide sales shall be based on one-tenth of one percent of the gross annual sales of all pesticides sold the previous fiscal year. The fiscal year shall begin July 1 and end June 30 of the following year.

45.48(1) A pesticide dealer license expires on June 30 of each year. However, a three-month grace period shall be allowed for renewal of pesticide dealer licenses. A late fee of \$25 is imposed on a dealer with less than \$100,000 in gross retail pesticide sales, and a late fee of 5 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer with \$100,000 or more in gross retail pesticide sales. The application for renewal shall be considered complete once the required fees and reports have been submitted to the department.

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

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

[ARC 3232C, IAB 8/2/17, effective 9/6/17]

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

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

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

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

45.50(1) Residential lawns.

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

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

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

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

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

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

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

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

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

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

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

45.50(6) *Notification signs.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Name and address of occupant.

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

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

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

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

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

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

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

(1) Name and address of occupant.

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

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

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

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

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

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

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

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

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

45.51(4) Atrazine use limitations.

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

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

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

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

e. The following areas shall be designated as pesticide management areas regarding the application of pesticides containing the active ingredient atrazine. The application of atrazine shall be

limited to no more than one and one-half pounds of the actual active ingredient atrazine per acre per calendar year in the following designated areas:

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

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

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

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

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

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

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

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

a. An approved continuing instruction course for pesticide applicator recertification shall include, as a minimum, information on safe handling, application and storage of pesticides; the correct calibration of equipment used for the application of pesticides; effects of pesticides upon groundwater; and the federal standards for pesticide applicator certification outlined in 40 CFR 171.5 as revised July 1, 1992, for private applicators or 40 CFR 171.4(b) and (c) revised as of July 1, 1992, for commercial applicators.

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

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

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

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

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

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

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

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

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

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

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

45.52(3) Course approval.

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

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

- (1) Name and address of provider or sponsoring organization.
- (2) Name and telephone number of the contact person for the provider.

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

45.52(4) Certificate of completion.

a. The department shall adopt a standard certificate of completion form and provide the form to each registered provider. The form shall include the applicator's name, name of employer when applicable, course number, date and location of the course, the category or categories the course has been approved for and the signature of the course instructor.

b. Once a course is approved, the provider shall furnish a certificate of completion to each person who satisfactorily completes such a course. The certificate shall be signed by the course instructor. Providers shall also maintain a list of all persons who attend courses offered by providers for continuing instruction for at least three years from the end of the year in which the courses are offered. The list shall identify each participant by name, address and employer when applicable.

45.52(5) Provider's responsibility.

a. A provider of an approved course is responsible for both the attendance of the participants and their attention. During the approved instructional course, if the provider finds that a participant is reading unrelated materials, sleeping, talking excessively with a neighbor or is otherwise disruptive or inattentive, the provider may refuse to grant the participant any credit for attendance.

b. A provider may require participants to preregister for an approved course. In the event a provider cancels an approved course, the provider shall notify each individual registered for the course in a timely manner but not less than three business days prior, except as specified, to the scheduled date of the course.

c. A provider who cancels a course which did not require participants to preregister shall notify prospective participants in a timely manner. Notification for cancellation may be accomplished by a similar means of communication as the original notification of the course availability or any other generally accepted means of reaching the expected target participants.

d. Minimum lead time for participant notification of canceled courses shall be waived when courses are canceled because of emergency conditions such as extreme weather conditions, acts of God, military actions, or any other circumstance which is deemed to be an emergency condition. Providers shall attempt to notify prospective participants by public service announcements via radio or television broadcasts which may provide this service.

e. A provider shall notify the pesticide bureau of the department in a timely manner prior to the cancellation of an approved course. Initial notice of cancellation may be made by telephone; however, cancellations made by telephone shall be followed by written verification.

f. Provider records. The provider shall maintain a list of all persons who attend courses offered by them for continuing instruction credit for at least three years from the end of the year in which the courses are offered. The record system shall provide for secure storage and retrieval of individual attendance and information regarding each instructional course offering. The provider's record of continuing instruction

credits granted shall be available within two weeks upon request from individual participants or from the department.

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

45.52(6) Enforcement—providers.

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

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

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

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

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

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

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

[ARC 2882C, IAB 1/4/17, effective 2/8/17]

DIVISION II

21—45.53 to 45.99 Reserved.

DIVISION III
CIVIL PENALTIES

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

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

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

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

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

"*Panel*" means the peer review panel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[Filed ARC 3232C (Notice ARC 3091C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

[◇] Two or more ARCs

CHAPTER 63

BRANDING

[Appeared as Ch 18, 1973 IDR]

[Prior to 7/27/88, see Agriculture Department 30—Ch 15]

21—63.1(169A) Location of brands on livestock.

63.1(1) Brands shall be recorded on one of either sides of the animals, in any one of three locations, to wit: The shoulder, rib, or hip.

63.1(2) For brands recorded prior to 1996, each location is considered a separate brand and not in or under conflict with the same or similar brand in a different location or on a different side.

This rule is intended to implement Iowa Code section 169A.5.

[ARC 3232C, IAB 8/2/17, effective 9/6/17]

21—63.2(169A) Brands in conflict.

63.2(1) Whenever two or more brands are determined by the secretary, to be in or under conflict, the secretary shall give written notice to the brand owners.

63.2(2) When herds bearing a similar brand are maintained in close proximity to each other, and the secretary determines that confusion or conflict may arise therefrom; then the secretary shall direct any change or changes in the position of the brands, so as to remove such confusion or conflict.

63.2(3) When two or more brands are determined, by the secretary, to be in or under conflict, then the owner having recorded said brand on the earliest date shall be given preference in retaining said brand.

This rule is intended to implement Iowa Code section 169A.15.

[Filed September 26, 1967]

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

[Filed ARC 3232C (Notice ARC 3091C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 68

DAIRY

[Prior to 3/9/88, see Agriculture Department 30—Ch 30]

[Prior to 7/27/88, see 21—Ch 30]

21—68.1(192,194) Definitions. In addition to the definition found in the Code of Iowa, the following terms shall mean:

“Habitual violator” is a producer or other dairy industry business entity that is regulated by the department, for whom the monthly official records for somatic cell counts, bacteria, cooling or added water show that the violation has occurred eight times in a 12-month period, including the accelerated testing counts; or that has received three, two-of-four warning letters in a 12-month period; or that has received a second three-of-five, off-the-market letter in a 12-month period; or that has been cited for unsanitary conditions three times in a 12-month period; or that has been found with a fourth positive antibiotic in a 12-month period.

“Imminent hazard to the public health” means any condition so serious as to require immediate action to protect the public health. It shall include, but is not limited to: pesticide, antibiotic, or any other substance in milk or milk products considered to be dangerous if consumed by humans.

“P.M.O.” means the Grade A Pasteurized Milk Ordinance, 2015 Revisions, from the United States Public Health Service/Food and Drug Administration, a copy of which is on file with the department and is incorporated into this chapter by reference and made a part of this chapter.

“Public health hazard” means any condition which, if not corrected, could endanger the public health.

“Qualified personnel” means employees certified or approved by the department to perform certain tasks as required by the Code of Iowa. It shall include, but not be limited to, dairy industry inspectors and hearing officers.

[ARC 8699B, IAB 4/21/10, effective 5/26/10; ARC 2104C, IAB 8/19/15, effective 9/23/15]

21—68.2(192) Licenses and permits required.

68.2(1) Milk plant permit. A person who brings, sends into, or receives into this state, milk or milk products for storage, transfer, processing, sale or to offer for sale, shall possess a “milk plant” permit.

68.2(2) Grade A farm permit. A person who operates a dairy farm to produce “Grade A milk” shall possess a “Grade A farm” permit.

68.2(3) Grade B farm permit. A person who operates a dairy farm to produce milk to be used as “milk for manufacturing purposes” shall possess a “Grade B farm” permit.

68.2(4) Hauler/grader license. A person engaged in the transporting, transferring, sampling, weighing or measuring of milk or a person engaged as a sample courier shall possess a “hauler/grader” license.

68.2(5) Tester license. A person who tests a dairy product for fat content to establish a value of the product shall possess a “tester’s” license.

68.2(6) Milk truck license. A vehicle used primarily for collecting or transporting milk or milk product in the bulk shall possess a “milk truck” license.

68.2(7) Dairy distributor’s permit. A person primarily in the business of distributing dairy products shall possess a “dairy distributor” permit.

21—68.3(192) License application. Reserved.

21—68.4(192) Certification of personnel. Certification programs conducted by the department shall follow closely the procedures as outlined in the P.M.O., Appendix B.

68.4(1) Dairy industry inspectors. Reserved.

68.4(2) Field representative. The department shall provide a certification program for individuals who work as “quality control” officers in the dairy industry but are not employees of the department. An individual certified as a “field representative” may perform certain tasks for the department when authorized to do so by the department.

21—68.5(190,192,194) Milk tests. The department recognizes approved methods of testing milk or cream for milk fat and other dairy products as specified in Standard Methods for the Examination of Dairy Products (17th Edition). That publication is hereby incorporated into this rule by this reference and made part thereof insofar as applicable, and a copy is on file with the department.

All milk, graded or tested, as provided by Iowa Code chapters 192 and 194 shall be graded and tested by samples which shall be taken in the following manner:

1. Samples may only be taken from vats or tanks which pass the required organoleptic test.
2. The temperature of milk in bulk tanks from which the sample is to be taken must not be higher than 45 degrees Fahrenheit for Grade A milk and 50 degrees Fahrenheit for manufacturing milk.
3. The temperature of the milk in the bulk tank shall be recorded on the farm milk room record, on the collection record, and on the sample container.
4. The volume of the milk in the bulk tank shall then be measured and the measurement shall be recorded.
5. Bulk tanks of less than 1,000-gallon size shall be agitated for a period of not less than five minutes. Bulk tanks of 1,000 gallons or greater shall be agitated for a period of not less than ten minutes. However, if the manufacturer of the bulk tank provides in writing that a lesser time for agitation is acceptable given the design of the bulk tank, then the lesser time is acceptable if the agitation is done in a manner and time consistent with the manufacturer's written instructions. In addition, the instructions must be conspicuously posted in the milk room. The instructions shall be laminated, framed under glass, or otherwise displayed so that the instructions will not deteriorate while displayed in the milk room.
6. The sample shall then be taken by using an approved sterile dipper and the milk shall be poured in an approved sterile sample container, until the sample container is three-quarters full.
7. The sample of milk shall then be immediately stored at a temperature of between 32 and 40 degrees Fahrenheit.
8. Grade A and Grade B milk shall not be picked up from a farm bulk milk tank when the milk volume in the tank is insufficient to completely submerge the bulk milk agitator paddle or, if there is more than one set of paddles, the lower set of agitator paddles into the milk.
9. No device, other than the bulk tank agitator, shall be used to agitate the milk in a farm bulk milk tank.
10. If the milk in a farm bulk milk tank cannot be properly agitated by the bulk tank agitator at the time of pickup by the milk hauler, the milk shall not be sold for human consumption.

This rule is intended to implement Iowa Code sections 194.4, 194.5, and 194.6.
[ARC 2104C, IAB 8/19/15, effective 9/23/15]

21—68.6(190,192,194) Test bottles. Test bottles and pipettes as approved by the Standard Methods for the Examination of Dairy Products, 17th Edition, are approved for universal use in Iowa. All test bottles should be graduated to the half point.

This rule is intended to implement Iowa Code chapters 192 and 194.
[ARC 2104C, IAB 8/19/15, effective 9/23/15]

21—68.7(190,192,194,195) Test transactions. Rescinded IAB 1/24/01, effective 2/28/01.

21—68.8(190,192,194,195) Cream testing. Rescinded IAB 1/24/01, effective 2/28/01.

21—68.9(192,194) Tester's license. The examination for a tester's license must be approved and administered by the department.

This rule is intended to implement Iowa Code sections 192.111 and 194.13.

21—68.10(192,194) Contaminating activities prohibited in milk plants. All "milk plants," "creameries," "transfer stations," "receiving stations," or any other facility for handling of bulk milk or milk products shall be a facility separated from any activity that could contaminate or tend to contaminate the milk or milk products.

21—68.11(192,194) Suspension of dairy farm permits.

68.11(1) Grade A and Grade B farm permit suspension and revocation. The department may temporarily suspend a Grade A or Grade B farm permit if the dairy farm fails to meet all the requirements as set forth in the P.M.O. or the Grade B United States Department of Agriculture document titled, "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," effective July 21, 2011. A Grade A farm under temporary suspension of the Grade A permit may sell the milk as "milk for manufacturing purposes" until reinstated as a Grade A farm if the former Grade A farm meets the requirements necessary to sell Grade B milk. A Grade B farm under temporary suspension of the Grade B permit may sell milk as "Undergrade Class 3" until reinstated as a Grade B farm if the former Grade B farm meets the requirements of Undergrade Class 3. If an inspection reveals a violation which, in the opinion of the inspector, is an imminent hazard to the public health, the inspector shall take immediate action to prevent any milk believed to have been exposed to the hazard from entering commerce. In addition, the inspector shall immediately notify the department that such action has been taken. In other cases, if there is a repeat violation of a dairy standard as determined by two consecutive routine inspections of a dairy farm, the inspector shall immediately refer the violation to the department for action. The department may revoke the dairy permit of a person that the department determines is a habitual violator as defined in rule 21—68.1(192,194).

68.11(2) Summary suspension of dairy farm permits. If the department finds that the public health, safety or welfare imperatively requires emergency action, summary suspension of a permit may be ordered pending proceedings for revocation or other action. If a permit is summarily suspended, no milk or milk products may be sold or offered for sale until permit is reinstated.

The following situations or incidents are situations in which summary suspension is appropriate:

- a. Unclean milk contact surfaces of equipment or utensils.
- b. Filthy conditions in a milking barn or parlor or in a cattle housing area, including several days' accumulation of manure in the milking barn gutters, calf pens or in other areas.
- c. Filthy conditions in a cow yard and very dirty cows.
- d. Filthy conditions in a milk room/milk house.
- e. Water supply, water pressure, or water heating facilities not in compliance with standard operating procedures.
- f. No access to hand-washing facility in the milk room/milk house.
- g. Violation of standards under this chapter related to well construction or potability of water supply, including any cross connections between potable and nonpotable water sources.
- h. Lack of an approved sanitizer in the milk room/milk house or adjacent storage area to meet the sanitizing requirements.
- i. Visibly dirty udders and teats on cows being milked.
- j. Milk not cooled in compliance with subrule 68.22(4).
- k. Rodent activity in the milk room/milk house, or severe rodent activity in a milking barn or milking parlor or in a feed storage room.
- l. Dead animals in the milking barn, parlor or cow yard.
- m. Other situations where the department determines that conditions warrant immediate action to prevent an imminent threat to the public health or welfare.

68.11(3) A Grade A dairy producer whose permit has been suspended for a period of 12 consecutive months shall be downgraded to the Grade B market and be issued a Grade B permit.

[ARC 8699B, IAB 4/21/10, effective 5/26/10; ARC 2104C, IAB 8/19/15, effective 9/23/15]

GRADE A MILK

21—68.12(192) Milk standards. Standards for the production, processing, distribution, transportation, handling, sampling, examination, grading, labeling, sale and standards of identity of Grade A pasteurized milk, Grade A milk products and Grade A raw milk, the inspection of Grade A dairy herds, dairy farms, milk plants, milk receiving stations and milk transfer stations, the issuing, suspension and revocation of permits and licenses to milk producers, milk haulers, and milk distributors shall be regulated in

accordance with the provisions of the P.M.O., a copy of which is on file with the department and is incorporated into this rule by reference and made a part of this rule.

Where the mandatory compliance with the provisions of the appendixes therein is specified, the provisions shall be deemed a requirement of this rule.

Cottage cheese, dry curd cottage cheese and low fat cottage cheese bearing the Grade A label must conform to the standards of identity for Title 21, section 133 of the Code of Federal Regulations. However, cottage cheese, dry curd cottage cheese, and low fat cottage cheese shall not require a Grade A rating for sale within this state.

The discharge pipe on all gravity flow manure removal systems in milk barns shall be sufficient in size to handle the flow of manure generated by the cows using the system and any bedding materials or other materials that may enter the system.

Lighting systems shall be adequate to produce sufficient light as required by the Pasteurized Milk Ordinance. Such systems may include, but are not limited to, electrical powered lighting systems or pressurized white gasoline, pressurized kerosene, or battery powered lanterns. Such systems shall be designed and used in a manner that no odors can reasonably be expected to be emitted into the milk room unless there is sufficient ventilation to remove the odors. Lanterns shall be mounted on permanently affixed hooks and shall remain in place at all times.

If artificial lighting is provided by nonelectrical means, then a portable battery operated fluorescent light shall be made available for use and maintained in working order in the milk house. The fluorescent bulb shall either be shatterproof or shall be enclosed in a shatterproof enclosure.

Raw milk for pasteurization shall be cooled to 7° C (45° F) or less within two hours after milking. However, the blend temperature after the first milking and subsequent milkings shall not exceed 10° C (50° F). No specific bulk milk tank equipment is required in achieving this cooling standard; however, producers are expected to use all necessary diligence in achieving compliance.

This rule is intended to implement Iowa Code chapter 192.

21—68.13(192,194) Public health service requirements.

68.13(1) Certification. A rating of 90 percent or more calculated according to the rating system as contained in Public Health Service “Methods of Making Sanitation Ratings of Milk Shippers,” 2015 Revision, shall be necessary to receive or retain a Grade A certification under Iowa Code chapter 192. That publication is hereby incorporated into this rule by this reference and made a part thereof insofar as applicable, and a copy is on file with the department.

68.13(2) Documents. The following publications of the Public Health Service of the Food and Drug Administration are hereby adopted. A copy of each is on file with the department:

1. “Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments,” 2015 Revision.
2. “Standards for the Fabrication of Single Service Containers and Closures for Milk and Milk Products,” as incorporated in the P.M.O., Appendix J.
3. “Evaluation of Milk Laboratories,” 2015 Revision.

This rule is intended to implement Iowa Code chapter 192.

[ARC 8699B, IAB 4/21/10, effective 5/26/10; ARC 2104C, IAB 8/19/15, effective 9/23/15; ARC 2978C, IAB 3/15/17, effective 4/19/17]

21—68.14(190,192,194,195) Laboratories. Evaluation of methods and reporting of results for approval of a laboratory shall be based on procedures and tests contained in “Standard Methods for the Examination of Dairy Products, 17th Edition, 2004,” and “Methods of Analysis of the Association of Official Analytical Chemists, 18th Edition, 2005.” These publications are hereby incorporated into this rule by this reference and made a part thereof insofar as applicable; a copy of each is on file with the department. The health authority shall accept, without the imposition of a fee for testing or inspection, supplies of milk and milk products from an area or an individual shipper not under routine inspection provided they are delivered in closed and date-coded containers; provided further that if the code date

has expired, reasonable inspection testing fees may be assessed the processor or establishment having care, custody and control of the milk and milk products.

This rule is intended to implement Iowa Code chapter 192.
[ARC 2104C, IAB 8/19/15, effective 9/23/15]

GRADE B MILK

21—68.15(192,194) Milk standards. Standards for the production and processing of milk for manufacturing purposes shall conform to standards contained in the USDA document entitled “Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements,” dated July 21, 2011, which is hereby incorporated into this rule by reference and made a part thereof insofar as applicable, and a copy is on file with the department.

[ARC 8699B, IAB 4/21/10, effective 5/26/10; ARC 2104C, IAB 8/19/15, effective 9/23/15]

21—68.16(194) Legal milk.

68.16(1) All milk delivered to a creamery, cheese factory or milk processing plant shall be subject to an examination, as provided in Iowa Code chapter 194, which shall be made at the plant if delivered in separate containers or before mixing with other milk collected in a bulk tank container and the examination shall be made by a licensed grader.

68.16(2) Every creamery, cheese factory or milk processing plant which gathers its milk by a bulk tank vehicle whether operated by an independent contractor or otherwise shall provide for a licensed grader in the operation of the bulk tank and for examination of the milk by the grader upon receipt thereof at the bulk tank.

68.16(3) The common change occurring in milk is the development of acidity, causing an acid flavor and odor, or even complete or partial coagulation. Other undesirable changes include sweet curdling, ropiness, gassiness and abnormal flavors, odors and colors. All milk showing any of these defects or any other defect must be rejected.

68.16(4) The presence of any insect in milk shall be sufficient cause for rejection.

This rule is intended to implement Iowa Code sections 194.2, 194.12 and 194.15.

21—68.17(194) New producers.

68.17(1) A “new producer” is a person selling milk for the first time who has not previously produced milk under Iowa Code chapter 194. A person who formerly produced farm-separated cream and is now selling, for the first time, whole milk for manufacturing purposes is considered a new producer. Similarly, a producer who previously supplied Grade A milk or sold milk in another state not reciprocating on quality transfers and offering manufacturing milk for sale in the state of Iowa for the first time shall be classified as a new producer. A new producer is also one who has not offered manufacturing milk for sale since the enactment of this milk grading law on July 4, 1959.

68.17(2) A licensed milk grader must examine, smell and taste the first lot of milk purchased from a new producer. This milk must also be tested immediately for extraneous matter or sediment content. However, it is not necessary to subject the milk of the new producer on the first delivery to a bacterial quality test. A test of this nature, however, must be made on a properly collected sample from this producer within 15 days thereafter.

68.17(3) If the sediment disc on the can of milk selected for test shows sediment in excess of 2.50 mg., all cans in the shipment shall be tested for sediment content in the same manner. Any milk showing sediment in excess of 2.50 mg. shall be rejected by the creamery, cheese factory or milk processing plant and not used for human consumption.

This rule is intended to implement Iowa Code section 194.2.

21—68.18(194) Testing and exclusion of Class III milk.

68.18(1) If a producer desires to change to another plant or factory, it is required that the first shipment of milk be accompanied by a written quality release form from the former purchaser. This quality release form must be requested by the producer in person or in writing from the manager of

the plant previously purchasing the milk. (Plant being asked for quality release shall give it to person with written order or deliver to producer making the request.) The new buyer shall not accept the first delivery until receiving a copy of the record of the producer's milk quality covering the preceding 90 days.

68.18(2) If the quality release form of this producer shows that the last test for bacterial quality indicated Class III milk, the new purchaser must then test first shipment of the transferring producer's milk by:

- a. Organoleptic grading (physical appearance, taste and smell).
- b. Sediment or extraneous matter.
- c. An estimate of bacterial quality must be run within seven days from the last test date entered on the transfer form.

68.18(3) In other words, the previous record of bacterial quality is transferred. For example, if a producer has had two consecutive Class III bacterial estimates at one plant and then decides to sell the milk to another plant, the producer may not start as a new producer without previous history. This rule requires that the milk be tested for four consecutive weeks if there is no improvement in the quality of the milk during this period. Upon transferring to a new plant, the next bacterial test is entered on the record as the third of the four required tests.

68.18(4) If the fourth consecutive test is still Class III, this producer's milk may not be purchased by any plant for human consumption. The plant refusing this milk is required to notify the area resident inspector of the dairy products control bureau of the Iowa department of agriculture and land stewardship, immediately, in writing.

This rule is intended to implement Iowa Code section 194.2.

21—68.19(194) Unlawful milk. Four weekly Class III bacterial tests or milk containing radioactive agents "deleterious to health" shall make rejection compulsory and that milk shall not be accepted thereafter by any plant or creamery until authorized by the secretary of agriculture.

This rule is intended to implement Iowa Code sections 194.4 and 194.9.

21—68.20(194) Price differential. All purchasers or receivers of milk shall maintain a price differential between the grades of milk as defined by bacterial estimate test.

21—68.21(194) Penalties for plants and producers.

68.21(1) The scope of this section is broad, covering all plant employees, operators and milk haulers.

68.21(2) A producer selling milk to a new purchaser without first obtaining a quality release form from the former buyer, would be an example of noncompliance with the law and these rules.

This rule is intended to implement Iowa Code section 194.20.

21—68.22(192,194) Farm requirements for milk for manufacturing.

68.22(1) Milking facility and housing. A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations. It shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material. The facility shall be kept clean.

68.22(2) Milk house or milk room. A milk house or milk room conveniently located and properly constructed, lighted, and ventilated shall be provided for handling and cooling milk and for washing, handling, and storing the utensils and equipment. Other products shall not be stored in the milk room which would be likely to contaminate milk, or otherwise create a public health hazard.

It shall be equipped with wash and rinse vat, utensil rack, milk cooling facilities and have an adequate supply of hot water available for cleaning milking equipment.

68.22(3) Utensils and equipment. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and

drained after each milking, stored in suitable facilities, and sanitized immediately before use with at least 200 ppm. chlorine solution or its equivalent.

68.22(4) Cooling. Milk in farm bulk tanks shall be cooled to 45° F or 7° C or lower within two hours after milking and maintained at 50° F or 10° C or lower until transferred to the transport tank. Milk in cans shall be cooled immediately after milking to 50° F or 10° C or lower unless delivered to the plant within two hours after milking. The temperature requirement for milk placed in cans will be 50° F or 10° C or lower. The cooler, tank, or refrigerated unit shall be kept clean.

This rule is intended to implement Iowa Code chapter 192 and section 192A.28.

21—68.23 to 68.25 Reserved.

21—68.26(190,192,194) Tests for abnormal milk.

68.26(1) At least once every calendar month, all creameries, cheese factories, or milk processing plants, hereafter referred to as purchasers, shall test a herd milk sample from every producer in a certified or officially designated laboratory to determine the existence of abnormal milk.

68.26(2) A herd milk sample shall be deemed to be abnormal or adulterated if a test by direct microscopic examination, electronic somatic cell count, or equivalent technique, reveals a count greater than 750,000 somatic cells/ml.

68.26(3) Whenever two of the last four consecutive somatic cell counts exceed 750,000 cells/ml, the purchaser or regulatory authority shall send a written notice thereof to the person concerned. An additional sample shall be taken within 21 days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit shall be instituted whenever the standard is violated by three of the last five somatic cell counts.

68.26(4) Within one week following receipt of a written application from the producer, an inspection shall be made by the regulatory authority or the purchaser and a herd milk sample taken. If the test indicates a count of 750,000 or less somatic cells/ml, the producer's milk may be purchased for human consumption provided additional samples of herd milk are tested at a rate of not more than two per week. The producer shall be reinstated under the normal testing program when three out of four consecutive tests have counts of 750,000 or less somatic cells/ml.

This rule is intended to implement Iowa Code chapter 192 and Iowa Code sections 190.4, 194.4, and 194.6.

21—68.27(192,194) Standards for performing farm inspections. The October 1, 2009, manual prepared by USDA/AMS, Dairy Division, titled "General Instructions for Performing Farm Inspections According to USDA Recommended Requirements for Manufacturing Purposes and Its Production and Processing for Adoption by State Regulatory Agencies," is adopted in its entirety and shall constitute the official standards for farms producing milk for manufacturing, with the following exception:

Strike from Rule 1c, Brucellosis Test, the words "Uniform Methods and Rules for establishing and maintaining Certified Brucellosis Free Herds of Cattle, Modified Certified Brucellosis Area and Certified Brucellosis Free Areas which are approved by Animal Disease Eradication Division, Agricultural Research Service..." and insert in lieu thereof, "Brucellosis Eradication, Uniform Methods and Rules, effective February 1, 1998". The bacteriological standards for private water supplies used by dairy farms consist of an MPN (Most Probable Number of Coliform Organisms) of less than 2.2/100 ml by the multiple tube fermentation technique, or less than 1/100 ml by the membrane filter technique, or the results of any water test approved by the United States Food and Drug Administration or Environmental Protection Agency of less than 1/100 ml.

[ARC 2104C, IAB 8/19/15, effective 9/23/15]

DAIRY FARM WATER

21—68.28 to 68.34 Reserved.

21—68.35(192) Dairy farm water supply.

68.35(1) Water for milk house and milking operations shall be from a supply properly located, protected, and operated and shall be easily accessible, adequate and of a safe, sanitary quality.

68.35(2) A Grade A permit shall not be issued to an applicant when the water well supplying the dairy facility is located in a well pit.

68.35(3) New well construction or the reconstruction of an existing well supplying the dairy facility shall be constructed according to 567—Chapter 49, Iowa Administrative Code.

68.35(4) Frost-free hydrants shall be located at least ten feet from the well that supplies the water for the dairy facility unless a written variance is granted by the department.

68.35(5) The department encourages the use of high-pressure washers for use in the dairy facility. However, they can create a negative pressure and contaminate the water supply system because of their capability to pump at a faster rate than water can be supplied if not properly installed and operated.

The dairy facility water supply system shall be protected from overpumping by a high-pressure washer by one of the following:

1. A separate water supply.
2. By supplying the high-pressure washer from a surge tank that is isolated from the main water supply system by an air gap.
3. A low-pressure cutoff switch.
4. A device built into the high-pressure washer by the manufacturer and approved by the department.
5. Any other device installed in the system to prevent a negative pressure to the supply system that is approved by the department.

This rule is intended to implement Iowa Code chapter 192.

21—68.36(192) Antibiotic testing.

68.36(1) The dairy industry shall screen all Grade A and Grade B farm bulk milk pickup tankers and farm can milk loads for beta lactam drug residues or other residues as designated by the department. A sampling method shall be used with can milk loads to ensure that the sample includes raw milk from every milk can on the vehicle.

68.36(2) When loads are found to contain drugs or other inhibitors at levels exceeding federal Food and Drug Administration established “safety levels,” the department’s dairy products control bureau shall be notified immediately of the results and of the ultimate disposition of the raw milk. Disposition shall be in a manner approved by the bureau. The producer samples from the violative load shall be tested for tracing the violation back to the violative producer. The primary responsibility for tracing the violation back to the violative producer shall be that of the initial purchaser of the raw milk.

68.36(3) In every antibiotic incident, pickups of milk from the violative individual producer(s) shall be immediately discontinued and the permit shall be suspended until such time that subsequent testing by a certified industry supervisor establishes that the milk does not exceed safe levels of inhibitory residues. In addition, in every antibiotic incident except when the load is negative and the milk can be used, the violative producer shall pay the purchaser for the contaminated load of milk and the producer will not be paid for the producer’s share of milk on the load.

68.36(4) The dairy products control bureau staff shall monitor the dairy industry inhibitor load testing activities by making unannounced, on-site inspections to review the load sampling records. The inspector may also collect load samples for testing in the department’s dairy laboratory.

68.36(5) For the first violative occurrence within a 12-month period, a department dairy products inspector shall conduct an investigation.

68.36(6) For the second violative occurrence within a 12-month period, a department dairy products inspector shall make an appointment with the producer and a dairy industry representative to meet at the dairy facility within 10 working days of the violative occurrence to inspect the drug storage and to determine the cause of the second violation. In addition, the producer shall review the “Milk and Dairy Beef Residue Prevention Protocol” with a veterinarian within 30 days of the violative occurrence. The protocol certificate shall be signed by the producer and the veterinarian. The producer shall send the

dairy products control bureau a copy of the signed certificate within 35 days of the violation. Failure to complete the course or to submit a copy of the certificate to the dairy products control bureau is grounds for suspension or revocation of a violative producer's permit to sell raw milk.

68.36(7) For the third violative occurrence within a 12-month period, the producer shall attend a hearing concerning the third violation at a time, date, and place set by the department. At the hearing, the producer shall explain the history of the violations and steps taken to prevent a repetition of the violation. At the conclusion of the hearing, the department may order the producer to take additional steps to avoid future repetition of the violation. Failure of the producer to abide by the conditions set by the department is grounds for the department to initiate an action to suspend or revoke the producer's permit to sell raw milk.

68.36(8) In every antibiotic incident of a noncommingled load of milk where there is only one producer on the load, the load shall be discarded and the producer shall pay for the disposition of the load and for the cost of hauling. In addition, the producer and employee(s) shall review the "Milk and Dairy Beef Residue Prevention Protocol" with a veterinarian within 30 days, and the protocol certificate shall be signed by the veterinarian, the producer and the employee(s). The certificate shall be received by the dairy products control bureau within 35 days of the violative occurrence or the permit will be suspended until the certificate is received. For the third violation within a 12-month period, the producer shall be required to attend a hearing in the same manner as specified in subrule 68.36(7).

68.36(9) When the antibiotic tests show that a load is nonviolative, but routine producer sampling finds that a producer on the load is violative, the permit shall be suspended until subsequent testing establishes that the milk does not exceed safe levels of inhibitory residues. The first or second monetary penalty within a 12-month period shall be waived. In case of a third violation within a 12-month period, procedures shall be initiated as provided in subrule 68.36(7).

68.36(10) Each violative occurrence within a 12-month period, including a violative producer found on a nonviolative load, shall count as a first, second, third or fourth violation against the producer.

68.36(11) Records shall be kept by the industry at each receiving or transfer station of all incoming farm pickup loads of raw milk. The records shall be retained for a period of at least 12 months.

a. The records shall include the following information:

- (1) Name of the organization;
- (2) Name of test(s) used;
- (3) Controls, positive and negative;
- (4) Date of test(s);
- (5) Time the test was performed;
- (6) Temperature of the milk in the tanker at the time of sampling;
- (7) Identification of the load;
- (8) Pounds of milk on the load;
- (9) Initials of the person filling out the record.

b. When the load is violative, the records shall also include the following:

- (1) Names of the producers on the load;
- (2) Identification of the violative producer(s);
- (3) The first name of the dairy products control bureau office person telephoned;
- (4) Location of disposition of the violative load;
- (5) The number of pounds of milk belonging to each producer.

68.36(12) When telephoning the dairy products control bureau office to report a violative load or violative producer, the following information shall be given:

- a.* Name of the person telephoning;
- b.* Name of the organization;
- c.* Date of violation;
- d.* Route number and name of the milk hauler;
- e.* Verification that all producers on the violative load were tested;
- f.* Name and producer number(s) of the violative producer(s) and milk grade;
- g.* The concentration of residue in the producer sample;

- h.* The concentration of residue in the load sample, if available;
- i.* Name of test(s) used;
- j.* Name of analyst;
- k.* Pounds of milk on the load and violative producer(s) pounds;
- l.* Location of disposition of the milk.

This rule is intended to implement Iowa Code chapter 192.

21—68.37(192,194) Milk truck approaches.

68.37(1) The milk truck approach of a dairy farm facility shall not be through a cowyard or any other animal confinement area.

68.37(2) If the milk truck approach is contaminated with manure, the milk truck shall not traverse through the contaminated area.

68.37(3) All milk truck approach driveways shall be graded, maintained in a smooth condition, and shall be topped with gravel or be paved.

This rule is intended to implement Iowa Code chapters 192 and 194.

[ARC 8699B, IAB 4/21/10, effective 5/26/10]

21—68.38 and 68.39 Reserved.

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

21—68.40(192) Definitions.

“Bulk milk tanker” means a mobile bulk container used to transport milk or fluid milk products from farm to plant or from plant to plant. This includes both the over-the-road semitankers and the tankers that are permanently mounted on a motor vehicle.

“Bulk tank” means a bulk tank used to cool and store milk on a farm.

“Can milk truck body” means a truck body permanently mounted on a motor vehicle for the purpose of picking up milk in milk cans from dairy farms for delivery to a milk plant.

“Dairy farm” means any place where one or more cows, sheep or goats are kept for the production of milk.

“Milk” means the lacteal secretion of cows, sheep or goats, and includes dairy products.

“Milk can” means a sanitary-designed, seamless, stainless steel can, manufactured from approved material for the purpose of storing raw milk on can milk farms, to be picked up and loaded onto a can milk truck body.

“Milk grader” means a person who collects a milk sample from a bulk tank or a bulk milk tanker. This includes dairy industry field personnel and dairy industry milk intake personnel.

“Milk hauler” means any person who collects milk at a dairy farm for delivery to a milk plant.

“Milk plant” means any facility where milk is processed, received or transferred.

“Milk producer” means any person who owns or operates a dairy farm.

21—68.41(192) Bulk milk tanker license required.

68.41(1) A milk tanker shall not operate in Iowa without a valid license.

68.41(2) The license application shall include a description of the bulk milk tanker, including the make, serial number, capacity and the address at which the bulk milk tanker is customarily kept when not being used. The applicant shall also furnish any other information which the department reasonably requires for identification and licensing.

68.41(3) A license pursuant to this rule expires June 30 biennially and is not transferable between tankers.

68.41(4) The department may initiate an enforcement action against a person operating a bulk milk tanker if the department determines that the person has operated without a license or has procured another person to operate without a license.

68.41(5) The cost of the bulk milk tanker license is \$50.

68.41(6) If the bulk milk tanker and accessories have been inspected within the last 12 months and carry a current license, the bulk milk tanker renewal license application and a return envelope will be mailed to the owner of the tanker in April biennially by the dairy products control bureau office in Des Moines.

[ARC 3232C, IAB 8/2/17, effective 9/6/17]

21—68.42(192) Bulk milk tanker construction. A bulk milk tanker, including equipment and accessories, shall be of a sanitary design and construction and shall comply with “3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Products Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service,” Number B-05-15-A (April 14, 2015), published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc. and the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services.

[ARC 2104C, IAB 8/19/15, effective 9/23/15]

21—68.43(192) Bulk milk tanker cleaning and maintenance.

68.43(1) A bulk milk tanker, including equipment and accessories, shall be thoroughly cleaned immediately after each day’s use and shall be kept clean and in good repair.

68.43(2) All product contact surfaces on a bulk milk tanker, including all contact product surfaces of equipment and accessories used on the tanker, shall be thoroughly cleaned.

68.43(3) External surfaces of a bulk milk tanker shall also be thoroughly cleaned.

21—68.44(192) Bulk tanker sanitization. All product contact surfaces on a bulk milk tanker, including equipment and accessories, shall be thoroughly sanitized immediately after cleaning.

21—68.45(192) Bulk milk tanker cleaning facility.

68.45(1) A bulk milk tanker shall be cleaned and sanitized in a fully enclosed facility.

68.45(2) The facility shall have an impervious drained floor and shall be equipped with adequate hot and cold water under pressure, a wash vat, sanitizing facilities and equipment storage racks.

68.45(3) A bulk milk tanker may be cleaned and sanitized in the same room where milk is being received from bulk milk tankers.

21—68.46(192) Bulk milk tanker cleaning tag.

68.46(1) When a bulk milk tanker has been thoroughly cleaned and sanitized, but is not returning to the same plant, the dairy receiving operator shall attach a tag showing all of the following:

- a. The date on which the tanker was cleaned and sanitized.
- b. The name and location of the facility where the tanker was cleaned and sanitized.
- c. The legible signature or initials of the person who cleaned and sanitized the tanker.
- d. The type or name of the chemicals used to clean and sanitize.

68.46(2) The tag shall be attached to the outlet valve or inside the pump cabinet of the tanker.

68.46(3) The tag shall not be removed until the tanker is cleaned and sanitized again.

68.46(4) All unused tags shall be maintained in a secure location so they cannot be easily used for unauthorized purposes.

21—68.47(192) Dairy plant, receiving station or transfer station records.

68.47(1) Records shall be kept at all plants where tankers are cleaned and sanitized.

68.47(2) The records shall be kept for at least 90 days.

68.47(3) The records shall include all of the following:

- a. The name and address of the facility where the tanker was cleaned and sanitized.
- b. The date on which the tanker was cleaned and sanitized.
- c. The legible name or initials of the person who cleaned and sanitized the tanker.

21—68.48(192) Milk hauler license required.

68.48(1) A person shall not engage in the activities of being a milk hauler without a valid milk hauler license.

68.48(2) The cost of a milk hauler license is \$20.

68.48(3) A milk hauler license obtained pursuant to this rule expires June 30 biennially and is not transferable between persons.

68.48(4) As a condition of relicensing, a milk hauler license renewal applicant shall have had an on-the-farm evaluation of milk pickup procedures by a department inspector within two years immediately prior to relicensure and shall have attended a milk hauler school within three years immediately prior if a hauler school was made available within that three-year period.

68.48(5) If a milk hauler with a current license has had an on-the-farm evaluation within the last two years and has attended a state milk hauler training school within the last three years, a milk hauler renewal application and a return envelope will be mailed to the milk hauler in April biennially by the dairy products control bureau office in Des Moines.

68.48(6) The department may take action against a person if the department determines that the person has engaged in activities requiring a milk hauler license without a valid milk hauler license or has procured another person to operate without a license.

[ARC 3232C, IAB 8/2/17, effective 9/6/17]

21—68.49(192) New milk hauler license applicant. Rescinded ARC 3232C, IAB 8/2/17, effective 9/6/17.

21—68.50(192) Supplies required for milk collection and sampling. A milk hauler who collects milk in bulk from a dairy farm shall have all of the following supplies available:

1. An adequate supply of sample containers.
2. A sample dipper.
3. A sample dipper storage container.
4. A sanitizing solution in the sample dipper storage container of 200 ppm of chlorine or equivalent.
5. An insulated carrying case with a rack to hold samples.
6. A certified thermometer, accurate to plus or minus 2°F, that can be used to check the temperature of the milk in the farm bulk tank, the accuracy of the farm bulk tank thermometers and the temperature of the commingled load.
7. A marking device to identify samples collected.
8. A watch or timing device.
9. An adequate supply of forms needed for milk collection and records.
10. A writing device to write on the forms and records.
11. Access to an adequate supply of single-service paper towels.

21—68.51(192) Milk hauler sanitization.

1. A milk hauler shall wear clean clothing.
2. A milk hauler shall maintain a high degree of personal cleanliness.
3. A milk hauler shall observe good hygienic practices.
4. A milk hauler shall not measure, sample or collect milk if the hauler has a discharging or infected wound or lesion on the hauler's hands or exposed arms.

21—68.52(192) Examining milk by sight and smell.

68.52(1) Before a milk hauler receives or collects milk from a dairy farm, the hauler shall examine the milk by sight and smell and shall reject all milk that has any of the following characteristics:

1. Objectionable odor.
2. Abnormal appearance and consistency.
3. Visible adulteration.

68.52(2) A milk hauler who rejects milk from a farm shall collect only a sample of the rejected milk.

68.52(3) If a dairy farmer disputes a milk hauler's rejection of the milk, the milk hauler shall contact the operator of the dairy plant to which the milk would ordinarily be delivered, and the plant operator or the plant field person shall examine the rejected milk to determine whether the milk was properly rejected.

21—68.53(192) Milk hauler hand washing. A milk hauler shall wash and dry hands before performing any of the following:

1. Using a thermometer.
2. Measuring the milk.
3. Collecting a milk sample.

21—68.54(192) Milk temperature.

68.54(1) Before a milk hauler collects milk at a dairy farm, the milk hauler shall record the temperature of the milk to be collected.

68.54(2) If the milk is collected more than two hours after the last milking, the milk hauler shall reject the milk if the milk temperature exceeds 45°F or 7°C.

68.54(3) If milk from two or more milkings is collected within two hours of the last milking, the milk hauler shall reject the milk if the milk temperature exceeds 50°F or 10°C.

68.54(4) If the farm bulk tank thermometer is working, at least once each month, and more often if necessary, a milk hauler shall check the accuracy of each dairy farm bulk tank thermometer by taking the temperature of the milk in the bulk tank with the milk hauler's thermometer and shall record the temperature on the milk pickup record card. This procedure shall be done at every pickup if the farm bulk tank thermometer is not working.

68.54(5) Before a milk hauler uses the milk hauler's thermometer to take the temperature of the milk in a bulk tank, the hauler shall sanitize the stem of the thermometer in 200 ppm chlorine or its equivalent for a minimum of 60 seconds.

68.54(6) A milk hauler shall immediately notify the milk producer and the dairy field person if the dairy farm bulk tank is not cooling properly or if the bulk tank thermometer is not recording the temperatures accurately.

21—68.55(192) Connecting the milk hose.

68.55(1) Before the milk hauler connects a tanker hose to a bulk tank, the hauler shall examine the fittings of the tanker hose and the bulk tank outlet and shall clean and sanitize as necessary.

68.55(2) The milk hauler shall attach the milk hose to the bulk tank outlet in a manner that does not contaminate the hose or the hose cap.

68.55(3) The hose shall be connected through the milk room hose port.

21—68.56(192) Measuring the milk in the bulk tank.

68.56(1) Before milk is transferred from a bulk tank to a bulk milk tanker, the milk hauler shall measure the amount of milk in the bulk tank.

68.56(2) The milk hauler shall measure the milk using a clean gauge rod or other measuring device that is specifically designed and calibrated to measure milk in the bulk tank.

68.56(3) Immediately before using the gauge rod or measuring device, the milk hauler shall wipe it dry with a clean, single-service disposable towel.

68.56(4) A milk hauler shall not measure the amount of milk in a dairy farm bulk tank until the milk in the tank is motionless.

68.56(5) If the milk is being agitated, the milk hauler shall turn off the agitator and wait for the milk to become completely motionless before measuring the milk.

68.56(6) After measuring the milk with a gauge rod or other device, the milk hauler shall use that measurement to calculate the weight or volume of milk in the bulk tank with the manufacturer's conversion chart.

68.56(7) The milk hauler shall record that weight or volume on a written collection record.

21—68.57(192) Milk sample for testing.

68.57(1) Before milk is transferred from a dairy farm bulk tank to a bulk milk tanker, a milk hauler shall collect a representative sample of that milk from the dairy farm bulk tank for testing. If there is more than one bulk tank, a sample from each tank shall be taken and identified.

68.57(2) The collected sample shall be filled only $\frac{3}{4}$ full in the sample container so that the sample can be agitated in the lab.

21—68.58(192) Milk collection record.

68.58(1) Whenever a milk hauler collects a milk shipment from a dairy farm, the milk hauler shall make a written record for that shipment.

68.58(2) One copy of the collection record shall be posted in a dairy farm milk room.

68.58(3) The collection record shall be initialed by the milk hauler.

68.58(4) The record shall include all of the following:

1. The milk producer identification number.
2. The milk hauler's initials.
3. The date when the milk was sampled and collected.
4. The temperature of the milk when collected.
5. The weight or volume of milk collected as determined by the milk hauler.
6. The time of pickup, including whether A.M. or P.M. or military time.

21—68.59(192) Loading the milk from the bulk tank to the milk tanker.

68.59(1) After a milk hauler has sampled milk from the dairy farm bulk tank and prepared a complete collection record, the hauler may transfer the milk from that bulk tank to the milk tanker.

68.59(2) A milk hauler shall not collect milk from any other container on a dairy farm other than from a bulk tank.

68.59(3) Partial pickup of milk shall be avoided whenever possible.

68.59(4) After a milk hauler has collected all of the milk from a bulk tank, the milk hauler shall disconnect the milk hose from the bulk tank, cap the hose and return the hose to its cabinet in the bulk milk tanker.

68.59(5) The milk hauler shall inspect the empty dairy farm bulk tank for abnormal sediments and shall report any abnormal sediments to the dairy producer and the dairy plant field person.

68.59(6) After the milk hauler has disconnected the milk hose and inspected the empty farm bulk tank for abnormal sediments, the milk hauler shall rinse the bulk tank with cold or lukewarm water.

21—68.60(192) Milk samples required for testing.

68.60(1) The milk hauler shall collect a sample of milk from each dairy farm bulk tank before that milk is transferred to a bulk milk tanker.

68.60(2) A milk sample collected from a dairy farm bulk tank shall not be commingled with a sample collected from any other bulk tank.

21—68.61(192) Bulk milk sampling procedures. A milk hauler shall comply with all of the following procedures when collecting a milk sample:

1. Shall collect the sample after the bulk tank milk has been thoroughly agitated.
2. Shall agitate a bulk tank of less than a 1000 gallon size, in the presence of the milk hauler, for at least five minutes before the milk sample is taken.
3. Shall agitate a bulk tank of a 1000 gallon size or larger, in the presence of the milk hauler, for at least ten minutes before the milk sample is taken. If there are stamped printed instructions on the bulk tank, giving explicit agitation instructions that are different from ten minutes, the bulk tank shall then be agitated according to the written instructions.
4. Shall collect the sample using a sanitized sample dipper that is manufactured for the purpose of taking a milk sample from a bulk tank. The milk hauler shall not use the sample container to collect a milk sample.

5. Shall rinse the sanitized sample dipper in the milk, in the bulk tank, at least two times before the dipper is used to collect the sample.
6. After rinsing the sample dipper in the milk, shall pour the sample from the dipper into a sample container until the sample container is $\frac{3}{4}$ full and shall securely close the sample container.
7. Shall not fill the sample container over the bulk tank, but shall fill the sample container off to the side of the bulk tank, over the floor of the milk room.
8. Shall handle the sample container and cap aseptically.
9. After collecting the milk sample, shall immediately place the sample on a rack or floater, on ice in the insulated sample container, and rinse the sample dipper with clean potable water.

21—68.62(192) Temperature control sample.

68.62(1) The milk hauler shall collect two milk samples at the first farm on each milk route.

68.62(2) One of the two samples collected from the first farm shall be used for a temperature control (TC) sample.

68.62(3) The temperature control (TC) sample shall remain in the rack with the other samples pertaining to that load.

68.62(4) The temperature control (TC) sample container shall be marked in a legible manner identifying the sample as the TC sample and shall also be marked with the other following information:

1. The producer identification number.
2. The initials of the milk hauler.
3. The date the sample was collected.
4. The time the sample was collected.
5. The temperature of the milk in the farm bulk tank from which the TC sample was collected.

21—68.63(192) Producer sample identification. Immediately before a milk hauler collects a milk sample, but before the milk hauler opens the sample container, the milk hauler shall, unless that sample container is pre-labeled with the producer information, clearly and indelibly label the sample container with all of the following information:

1. The producer identification number.
2. The date when the sample was collected.
3. The temperature of the milk in the bulk tank.

21—68.64(192) Care and delivery of producer milk samples.

68.64(1) Immediately after a milk hauler collects a milk sample, the milk hauler shall place the sample container in a clean, refrigerated carrying case in which the temperature is kept at from 32°F to 40°F.

68.64(2) If the sample containers are packed in ice or cold water to keep the samples refrigerated, the ice or water shall cover no more than $\frac{3}{4}$ of each sample container.

68.64(3) The milk hauler shall promptly deliver the samples to the place designated by the milk purchaser.

21—68.65(192) Milk sample carrying case. The carrying case shall be constructed to have all of the following characteristics:

1. Shall be constructed of rigid metal or plastic.
2. Shall be effectively insulated and refrigerated to keep the samples at the required temperature.
3. Shall have a rack or floater designed to hold samples in the upright position.

21—68.66(192) Bulk milk delivery.

68.66(1) If milk is unloaded or transferred at any location other than a licensed facility, the person having custody of the milk shall notify the department of that unloading or transfer before that milk is processed or shipped to any other location.

68.66(2) Air entering a bulk milk tanker when the tanker is unloading shall be filtered to prevent contamination of the milk when the door to the receiving area is open.

21—68.67(192) False samples or records. The department may take enforcement action against a person doing or conspiring to do any of the following:

1. Falsely identify any milk sample.
2. Submit a false or manipulated milk sample.
3. Submit a milk sample collected in violation of this chapter.
4. Misrepresent the amount of milk collected from a dairy farm.
5. Misrepresent or falsify any record or report required under this chapter.

21—68.68(192) Violations prompting immediate suspension. A person violating any of the following shall have the person's milk hauler license suspended for the first full five weekdays following the violation. Administering the violation in this manner will allow a licensed field representative or a person employed by the plant with a milk hauler's license to ride with a suspended milk hauler and to perform all of the bulk milk pickup procedures which the suspended milk hauler shall not perform while the license is suspended. This rule will also allow a dairy co-op or a proprietary establishment the ability to recover the cost of the employee of the business establishment while the employee is working with the suspended milk hauler.

1. Not measuring the milk before pumping.
2. Not collecting a sample from the farm bulk tank.
3. Collecting milk from a container other than the farm bulk tank or an approved milk can.
4. Not collecting a milk sample before pumping or opening the valve to the milk tanker.
5. Mixing the contents of milk samples with other milk samples.
6. Collecting a sample before proper agitation.
7. Not using proper sample collection equipment.
8. Falsely identifying a milk sample.
9. Submitting a false or manipulated milk sample or a false sample collection record.

21—68.69(192) Milk grader license required.

68.69(1) A person shall not be employed as a dairy field person or a milk intake person and shall not collect a raw milk sample from a farm bulk tank or collect a load sample from a bulk milk tanker in Iowa without first being evaluated by a department dairy inspector and making application for a milk grader license. A milk grader license will not be needed by a temporary milk plant intake person that is under the direct supervision of a licensed milk grader.

68.69(2) The department may take an enforcement action against a person engaged in activities of a dairy field person or milk intake person or a person collecting milk samples from a farm bulk tank or from a bulk milk tanker if the department determines that the applicant has engaged in such activities without first obtaining a valid Iowa milk grader license or a valid 45-day interim license or has procured another person to operate without a license.

68.69(3) The cost of a milk grader license is \$20.

68.69(4) A milk grader license obtained pursuant to this rule expires June 30 biennially and is not transferable between persons.

68.69(5) As a condition of relicensing:

a. A milk grader license renewal applicant for collecting a milk sample from a farm bulk tank shall have had an on-the-farm evaluation of milk collecting and care of milk sample procedures by a department inspector within two years immediately prior to relicensure and shall have attended a milk hauler school within three years immediately prior to relicensure, if a hauler school was made available within that three-year period.

b. A milk grader license renewal applicant for collecting a milk sample from a bulk milk tanker at a milk plant shall have had an in-the-plant evaluation of milk collecting procedures by a department inspector within the last two years prior to relicensure.

c. If the milk grader has had an evaluation within the last two years and, if required, has attended a milk hauler training school within the last three years, a milk grader renewal application and a return

envelope will be mailed biennially in April to the milk grader by the dairy products control bureau office in Des Moines.

[ARC 3232C, IAB 8/2/17, effective 9/6/17]

21—68.70(192) New milk grader license applicant.

68.70(1) Rescinded IAB 8/19/15, effective 9/23/15.

68.70(2) An applicant for a milk grader license to collect a milk sample from a farm bulk tank shall follow the procedures outlined in subrules 68.49(2) to 68.49(4).

68.70(3) An applicant for a milk grader license to collect a milk sample from a bulk milk tanker at a milk plant shall contact the dairy products control bureau office in Des Moines, telephone (515)281-3545, and request a sampling procedure review by a department inspector and a milk grader application.

The inspector will fill out “Inspection Form Short Form 009-0293/TS” for verification of the sampling procedure review and give a signed copy to the applicant. The applicant shall mail the signed copy, the completed application and the \$10 license fee to the dairy products control bureau office for a “Restricted Milk Grader License.”

[ARC 2104C, IAB 8/19/15, effective 9/23/15]

21—68.71(192,194) Can milk truck body.

68.71(1) A can milk truck body used for the purpose of picking up milk in milk cans from dairy farms for delivery to a milk plant shall not operate in the state of Iowa without first being issued a valid license from the department. This rule is intended to include can milk truck bodies that are commercially licensed in Iowa.

68.71(2) The can milk truck body vehicle license applicant shall include a description of the body, the make, model, year and color of the truck, a description of the can milk truck body, including the make, serial number, can capacity and the address at which the can milk truck body is customarily kept when not being used. The applicant shall also furnish any other information which the department reasonably requires for identification and licensing.

68.71(3) A license pursuant to this rule expires June 30 biennially and is not transferable between truck bodies.

68.71(4) The department may take enforcement action against a person operating a can milk truck body if the department determines that the person has operated without a license or a person has procured another person to operate without a license.

68.71(5) The cost of the can milk truck body license is \$50.

68.71(6) The applicant shall have received an annual inspection by a department inspector and shall make the vehicle available for inspection prior to receiving the license.

[ARC 3232C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapter 192.

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SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

[Renamed Soil Conservation Division[27] under the Agriculture and Land Stewardship Department[21] “umbrella”]
[Renamed Soil Conservation and Water Quality Division[27] pursuant to 2015 Iowa Acts, House File 634]

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DIVISION I
SOIL CONSERVATION DIVISION

CHAPTER 1

REGIONS OF REPRESENTATION FOR STATE SOIL CONSERVATION
AND WATER QUALITY COMMITTEE FARMER MEMBERS

27—1.1(161A) Scope. This chapter delineates the regional boundaries from which the six farmer members of the state soil conservation and water quality committee shall be appointed. The three members representing the mining industry, cities and towns, and tree farming shall be selected from the state at large.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—1.2(161A) Regions of representation. The farmer members of the state soil conservation and water quality committee shall be selected from the northwest, north central, northeast, southwest, south central, and southeast regions of the state.

1.2(1) Northwest region. The northwest region shall contain the counties of Buena Vista, Calhoun, Cherokee, Clay, Dickinson, Emmet, Ida, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, and Woodbury.

1.2(2) North central region. The north central region shall contain the counties of Boone, Butler, Cerro Gordo, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Marshall, Mitchell, Story, Tama, Webster, Winnebago, Worth, and Wright.

1.2(3) Northeast region. The northeast region shall contain the counties of Allamakee, Benton, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Howard, Jackson, Jones, Linn, and Winneshiek.

1.2(4) Southwest region. The southwest region shall contain the counties of Adair, Adams, Audubon, Carroll, Cass, Crawford, Fremont, Greene, Guthrie, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie, Shelby, and Taylor.

1.2(5) South central region. The south central region shall contain the counties of Appanoose, Clarke, Dallas, Decatur, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Poweshiek, Ringgold, Union, Warren, and Wayne.

1.2(6) Southeast region. The southeast region shall contain the counties of Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jefferson, Johnson, Keokuk, Lee, Louisa, Muscatine, Scott, Van Buren, Wapello, and Washington.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapter 161A.

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[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 2
OPERATION OF STATE SOIL CONSERVATION AND WATER QUALITY COMMITTEE

27—2.1(161A) Scope. This chapter governs the conduct of business by the state soil conservation and water quality committee. Rule-making proceedings held as part of committee meetings and contested case proceedings involving the committee are consistent with Iowa Code chapter 17A.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—2.2(161A) Time of meetings. The committee meets monthly, generally the first Thursday of each month. The chairperson or a majority of the committee may establish meetings at more frequent intervals.

27—2.3(161A) Place of meetings. Meetings are held in the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa, or at other locations as appropriate. The meeting place will be specified in the agenda.

27—2.4(161A) Notification of meetings. The director of the soil conservation division shall provide public notice of all meeting dates, locations, and tentative agenda.

2.4(1) Form of notice. Notice of meetings is given by posting the tentative agenda and by distribution upon request. The agenda lists the time, date, place, and topics to be discussed at the meeting. The agenda shall include an opportunity for the public to address the committee on any issue related to the duties and responsibilities of the committee, except as otherwise provided in these rules.

2.4(2) Posting of agenda. The tentative agenda for each meeting will be posted at the division's offices on the second floor, Henry A. Wallace Building, normally at least five days prior to the meeting. The agenda will be posted at least 24 hours prior to the meeting, unless, for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

2.4(3) Distribution of agenda. Agenda will be mailed to anyone who files a request with the director. The request should state whether the agenda for a particular meeting is desired, or whether the requester desires to be on the division's mailing list to receive the agenda for all meetings of the state soil conservation and water quality committee.

2.4(4) Amendment to agenda. Any amendments to the agenda after posting and distribution under subrules 2.4(2) and 2.4(3) will be posted, but will not be mailed. The amended agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The committee may adopt amendments to the agenda at the meeting only if good cause exists requiring expeditious discussion or action on such matters. The reasons and circumstances necessitating such agenda amendments, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

2.4(5) Supporting material. Written materials provided to the committee with the agenda may be examined and copied as provided in the public information rules of the department. The director may require a fee to cover the reasonable cost to the division to provide the copies, in accordance with rules of the department.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—2.5(161A) Attendance and participation by the public.

2.5(1) Attendance. All meetings are open to the public. The committee may exclude the public from portions of the meeting only in accordance with Iowa Code section 21.5.

2.5(2) Participation.

a. Items on agenda. Presentations to the committee may be made at the discretion of the chairperson.

b. Items not on agenda. Iowa Code section 21.4 requires the committee to give notice of its agenda. The committee will not take action on a matter not on the agenda, except in accordance with subrule 2.4(4). Presentations to the committee on subjects not on the agenda may be made at the discretion of the chairperson. Persons who wish the committee to take action on a matter not on the agenda should file a request with the director to place that matter on the agenda of a subsequent meeting.

c. Meeting decorum. The chairperson may limit participation as necessary for the orderly conduct of agency business.

2.5(3) Use of cameras and recording devices. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices be discontinued if they cause interference and may exclude those persons who fail to comply with that order.

27—2.6(161A) Quorum and voting requirements.

2.6(1) Quorum. Two-thirds of the members of the committee constitutes a quorum.

2.6(2) Voting. The concurrence of a majority of the committee members is required to determine any matter before the committee for action, except for a vote to close a meeting which requires the concurrence of two-thirds of the members of the committee present.

27—2.7(161A) Conduct of meeting.

2.7(1) General. Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting shall be by voice or by roll call. Voting shall be by voice unless a voice vote is inconclusive, a member of the committee requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairpersons shall announce the result of the vote.

2.7(2) Voice votes. All committee members present should respond when a voice vote is taken. The response shall be aye, nay, or abstain.

a. All members present shall be recorded as voting aye on any motions when there are no nay votes or abstentions heard.

b. Any member who abstains shall state at the time of the vote the reason for abstaining. The abstention and the reason for it shall be recorded in the minutes.

2.7(3) Provisions of information. The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

27—2.8(161A) Minutes, transcripts, and recordings of meetings.

2.8(1) Recordings. The director shall record by mechanized means each meeting and shall retain the recording for at least one month. Recordings of closed sessions shall be sealed and retained at least one year.

2.8(2) Transcripts. The division does not routinely prepare transcripts of meetings. The division will have transcripts of meetings, except for closed sessions, prepared upon receipt of a request for a transcript and payment of a fee to cover the cost to the division of preparing the transcript.

2.8(3) Minutes. The director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the committee and retained permanently by the director. The approved minutes shall be signed by the director and the committee chairperson.

27—2.9(161A) Officers and duties.

2.9(1) Officers. The officers of the committee are the chairperson and the vice chairperson.

2.9(2) Duties. The chairperson shall preside at the meetings and shall exercise the powers conferred upon the chairperson. The vice chairperson shall perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson.

27—2.10(161A) Election and succession of officers.

2.10(1) Elections. Officers shall be elected annually during June and shall assume office effective July 1.

2.10(2) Succession.

a. If the chairperson does not serve out the elected term, the vice chairperson shall succeed the chairperson for the remainder of the term. A special election shall be held to elect a new vice chairperson to serve the remainder of the term.

b. If the vice chairperson does not serve out the elected term, a special election shall be held to elect a new vice chairperson to serve the remainder of the term.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 12/8/89, Notice 10/4/89—published 12/27/89, effective 1/31/90]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 3
CONTESTED CASE PROCEEDINGS AND PRACTICE

The uniform rules on contested case proceedings published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

27—3.1(17A,161A) Scope and applicability. In lieu of the words “(agency name)” insert “the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship”.
[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—3.2(17A,161A) Definitions. Insert the following definitions in alphabetical order:

“*Committee*” means the state soil conservation and water quality committee established at Iowa Code section 161A.4.

“*Department*” means the department of agriculture and land stewardship.

“*Director*” means the director of the division of soil conservation and water quality, department of agriculture and land stewardship.

“*Division*” means the division of soil conservation and water quality, department of agriculture and land stewardship.

“*Secretary*” means the Iowa secretary of agriculture.

In lieu of the words “(designate official)” insert “person designated by the director to preside over a contested case including, but not limited to, an administrative law judge with the department of inspections and appeals”. In lieu of the words “(agency name)” insert “the division of soil conservation and water quality, department of agriculture and land stewardship”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—3.3(17A,161A) Time requirements.

3.3(2) Delete the words “or by (specify rule number)”.

27—3.4(17A,161A) Requests for contested case proceeding. In lieu of the first paragraph, insert “Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question. If no time is specified in the agency action and there is no applicable rule or statute, then the written request for a contested case proceeding shall be filed in writing within 30 calendar days of the action or notice of the intended action the person wishes to contest.”

27—3.5(17A,161A) Notice of hearing.

3.5(1) Delete paragraph “e. (other options).”

27—3.6(17A,161A) Presiding officer.

3.6(1) Delete the words “(or such other time period the agency designates)”.

3.6(2) Delete the words “(or its designee)”. Delete paragraphs “c” and “i” and reletter the subsequent paragraphs.

3.6(3) Delete the subrule and insert “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.”

3.6(4) Delete the subrule and renumber the subsequent subrules.

27—3.12(17A,161A) Service and filing of pleadings and other papers.

3.12(3) In lieu of the words “(specify office and address)” insert “Director’s Office, Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”. In lieu of the words “(agency name)” insert “division”.

3.12(4) In lieu of the words “(designate office)” insert “director’s office”.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—3.15(17A,161A) Motions.

3.15(4) Delete the words “(or other time period designated by the agency)”.

3.15(5) In lieu of the words “(45 days)” insert “45 days”. In lieu of the words “(15 days)” insert “15 days”. In lieu of the words “(20 days)” insert “20 days”.

27—3.16(17A,161A) Prehearing conference.

3.16(1) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(designate office)” insert “presiding officer”.

27—3.17(17A,161A) Continuances.

3.17(1) Delete the words “(or other time period designated by the agency)”.

27—3.22(17A,161A) Default.

3.22(5) Delete the words “(or other time specified by the agency)”.

27—3.23(17A,161A) Ex parte communication.

3.23(8) In lieu of the words “(or disclosed)” insert “or disclosed”.

3.23(10) In lieu of the words “(agency to designate person to whom violations should be reported)” insert “the division director or the director’s designee”.

27—3.24(17A,161A) Recording costs. In lieu of the words “(agency name)” insert “division”.

27—3.25(17A,161A) Interlocutory appeals. In lieu of the words “(board, commission, director)” insert “director or the director’s designee”. In lieu of the words “(of the presiding officer)” insert “of the presiding officer”. Delete the words “(or other time period designated by the agency)”.

27—3.26(17A,161A) Final decision.

3.26(1) In lieu of the words “(the agency) (or a quorum of the agency)” insert “the division”.

3.26(2) In lieu of the words “(agency name)” insert “division”.

27—3.27(17A,161A) Appeals and review.

3.27(1) In lieu of the words “(board, commission, director)” insert “director or the director’s designee”. Delete the words “(or other time period designated by the agency)”.

3.27(2) In lieu of the words “(board, commission, director)” insert “director or the director’s designee”. Delete the words “(or other time period designated by the agency)”.

3.27(3) In lieu of the words “(agency name)” insert “division”.

3.27(4) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(board, commission, director)” insert “director or the director’s designee”.

3.27(5) In lieu of the words “(agency name)” insert “division”.

3.27(6) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(board, commission, director)” insert “director or the director’s designee”.

27—3.28(17A,161A) Applications for rehearing.

3.28(3) In lieu of the words “(agency name)” insert “division”.

3.28(4) In lieu of the words “(agency name)” insert “division”.

27—3.29(17A,161A) Stays of agency action.

3.29(1) In lieu of the words “(agency name)” insert “division”. In lieu of the words “(board, commission, director)” insert “director or the director’s designee”.

3.29(2) In lieu of the words “(board, commission, director, as appropriate)” insert “director or the director’s designee”.

3.29(3) In lieu of the words “(agency name)” insert “division”.

These rules are intended to implement Iowa Code chapters 17A and 161A.

[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

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

27—10.1 to 10.9 Reserved.

PART 1

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

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

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

27—10.12 to 10.19 Reserved.

PART 2

27—10.20(161A) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“*Edge-of-field practice*” means a wetland, bioreactor, or saturated buffer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12; ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—10.21 to 10.29 Reserved.

PART 3

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

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

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

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

10.31(2) *Maintenance/performance agreement.* As a condition for receipt of any financial incentives funds for implementing soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for the term specified in the maintenance/performance agreement. Specific conditions of the agreement are detailed on the form.

a. Determination of practice implementation and continued compliance with maintenance/performance agreements.

(1) The certifying technician or the technician of the district will determine if the completed practice is in compliance with applicable standards and specifications in Part 8 of these rules. The certifying technician shall attest to completion and compliance with the standards by completing and signing a certification of practice form. The completed certification will be retained in the district case file for the appropriate landowner.

(2) The certifying technician or district technician shall inspect the practice at any time the district commissioners have reason to believe it is not being satisfactorily maintained. The division will evaluate the situation to determine that proper procedures were followed. “Satisfactorily maintained” means being maintained in such a state of repair so that the practice is successfully performing the function for which it was originally installed. Following the inspection, the certifying technician shall complete a certification of practice form. The completed certification shall be filed in the district’s case file for the landowner.

(3) The district shall inspect a practice whenever requested to do so by the landowner. The person requesting the inspection shall be provided a copy of the completed certification of practice form, used to document the results of this inspection.

b. Determination of noncompliance with maintenance/performance agreement. If the certifying technician determines that the practice is not being satisfactorily maintained, it shall be so noted on the certification of practice form. The district shall notify the division in writing of the noncompliance finding. The notification to the division shall contain a complete explanation of why the practice is considered not to be in compliance with the maintenance/performance agreement. The division will evaluate the situation to determine that proper procedures were followed. “Satisfactorily maintained” means the practice has been maintained in such a state of repair that it is successfully performing the function for which it was originally installed.

c. In the event that properly maintained practices that were installed with the assistance of Iowa financial incentive program funds are damaged due to natural disasters, completing the maintenance/performance agreement shall not constitute an action or intent on the part of the division

to prevent the owner of the land on which the practices were installed from receiving federal emergency conservation program assistance to repair or replace the practices.

27—10.32(161A) Noncompliance.

10.32(1) *Noncompliance with performance agreements.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(2) *Refunds for noncompliance with maintenance agreements to cost-share agreements entered prior to July 1, 1981.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(3) *Refunds for noncompliance with maintenance agreements entered between January 1, 1981, and July 1, 1982.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(4) *Noncompliance with maintenance/performance agreements.* Upon determination by the district and the division that a landowner is not in compliance with a maintenance/performance agreement, the division shall assist the district in the issuance of an administrative order to the landowner requiring appropriate maintenance, repair or reconstruction of the practice, provided voluntary means have been exhausted. The district, in its sole discretion, may allow the landowner or the landowner's successors to refund to the division the entire amount of the financial incentive payment received by the landowner in lieu of maintaining, repairing or reconstructing a practice.

a. Within 60 days from the date of issue of the administrative order, the landowner shall submit to the district a written and signed statement of intent to maintain, repair or reconstruct the practice.

b. The maintenance, repair or reconstruction work shall be initiated within 180 days from the date of issue of the administrative order and shall be satisfactorily completed within one year of the date of issue of the administrative order.

10.32(5) *Agricultural land converted to nonagricultural land.* If land subject to a maintenance/performance agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the practice shall not be removed until the owner refunds the appropriate amount of the payment received.

a. Amount of refund. The amount of refund will be the amount of the financial incentive payment received less 5 percent for each year the practice was in place.

b. Districts will notify the division when such refunds are collected.

c. Refunds will be made to the division. The division will deposit refunds to the appropriate district account. Use of the refunds will be limited to providing financial incentives under this chapter.

27—10.33(161A) Appeals and reviews. A landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the district commissioners or the division of soil conservation and water quality. Appeals to the state soil conservation and water quality committee may be made by the district, a landowner or a farm operator following a review by the division director or the director's designee.

10.33(1) Review with soil and water conservation district commissioners. When a landowner or farm operator wishes to appeal an order to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement, the landowner or farm operator may request a review of the order with the district commissioners. The commissioners shall schedule a meeting to review the issue with the landowner or farm operator. This proceeding shall be informal. A landowner or farm operator shall request a review with the district commissioners in writing and within 30 days following receipt of their order.

10.33(2) Review with the division of soil conservation and water quality. After having unsuccessfully met with the district commissioners, a landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may file a written request for review with the division. The division review shall be conducted by the division director or the director's designee. This proceeding shall be informal. A landowner or farm operator shall request the review with the division in writing within 30 days following the review with the district.

10.33(3) Appeal to the state soil conservation and water quality committee. In those cases where the district, landowner, or farm operator is not satisfied with the decision rendered as a conclusion of a division review concerning an order to maintain, repair or reconstruct a temporary or permanent practice covered by a maintenance/performance agreement, the district, landowner, or farm operator may appeal the division's decision to the state soil conservation and water quality committee. This proceeding shall be a formal, contested case hearing. The district, landowner, or farm operator shall make the appeal to the state committee in writing within 30 days following completion of the division's review.

10.33(4) The committee will either affirm, modify, or vacate the administrative order following the completion of the contested case hearing.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—10.34 to 10.39 Reserved.

PART 4

27—10.40 Reserved.

27—10.41(161A) Appropriations. The department of agriculture and land stewardship, division of soil conservation and water quality, has received appropriations for conservation cost sharing since 1973 and appropriations to fund certain incentive programs for soil erosion control since 1979. Funds are appropriated each year by the general assembly.

The division has four years to encumber or obligate these funds before they revert to the state's general fund. This rule addresses the distribution of these appropriations among the incentive programs for soil erosion control established by the division in accordance with the authorities extended in Iowa Code chapter 161A. The rule is also consistent with the restrictions imposed by language of the appropriations bills.

10.41(1) Voluntary program. Ninety percent of the appropriation is to be used for cost sharing to provide state funding of not more than 50 percent of the approved cost of permanent soil and water conservation practices or for incentive payments to encourage management practices to control soil erosion on land that is now row-cropped.

The first \$15,000 allocated to each district and up to 30 percent of the amount remaining in a district's original and supplemental allocation may be used for the establishment of practices listed in subrules 10.82(1) and 10.82(2).

The commissioners of a district may allocate voluntary program funds for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. Funds may be used for construction, reconstruction, installation, or repair of projects. The commissioners must determine that funds are necessary to restore permanent practices to prevent erosion in excess of applicable soil loss limits caused by the disaster emergency. Funds cannot be used unless a state of disaster emergency pursuant to a proclamation as provided in Iowa Code section 29C.6 has been declared. Funds can be used only if federal or state disaster emergency funds are not adequate. Funds do not have to be allocated on a cost-share basis. Districts are required to report to the division regarding restoration projects and funds allocated for projects.

10.41(2) Publicly owned lakes. For the approved cost of permanent soil conservation practices on watersheds above publicly owned lakes, a minimum of 5 percent of the amount appropriated is to be set aside for cost sharing at a rate not to exceed 75 percent.

10.41(3) Mandatory program. A maximum of 5 percent of the appropriation shall be set aside for cost sharing with landowners or farm operators who are required to install soil erosion control practices as a result of an administrative order from the district to abate complaints filed under Iowa Code section 161A.47.

10.41(4) Special watershed projects. Iowa Code section 161A.7 permits cost sharing up to 60 percent of the cost of a project including five or more contiguous farm units which have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or

subwatershed, where the owners jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plan.

10.41(5) Summer construction incentives. Funds are available for the planting of a conservation cover crop in place of cropland during the growing season to extend the construction season for the purpose of the installation of conservation practices. This practice shall be applied using the conservation crop rotation standard. Summer construction incentives are only available in conjunction with state-funded conservation practices.

This rule is intended to implement Iowa Code chapter 161A.
[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—10.42 to 10.49 Reserved.

PART 5

27—10.50(161A) Allocations to soil and water conservation districts. This division identifies those program funds that are allocated to the districts and explains how the allocations are made.

27—10.51(161A) Voluntary program. The division will allocate program funds to the districts in steps identified as original allocations and supplemental allocations.

10.51(1) Original allocation. Sixty percent of the fiscal year funds distributed to this program will be allocated to the districts at the beginning of the fiscal year in accordance with a formula based on the state soil survey database for Iowa. The formula is $A = wzf$, where:

- a. A = allocation to the district.
- b. w = the percentage factor for the district, determined by $(x/y) (100)$, where:
 - (1) x = district acres, determined by totaling the district's land capability class acres from the state soil survey database for Iowa using the formula: $(\frac{1}{4})2e + 3e + 4e$.
 - (2) y = state acres, determined by totaling the state's land capability class acres from the state soil survey database for Iowa using the formula: $(\frac{1}{4})2E + 3E + 4E$.
- c. z = sixty percent of fiscal year funds distributed to the voluntary program.
- d. f = an adjustment factor of 0.980 applied to each district's allocation to adjust the original allocation to compensate for establishing a minimum of four-tenths of 1 percent of "z" to ensure that each district has a workable program.
- e. The following table provides the value of "w" for each district:

Individual Soil and Water Conservation District

Percentage Allocation Factors

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
1.7 Adair	1.2 Davis	1.0 Jefferson	0.2 Pocahontas*
1.1 Adams	1.4 Decatur	1.2 Johnson	0.8 Polk
1.5 Allamakee	0.8 Delaware	1.2 Jones	1.4 E. Pottawattamie
1.1 Appanoose	0.5 Des Moines	1.4 Keokuk	1.2 W. Pottawattamie
1.3 Audubon	0.4 Dickinson	0.5 Kossuth	1.6 Poweshiek
1.2 Benton	1.8 Dubuque	1.0 Lee	1.6 Ringgold
0.3 Black Hawk*	0.4 Emmet	1.0 Linn	0.7 Sac
0.6 Boone	1.1 Fayette	0.5 Louisa	0.8 Scott
0.3 Bremer*	0.3 Floyd*	1.1 Lucas	1.8 Shelby
0.3 Buchanan*	0.6 Franklin	0.9 Lyon	1.0 Sioux
0.5 Buena Vista	1.0 Fremont	1.2 Madison	0.6 Story
0.6 Butler	0.5 Greene	1.2 Mahaska	1.5 Tama

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
0.3 Calhoun*	0.5 Grundy	1.3 Marion	1.7 Taylor
1.2 Carroll	1.5 Guthrie	1.5 Marshall	1.1 Union
1.5 Cass	0.4 Hamilton	1.1 Mills	1.2 Van Buren
1.2 Cedar	0.4 Hancock	0.2 Mitchell*	1.0 Wapello
0.4 Cerro Gordo	0.7 Hardin	1.3 Monona	1.2 Warren
1.0 Cherokee	1.7 Harrison	1.0 Monroe	1.1 Washington
0.4 Chickasaw	0.9 Henry	1.2 Montgomery	1.4 Wayne
1.2 Clarke	0.4 Howard	0.5 Muscatine	0.3 Webster*
0.4 Clay	0.2 Humboldt*	0.5 O'Brien	0.5 Winnebago
2.0 Clayton	1.3 Ida	0.3 Osceola*	2.0 Winneshiek
1.2 Clinton	1.4 Iowa	1.5 Page	2.2 Woodbury
2.5 Crawford	1.7 Jackson	0.4 Palo Alto	0.2 Worth*
0.8 Dallas	1.8 Jasper	2.4 Plymouth	0.4 Wright

*The minimum value to be used in determining original allocations to districts shall be 0.4.

10.51(2) Supplemental allocation. The remaining balance of the fiscal year funds plus recalled funds will be provided to the districts in a supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1 and by December 31. Factors to be considered in making a supplemental allocation to a district include:

a. The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

b. Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

10.51(3) Recall of funds. The division shall recall unobligated funds from district accounts on December 31 and on June 30. Recalled funds will be made available to qualifying districts as supplements to their initial allocation.

10.51(4) Reallocation of recalled funds. Rescinded IAB 7/18/07, effective 6/27/07.

10.51(5) Eligibility for supplemental allocations. In order to be considered as a pending application for the purpose of calculating supplemental need, an application must be immediately ready to proceed to layout, design and construction upon approval by the district.

a. Fall supplemental funding shall only be available to those districts that have 75 percent of their funds obligated and have demonstrated an ability to use available funds.

b. Spring supplemental funding shall be made available to practices that will be completed by June 30 of the current year.

10.51(6) Recall and reallocation of funds by division director. If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14]

27—10.52(161A) Publicly owned lakes. The division of soil conservation and water quality maintains the funds that are distributed to the publicly owned lakes program. These funds may be used to provide cost sharing not to exceed 75 percent of the approved cost of soil conservation practices on watersheds above publicly owned lakes and reservoirs. The division will allocate these program funds to eligible districts in steps identified as original allocation, recall of unobligated funds, and reallocation.

10.52(1) Original allocation. Funding needs will be identified and funds will be set aside for watershed projects which have cost-share funds in addition to state and district cooperator funds (e.g., federal, county, or other). The remaining funds will be allocated equally between the other watersheds identified on the publicly owned lakes priority list.

10.52(2) Recall of unobligated funds. Funds that are allocated to districts under this program and are not obligated by September 1 shall be recalled by the division and reallocated.

10.52(3) Recall of obligated, but unspent funds. Rescinded IAB 7/18/07, effective 6/27/07.

10.52(4) Reallocation of recalled funds. The reallocation of recalled funds will be based on need and demonstrated ability to use the funds. The districts shall submit their requests identifying valid applications and cost estimates, if any, to the division. The division shall allocate funds for these requests on a first-come, first-served basis to other eligible watersheds above publicly owned lakes.

10.52(5) Eligible watersheds. For a landowner to qualify for 75 percent cost sharing under this program, the watershed in which the land is located must be on a list of priority watersheds above publicly owned lakes or reservoirs that is established by the department of natural resources.

10.52(6) Applications and agreements. Applications and agreements for 75 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except that the division will allocate funds to districts on an as-needed and first-come, first-served basis.

[ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—10.53 Reserved.

27—10.54(161A) Mandatory program. The division of soil conservation and water quality maintains the funds that are distributed to the mandatory cost-share program. These funds are used to provide cost sharing to landowners who are required to establish permanent soil and water conservation practices as the result of a district's administrative order or a court order.

10.54(1) Applications and agreements. Applications and maintenance/performance agreements for 50 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except as follows:

a. When the district commissioners have decided that cost-share assistance is to be approved for a landowner, a copy of the application and a copy of the cost estimate proposed by the technician will be sent to the division with a request for funding obligation. The division will review the application, allocate funds for the specific application to the district and notify the district of the approval. If funds are not available, the division will not allocate funds to the specific application, but will write a letter of explanation to the district. The district will notify the landowner of the status by issuing a supplementary administrative order.

b. Prior approval of the amendment must be obtained from the division should the commissioners desire to amend the application to change the amount of work or the cost.

10.54(2) Redistribution of program funds. Any unobligated program funds remaining at the end of the fiscal year will be redistributed to the voluntary cost-share program. These funds may be included with the supplemental allocation to districts or may be disbursed with the original allocation.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—10.55 Reserved.

27—10.56(161A) Special watershed projects. District commissioners will satisfy the following conditions with regard to special watershed projects:

10.56(1) Prior to approving a project application for 60 percent cost-share, the district must obtain a project number from the division.

10.56(2) All participating landowners in a particular project will be required to show progress towards completion during the first year of the project. Progress will be evaluated by the district. Failure of all participating landowners to show progress during the first year will result in loss of authorization of the project and 60 percent cost-share funding eligibility.

10.56(3) Authorization for each project shall not exceed five years.

27—10.57(161A) Reserve fund.

10.57(1) Purpose and use of the reserve fund. The reserve fund will be set aside and used only to meet contingencies that occur in the districts or within the division. The reserve fund shall not exceed \$150,000.

10.57(2) Replenishing the reserve fund. On June 30 of each year, the division may recall any unspent allocations and replenish the fund in accordance with subrule 10.57(1). If needed, the reserve fund may also be replenished at any time with recalled funds to return the balance to \$150,000.

27—10.58 and 10.59 Reserved.

PART 6

27—10.60(161A) Funding rates. The purpose of this division is to establish the funding rates at which the state will fund or share the cost for approved soil conservation practices under the various incentive programs. In all cases, except for the mandatory program, the state's share will be computed using the percentages specified below and the estimated cost, the amended estimated cost, or the actual cost of implementing the practice, whichever is less. Payments under the mandatory program will be based on actual costs. Funds distributed to annual programs for permanent practices may be used in combination with other public funds as long as the maximum cost-share rate realized by the district cooperator does not exceed 75 percent of the total eligible costs.

10.60(1) Voluntary.

a. The state will cost-share 50 percent of the cost certified by the certifying technician as being reasonable, proper, and incurred by the applicant in voluntarily installing approved, permanent soil conservation practices, except for tree planting. Eligible costs include machine hire or use of the applicant's equipment, needed materials delivered to and used at the site, and labor required to install the practice.

b. For tree and shrub establishment, the following criteria shall apply:

(1) Fifty percent of the actual cost, not to exceed \$450 per acre, including the following:

1. Establishing ground cover;
2. Trees and tree planting operations;
3. Weed and pest control; and
4. Mowing, disking, and spraying.

(2) Fifty percent of actual cost, not to exceed \$150 per acre, for wood plant control.

(3) Actual cost, not to exceed the lesser of \$14 per rod or \$45 per acre protected, for permanent fences that protect planted acres from grazing, excluding boundary and road fencing.

c. For currently funded fiscal years, the division will make one-time payments of up to \$10 per acre for no-tillage, ridge-till and strip-till; \$6 per acre for contour farming; \$25 per acre for establishing a cover crop; and 50 percent of the cost up to \$25 per acre for strip-cropping, field borders and filter strips. The one-time only payment may apply to management practices lasting up to four consecutive years. The one-time only payment for multiple years is calculated based on the listed annual amounts. A performance agreement is required for incentive payments covering a time period of one year or longer.

d. Funding for the restoration of permanent practices damaged or destroyed because of a disaster (see 10.41(1)) does not have to be allocated on a cost-share basis.

e. Where a livestock watering system is installed in a grade stabilization structure, cost share is limited to 50 percent of the estimated or eligible cost, whichever is less, not to exceed \$500 for the watering tank or holding facility, pipe and valves. Payment will be made only if the structure is fenced.

10.60(2) Summer construction incentives. In addition to cost share for the establishment of a permanent conservation practice, up to \$200 per acre is available to offset income lost from cropland acres taken out of production during the growing season. Payment will be made upon completion of the permanent conservation practice. To qualify:

a. The field being treated shall be in row cropland during the growing season in which the permanent conservation practice is being constructed.

b. The construction area shall be planted with a conservation cover for erosion control purposes on the construction site.

c. The construction of the permanent conservation practice shall take place between June 15 and October 15. Work must be started and completed between these dates and verified by the technician prior to payment of the incentive.

d. Only the land necessary for the construction is eligible for this incentive. The construction work area shall be determined by the technician.

e. The construction work area shall not be used to grow a row crop except for the required conservation cover crop.

10.60(3) *Special watershed projects.* Commissioners may enter into agreements providing for cost sharing up to 60 percent of the cost of a project that includes five or more contiguous farm units which collectively have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or a subwatershed. The owners must jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plans.

10.60(4) *Mandatory.* The rate of cost share for permanent soil and water conservation practices required as a result of an administrative order shall be 50 percent of the total cost to the landowner of installing the approved practice. The cost must be certified by the technician as being reasonable, proper and incurred by the landowner. The rate of cost share for temporary soil and water conservation practices is set by the state soil conservation and water quality committee.

10.60(5) *Watersheds above publicly owned lakes.* The state will cost-share 75 percent of the approved cost of permanent soil and water conservation practices on watersheds above certain publicly owned lakes. Watersheds above publicly owned lakes that qualify for 75 percent cost sharing must be identified on a priority list established by the department of natural resources.

10.60(6) *Conservation cover.* Cost share for certain lands is restricted by Iowa Code chapter 161A. Each tract of agricultural land which has not been plowed or used for growing row crops at any time within the prior 15 years shall be considered classified as agricultural land under conservation cover. "Agricultural land" has the meaning assigned that term by Iowa Code section 9H.1. If any tract of land so classified is thereafter plowed or used for growing row crops, the district commissioners shall not approve use of state cost-share funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-share funds which would be available for that land if it were not classified as agricultural land under conservation cover. This restriction shall apply even if an administrative order or court order has been issued requiring establishment of conservation practice.

[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12; ARC 0331C, IAB 9/19/12, effective 8/24/12; ARC 0477C, IAB 11/28/12, effective 1/2/13; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—10.61 to 10.69 Reserved.

PART 7

27—10.70(161A) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving financial incentives for implementing approved temporary or permanent soil and water conservation practices.

27—10.71(161A) Applications submitted to soil and water conservation district. District cooperators desiring to be considered for financial incentives for implementing soil and water conservation practices shall complete necessary applications as specified by the division. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—10.72(161A) Application signup.

10.72(1) Signatures by landowner and applicant. All applications and agreements shall be signed by the landowner except as noted in subrule 10.72(3) below. For an applicant to qualify for payment, both landowner and applicant must sign the application.

10.72(2) Land being bought under contract. All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

10.72(3) Power of attorney. Applications and agreements may be signed by any person designated to represent the landowner or applicant, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—10.73(161A) Eligibility for financial incentives.

10.73(1) District cooperator. Rescinded IAB 7/18/07, effective 6/27/07.

10.73(2) Administrative order. Rescinded IAB 7/18/07, effective 6/27/07.

10.73(3) Practices installed on adjoining public lands. Where soil and water conservation practices are installed on public lands, which benefit adjoining private lands, and costs of the installation are to be shared by the parties, state cost-share funds may be used to cost-share the landowner cost of the erosion control portion of the project.

10.73(4) Ineligible lands.

a. Iowa financial incentive funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

b. Privately owned land not used for agricultural production shall not qualify for financial incentives.

c. Tracts of land used for agricultural production which are less than ten acres in size and from which less than \$2500 of agricultural products are sold annually shall not qualify for financial incentives funds, unless approved by the commissioners as part of a group project or as a continuation of an adjacent system.

d. Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract.

10.73(5) Need for soil and water conservation practices.

a. Financial incentives shall be available only for those soil and water conservation practices determined to be needed by the district to reduce excessive erosion or sedimentation and included in the designated practices identified in Part 8 of these rules. Such determination of need shall be made by a qualified technician.

b. At the discretion of the SWCD commissioners, practice construction may be allowed during the last 90 days of the CRP contract.

10.73(6) District priorities. Each application for financial incentives shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The district priority system shall be reviewed annually by the district. The priority system shall be sent electronically to the division for the division's record after the annual review. The priority system shall give consideration to the public benefit derived. The priority system adopted by the district shall be made available for review at the district office.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13]

27—10.74(161A) Financial incentive application and processing procedures.

10.74(1) Application for financial incentives.

a. Application submitted by landowner and applicant. Applicants for financial incentives for soil and water conservation practices shall complete and submit a request for assistance to the district office where the practice will be implemented.

b. Denial of application by district. Applications which are denied by the district shall be retained in the district until the end of the fiscal year. Application denial as used in this part refers to those applications which cannot be approved for reasons other than lack of available financial incentive funds.

c. Obligation of funds. Following approval of an application, the district may obligate funds for the project or, as appropriate, secure obligation of funds from the division for the amount of the project cost estimate identified on the application. In those cases where funds are not available, the application will be held by the district until funding becomes available or until the end of the fiscal year. Upon obligation of funds, the district shall notify the applicant. The district will maintain a record of funds obligated for approved applications.

d. Application withdrawn by applicant. An application may be withdrawn by the applicant at any time prior to receipt of payment by notifying the district in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district until the end of the fiscal year.

10.74(2) Project design by district.

a. District personnel responsible for design. The technician of the district shall design and lay out proposed soil and water conservation practices for which financial incentives funds have been obligated. The certifying technician of the district shall be responsible for determining compliance with applicable design standards and specifications.

b. Cost estimate adjustments.

(1) Application amendment. In the event that adjustment to the project cost estimate is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment request to the district for approval by the commissioners.

(2) Adjustment to obligated funds. The district may adjust the amount of incentive funds obligated for the project or may secure an adjusted obligation from the division for funds obligated by the division. In the event that additional funds are not available, the project may be redesigned, if possible, to a level commensurate with available funds, or the applicant can agree to assume full financial responsibility for the portion of the project cost in excess of the amount obligated.

10.74(3) Practice construction and certification.

a. Construction contracts. The landowner and applicant shall be responsible for securing any contractors needed and for all contractual or other agreements necessary to construct or perform the approved practices.

b. Certification of practice. The certifying technician or the technician of the district will determine that the completed practice is in compliance with applicable standards and specifications and that costs incurred are reasonable and proper. The certifying technician shall make such determination by completing and signing the certification of practice form. A copy of the certification will be retained in the district's case file.

10.74(4) Payment of financial incentives.

a. Submittal of bills and claim or certification of practice form to district. The applicant shall submit to the district a signed claim or certification of practice form and all bills relative to the project. Any materials and labor provided by the applicant must be itemized, and the itemization of any materials and labor provided by the applicant shall accompany the claim.

b. Approval for payment. The commissioners shall verify the technician's certification prior to approving the certification of practice form for submittal to the division for payment.

c. Claim submitted to the division by district. The signed claim or certification of practice form shall be submitted to the division. All original signed documents including itemized bills, claim agreements, maintenance/performance agreements and amendments shall be retained at the district office in the cooperator's case file.

d. Payment. Payment for the reimbursable cost of the project will be returned by the division to the district or directly to the landowner or applicant.

10.74(5) Maintenance/performance agreements.

a. Maintenance/performance agreement required. As a condition for receipt of any financial incentive funds for permanent soil and water conservation practices, the owner of the land on which the

practices have been installed shall agree to maintain those practices for a minimum term as required by the division.

b. Maintenance/performance agreement form. An agreement to maintain practices for which financial incentives are being paid shall be made by completing and signing a maintenance/performance agreement form. Specific conditions of the maintenance/performance agreement are detailed on the form. Completion of the form and signature of the landowner are required prior to transfer of the incentive payment from the district to the recipient(s).

c. Filing of agreements.

(1) Establishment of a file for maintenance/performance agreements. The district shall establish and maintain a separate permanent file containing any documentation related to the maintenance/performance agreement form. The maintenance/performance agreements file shall be accessible for review by the public.

(2) Statement of compliance or noncompliance. A seller of agricultural land with respect to which a maintenance/performance agreement is in effect may request the district to inspect the practices. If the practices have not been removed, altered, or modified, the district shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

The buyer of lands covered by a maintenance/performance agreement, where buyer means someone who has completed a contract for sale or deed, may also request that the district inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If a practice has been removed, altered, or modified, the district will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

10.74(6) Case files. A case file shall be assembled and maintained for each application approved. The file will contain all documents and correspondence that require signatures from either the district, district cooperater or technician. The case file shall also include all bills and invoices related to an approved application.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.75 to 10.79 Reserved.

PART 8

27—10.80(161A) General conditions, eligible practices and specifications. The purpose of this part is to establish the general conditions and limitations concerning practice implementation, the state-approved soil and water conservation practices eligible for state financial incentives and the specifications for which funded practices must conform.

27—10.81(161A) General conditions. The following general conditions shall be met, where applicable, in addition to the specifications in rule 27—10.84(161A). To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

10.81(1) Practice need. The designated soil and water conservation practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to reduce excessive erosion or sedimentation.

10.81(2) Eligible practices must control erosion and sediment. Only those soil and water conservation practices applied to agricultural crop and pasture land whose primary function is to control soil erosion and prevent sediment damage will be eligible for incentive program funds.

10.81(3) Limitation of reimbursable costs of practices. Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state. Examples of overbuilding or exceeding specifications include but are not limited to the following:

a. Where a district cooperater desires that water be stored for purposes other than grade stabilization to control erosion,

b. Where additional top width is added to an earthen fill to provide a field crossing or road,

c. Where additional flow capacity for lowland drainage laterals is added to an underground outlet constructed as a component of a terrace system, and

10.81(4) Materials. Projects funded with Iowa financial incentive funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

10.81(5) Existing practices.

a. *Repair and maintenance.* Repair and maintenance of existing practices are not eligible for funding.

b. *Addition of underground outlets.* The addition of underground outlets to existing waterways and terraces is not eligible for funding.

10.81(6) Upland treatment. Seventy-five percent of the upland area shall be adequately treated for erosion control before waterways or grade stabilization structures will be funded.

10.81(7) Seeding.

a. *Seeding required.* Following practice construction, seeding shall be performed as appropriate in accordance with seeding specifications referenced in rule 10.84(161A), except as waived below.

b. *Seeding after specified seeding dates.* When the construction of a practice is completed after the seeding date contained in the specifications, seeding may be delayed until the following year. If delayed, the applicant shall be responsible for protecting the practice with temporary vegetative cover or other means until the seeding can be completed. For seeding delayed until the next year, the district may approve payment for the completed practice but such payment shall exclude the seeding cost. The remaining payment for seeding may be made available the following year.

10.81(8) Diversions. Rescinded IAB 5/19/10, effective 7/1/10.

10.81(9) Converting land to permanent vegetative cover. Rescinded IAB 5/19/10, effective 7/1/10.

10.81(10) Underground outlet. Rescinded IAB 5/19/10, effective 7/1/10.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.82(161A) State designation of eligible practices. Only those soil and water conservation practices listed in this rule are eligible for the Iowa financial incentives program funds.

10.82(1) Residue and management practices. The division will make one-time payments for residue and tillage management practices.

a. No-till planting.

b. Ridge-till planting.

c. Strip-till planting.

d. Cover crops.

10.82(2) Temporary practices. The division will make one-time payments for temporary practices.

a. Critical area planting.

b. Contour farming.

c. Strip-cropping.

d. Field border.

e. Filter strips.

f. Pasture and hay planting. Pasture and hay planting will be eligible for funding only when land that has been planted to row crop for three out of the last five years is being converted to permanent vegetative cover.

10.82(3) Permanent practices.

a. Reserved.

b. Diversion. Diversions are eligible for funding only when used to prevent downstream erosion.

c. Windbreak and shelterbelt establishment. A strip or belt of trees or shrubs established within or adjacent to a field to reduce sediment damage and soil depletion caused by wind.

d. Grade stabilization structure.

e. Reserved.

- f.* Grassed waterway.
 - g.* Reserved.
 - h.* Terrace.
 - i.* Underground outlet. Underground outlets are eligible for Iowa financial incentive funding only when used as a component of eligible permanent practices contained in subrule 10.82(3).
 - j.* Water and sediment control basin.
 - k.* Reserved.
 - l.* Conservation cover.
 - m.* Tree and shrub planting. The minimum eligible area is three acres.
- [ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0331C, IAB 9/19/12, effective 8/24/12; ARC 0477C, IAB 11/28/12, effective 1/2/13]

27—10.83(161A) Designation of eligible practices. District commissioners may designate which soil and water conservation practices will be eligible for Iowa financial incentive payments in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A). [ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.84(161A) Practice standards and specifications. Practices shall meet Natural Resources Conservation Service conservation standards and specifications. These standards may be accessed through the electronic field office technical guide at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA. The tree planting standard may be accessed through the department of natural resources' forestry technical guide found at <http://www.iowadnr.com/forestry/pdf/techguide.pdf>. Standards and specifications are available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

27—10.85 to 10.89 Reserved.

PART 9

27—10.90 Reserved.

27—10.91(161A) Annual report. The district will submit an annual report to the division. The report will reflect accomplishments for the fiscal year ending June 30. The report shall be submitted to the division on or before July 7 each year.

27—10.92(161A) Control of lands. Rescinded IAB 5/19/10, effective 7/1/10.

27—10.93 and 10.94 Reserved.

27—10.95(161A) Forms. Standard forms, applications, and agreements used by the applicant and recipient of financial incentives for soil erosion control as outlined in these rules are provided by the division. Copies of all forms, applications, and agreements are available from the soil conservation district office located in each county. Copies are also available from the division at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. [ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—10.96 to 10.99 Reserved.

These rules are intended to implement Iowa Code chapter 161A.

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- [Filed ARC 1448C (Notice ARC 1369C, IAB 3/5/14), IAB 4/30/14, effective 7/1/14]
- [Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]
- [Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

¹ History transferred from 780—Ch 7

CHAPTER 11
CONSERVATION PRACTICES REVOLVING LOAN FUND

[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 9]

27—11.1 to 11.9 Reserved.

27—11.10(161A) Authority and scope. These rules provide procedures and standards to be followed by the division of soil conservation and water quality, department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in administering the conservation practices revolving loan fund and the standards and guidelines to which the soil and water conservation districts shall conform in all contracts under this program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—11.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—11.12 to 11.19 Reserved.

27—11.20(161A) Definition of terms. In addition to terms defined herein, rule 27—10.20(161A) Definitions shall apply.

“*Current legal usury limit*” means the limit on interest rates established by Iowa Code section 535.2, subsection 3, paragraph “a.”

“*Financial partner*” means the division’s designated bank, mortgage company or governmental agency charged with servicing loans described in this chapter.

“*Net worth*” means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the landowner’s net worth.

“*Total assets*” means the sum of cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; and any other assets. Total assets shall not include items used for personal, family or household purposes by the applicant; but in no event shall such property be excluded to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. Such value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

“*Total liabilities*” means the sum of accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; and any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

27—11.21(161A) Financial partner. The division may designate or enter into an agreement with a financial partner to assist with servicing loans under this program.

11.21(1) Responsibilities. The financial partner may assist with the following responsibilities:

a. Making determinations regarding an applicant’s ability to repay the loan. Making this determination may include evaluating the applicant’s net worth or securing other information as deemed necessary.

b. Securing valid liens on real estate on which the conservation practices are applied.

c. Disbursing loan funds and processing loan payments.

d. Collecting application fees for servicing loans. Maximum application fees assessed to the borrower will be 2 percent of the loan plus filing costs.

e. Pursuing delinquent loan payments and collections.

11.21(2) Reserved.

27—11.22(161A) Allocation of revolving loan funds to soil and water conservation districts. The division shall utilize the following method to allocate program funds to the districts:

11.22(1) District allocations. Districts shall submit requests identifying valid applications and cost estimates, if any, to the division by March 1 of each year. If the requests submitted by districts fail to exhaust funds available, the division may continue to fund district requests on an individual basis until December 1. The allocation to any district will be the lesser amount of either:

a. The amount of available funds divided by the number of districts applying for an allocation; or

b. The amount requested.

11.22(2) Unobligated allocations. Any funds allocated in a fiscal year that the districts have not obligated by March 1 of that fiscal year and any funds that were obligated during the previous year for projects for which construction has not been started by March 1 will be recalled by the division. Recalled funds shall be distributed in accordance with 11.22(1).

11.22(3) Reserve funds. The division shall administer for each program year a reserve fund that shall not exceed \$20,000. The reserve fund will be set aside and used only to meet contingencies that occur in the districts or within the division.

27—11.23(161A) Eligibility for revolving fund loan.

11.23(1) Reserved.

11.23(2) Ability to repay the loan. The applicant must demonstrate the ability to repay the loan to the satisfaction of the division and its financial partner.

11.23(3) Use of the loan. Loan funds shall be used only to pay the total eligible cost of installing permanent soil and water conservation practices listed in 27—subrule 10.82(2) of the Iowa financial incentive program for soil erosion control. District commissioners may designate which soil and water conservation practices will be eligible for loans in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A). The general conditions contained in rule 27—10.81(161A) and the specifications contained in rule 27—10.84(161A) shall apply to the district-designated practices. Revolving loan funds and public cost-sharing funds may be used in combination for funding a particular soil and water conservation practice.

11.23(4) Other requirements. The applicant must also meet the eligibility requirements contained in rule 27—10.73(161A) for the Iowa financial incentive program for soil erosion control.

[ARC 0798C, IAB 6/26/13, effective 7/31/13]

27—11.24(161A) Loan application processing procedures.

11.24(1) Application submitted by landowner. Applicants for loans for soil and water conservation practices shall complete and submit an application for financial incentives to the district office. Application forms shall be available at the district office.

11.24(2) Denial of application by district. Applications for financial incentives which are denied by the district shall be retained in the district to the end of the program year. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied. Application denial as used here refers to those applications which cannot be approved for reasons other than lack of available loan funds.

11.24(3) Initial approval of application by district. Rescinded IAB 12/7/05, effective 11/16/05.

11.24(4) Selection of applications for fiscal evaluations. Applications received by the district shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The high-priority applications that can possibly be funded by the district's loan fund allocation will be identified, and successful applicants will be requested to provide necessary financial information as required by the division or the division's financial partner.

11.24(5) *Final approval of application and obligation of funds.* Upon receipt of proper financial disclosures on a form prescribed by the division or by the division's financial partner, the district shall give the application final approval and obligate funds for the project in the amount of the project cost estimate identified on the application. Upon obligation of funds, the district shall notify the applicant.

11.24(6) *Application withdrawn by applicant.* An application may be withdrawn by the applicant at any time prior to receipt of loan by notifying the district in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district until the end of the program year.

27—11.25(161A) Project design and construction. 27—subrules 10.74(2), Project design by district, and 10.74(3), Project construction or practice performance, of the Iowa financial incentive program for soil erosion control shall apply to the revolving loan fund program.

27—11.26(161A) Issuance of loan.

11.26(1) *Loan payment to applicant.* 27—subrule 10.74(4), Payment of financial incentive, of the Iowa financial incentive program for soil erosion control shall apply in its entirety. In addition, upon transfer of payment to the recipient(s), the district shall require the recipient to sign appropriate loan papers.

11.26(2) *Maintenance agreement.* As a condition for receipt of a loan for permanent soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices in accordance with the requirements of 27—subrule 10.74(5), Maintenance and performance agreements.

11.26(3) *Case files.* A case file shall be assembled and maintained for each approved loan application. The file will be assembled and maintained in accordance with the requirements of 27—subrule 10.74(6), Case files.

27—11.27(161A) Amount of loan and number.

11.27(1) *Minimum loan.* The minimum loan that will be granted under this program will be \$2,500.

11.27(2) *Maximum loan.* The maximum loan that a landowner may receive in one year pursuant to this program shall not exceed \$20,000.

11.27(3) *Number of loans.* There will be no limit to the number of loans an applicant can receive, except that an applicant shall be eligible for no more than \$20,000 in loans outstanding at any time under this program. Each approved application will be handled as a new loan.

[ARC 0798C, IAB 6/26/13, effective 7/31/13]

27—11.28(161A) Repayment of loans.

11.28(1) *Loan period.* Each loan made under this chapter shall be for a period not to exceed ten years.

11.28(2) *Repayment schedule.* Loans shall be paid back to the revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect.

11.28(3) *Repayment upon sale of land.* Loans made under this program shall come due for payment upon sale of the land on which those practices are established. If the entire balance of the loan is not paid within ten days of the date of sale, a delinquent loan charge shall be applied as provided in subrule 11.28(5).

11.28(4) *Interest.* The loans shall bear no interest.

11.28(5) *Interest on delinquent loans.* Interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. This is the maximum rate allowed by Iowa Code section 535.2, subsection 3, paragraph "a," and it shall be applied to the entire unpaid principal, prorated for the period for which the installment is delinquent.

[Filed emergency 8/10/83 after Notice 6/22/83—published 8/31/83, effective 8/10/83]

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[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 12
WATER PROTECTION PRACTICES—WATER PROTECTION FUND

27—12.1 to 12.9 Reserved.

PART 1

27—12.10(161C) Authority and scope. This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation and water quality of the department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4. This account shall be used to establish water protection practices with individual landowners.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.11(161C) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—12.12 to 12.19 Reserved.

PART 2

27—12.20(161C) Definition of terms. In addition to the term defined herein, definitions in rule 27—10.20(161A) shall apply.

“*Agricultural production*” means the commercial production of food or fiber.

27—12.21 to 12.29 Reserved.

PART 3

27—12.30(161C) Compliance, refund, reviews and appeals. Rules 27—10.30(161A) through 27—10.33(161A) shall apply.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.31 to 12.39 Reserved.

PART 4

27—12.40(161C) Appropriations. Resource enhancement and protection program, soil and water enhancement account funds are allocated to the water protection fund. Each year’s allocation of water protection funds is divided equally between the water quality protection projects account and the water protection practices account.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.41 to 12.49 Reserved.

PART 5

27—12.50(161C) Water protection practices account. This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division’s reserve fund.

[ARC 0737C, IAB 5/15/13, effective 7/1/13]

27—12.51(161C) Allocation to soil and water conservation districts.

12.51(1) Original allocation. July 1 of each year, funds appropriated to the water protection practices account will be allocated to districts. Seventy-three and one-half percent of the funds will be divided equally among 100 soil and water conservation districts. Twenty-five percent of the funds plus any additional appropriations for reforestation will be kept in a separate account for woodland establishment and protection, and establishment of native grasses and forbs. One and one-half percent will be held in a reserve fund.

12.51(2) Recall of funds. Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 shall be recalled by the division.

12.51(3) Supplemental allocations. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. Factors to be considered in making a supplemental allocation to a district include:

a. The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

b. Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

12.51(4) Reallocation of recalled funds. Rescinded IAB 7/18/07, effective 6/27/07.

12.51(5) Woodland, native grass and forbs fund. Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

a. Original allocation. The funds distributed to this program will be allocated equally to the 100 soil and water conservation districts at the beginning of each fiscal year.

b. Supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. Factors to be considered in making a supplemental allocation to a district include:

(1) The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

(2) Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

c. Eligibility of soil and water conservation districts for supplemental allocation. For a district to qualify for a supplemental allocation, the district must meet the following requirement: seventy-five percent of the woodland, native grass and forbs funds shall be obligated to landowners.

12.51(6) Reserve funds. The division may administer a reserve fund for the program consisting of not more than 1.5 percent of each year's appropriated funds.

a. Purpose and use of the reserve fund. The reserve fund will be set aside and used only to fund contingencies that occur in the application of practices in the districts.

b. On June 30 each year the division will transfer the unspent reserve fund balance into the water protection practices account to be allocated to districts under subrule 12.51(1).

12.51(7) Recall and reallocation of funds by division director. If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.52 to 12.59 Reserved.

PART 6

27—12.60(161C) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving water protection practices funds.

27—12.61(161C) Applications submitted to soil and water conservation district. Landowners or farm operators desiring to be considered for water protection practices funds shall complete necessary applications as specified by the district. All application forms and agreements for water protection practices funds are available from and shall be submitted to the district office located in the county where such practices are proposed. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—12.62(161C) Application sign-up.

12.62(1) Signatures by landowner and qualified applicant. All applications and agreements shall be signed by the landowner and applicant. For an applicant to qualify for payment, both landowner and applicant must sign the application.

12.62(2) Land being bought under contract. All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

12.62(3) Power of attorney. Applications and agreements may be signed by any person designated to represent the landowner or farm operator, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—12.63(161C) Eligibility for financial incentives.

12.63(1) District cooperator. Rescinded IAB 7/18/07, effective 6/27/07.

12.63(2) Practices installed on adjoining public lands. Where water protection practices which benefit adjoining private lands are installed on public lands and costs of the installation are to be shared by the parties, state water protection practices funds may be used to cost-share only the private landowner cost of the water protection practice.

12.63(3) Ineligible lands.

a. Water protection practices funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

b. Privately owned land not used for agricultural production shall not qualify for water protection practices funds. Windbreaks, streambank and shoreline protection, and stormwater quality best management practices established on privately owned land are eligible whether or not the land is in agricultural production.

c. Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract, except for woodland establishment, management and protection practices, and native grass and forb establishment practices under rule 27—12.82(161C) shall not qualify.

12.63(4) District priorities. Each application for water protection practices shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The priority system adopted by the district shall be made available for review at the district office.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.64 to 12.69 Reserved.

PART 7

27—12.70(161C) Water protection practices. The purpose of this part is to establish the general conditions, eligible practices, specifications, and cost-share rates for the installation of water protection practices authorized in Iowa Code chapter 161C.

27—12.71(161C) General conditions. The following general conditions shall be met.

12.71(1) Technician certification. The designated water protection practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to protect water quality.

12.71(2) Limitation of reimbursable cost of practices. Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state.

12.71(3) Materials. Projects funded with water protection funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

12.71(4) Repair or maintenance. Repair or maintenance of existing practices is not eligible for funding.

27—12.72(161C) Eligible practices. Practices listed in this rule are eligible for water protection practices fund reimbursement.

12.72(1) Critical area planting.

12.72(2) Contour buffer strips. The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted on contour.

12.72(3) Field border.

12.72(4) Filter strips. The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted at the foot slope.

12.72(5) Pasture and hay planting. The practice must include the conversion of land from row crop production to a permanent vegetative cover to control excessive water erosion.

12.72(6) Constructed wetlands. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(7) Wetland restoration. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(8) Streambank and shoreline protection. The practice must be bioengineered using combinations of stream-side plantings or trees, other vegetation, structural practices such as modification of slopes, and installation of reinforcing materials and in-stream structures. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(9) Stormwater quality best management practices (BMPs). A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner. BMPs can be either:

a. Nonstructural BMPs, which include a range of pollution prevention, education, or institutional management and development practices designed to limit the conversion of rainfall to runoff and to prevent pollutants from entering runoff at the source of runoff generation; or

b. Structural BMPs, which are engineered and constructed systems that are used to treat the stormwater at either the point of generation or the point of discharge to either the storm sewer system or to receiving waters (e.g., detention ponds or constructed wetlands).

12.72(10) Access control. The practice involves fencing an area to exclude livestock from intermittent streams (defined on U.S. Geological Survey topographic maps as “3 dot” blue-line streams) or larger streams. Eligibility for cost-share assistance extends only to fencing required to implement this practice, but does not extend to fences along roads or land boundaries.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.73(161C) Eligible practices for priority water resource protection. Practices listed in this rule are eligible for water protection practice fund reimbursement only in those areas or instances approved in rule 27—12.75(161C).

12.73(1) Grassed waterway.

12.73(2) Grade stabilization structure.

12.73(3) Terrace.

12.73(4) Water and sediment control basin.

12.73(5) Diversion.

12.73(6) Waste storage facility. Cost-sharing under this practice is not authorized for:

- a. Portable pumps and pumping equipment.
- b. Waste disposal equipment.
- c. Building, modification of a building, that portion of the animal waste structure that serves as part of the building, or its foundation.
- d. That portion of the cost of animal waste control structures attributed to expansion of an animal waste management system.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13]

27—12.74(161C) Agricultural drainage well closure. Practices listed in this rule are eligible for water protection practice fund reimbursement where installation of the practice is consistent with current drainage law of the state of Iowa. This practice is intended to assist in the voluntary closure of agricultural drainage wells registered with the department of natural resources prior to September 30, 1988. It is not intended to be a substitute for future agricultural drainage well assistance programs authorized in Iowa Code section 159.29 that will be developed in conjunction with the Iowa department of agriculture and land stewardship's agricultural drainage well research and demonstration project.

12.74(1) *Eligible practices.*

- a. Agricultural drainage well plugging and cistern removal.
- b. Tile outlet from plugged agricultural drainage well to a suitable, legal outlet.

12.74(2) *Implementation of practice.* This practice shall not be used to provide outlet(s) for previously undrained wetland(s) as defined and classified under state or federal law.

12.74(3) *Outlets with excess capacity.* Tile outlets which exceed the minimum capacity required to provide one-half inch drainage coefficient to the area originally served by the drainage well shall be permitted, if approved by the technician. Any additional cost resulting from providing such excess capacity shall not be cost-shared by the state.

27—12.75(161C) Priority watersheds and water quality problems. Practices listed in rule 27—12.73(161C) will be eligible for landowner reimbursement from water protection practices funds only for watersheds and water quality problems designated by soil and water conservation district commissioners and approved by the state soil conservation and water quality committee.

12.75(1) *District designation.* Districts shall submit to the division the description of high priority watershed(s) or water quality problems within their district to be designated as eligible for practices listed in rule 27—12.73(161C).

12.75(2) *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.75(1) with respect to the following criteria.

- a. The public value and current use of the water resource to be protected.
- b. The nature, extent and severity of the water quality problem to be addressed.
- c. The degree to which the district designation focuses practice application in a manner that will achieve a water quality benefit from the funds available.

12.75(3) *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.75(4) *Disapproval of designation.* In the event of disapproval of district designation, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.76(161C) Practice standards and specifications. In addition to specifications defined herein, rule 27—10.84(161A) specifications shall apply.

12.76(1) *Agricultural drainage well closure.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

12.76(2) *Agricultural drainage well plugging and cistern removal.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

12.76(3) *Stormwater quality best management practices.* Iowa Stormwater Management Manual, Chapter 2, Sections D-L.

27—12.77(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rules 27—12.72(161C) to 27—12.74(161C). These rates represent the maximum allowable cost share provided by state funds. These rates may be used in combination with other public funds to provide a total cost-share rate not to exceed 75 percent of the lesser of the eligible or the estimated cost of installation.

12.77(1) *Cost-share rates.* Cost-share rates for practices designated in rule 27—12.72(161C) shall be 50 percent of the eligible or estimated cost of installation, whichever is less, except for contour buffer strips, field borders, and access control. Cost-share rates for 12.72(2), contour buffer strips, and 12.72(3), field borders, shall be a one-time payment of 50 percent of the eligible or estimated cost of installation, whichever is less, up to \$25 per acre. Cost-share rates for 12.72(10), access control, shall include a one-time payment of up to \$200 per acre. In addition, fencing systems used to implement access control are eligible for 50 percent of the eligible or estimated cost, whichever is less, not to exceed \$14 per rod for permanent fencing. Cost-share assistance for this practice may not be provided on the same acres that already received a cost-share payment through the buffer initiative program.

12.77(2) *Cost-share rates for water protection practices.* Cost-share rates for practices designated in rule 12.73(161C) shall be 50 percent of the eligible or estimated cost, whichever is less.

12.77(3) *Cost-share rates for agricultural drainage well closure.* Cost-share rates for practices designated in rule 27—12.74(161C) shall be the following:

a. 50 percent of the eligible or estimated cost, whichever is less, of agricultural drainage well plugging and cistern removal, not to exceed \$500.

b. 50 percent of the eligible or estimated cost, whichever is less, of establishing a tile outlet from the plugged agricultural drainage well to a suitable, legal outlet, not to exceed \$2000.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.78 and 12.79 Reserved.

PART 8

27—12.80(161C) Water protection practices—woodlands, native grasses and forbs. The purpose of this part is to establish the general conditions, eligible practices, specifications and cost-share rates for the installation of woodlands, native grasses and forbs as authorized in Iowa Code chapter 161C.

27—12.81(161C) General conditions. The following general conditions shall be met.

12.81(1) *Practice need.* The designated practices shall not be funded unless the certifying technician has inspected the site and has determined that such practice(s) is needed.

12.81(2) *Forest management plan required.* A forest management plan approved by the forestry bureau of the department of natural resources is required for the practices of forest stand improvement, tree planting, site preparation for natural regeneration, and rescue treatments.

12.81(3) *Eligibility of practices.* Planting or management of trees for nut orchards or Christmas tree production is only eligible as intermediate products in stands being established for other approved purposes. Planting or management of trees for ornamental purposes or fruit orchards is not eligible.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.82(161C) Eligible practices. Land enrolled in the Conservation Reserve Program is eligible for woodland establishment, management and protection practices and is also eligible for native grass and forb establishment. All practices listed in this part are available to all other eligible landowners within Iowa soil and water conservation districts. All practices listed below are permanent.

12.82(1) Windbreaks. A belt of trees or shrubs established or restored next to an occupied structure. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

12.82(2) Field windbreak. A belt of trees or shrubs established or restored, within or adjacent to a field. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

12.82(3) Forest stand improvement. Minimum eligible area is five acres.

12.82(4) Tree planting. Minimum eligible area is three acres.

12.82(5) Site preparation for natural regeneration. Minimum eligible area is three acres.

12.82(6) Riparian forest buffer.

12.82(7) Rescue treatments. Minimum eligible area is three acres.

12.82(8) Prescribed grazing. The practice must include a minimum of two paddocks of native species grasses.

12.82(9) Conservation cover.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.83(161C) Practice standards and specifications. Soil and water conservation practices shall meet Natural Resources Conservation Service conservation standards and specifications where applicable. These standards may be accessed through the electronic field office technical guide at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA.

Tree planting, forest stand improvement, site preparation for natural regeneration and rescue treatment standards may be accessed through the department of natural resource's forestry technical guide found at <http://www.iowadnr.com/forestry/pdf/techguide.pdf>.

Standards and specifications are also available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.84(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rule 27—12.82(161C). The use of state cost-share funds alone or in combination with other public funds shall not exceed the limits established by these rules.

12.84(1) *Windbreaks.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$1500 for the total cost of the establishment or restoration of the windbreak.

12.84(2) *Field windbreaks.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$450 per acre.

12.84(3) *Forest stand improvement.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre for prescribed woodland burning, thinning, pruning crop trees, or releasing seedlings or young trees.

12.84(4) *Tree planting.*

a. Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$600 per acre, for tree planting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree-planting operations,
- (3) Weed and pest control,
- (4) Mowing, disking, and spraying.

b. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$150 per acre for woody plant competition control.

12.84(5) *Site preparation for natural regeneration.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre of site preparation.

12.84(6) *Riparian forest buffer.* 75 percent of the eligible or estimated cost, whichever is less.

12.84(7) *Rescue treatment.*

a. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$60 per acre to establish alternate cover for competition control.

b. A one-time payment of 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$15 per acre to control damaging rodent populations.

c. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$450 per acre, for plantation replanting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree planting,
- (3) Weed control.

12.84(8) *Prescribed grazing.* 75 percent of the eligible or estimated cost, whichever is less. Systems must include at least two paddocks of native species grasses. Development of a water source is not eligible. Boundary fences or road fences are not included.

12.84(9) *Conservation cover.* 75 percent of the eligible or estimated cost, whichever is less.

12.84(10) *Fencing systems.* Fencing systems used to implement or protect a conservation practice described in rule 27—12.82(161C) are eligible for the lesser of 75 percent of the eligible or estimated cost. The fencing costs cannot exceed \$14 per rod for permanent fencing or \$5 per rod for temporary electric fencing. Fences along roads or land boundaries are not eligible.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.85(161C) *Special practice and cost-share procedures eligibility.* Districts may submit requests to establish eligible practices, develop cost-share procedures, experiment with new conservation practices and explore new technologies with approval of the state soil conservation and water quality committee.

12.85(1) *District designation.* Districts shall submit to the state soil conservation and water quality committee the description of their intentions, which could include:

- a.* Type of practice.
- b.* Cost-share rate.
- c.* Resource to be protected.
- d.* Estimated cost.
- e.* Landowner interest.
- f.* Technology to be addressed.

12.85(2) *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.85(1) with respect to the following criteria.

- a.* The public and current use of the resource to be protected.
- b.* The nature, extent, and severity of the problem to be addressed.
- c.* The degree to which the request focuses practice or technology application in a manner that will achieve a soil erosion or water quality benefit from the funds available.
- d.* Whether a specification can be developed by NRCS or DNR for the new technology or practice.

12.85(3) *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.85(4) *Disapproval of designation.* In the event of disapproval of district requests, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

This rule is intended to implement Iowa Code chapters 161A and 161C.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.86 to 12.89 Reserved.

PART 9

27—12.90(161C,312) Reporting and accounting. Reports will be prepared in the same manner as provided in rule 27—10.91(161A).

These rules are intended to implement Iowa Code chapters 161A and 161C and Iowa Code section 455A.19.

[Filed 12/8/89, Notice 10/18/89—published 12/27/89, effective 1/31/90]

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[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

[Filed ARC 3244C (Notice ARC 3112C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 20
IOWA SOIL 2000 PROGRAM
[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 6]

PART 1

27—20.1 to 20.9 Reserved.

27—20.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the Iowa Soil 2000 Program goal of satisfactorily controlling erosion on all Iowa land. It also establishes standards and guidelines which the soil and water conservation districts will use in fulfilling their responsibilities under this program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—20.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—20.12 to 20.19 Reserved.

PART 2

27—20.20(161A) Availability, development, distribution, updating and notice of conservation folders. This division establishes rules for the development, distribution, updating, and minimum requirements for notifying landowners that a conservation folder has been developed. This section also defines the responsibilities of the seller and the district to provide copies of conservation folders and farm unit soil conservation plans to a prospective purchaser.

20.20(1) Priority for development of conservation folders. The district staff when developing conservation folders as required by Iowa Code section 161A.62 will include as a minimum the content items required by 27—20.30(161A) of these rules.

The district commissioners will select priority watershed(s) or area(s) within their district, using the following criteria:

- a.* Highest priority will be given to watersheds or areas with the largest percentage of acreage of soils in the first priority criteria.
- b.* Lowest priority will be given to watersheds or areas with the largest percentage of acreage of soils in the fifth priority criteria.
- c.* If after screening watersheds or areas against these priority criteria, no watersheds or areas fall in the highest priority, that district will select the next highest category for which soils exist in that district as the top priority category.
- d.* Priority criteria.
 - (1) Fragile soils which under present agricultural use and management will be depleted in 20 years.
 - (2) Fragile soils which under present agricultural use and management will be depleted in 40 years.
 - (3) Excessively eroding soils that under present agricultural use and management are eroding greater than 15 tons per acre per year.
 - (4) Excessively eroding soils that under present agricultural use and management are eroding greater than 10 tons per acre per year.
 - (5) Excessively eroding soils that under present agricultural use and management are eroding greater than the districts adopted soil loss limits.

20.20(2) *Rate of development of conservation folders.* Iowa Code section 161A.62(1) “a” requires that each farm unit must be furnished a conservation folder not later than January 1, 1985, or as soon thereafter as funding is available.

The number of conservation folders to be developed in any given year will be at a rate established in the annual work plan developed and adopted by the commissioners of that district.

20.20(3) *Notification of landowner and operator.* Iowa Code section 161A.62 requires notification of appropriate parties and the keeping of certain records.

Notification that a particular conservation folder is completed will be sent on a date specified by the commissioners. The district records concerning completion and notification of availability of the conservation folder will be maintained in the manner prescribed in 27—20.60(161A) of these rules.

a. Certified completion. A conservation folder will be certified complete upon a vote of approval by the commissioners, on a motion at any regular or special meeting.

b. Notification of landowner and operator. Following certification of completion by the commissioners, the chairman will send a letter by regular mail to the landowner and the operator if known to the commissioners. The letter will offer those persons a copy of the conservation folder in accordance with a distribution procedure adopted by the commissioners in compliance with the guidelines of subrule 20.20(4).

20.20(4) *Distribution procedure.*

a. The annual work plan adopted by the commissioners will specify, within these guidelines, a conservation folder distribution procedure for use in their district. These procedures may include the following:

(1) Neighborhood meetings may be utilized to deliver conservation folders to landowners or operators.

(2) Personal delivery may be by district staff, a commissioner, assistant commissioner, or any individual the commissioners deem qualified to do so.

b. Mailing of conservation folders will only be used in those cases where the individual cannot reasonably be contacted otherwise.

20.20(5) *Updating conservation folders.* Conservation folders previously distributed may be updated at any time the commissioners determine that to do so would be appropriate and helpful to landowners and operators. Records concerning delivery of updated material will be in accordance with 20.60(161A) of these rules.

20.20(6) *Certified updated farm plan.* An existing farm plan prepared for a particular farm unit in January 1971 or later may be certified by the commissioners, as adequate replacement for the conservation folder upon:

a. Commissioner review to determine that the farm plan provides adequate information to meet the intent and purposes of the conservation folder.

b. Updating the farm plan, if needed, with supplemental information to bring the farm plan into conformance with the conservation folder.

c. Certification of adequacy upon a vote of approval by the commissioners on a motion at any regular or special meeting.

d. Establishment of a record and file for that farm plan in compliance with 20.61(161A) of these rules.

20.20(7) *Availability to prospective purchasers.*

a. Copies of a conservation folder or farm unit soil conservation plan will be made available for review in the district office to any prospective purchaser.

b. A statement explaining conservation cover will be supplied to any prospective purchaser when that individual reviews a copy of either a conservation folder or farm unit soil conservation plan.

c. Seller’s responsibility. The seller of land, which has a conservation folder or a farm unit soil conservation plan, will either provide that person copies of these documents or refer the prospective purchaser to the district.

27—20.21 to 20.29 Reserved.

PART 3

27—20.30(161A) Conservation folder content. This division establishes rules concerning required content items and establishes guidelines for the inclusion of additional material at the discretion of the commissioners. The conservation folder contents will provide the landowner and operator with adequate information to develop an understanding of the impacts of excessive erosion, the approximate rate of erosion on their own land, potential alternative solutions to excessive erosion, their erosion control obligations under Iowa law and information about available educational, technical and financial assistance.

20.30(1) Standard conservation folder content.

a. Concise document covering the following:

- (1) Short-term and long-term economic effects of erosion.
- (2) Effects associated with potential land treatments; economic, yield, operational, management.
- (3) Low cost land treatment alternatives.
- (4) Explanation of Iowa's soil conservation laws and landowner's responsibilities.
- (5) Erosion's impact on long-term productivity.

b. District specific items.

- (1) Estimated erosion rates in the local area.
- (2) Rates of acceptable soil loss in the local area.
- (3) Potential erosion rates for the dominant soils of the farm unit.

c. Information on educational, technical, and financial assistance available from various agencies.

20.30(2) Supplemental conservation folder content. The commissioners may at their own discretion include local information that might be beneficial to landowners and operators in the furtherance of soil conservation and the protection and maintenance of the future productivity of the soil.

27—20.31 to 20.39 Reserved.

PART 4

27—20.40(161A) Farm unit soil conservation plan. The farm unit soil conservation plan as defined in rule 20.70(161A) will identify specific permanent and temporary soil and water conservation practices for achieving erosion control to meet soil loss limits established by the district. Where practicable, the plan shall also identify alternatives by which this objective may be obtained. The completed plan must be acceptable to and approved by the commissioners.

27—20.41 to 20.49 Reserved.

PART 5

27—20.50(161A) Conservation agreement. This part establishes procedures for entering conservation agreement as defined in rule 27—20.70(161A) between district commissioners and landowners and operators.

20.50(1) In accordance with Iowa Code section 161A.62, for any farm unit that has received a conservation folder after January 1, 1986, or one year after the completion of the farm unit plan, whichever is later, state cost-sharing funds through the voluntary program will be available only when a conservation agreement is in effect.

20.50(2) Eligibility. A landowner and, if appropriate, the operator of a farm unit, may enter into a conservation agreement with the commissioners after a farm unit soil conservation plan has been approved by the commissioners.

20.50(3) Initiation of conservation agreement. Within 60 days after the commissioners approve a farm unit soil conservation plan, the district shall offer to enter into a conservation agreement with the landowner.

20.50(4) Conservation agreement form. The schedule for implementing the farm unit soil conservation plan will be recorded on form SCD-6. To complete the conservation agreement, form SCD-6 will be signed by the landowner and the chairman of the district.

20.50(5) Period of conservation agreement. The implementation period of the initial agreement shall not exceed five years, unless amended as defined in 20.50(7).

20.50(6) Performance of conservation agreement. To continue to qualify for state cost-share funds, the landowner shall implement the agreed-upon soil conservation practices according to the schedule contained in the conservation agreement.

20.50(7) Amending or extending the conservation agreement. Conservation agreements may be amended or extended provided the revisions are mutually acceptable to the landowner and the commissioners, for reasons not limited to but including the following:

- a. Lack of public cost-share funding.
- b. Loss or gain of land under agreement.
- c. Uncontrollable circumstances (flood, drought, hail).
- d. Economic constraints on the landowner.

20.50(8) Terminating conservation agreements. Conservation agreements can be terminated for the following reasons:

- a. Conservation agreements shall be terminated when the land changes ownership.
- b. Conservation agreements may be terminated at any time upon request of the landowner, with the understanding that the landowner forfeits the future right to receive state cost-share funds for soil conservation practices on that farm unit.
- c. Conservation agreements may be terminated by the commissioners in the event that the landowner fails to implement the agreed-upon soil conservation practices according to the schedule contained in the conservation agreement.

20.50(9) Distribution of conservation agreement records. Copies of the soil conservation agreement and any revisions or terminations thereto shall be provided to the landowner, the division of soil conservation and water quality and the district case file.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—20.51 to 20.59 Reserved.

PART 6

27—20.60(161A) Records. This part establishes rules concerning standards and records necessary to ensure orderly progress toward attaining the requirements of Iowa Code section 161A.62 to furnish a conservation folder to owners of every farm unit in Iowa.

27—20.61(161A) Record of distribution—district file.

The district will maintain a file system, indexed according to township, range and section to adequately describe each farm unit, that contains a record of:

1. The date the conservation folder was certified complete.
2. The date a letter of notification was sent to the landowner.
3. The landowner's name and address.
4. The operator's name and address.
5. The date the conservation folder was delivered and:
 - By whom,
 - To whom,
 - Method of delivery.

27—20.62(161A) Conservation folder file copy. The district will maintain a record of information furnished to each farm unit. The file will also contain all correspondence related to notification, delivery and updating of the conservation folder.

27—20.63(161A) Program performance records. The district will use existing record systems to provide a data base from which progress can be identified by the division in the following areas:

1. Implementing treatment of fragile soils
2. Reducing nonpoint source pollution
3. Reducing excessive soil erosion
4. Attaining a nondepleting level of erosion on all agricultural lands.

27—20.64 to 20.69 Reserved.

PART 7

27—20.70(161A) Definition of terms. In addition to the definitions in rule 27—10.20(161A), the following terms are defined:

“Adjacent tracts” means two or more tracts of land in the same legal section of land or in touching legal sections lying such that the two tracts have a common side or common corner.

“Conservation agreement” is defined in Iowa Code section 161A.42 to mean a commitment by the owner or operator of a farm unit to implement a farm unit soil conservation plan or, with the approval of the commissioners of the district within which the farm unit is located, a portion of a farm unit soil conservation plan. The commitment shall be conditioned on the furnishing by the district of such technical or planning assistance in the establishment of, and cost-sharing or other financial assistance for establishment and maintenance of the soil and water conservation practices necessary to implement the plan, or a portion of the plan.

“Conservation folder” is defined in Iowa Code section 161A.42 to mean compiled information concerning the topography, soil composition, natural or artificial drainage characteristics and other pertinent factors concerning a particular farm unit, which are necessary to the preparation of a sound and equitable conservation agreement for that farm unit. The specific items to be contained in a conservation folder shall be prescribed by administrative rules of the division of soil conservation and water quality. The division shall provide by rule that an updated farm plan prepared for a particular farm unit within 10 years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit.

“Contiguous” means two or more tracts of land lying in the same legal section that have separate legal descriptions, but which have at least a partially common boundary line.

“District staff” means all individuals assigned to, assisting, or employed by a soil and water conservation district.

“Farm plan” as used in these rules refers to any conservation plan or other plan developed in cooperation with the landowner, which provides compiled information concerning the topography, soil composition, natural and artificial drainage characteristics, permanent soil and water conservation practices, and other pertinent factors for the farm unit.

“Farm unit” is defined in Iowa Code section 161A.42 to mean a single contiguous tract of agricultural land, or two or more adjacent tracts of agricultural land, located within a single district, upon which farming operations are being conducted by a person who owns or is purchasing or renting all of such land, or by a tenant or tenants. If a landowner has multiple farm tenants, the land on which farming operations are being conducted by each tenant shall constitute a separate farm unit. This definition does not prohibit land which is within a single district and is owned or being purchased by the same person, or is being rented by the same tenant, from being treated as two or more farm units if the commissioners of the district deem it preferable to do so.

“Farm unit soil conservation plan” is defined in Iowa Code section 161A.42 to mean a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the commissioners of the district within which that farm unit is located, based on the conservation folder for that farm unit and identifying those permanent soil and water conservation practices and temporary soil and water conservation practices the use of which may be expected to prevent soil loss by erosion from that farm

unit in excess of the applicable soil loss limit or limits. The plan shall, if practicable, identify alternative practices by which this objective may be attained.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code chapter 161A.

[Filed 5/10/82, Notice 2/17/82—published 5/26/82, effective 6/30/82]

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[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 21
WATER QUALITY PROTECTION PROJECTS—WATER PROTECTION FUND

PART 1
AUTHORITY AND SCOPE

27—21.1 to 21.9 Reserved.

27—21.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing water quality protection projects through the water protection fund created in Iowa Code chapter 161C. These projects will protect the state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants. Water protection fund resources will provide administrative, operational, and personnel support for the projects and funds for management and structural measures to address identified water quality problems.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—21.11(161A) Rules or subrules are severable. If any provisions of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provisions or application, and to this end the provisions of these rules or subrules are severable.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.12 to 21.19 Reserved.

PART 2
APPLICATIONS

27—21.20(161A) Announcement, eligibility, development and submission of applications. Part 2 establishes procedures for announcement, eligibility, development and submission of applications for water quality projects supported through the water protection fund.

21.20(1) Announcement of application opportunities. The state soil conservation and water quality committee will announce to districts and other interested parties the opportunity to submit applications for projects. The announcement will state:

- a. The application submission deadline.
- b. The location to which applications will be submitted.
- c. The number of copies of applications to be submitted.

21.20(2) Eligibility of applicants. All applications must be submitted by individual or multiple soil and water conservation districts.

a. Districts are encouraged to cooperate with and accept assistance in the development and preparation of applications from other agencies and organizations.

b. Districts are encouraged to accept financial and nonfinancial participation in project implementation from other agencies and organizations.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—21.21 to 21.29 Reserved.

PART 3
APPLICATION CONTENT

27—21.30(161A) Water quality protection project application content. Part 3 establishes the minimum content requirements of project applications.

21.30(1) Title, applicant and participants. Each application will identify:

- a. Water quality protection project title.
- b. Name of district or districts submitting the application.
- c. Names of participating agencies and organizations.
- d. Number of landowners within the project area.

21.30(2) Project location. Each application will identify:

- a. Project location by description and map.
- b. Project size.
- c. Geographic setting.

21.30(3) Project description. Each application will identify:

- a. Land use, land management, and land ownership within the project area and, if appropriate, the surrounding area.
- b. Priority water resources to be protected.
- c. Water quality problems within the project area.
- d. Quantification of the sources of contamination.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.31(161A) Project water quality improvement objectives. Each application will identify:

21.31(1) Water quality objectives of the project.

21.31(2) Measures to be taken to address each water quality problem identified within the project.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.32(161A) Project costs. Each application will identify on an annual basis:

21.32(1) Project measure costs.

- a. Estimated cost of each measure to be implemented.
- b. Landowner contribution.
- c. Financial incentive contribution of the water protection fund.
- d. Financial or other contribution of project participants.

21.32(2) Project personnel needs.

- a. Personnel contribution of the water protection fund.
- b. Personnel contribution of project applicants and participants.

21.32(3) Project operating expenses.

- a. Project expense contribution from the water protection fund.
- b. Project expense contribution from applicants and participants.

21.32(4) Total project costs for each project year.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.33(161A) Landowner interest. Each application will provide an assessment of landowner interest in participating in the project.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.34(161A) Project maintenance. Each application will describe measures to be taken to ensure the long-term viability of the implemented project through maintenance agreements, easements, or other such measures.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.35(161A) Time frame. Each application will provide a time frame for project implementation.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.36(161A) Project evaluation. Each application will describe criteria that will be used to evaluate the success of the project. Evaluation criteria should state, at a minimum, projected landowner participation and water quality improvements.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.37 to 21.39 Reserved.

PART 4
PROPOSAL REVIEW

27—21.40(161A) Proposal review. Part 4 establishes the process that the state soil conservation and water quality committee will follow in reviewing the applications submitted and selecting which, if any, will be funded.

21.40(1) The state soil conservation and water quality committee will give consideration to the following criteria in evaluating the project proposals submitted:

- a. The water resource to be protected.
- b. The nature, extent and severity of water quality issues identified and targeted for correction.
- c. The nature and variety of the proposed project measures.
- d. The level of financial contribution requested for the project.
- e. The cost-effectiveness of the proposed project measures.
- f. Agency, organization and landowner participation.
- g. The public benefits projected.
- h. The likelihood of project success within the projected time frame.

21.40(2) Proposal presentation. The state soil conservation and water quality committee may, at its discretion, ask the project applicant to make a formal presentation concerning the application or provide additional information.

21.40(3) Review assistance. The state soil conservation and water quality committee may receive assistance in the evaluation of project applications from division staff or other agencies.

21.40(4) Negotiation. The state soil conservation and water quality committee may negotiate any part of the proposal with the applicant prior to project selection.

21.40(5) Project selection. Projects selected will be funded on an annual basis. Funding for additional years of the projects will be provided on the basis of satisfactory progress and available funds of the water protection fund.

21.40(6) Notification. The state soil conservation and water quality committee will inform each applicant of the final determination with respect to the applicant's application.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—21.41 to 21.49 Reserved.

PART 5
BUDGET AND STAFF

27—21.50(161A) Budget and staff. Part 5 establishes procedures that the division will follow in providing budgets and staff for projects.

21.50(1) *Budget.* The division will establish an annual budget allocation for each selected project, to support:

- a. Field office staff.
- b. Project expenses.
- c. Commissioner project expenses.
- d. Financial incentives.

21.50(2) *Staff.* Appropriate to the project, the division will establish positions and allocate them to district field offices.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.51 to 21.59 Reserved.

PART 6
REPORTING

27—21.60(161A) Project reporting. Part 6 establishes reporting requirements for projects.

21.60(1) Annual reports. Annual reports meeting the following criteria will be submitted to the division:

- a. Annual report deadline to be established consistent with the initiation of the project.
- b. The annual report will describe accomplishments during the reporting period and compare them to the objectives of the application.
- c. The annual report will itemize funds disbursed during the reporting period.

21.60(2) Reserved.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.61(161A) Supplemental reports. Supplemental reports shall be submitted as required by the division.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.62(161A) Content of project reports. All project reports will contain the following credit: “This project is supported in part or in total by the department of agriculture and land stewardship, division of soil conservation and water quality, through funds of the water protection fund.”

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.63 to 21.69 Reserved.

PART 7 ANNUAL PROJECT REVIEW

27—21.70(161A) Annual project review, continuation, amendment and termination. Part 7 describes procedures that the state soil conservation and water quality committee will follow to review annual progress for each project and to approve continuation, amend, or terminate them.

21.70(1) Annual review. The state soil conservation and water quality committee and district(s) will review each project annually. Upon completion of the annual review, the committee will inform the district(s) of their findings. Based on their findings, the committee will do one or more of the following:

- a. Instruct the division to establish a budget for the next project year.
- b. Renegotiate with the applicant district(s) the project objectives, procedures, budget or time schedule.
- c. Terminate the project.

21.70(2) Reserved.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—21.71 to 21.79 Reserved.

PART 8 PROJECT COMPLETION

27—21.80(161A) Project completion. Part 8 describes the procedures to be followed to close out projects upon completion or termination.

21.80(1) Required reports. Upon project completion or termination, the project district(s) will complete the following reports within 90 days:

- a. Final project report that summarizes project accomplishments, comparing them to original project objectives.
- b. Final financial status report on all water project fund expenditures and any participating agency and organization expenditures.

21.80(2) Reserved.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—21.81 to 21.89 Reserved.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 11/23/88, Notice 10/5/88—published 12/14/88, effective 1/18/89]

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[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 22
SOIL AND WATER RESOURCE CONSERVATION PLANS

27—22.1 to 22.9 Reserved.

27—22.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the development of soil and water resource conservation plans in all soil and water conservation districts in Iowa and developing a comprehensive soil and water resource conservation plan for the state of Iowa. It establishes standards and guidelines which the soil and water conservation districts will use in fulfilling their responsibilities under this program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—22.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—22.12 to 22.19 Reserved.

27—22.20(161A) Definition. In addition to the definitions in rule 27—10.20(161A), the following term is defined:

“Soil and water resource conservation plan” is a comprehensive long-range assessment of soil and surface water resources in the district consistent with rules approved by the committee under Iowa Code section 161A.4. The plan will assess the condition of soil and water in the district; evaluate the type, amount, and quality of soil and water, the threat of soil erosion, floodwater, and sediment damages, and necessary preventative and control measures; develop methods to maintain or improve soil and water condition; and cooperate with other state and federal agencies to carry out this plan.

27—22.21(161A) Soil and water resource conservation plan development. This rule establishes criteria for districts to develop a plan to preserve and protect the public interest in the soil and water resources of this state and for future generations.

22.21(1) Plan development criteria. The soil and water conservation district commissioners will develop a soil and water resource conservation plan as required by Iowa Code section 161A.4 that will include the content items required by rule 27—22.30(161A).

The district commissioners will use the following planning process criteria:

- a. Examine and inventory the current resource situation.
- b. Identify current problems.
- c. List available resources—human and financial.
- d. Determine objectives and goals.
- e. Determine the best course of action to obtain those objectives and goals.
- f. Review the action periodically for progress and effectiveness.

22.21(2) Plan development deadline. The soil and water resource conservation plan should be developed by May 31, 1991. The duration of the plan is five years. After five years, the plan should be revised and updated. It will go through the adoption and approval process again.

22.21(3) Participation in the planning process. Each soil and water conservation district should enlist the support and input of public and private sector agencies and organizations, including the county board of supervisors, the USDA Soil Conservation Service, the Cooperative Extension Service, and the division.

27—22.22 to 22.29 Reserved.

27—22.30(161A) Soil and water resource conservation plan content. The plan will preserve and protect the public interest in the soil and water resources of this state for future generations. It will include the proper control of and use of the soil and water resources by measures including, but not limited to, the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.

22.30(1) Plan content.

- a. Preface.
 - (1) Purpose of the soil and water resource conservation planning process.
 - (2) Credits to sources and those assisting in the planning.
 - (3) Credits to groups providing input for district objectives and goals.
- b. Organization and authorities.
- c. General description of soil and water conservation district.
- d. Inventory of soil, water, and related natural resources.
 - (1) Existing land use—general description.
 - (2) Soil resources.
 - (3) Water resources.
 - (4) Recreation and wildlife resources.
 - (5) Mining and mineral resources.
 - (6) Land management.
 - (7) Factors limiting practice application.
 - (8) Actions needed to overcome limiting factors.
- e. District objectives, goals, and priorities.
- f. District policies.
- g. Statement of adoption.
- h. Statement of approval.
- i. Maps.

22.30(2) Annual review. There shall be an annual review of the plan by the district that will assist in developing the annual work plan. The plan may be amended as a part of the annual review.

27—22.31 to 22.39 Reserved.

27—22.40(161A) Soil and water resource conservation plan adoption, approval, filing, and distribution. The plan shall meet all of the requirements of Iowa Code chapter 161A and this chapter before final plan completion.

22.40(1) Adoption. The district commissioners by a motion at their regularly scheduled meeting shall approve their completed plan or amendment.

22.40(2) Approval. The district shall submit their completed plan or amendment to the state soil conservation and water quality committee for approval. If found to meet the content requirements of rule 27—22.30(161A), the state soil conservation and water quality committee shall approve the plan or amendment by motion at their regularly scheduled meeting. The approved plan will be signed by the administrator of the division.

22.40(3) Filing. The approved district plan or amendment shall be filed with the recorder in the county in which the district is located and shall be filed with the division as part of the state soil and water resource conservation plan.

22.40(4) Distribution. The commissioners shall provide notice of the filing and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located. The district may provide copies to all interested parties that have been a part of the planning process.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—22.41 to 22.49 Reserved.

27—22.50(161A) State soil and water resource conservation plan. The division is responsible for developing a state plan according to Iowa Code section 161A.4(4)“*h.*” The state plan shall contain on a statewide basis the information required for a district plan.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 1/18/91, Notice 10/31/90—published 2/6/91, effective 3/13/91]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 30
AGRICULTURAL DRAINAGE WELLS—ALTERNATIVE DRAINAGE SYSTEM
ASSISTANCE PROGRAM

27—30.1 to 30.9 Reserved.

27—30.10(161A,460) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the agricultural drainage wells — alternative drainage system assistance program. This program provides financial assistance for closing agricultural drainage wells and constructing alternative drainage systems that are part of a drainage district. These rules establish the assistance program, provide for the allocation of assistance funds, and establish procedures and standards for eligibility to receive assistance under the program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—30.11(161A,460) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.12 to 30.19 Reserved.

27—30.20(161A,460) Definitions. When used in this chapter:

“Agricultural drainage well” means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, boring, augering, jetting, washing, or coring, and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

“Agricultural drainage well area” means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

“Alternative drainage system” means a drainage system constructed as part of a drainage district in order to drain surface or subsurface water from land due to the closing of an agricultural drainage well.

“Designated agricultural drainage well area” means an agricultural drainage well area in which there is located an anaerobic lagoon or earthen manure storage basin required to obtain a construction permit by the department of natural resources.

“Division” means the division of soil conservation and water quality of the department of agriculture and land stewardship.

“Drainage district” means a drainage district established pursuant to Iowa Code chapter 468.

“Drainage system” means tile lines, laterals, surface inlets, or other improvements which are constructed to facilitate the drainage of land.

“Earthen storage structure” means an earthen cavity, either covered or uncovered, including but not limited to an anaerobic lagoon or earthen manure storage basin which is used to store manure, sewage, wastewater, industrial waste, or other waste regulated by the department of natural resources, if stored in a liquid or semiliquid state.

“Land” means land which is used or which is suitable for use for any purpose, if the land is located within an agricultural drainage well area which includes land used or suitable for use in farming.

“Noncrop acres” means a land tract as identified in the assessment schedule in the report of the classification commission adopted at public hearing pursuant to Iowa Code sections 468.44 through 468.46 which is not predominantly used for row crop production. Areas used for wetland mitigation shall not be considered in determining predominant land use.

“*Watershed area*” means the benefited land area of a drainage district.
[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.21 to 30.29 Reserved.

27—30.30(161A,460) Appropriations. Moneys shall be used to provide financial assistance under the program and to defray expenses by the division in administering the program. However, not more than 1 percent of the fund may be used to defray administrative expenses of the division. Moneys which are unobligated at the end of the fiscal year shall not revert but will be available during subsequent fiscal years of the program. Moneys earned as income, including interest, from the fund shall remain in the fund until expended, notwithstanding Iowa Code section 12C.7.
[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.31(161A,460) Other funds. Funds for the agricultural drainage wells—alternative drainage system assistance program may be from moneys available to and obtained or accepted by the division or the state soil conservation and water quality committee from the United States or private sources for placement in the fund.
[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—30.32 to 30.39 Reserved.

27—30.40(161A,460) Allocation of funds. Funds will be allocated by the division for specific agricultural drainage well closure and alternative drainage system improvement projects. Allocations shall be 75 percent of the estimated cost of installing the alternative drainage system improvements as defined by Iowa Code section 468.3.

30.40(1) *Allocation by a priority system based on contamination potential.* Rescinded IAB 10/14/15, effective 11/18/15.

30.40(2) *Allocation for a single drainage improvement project which will allow for the closing of 30 or more agricultural drainage wells.* Rescinded IAB 10/14/15, effective 11/18/15.

30.40(3) *Application for fund allocation.* Application for fund allocation to a new drainage district shall be submitted to the division by the board of supervisors on behalf of eligible owners of land following receipt of petition to establish a drainage district pursuant to Iowa Code section 468.8 and before the hearing on establishment pursuant to Iowa Code section 468.22. Application for fund allocation to an existing drainage district shall be submitted to the division by the district board on behalf of eligible owners of land prior to the hearing on improvement pursuant to Iowa Code section 468.126. The application for fund allocation shall be in writing and shall identify:

- a. Approximate location and boundary of the watershed area served by the proposed project.
- b. Approximate watershed drainage area.
- c. Expected number of agricultural drainage wells to be closed.
- d. Location of any anaerobic lagoon or earthen manure storage basin required to obtain a construction permit by the department of natural resources.
- e. Preliminary cost estimate for the alternative drainage system.
- f. Anticipated project time line.
- g. Anticipated or actual date of establishment of the drainage district under Iowa Code section 468.22.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.41 to 30.49 Reserved.

27—30.50(161A,460) Eligibility. Financial assistance from the program will be limited by the criteria of this rule.

30.50(1) *Cost-share rate.* Cost-share payments from the fund shall not exceed 75 percent of the estimated cost or 75 percent of the actual cost of the project, whichever is less.

30.50(2) *Eligible costs.* Project costs eligible for financial assistance cost sharing from the fund are:

a. Construction costs normally incidental to the costs of a drainage district including, but not limited to:

- (1) Tile or channel mains.
- (2) Laterals.
- (3) Associated excavations, backfilling, tile line cradling materials, and junctions.

b. Cost of improvements as defined by Iowa Code section 468.3 including, but not limited to:

- (1) Administrative, legal and publication costs.
- (2) Classification.
- (3) Engineering design, construction inspection and contract administration.
- (4) Financing costs.
- (5) Damages.

c. Costs of wetland mitigation required under federal law.

d. Costs of connection lines from mains or laterals of the drainage district to the terminus of in-field drains at the existing wellheads of the agricultural drainage wells.

e. Costs of closure and plugging of agricultural drainage wells in accordance with 567 IAC 39, Requirements for Properly Plugging Abandoned Wells, or by an alternative method approved by the department of natural resources.

f. Costs for removal of agricultural drainage well cisterns in accordance with applicable requirements of the department of natural resources.

30.50(3) *Project design and construction.* The alternative drainage system of the drainage district shall be designed to meet standard engineering practice for drainage district improvements and be approved by the division. Construction shall be in accordance with the design and standard construction practice for drainage district improvements.

30.50(4) *Noncrop acres.* Noncrop acres within a designated agricultural drainage well area shall not be eligible to benefit from the program.

30.50(5) *Eligible persons.* A person who owns an interest in land within a designated agricultural drainage well area shall not be eligible to participate in the program, if the person is any of the following:

a. A party to a pending legal or administrative action, including a contested case proceeding under Iowa Code chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

b. Classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

30.50(6) *Closure of agricultural drainage wells.* Closure of all agricultural drainage wells located within the watershed area served by the alternative drainage system of the drainage district is required for landowners to be eligible for financial assistance from the fund.

30.50(7) *Compliance with applicable statutes.* The alternative drainage system project of the drainage district shall be conducted in compliance with all applicable statutes, rules and requirements.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.51 to 30.59 Reserved.

27—30.60(161A,460) *Payment of financial assistance.* Financial assistance under the program will be distributed to eligible landowners by the drainage district, under the terms of a 28E agreement between the division and the drainage district.

30.60(1) *Distribution to eligible landowners under adopted classification.* Funds will be transferred by the division for all eligible costs of the project under the program to the drainage district for distribution to eligible landowners in accordance with the adopted classification of the district. The financial assistance shall be distributed to reduce the actual assessment to eligible landowners under the adopted classification.

30.60(2) *Time of payment.* Financial assistance funds shall be transferred to the drainage district to reimburse actual expenditures of the district. The fund transfer to the drainage district will be in accordance with the terms of the 28E agreement.
[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—30.61 to 30.69 Reserved.

27—30.70(161A,460) Compliance procedures and reviews. This rule establishes procedures for compliance actions taken by the division when it is found that program requirements or funding agreements are not being carried out.

30.70(1) *Compliance with program requirements or funding agreements.* Upon determination that program requirements or funding agreements have not been complied with, the division shall notify the affected landowners or drainage district of the lack of compliance and establish a schedule for achieving compliance with applicable requirements. In the event compliance is not achieved, no financial assistance from the program shall be provided. If financial assistance payments have previously been made, the division may order the recipient to pay back the division the total amount of the financial assistance payment in accordance with a schedule determined by the division.

30.70(2) *Compliance reviews.* A landowner or drainage district that has been determined ineligible for financial assistance or has been ordered to pay back to the division financial assistance payments because of lack of compliance with program requirements or funding agreements may seek review of the compliance action taken by the division. The affected landowner or drainage district may address concerns about the compliance action in writing to the director of the division. Upon receipt of such concern, the director shall review the actions taken and shall communicate the findings of the compliance review to the complainant. The director's decision following review of the actions taken shall constitute final agency action for purposes of invoking the judicial review provisions of Iowa Code chapter 17A.
[ARC 2192C, IAB 10/14/15, effective 11/18/15]

These rules implement Iowa Code chapter 460.

[Filed 12/12/97, Notice 10/22/97—published 12/31/97, effective 2/4/98]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 40
COAL MINING

[Prior to 6/15/88, see Soil Conservation Department, 780—Ch 4]
[Prior to 12/26/90, see Soil Conservation[27] Chs 1 to 49]

PART 1A
COAL MINING—GENERAL

27—40.1(17A,207) Authority and scope. The following sets forth the rules and procedures through which the department of agriculture and land stewardship, division of soil conservation and water quality, will implement the regulatory program pursuant to Iowa Code chapter 207 and the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA).

40.1(1) Parts and sections of the federal regulations of the U.S. Office of Surface Mining Reclamation and Enforcement, U.S. Department of Interior, promulgated pursuant to the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), are incorporated by reference as rules of the division as specified in this chapter, with exceptions as indicated. Rules incorporated by reference, as specified in each specific rule, are those from the Code of Federal Regulations (30 CFR), as in effect on July 1, 2010.

40.1(2) The following general word substitutions are made in all incorporated federal regulations except as otherwise indicated:

“*Act*” refers to Iowa Code chapter 207.

“*Administrator*” is to be substituted for “*director*”, “*regional director*”, and “*secretary*”.

“*Division of soil conservation and water quality*” is to be substituted for “*department*”, “*the office*”, “*OSM*”, “*OSMRE*”, “*office of surface mining reclamation and enforcement*”, “*regulatory authority*”, “*State regulatory program*”, and “*regulatory program*”.

“*These rules*” is to be substituted for “*chapter*” and “*subchapter*”.

40.1(3) Delete from 30 CFR 779.25(b), 780.14(c), and 783.25(b) the words “or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional land surveyor.” Also, replace “,” with “or” between “professional engineer” and “professional geologist”.

Delete from 30 CFR 780.25(a)(1)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), and 784.16(a)(3)(i) the words “or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional land surveyor.” Also, replace “,” with “or” between “professional engineer” and “professional geologist”.

Delete from 30 CFR 816.46(b)(3) the words “or in any State which authorizes land surveyors to prepare and certify plans in accordance with §780.25(a) of this chapter a qualified, registered, professional land surveyor.”

Delete from 30 CFR 817.46(b)(3) the words “or in any State which authorizes land surveyors to prepare and certify plans in accordance with §784.16(a) of this chapter a qualified, registered, professional land surveyor.”

Delete from 30 CFR 816.151(a) and 817.151(a) the words “or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified, registered, professional land surveyor.”

40.1(4) Delete “or qualified, registered, professional land surveyor” from 30 CFR 816.49(a)(3) and 816.49(a)(11)(ii).

40.1(5) Delete “registered, professional engineer” from 30 CFR Parts 779, 780, 783, 784, 816 and 817, and replace it with “professional engineer, registered with the State of Iowa”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—40.2(207) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without the invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—40.3(207) General. The following is incorporated by reference: 30 CFR Part 700, as in effect on July 1, 2010, except for 30 CFR 700.1, 700.2, 700.3, 700.4, 700.10 and 700.12. The phrase “section 520 of the Act” is deleted from 30 CFR 700.13(a) and the words “Iowa Code section 207.17” are inserted in lieu thereof.

In lieu of the regulations deleted at 30 CFR 700.12 concerning “Petitions to initiate rule making,” rules of the Iowa Department of Agriculture and Land Stewardship at 21 IAC Chapter 3, “Petitions for Rule Making” shall serve as the basis for submitting petitions to initiate rule making.

Definitions for “*Federal lands*,” “*Federal lands program*,” “*Fund*,” “*Indian lands*,” and “*Indian tribe*” are correspondingly deleted from 30 CFR 700.5.

The definition of “*Regulatory program*” is deleted at 30 CFR 700.5 and the following definition is inserted in lieu thereof:

“*Regulatory program*” means Iowa’s approved State program.

Delete from 30 CFR 700.14 the phrase “43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act” and insert in lieu thereof “Iowa Code chapter 22, the Iowa open records law”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.4(207) Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals. The following is incorporated by reference: 30 CFR Part 701 and 30 CFR Part 702, as in effect on July 1, 2010, with the following exceptions:

40.4(1) None of the general word substitutions at rule 27—40.1(17A,207) apply to the definitions of “*Permit*,” “*Permittee*,” and “*State program*” at 30 CFR 701.5.

40.4(2) Delete from 30 CFR 701.5 the definitions “*Agricultural activities*,” “*Alluvial valley floor*,” “*Arid or semiarid area*,” “*Essential hydrologic functions*,” “*Farming*,” “*Federal program*,” “*Complete federal program*,” “*Partial federal program*,” “*Flood irrigation*,” “*Materially damage the quantity or quality of waters*,” “*Special bituminous coal mines*,” “*Subirrigation*,” “*Undeveloped rangeland*,” and “*Upland areas*.”

40.4(3) Delete from the last sentence in the definition of “*Permittee*” in 30 CFR 701.5 the words “section 523 of the Act” and insert the words “Iowa Code section 207.20”.

In 30 CFR 701.5, delete from the definition of “Significant imminent environmental harm to land, air or water resources” at (b)(2), the words “section 521(a)(3) of the Act” and insert the words “Iowa Code section 207.14, subsection 2”.

40.4(4) Delete 30 CFR 701.1, 701.3, 701.4, and 701.11(c).

40.4(5) Delete references to “Subchapter B” and “Subchapter K” at 30 CFR 701.11(d) and (e) and substitute in lieu thereof “Part 1B” and “Part 6”, respectively.

40.4(6) Delete 30 CFR 702.1 and 702.10.

40.4(7) Delete 30 CFR 702.11(f) and insert in lieu thereof the following:

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of notification of such determination in accordance with Part 9 of these rules.

(2) A petition for administrative review filed under Part 9 of these rules shall not suspend the effect of a determination under paragraph (e) of this section.

40.4(8) Delete 30 CFR 702.17(c)(2) and (3) and insert in lieu thereof the following:

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such a decision in accordance with the procedures of Part 9 of these rules.

(3) A petition for administrative review filed under Part 9 of these rules shall not suspend the effect of a decision whether to revoke an exemption.

40.4(9) Reserved.

40.4(10) Add to 30 CFR 701.5 the definition:

“Full water year” means at a minimum, the nine-month period from March through November.

40.4(11) Delete the definition for “Violation, failure or refusal” at 30 CFR 701.5 and insert in lieu thereof the following:

“Violation, failure, or refusal” means—

(1) A violation of a condition of an approved permit pursuant to the Iowa program or an enforcement action pursuant to Iowa Code section 207.14, or

(2) A failure or refusal to comply with any order issued under Iowa Code section 207.14 or any order incorporated in a final decision issued by the administrator, except an order incorporated in a decision issued under subrule 40.74(7) or rule 27—40.7(207).

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.5(207) Restrictions on financial interests of state employees. The general word substitutions used elsewhere in these rules do not apply to Iowa’s incorporation of 30 CFR Part 705. The following is incorporated by reference: 30 CFR Part 705, as in effect on July 1, 2010, with the following exceptions:

40.5(1) Delete from 30 CFR 705.5 the definition for “State regulatory authority” and insert the following definition in lieu thereof:

“State regulatory authority” means the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, or its authorized representative.

40.5(2) Delete 30 CFR 705.1, 705.2, 705.3, 705.4(b), 705.10, and 705.11(e).

[ARC 9575B, IAB 6/29/11, effective 8/3/11; ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—40.6(207) Exemptions for coal extraction incident to government-financed highway or other constructions. The following is incorporated by reference: 30 CFR Part 707, as in effect on July 1, 2010, with the following exceptions:

40.6(1) Add to 30 CFR 707.11 a paragraph (c) that shall read:

(c) Any person who conducts or intends to conduct such coal extraction must file a letter of intent with the division 60 days prior to surface disturbance.

40.6(2) Reserved.

40.6(3) Delete 30 CFR 707.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.7(207) Protection of employees. The following is incorporated by reference: 30 CFR Part 865, as in effect on July 1, 2010, with the following exceptions:

40.7(1) Delete the words “Office of Hearings and Appeals” and insert the word “division”.

40.7(2) Delete the words “43 CFR Part 4” and insert the words “Iowa Code section 207.14”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.8 to 40.10 Reserved.

PART 1B
COAL MINING—INITIAL PROGRAM

27—40.11(207) Initial regulatory program. The following is incorporated by reference: 30 CFR Part 710, as in effect on July 1, 2010, with the following exceptions:

40.11(1) Reserved.

40.11(2) Delete 30 CFR 710.1, 710.3, 710.4(a), 710.10, 710.11(b) and (c), and 710.12.

40.11(3) Reserved.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.12(207) General performance standards—initial program. The following is incorporated by reference: 30 CFR Part 715, as in effect on July 1, 2010, with the following exceptions:

40.12(1) Delete from 30 CFR 715.11(c) the scale of “1:6000” and insert the scale of “1:2400”.

40.12(2) Delete from 30 CFR 715.17(h)(3) the words “in a manner approved by the regulatory authority” and insert the words “monthly, and reported quarterly to the regulatory authority.”

40.12(3) Delete 30 CFR 715.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.13(207) Special performance standards—initial program. The following is incorporated by reference: 30 CFR Part 716, as in effect on July 1, 2010, with the following exception:

Delete 30 CFR 716.1(a), subparagraphs (1) through (5), 716.2, 716.3, 716.4, 716.5, 716.6, and 716.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.14 to 40.19 Reserved.

PART 2
COAL MINING—AREAS UNSUITABLE

27—40.20 Reserved.

27—40.21(207) Areas designated by an Act of Congress. The following is incorporated by reference: 30 CFR Part 761, as in effect on July 1, 2010, with the following exceptions:

40.21(1) None of the general word substitutions in rule 27—40.1(17A,207) apply to the definition of “Valid existing rights” at 30 CFR 761.5.

40.21(2) Delete from the definition of “Surface operations and impacts incident to an underground coal mine” in 30 CFR 761.5 the words “section 701(28) of the Act” and insert the words “Iowa Code section 207.2, subsection 14”.

40.21(3) None of the general word substitutions in rule 27—40.1(17A,207) apply to 30 CFR 761.11(b).

40.21(4) Delete from 30 CFR 761.5 under the definition for “Valid existing rights” the words “30 U.S.C. 1272(e)” and insert the words “Iowa Code section 207.8”.

40.21(5) Delete 30 CFR 761.13.

40.21(6) Delete from 30 CFR 761.16 the words “30 U.S.C. 1272(e)” and insert the words “Iowa Code section 207.8”.

40.21(7) None of the general word substitutions for “Act” and “secretary” at rule 27—40.1(17A,207) apply to 30 CFR 761.3.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.22(207) Criteria for designating areas as unsuitable for surface coal mining operations. The following is incorporated by reference: 30 CFR Part 762, as in effect on July 1, 2010, with the following exceptions:

40.22(1) The general word substitutions in rule 27—40.1(17A,207) do not apply to 30 CFR 762.12(b) or 762.13(a).

40.22(2) Delete from 30 CFR 762.15 the words “section 522 of the Act” and insert the words “Iowa Code section 207.8”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.23(207) State procedures for designating areas unsuitable for surface coal mining operations. The following is incorporated by reference: 30 CFR Part 764, as in effect on July 1, 2010, with the following exceptions:

40.23(1) Delete 30 CFR 764.10.

40.23(2) Delete from 30 CFR 764.13(b)(1)(v) the words “sections 522(a)(2) and (3) of the Act” and insert the words “Iowa Code section 207.8, subsection 1”.

40.23(3) Delete from 30 CFR 764.19(c) the words “section 526(e) of the Act” and insert the words “Iowa Code section 207.8, subsection 4, and Iowa Code section 17A.19”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.24 to 40.29 Reserved.

PART 3
COAL MINING—PERMITS FOR OPERATIONS AND EXPLORATION

27—40.30(207) Requirements for coal exploration. The following is incorporated by reference: 30 CFR Part 772, as in effect on July 1, 2010, with the following exceptions:

40.30(1) Delete from 30 CFR 772.11 and 772.11(a) the words “250 tons” and insert the words “50 tons”.

40.30(2) Delete 30 CFR 772.11(b)(3) and insert the following:

(3) A precise description and map at a scale of 1:24,000 or larger of the exploration area showing the lease limits and identifying lessor(s);

40.30(3) Add a new paragraph (6) to 30 CFR 772.11(b) to read as follows:

(6) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation.

40.30(4) Delete from 30 CFR 772.12, 772.12(a), and 772.12(b)(7) the words “250 tons” and insert the words “50 tons”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.31(207) Requirements for permits and permit processing. The following is incorporated by reference: 30 CFR Part 773, as in effect on July 1, 2010, with the following exceptions:

40.31(1) Delete the second sentence of 30 CFR 773.4(a).

40.31(2) Add at the end of the last sentence of 30 CFR 773.6(a)(1)(ii) the words “and the scale of the map”, and the following paragraph:

“The legal description shall include popular township, county, township, range, section, and the United States Geological Survey map identification by property owners. Section lines shall be marked and the sections shall be identified on the map. The total acreage of the proposed permit area shall be given to the nearest acre.”

40.31(3) Delete from 30 CFR 773.7(a) the words “a reasonable time set by the regulatory authority” and insert the words “90 days following the completion of the adequacy review”.

40.31(4) Delete 30 CFR 773.3, 773.4(c) and (d).

40.31(5) Delete from 30 CFR 773.4(b)(2) the words “section 502 of the Act” and insert the words “Iowa Code section 207.4”.

40.31(6) Delete from 30 CFR 773.6(a)(3)(ii) the words “section 503(a)(6) or 504(h) of the Act” and insert the words “Iowa Code section 207.5”.

40.31(7) Delete the first sentence from 30 CFR 773.6(c)(2)(iv).

40.31(8) Delete from 30 CFR 773.6(d)(3)(ii) the words “section 508 of the Act” and insert the words “Iowa Code section 22.7, subsection 6”.

40.31(9) The general word substitution for “Act” at rule 27—40.1(17A,207) does not apply to 30 CFR 773.11(a).

40.31(10) The general word substitution for “secretary” at rule 27—40.1(17A,207) does not apply to 30 CFR 773.17(d).

40.31(11) The general word substitution for “OSM” at rule 27—40.1(17A,207) does not apply to 30 CFR 773.19(b)(3).

40.31(12) Add the following paragraph (h) to 30 CFR 773.17:

(h) The permittee shall ensure and the permit shall contain specific conditions requiring that, as a condition of the permit, the permittee shall not, except as permitted by law, willfully resist, prevent, impede, or interfere with the division or any of its agents in the performance of their duties.

40.31(13) Delete from 30 CFR 773.6(b)(1) the words “a reasonable time established by the regulatory authority” and insert the words “60 days of the notification”.

40.31(14) Reserved.

40.31(15) Delete 773.23(d) and insert in lieu thereof the following:

(d) Right to appeal. The permittee may file an appeal for administrative review of the notice of proposed suspension or rescission under Part 9 of these rules.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.32(207) Revision or amendment; renewal; and transfer, assignment, or sale of permit rights. The following is incorporated by reference: 30 CFR Part 774, as in effect on July 1, 2010, with the following exceptions:

40.32(1) 30 CFR 774.10(b) and (c) are deleted.

40.32(2) 30 CFR 774.13 is deleted, with the exception that the notice, public participation, and notice of decision requirements of 30 CFR 773.6, 773.19(b), and 778.21 shall apply to all revisions.

These rules utilize the term “revision” to describe a change to a permit that constitutes a significant departure from the approved permit and the term “amendment” to describe a change that does not constitute a significant departure. A significant departure shall be any change in permit area, mining method or reclamation procedure, which would, in the opinion of the division, significantly change the effect that mining operations would have on persons impacted by the permitted operation, on cultural resources, or on the environment.

40.32(3) Permit revisions and amendments.

a. During the term of a permit, the permittee may submit an application to the division for revision or amendment of the permit.

(1) A revision or amendment is required for any changes in the approved permit. All information related to approved revisions or amendments shall be updated in all public copies of the permit.

(2) When a permit is reviewed at any time, including midterm review, the division may, by order, require revision or amendment of the approved permit to ensure compliance with the Act and these rules. Any order of the division requiring revision or amendment of permits shall be based upon written findings, and the order shall be subject to the provisions for administrative and judicial review of Part 9 of this chapter.

(3) A revision or amendment shall be obtained in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the approved permit was issued.

(4) A revision or amendment shall also be obtained as otherwise required under the Act or these rules.

b. An application for a permit revision will be approved or disapproved within 90 days following a determination of completeness for the revision application by the division. An application for an amendment will be approved or disapproved within 60 days of submittal of the application to the division.

c. Any application for an amendment or a revision under these rules shall, at a minimum, be subject to the requirements of Part 9 of these rules and must provide replacement documentation fully describing changes to be made in the same detail as required in the original permit.

d. Criteria for approval. No application for a permit revision or amendment shall be approved unless the application demonstrates and the division finds that the reclamation as required by the Act and the regulatory program can be accomplished, that the application complies with all requirements of the Act and the regulatory program, and any applicable requirements of written findings for the permit have also been met.

e. Extensions to permit area.

(1) Any increase in permit area, except for incidental boundary revisions, shall not be approved under this subrule, but shall be treated as a new permit application.

(2) Incidental boundary revisions are considered significant departures and as such shall be treated as revisions. A total of 20 acres of incidental boundary changes will be allowed over the life of a permit with individual increments being subject to approval by the division. Application for an incidental boundary revision shall include demonstration by the applicant that the area for which mining operations are proposed is contiguous to the approved permit.

40.32(4) Delete 30 CFR 774.9 and 774.15(c)(3).

40.32(5) Add at the end of 30 CFR 774.15(a) the sentence “Renewal is not required if the division determines that the phase II bond was released over the entire permit area before the expiration of the permit term.”

40.32(6) Delete from 30 CFR 774.15(b)(2)(i) the word “and” in the third line, and add at the end the words “and current status of the mine plan, other details and the time table—if different from the one previously approved—of the remaining phases of the operation and reclamation plans.”

40.32(7) The general word substitution for “OSM” at rule 27—40.1(17A,207) does not apply to 30 CFR 774.17(e)(1).

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.33(207) General content requirements for permit applications. The following is incorporated by reference: 30 CFR Part 777, as in effect on July 1, 2010, with the following exceptions:

40.33(1) Delete 30 CFR 777.11(a)(3) and insert the following:

(3) Be filed in three copies with the format addressed by subrule and subject title.

40.33(2) Delete from 30 CFR 777.14(a) the scale of “1:6000” and insert the scale of “1:2400”. Also delete the words “be in a scale determined by the regulatory authority, but in no event” and insert in lieu thereof “shall have a scale no”.

40.33(3) Delete 30 CFR 777.17 and insert in lieu thereof the following:

777.17 Permit fees.

An application for a surface coal mining and reclamation permit shall be submitted to the division and accompanied by the appropriate fee. All checks shall be made payable to the Treasurer of the State of Iowa.

(1) New permits require a fee of \$15 per acre to be permitted with a minimum fee of \$100.

(2) Permit revisions within present permit boundaries require a fee of \$2 per acre for the total permit area with a minimum of \$40. Permit revisions which include additional area require the revision fee plus \$5 per acre for the additional area, with a minimum of \$40.

(3) Permit renewals require a fee of \$100.

(4) Transfer, assignment, or sale by the permit holder requires a fee of \$50.

40.33(4) Delete 30 CFR 777.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.34(207) Permit application—minimum requirements for legal, financial, compliance, and related information. The following is incorporated by reference: 30 CFR Part 778, as in effect on July 1, 2010, with the following exceptions:

40.34(1) Amend 30 CFR Part 778 by adding the following section:

778.23 Identification of other licenses and permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

1. Type of permit or license;

2. Name and address of issuing authority;

3. Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses;

4. If a decision has been made, the date of approval or disapproval by each issuing authority; and

5. Date of expiration of permits.

40.34(2) Delete 30 CFR 778.8.

40.34(3) Reserved.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.35(207) Surface mining permit applications—minimum requirements for information on environmental resources. The following is incorporated by reference: 30 CFR Part 779, as in effect on July 1, 2010, except as modified by subrule 40.1(3) and with the following exceptions:

40.35(1) Delete from 30 CFR 779.19(a) the words “if required by the regulatory authority, contain a map” and insert the words “contain a map at a scale of 1:2400 or larger”.

40.35(2) Delete from 30 CFR 779.19(b) the words “When a map or aerial photograph is required, sufficient adjacent areas shall be included” and insert the words “A map at a scale of 1:2400 or larger or an aerial photo shall include sufficient adjacent areas”.

40.35(3) Reserved.

40.35(4) Amend the first sentence of 30 CFR 779.25(a) to read: “The permit application shall include cross sections at a vertical exaggeration of 1:10, maps at a scale of 1:2400 or larger and plans showing—”

40.35(5) Add to 30 CFR 779.25(a)(1) the words “and a survey coordinate net”.

40.35(6) Amend 30 CFR 779.25, cross sections, maps and plans, by adding the following paragraphs:

(c) Drill logs must contain the following:

(1) Must have survey coordinates (northing and easting) relating them to the map grid in the permit application.

(2) Must show surface elevation.

(3) Must be detailed enough to show all changes in material encountered in both consolidated and unconsolidated overburden.

40.35(7) Delete 30 CFR 779.1 and 779.10.

40.35(8) Reserved.

40.35(9) Delete from 30 CFR 779.18(a) the words “When requested by the regulatory authority”.

40.35(10) Add a new paragraph (c) to 30 CFR 779.18 as follows:

(c) Location of the rain gauges nearest to the permit area, preferably in the same watershed as the permit itself, shall be marked on a map, and these shall be described in the text as well, along with the period of available record at these gauges.

40.35(11) Add a new paragraph (d) to 30 CFR 779.18 as follows:

(d) A brief description shall be provided about the impact of the climatological factors on operation and reclamation plans, specifically what part of the year would be more conducive than others to various mining and reclamation operations.

40.35(12) Delete from 30 CFR 779.24(g) the words “defined by the regulatory authority” and add at the end the words “Hydrologic area is the area that consists of the permit area and the adjacent area.”

40.35(13) Insert the words “and its identification” between the words “road” and “located” in 30 CFR 779.24(h).

40.35(14) Insert at the beginning of 30 CFR 779.24(l) the words “Section lines and section identification, and any”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.36(207) Surface mining permit applications—minimum requirements for reclamation and operation plan. The following is incorporated by reference: 30 CFR Part 780, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions and clarifications:

40.36(1) Delete 30 CFR 780.1 and 780.10.

40.36(2) The general word substitutions at rule 27—40.1(17A,207) do not apply at 30 CFR 780.21(a).

40.36(3) The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.

40.36(4) Delete from 30 CFR 780.12 references to “Subchapter B” and “Subchapter K” and replace with “Part 1B” and “Part 6”, respectively.

40.36(5) Insert at the end of 30 CFR 780.21(a) the sentence “The methodology for measurement of the quantity of both surface water and groundwater shall also be described.”

40.36(6) Delete from 30 CFR 780.21(d) the words “may be required by the regulatory authority” and insert the words “is required”.

40.36(7) Delete from 30 CFR 780.21(i) and (j) the word “approved” and insert the word “proposed”.
[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.37(207) Underground mining permit applications—minimum requirements for information on environmental resources. The following is incorporated by reference: 30 CFR Part 783, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions:

40.37(1) Delete from 30 CFR 783.18(a) the words “When requested by the regulatory authority.”.

40.37(2) Delete 30 CFR 783.21(a)(1) and insert the following:

(1) A map, at the scale of 1:2400 or larger, delineating different soils;

40.37(3) Amend the first sentence in 30 CFR 783.24 to read: “The permit application shall include maps at a scale of 1:2400 or larger showing:”

40.37(4) Amend the first sentence in 30 CFR 783.25(a) to read: “The application shall include cross sections at a vertical exaggeration of 1:10, maps at a scale of 1:2400, and plans showing—”

40.37(5) Delete 30 CFR 783.1 and 783.10.

40.37(6) Reserved.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.38(207) Underground mining permit applications—minimum requirements for reclamation and operation plan. The following is incorporated by reference: 30 CFR Part 784, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions and clarifications:

40.38(1) Delete from 30 CFR 784.14(d) the words “information may be required” and insert the words “information is required”.

40.38(2) Delete from 30 CFR 784.20(b)(4) the words “if any”.

40.38(3) Delete from 30 CFR 784.20(b)(6) the words “if any”.

40.38(4) Amend the first sentence of 30 CFR 784.23 to read: “Each application shall contain maps at a scale of 1:2400 or larger and plans as follows:”

40.38(5) Delete 30 CFR 784.1 and 784.10.

40.38(6) The general word substitutions at rule 27—40.1(17A,207) do not apply to 30 CFR Part 784.14(a).

40.38(7) Delete from 30 CFR 784.13(a) the words “sections 515 and 516 of the Act” and insert the words “Iowa Code sections 207.7 and 207.19”.

40.38(8) The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.39(207) Requirements for permits for special categories of mining. The following is incorporated by reference: 30 CFR Part 785, as in effect on July 1, 2010, with the following exceptions:

40.39(1) Delete 30 CFR 785.10, 785.11, 785.12, 785.14, 785.15, 785.16, 785.17(d)(1), (2), and (3), 785.19, and 785.22.

40.39(2) The general word substitutions for “director” and “department” at rule 27—40.1(17A,207) do not apply at 30 CFR 785.13.

40.39(3) None of the general word substitutions at rule 27—40.1(17A,207) apply at 30 CFR 785.17(c)(1)(i) and (d).

40.39(4) Delete paragraphs (d) and (e) from 30 CFR 785.21 and insert in lieu thereof a new paragraph (d) as follows:

(d) Coal preparation plants are required to obtain permanent program permits under the Iowa regulatory program after April 10, 1981, as approved by the U.S. Office of Surface Mining.

40.39(5) Delete from 30 CFR 785.18(c)(5) the words “section 515(b)(16) of the Act” and insert the words “Iowa Code section 207.7”.

40.39(6) Delete from 30 CFR 785.18(c)(7) the words “section 515(b)(22) of the Act” and insert the words “Iowa Code section 207.7”.

40.39(7) Delete from 30 CFR 785.18(c)(9) the words “section 515(b) of the Act” and insert the words “Iowa Code section 207.7”.

40.39(8) Add the following clarifying sentence to 30 CFR 785.21(a): “An off-site processing plant operated in connection with the mine but off the mine site will be regulated without regard to its proximity to the mine.”

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

PART 4

COAL MINING—SMALL OPERATOR ASSISTANCE

27—40.40 Reserved.

27—40.41(207) Permanent regulatory program—small operator assistance program. The following is adopted by reference: 30 CFR Part 795, as in effect on July 1, 2010, with the following exceptions:

40.41(1) Delete 30 CFR 795.4, 795.5 and 795.6(b).

40.41(2) Delete from 30 CFR 795.1 the words “section 507(c) of the Act” and insert the words “Iowa Code section 207.4, subsection 1, paragraph “d”.”

40.41(3) Eligibility thresholds for annual production in tons at 30 CFR 795.6(a)(2) shall not apply until the same threshold at Iowa Code section 207.4(1)(d) has been amended from 100,000 tons to 300,000 tons.

40.41(4) Program services at 30 CFR 795.9(b)(3) through 795.9(b)(6) shall not apply until Iowa Code section 207.4(1)(d) has been amended to authorize these services.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.42 to 40.49 Reserved.

PART 5

COAL MINING—BONDING AND INSURANCE

27—40.50 Reserved.

27—40.51(207) Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. The following is incorporated by reference: 30 CFR Part 800, as in effect on July 1, 2010, with the following exceptions:

40.51(1) Add to 30 CFR 800.40(c) a paragraph (4) that shall read as follows:

(4) The maximum liability under performance bonds applicable to a permit which may be released at any time prior to the release of all acreage from the permit area shall be calculated by multiplying the ratio between the acreage on which a reclamation phase has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.6 if reclamation phase I has been completed, or 0.25 if reclamation phase II has been completed.

Acreage may be released from the permit area only after reclamation phase III has been completed. The maximum performance bond liability applicable to a permit which may be released at any time prior to the completion of reclamation phase III on the entire permit area shall be calculated by multiplying the ratio between the acreage on which reclamation phase III has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.15.

40.51(2) Delete from 30 CFR 800.60(a) the words “authorized to do business in the United States” and insert the words “authorized to do business in the State of Iowa”.

40.51(3) Delete 30 CFR 800.10, 800.11(e), and 800.70.

40.51(4) Delete from 30 CFR 800.40(a)(1) the words “established in the regulatory program or”.

40.51(5) Delete from 30 CFR 800.40(c)(2) the words “sections 515 and 515(b)(10) of the Act” and insert the words “Iowa Code section 207.7”. Delete also from 30 CFR 800.40(c)(2) the words “performed

pursuant to section 507(b)(16) of the Act” and insert the words “information included in the permit application and obtained from the official soil survey for the county in which the permit is located,”.

40.51(6) Delete from 30 CFR 800.40(h) the words “section 513(b) of the Act” and insert the words “Iowa Code section 207.5”.

40.51(7) An application for bond release shall not be considered filed until a written determination of completeness for the bond release application has been provided to the applicant by the division. The division will make a determination of completeness for the bond release application within 30 days following receipt of such application.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.52 to 40.59 Reserved.

PART 6

COAL MINING—PERMANENT PROGRAM PERFORMANCE STANDARDS

27—40.60 Reserved.

27—40.61(207) Permanent program performance standards—general provisions. The following is incorporated by reference: 30 CFR Part 810, as in effect on July 1, 2010, with the following exceptions:

40.61(1) Delete 30 CFR 810.3 and 30 CFR 810.4(a).

40.61(2) Delete 30 CFR 810.4(b) and substitute in lieu thereof the following:

(b) The division shall ensure that performance standards and design requirements are implemented and enforced under the Iowa program.

40.61(3) Delete 30 CFR 810.4(c) and substitute in lieu thereof the following:

(c) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with the performance standards and design requirements of the approved Iowa program.

40.61(4) Delete the phrase “Parts 818 through 828” at 30 CFR 810.11 and substitute in lieu thereof “Parts 819, 823, and 827”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.62(207) Permanent program performance standards—coal exploration. The following is incorporated by reference: 30 CFR Part 815, as in effect on July 1, 2010.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.63(207) Permanent program performance standards—surface mining activities. The following is incorporated by reference: 30 CFR Part 816, as in effect on July 1, 2010, except as modified by subrules 40.1(3), 40.1(4), and 40.1(5) and with the following exceptions:

40.63(1) Delete 30 CFR 816.61(c)(1) and insert the following:

(c) Blasters. (1) All blasting operations shall be conducted under the direction of a blaster certified by the division.

40.63(2) Delete 30 CFR 816.101. For “Backfilling and grading: Time and distance requirements,” the following shall apply:

a. Except as provided in paragraph “*b*” of this subrule, rough backfilling and grading for surface mining activities shall be completed within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge.

b. The division may extend the time allowed for rough backfilling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates in accordance with 27 IAC 40.36 / 30 CFR 780.18(b)“3” of these rules that additional time is necessary.

40.63(3) Add to 30 CFR 816.131(b) the sentence “The notice shall state a specific date when operations will resume.”

40.63(4) Add to 30 CFR 816.131 a paragraph (c) that shall read as follows:

(c) The period of temporary cessation shall be a period of two years after which cessation will become permanent cessation and subject to the conditions of 30 CFR 816.132. The applicant may request

one 12-month extension of the two-year time period. Approval of the extension request shall be at the discretion of the division administrator.

40.63(5) Delete 30 CFR 816.10.

40.63(6) The following is incorporated by reference: “Revegetation Success Standards and Statistically Valid Sampling Techniques,” dated April 1999, as approved on December 27, 2001, and as amended December 27, 2004.

40.63(7) Reserved.

40.63(8) Reserved.

40.63(9) Add at the end of 30 CFR 816.49(a)(11)(i) the sentence “Yearly inspection of the impoundments shall be done in the second quarter of each calendar year, and the inspection report shall be submitted to the division with the second quarter water monitoring report.”

40.63(10) Reserved.

40.63(11) Reserved.

40.63(12) Delete 30 CFR 816.89 and insert in lieu thereof the following:

816.89 Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to, grease, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a landfill permitted by the Iowa department of natural resources (DNR) pursuant to 561 IAC 101, 102, and 103. Lubricants, paints, and flammable liquids may not be buried in the State of Iowa but, along with other toxic wastes, must be disposed of in the legally prescribed manner. Iowa law prohibits final disposal of noncoal wastes within the permit area.

Pending final disposal at a permitted DNR facility, noncoal mine waste shall be placed and stored in a controlled manner in a designated portion of the permit area so as to ensure that leachate and surface runoff do not degrade surface or groundwater, that fires are prevented and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

Noncoal mine waste shall at no time be deposited in a refuse pile or impounding structure.

No excavation for or storage of noncoal mine waste shall be located within eight feet of any coal outcrop or coal storage area.

(b) Final disposal of noncoal mine wastes shall be in a designated, State-approved solid waste disposal site permitted by the Iowa department of natural resources pursuant to 561 IAC 101, 102, and 103.

(c) Notwithstanding any other provision in this chapter, any noncoal mine waste defined as “hazardous” under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Public Law 94-580 as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.64(207) Permanent program performance standards—underground mining activities. The following is incorporated by reference: 30 CFR Part 817, as in effect on July 1, 2010, except as modified by subrules 40.1(3), 40.1(4), and 40.1(5) and with the following exceptions:

40.64(1) Reserved.

40.64(2) Delete 30 CFR 817.10 and 817.107.

40.64(3) Delete 30 CFR 817.61(c)(1) and insert the following:

(c) Blasters (1) All blasting operations shall be conducted under the direction of a blaster certified by the division.

40.64(4) The following is incorporated by reference: “Revegetation Success Standards and Statistically Valid Sampling Techniques,” dated April 1999, as approved on December 27, 2001, and as amended December 27, 2004.

40.64(5) Add to 30 CFR 817.131 a paragraph (c) that shall read as follows:

(c) The period of temporary cessation shall be a period of two years after which cessation will become permanent cessation and subject to the conditions of 30 CFR 817.132. The applicant may request

one 12-month extension of the two-year time period. Approval of the extension request shall be at the discretion of the division administrator.

40.64(6) Reserved.

40.64(7) Reserved.

40.64(8) Reserved.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.65(207) Special permanent program performance standards—auger mining. The following is incorporated by reference: 30 CFR Part 819, as in effect on July 1, 2010.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.66(207) Special permanent program performance standards—operations on prime farmland. The following is incorporated by reference: 30 CFR Part 823, as in effect on July 1, 2010, except for 30 CFR 823.11(a) which is deleted.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.67(207) Permanent program performance standards—coal preparation plants not located within the permit area of a mine. The following is incorporated by reference: 30 CFR Part 827, as in effect on July 1, 2010, except for the following:

40.67(1) Delete 30 CFR 827.1.

40.67(2) Delete 30 CFR 827.13(a) and insert the following:

(a) Persons operating or who have operated coal preparation plants after April 10, 1981, shall comply with the applicable interim or permanent program performance standards for the Iowa program.

40.67(3) Proximity shall not be the decisive factor in deciding to regulate an off-site processing plant.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.68 and 40.69 Reserved.

PART 7

COAL MINING—INSPECTION AND ENFORCEMENT

27—40.70 Reserved.

27—40.71(207) State regulatory authority—inspection and enforcement. The following is incorporated by reference: 30 CFR Part 840, as in effect on July 1, 2010, with the following exceptions:

40.71(1) Delete 30 CFR 840.1, 840.10, and 840.13.

40.71(2) The general word substitution for “director” does not apply in 30 CFR 840.14.

40.71(3) Delete from 30 CFR 840.11(d)(2) the words “section 521(a)(2) of the Act” and insert the words “Iowa Code section 207.14”.

40.71(4) Delete from 30 CFR 840.11(g)(3)(ii) the words “section 518(e), 518(f), 521(a)(4) or 521(c) of the Act” and insert the words “Iowa Code subsections 207.15(6), 207.15(7), 207.14(3) and 207.14(8)”, respectively.

40.71(5) Delete from 30 CFR 840.15 the words “43 CFR Part 4” and insert the words “Iowa Code section 207.14”.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.72(207) Inspections and monitoring.

40.72(1) Requests for inspections.

a. A person may request an inspection under Iowa Code section 207.13 by furnishing to an authorized representative of the administrator a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation exists. The statement shall set forth a phone number and address where the person can be contacted.

b. The identity of any person supplying information to the division relating to a possible violation or imminent danger or harm shall remain confidential with the division, if requested by that person,

unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Iowa Code section 22.7, subsection 18.

c. If an inspection is conducted as a result of information provided to the division by a person as described in paragraph “a” of this subrule, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the administrator during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information but only if in the presence of and under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

d. Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the person’s written statement, the division shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person’s right, if any, to informal review of the action or inaction of the division under subrule 40.72(3).

e. The division shall give copies of all materials in paragraph “d,” subparagraphs (1) and (2), of this subrule, within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of the person’s identity is permitted under paragraph “b” of this subrule.

40.72(2) Review of adequacy and completeness of inspections. Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the administrator or designee in writing of any alleged failure on the part of the division to make adequate and complete or periodic State inspections. The notification shall include sufficient information to create a reasonable belief that these rules are not being complied with and to demonstrate that the person is or may be adversely affected. The administrator or designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The administrator or designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

40.72(3) Review of decision not to inspect or enforce.

a. Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the administrator or designee to review informally an authorized representative’s decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under subrule 40.72(1). The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

b. The administrator or designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under Iowa Code section 22.7, subsection 18.

c. Informal review shall not affect any right to formal review under Iowa Code section 207.14 or to a citizen’s suit under Iowa Code section 207.17.

d. Any determination made under paragraph “b” of this subrule shall constitute a decision of the division within the meaning of Iowa Code section 207.14 and shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.

27—40.73(207) Enforcement.

40.73(1) Definitions. As used in this Part 7, the following terms have the specified meanings:

“*Unwarranted failure to comply*” means the failure of a permittee to prevent the occurrence of any violation of the permit or any requirement of Iowa Code chapter 207 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of Iowa Code chapter 207 due to indifference, lack of diligence, or lack of reasonable care.

“*Willful violation*” means an act or omission which violates Iowa Code chapter 207, these rules or any permit condition required by Iowa Code chapter 207 or these rules, committed by a person who intends the result which actually occurs.

40.73(2) Cessation orders.

a. Cessation orders following State inspections:

(1) An authorized representative of the administrator shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if the representative finds, on the basis of any State inspection, any condition or practice, or any violation of Iowa Code chapter 207, these rules or any condition of an exploration approval or permit imposed under any such program, Iowa Code chapter 207 or these rules which:

- Creates an imminent danger to the health or safety of the public; or
- Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

- Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
- Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the division.

(3) If the cessation ordered under paragraph “*a*,” subparagraph (1), of this subrule will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the administrator shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

b. Cessation orders following expiration of abatement period:

(1) When a notice of violation has been issued under 40.73(3)“*a*” and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the administrator shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph “*b*” shall require the permittee to take all steps the authorized representative of the administrator deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

c. A cessation order issued under paragraphs “*a*” or “*b*” of this subrule shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) The nature of the condition, practice or violation;
- (2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- (3) The time established for abatement if appropriate; and
- (4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the administrator, or until the order expires pursuant to Iowa Code section 207.14(6) and subrule 40.73(6).

d. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

e. An authorized representative of the administrator may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

f. An authorized representative of the administrator shall terminate a cessation order by written notice to the permittee when the representative determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the division to assess civil penalties for those violations under rule 27—40.74(207).

g. Within 60 days after the issuance of a cessation order, the division shall notify in writing any person who has been identified under 27—40.32(207), 30 CFR 774.12, and 27—40.34(207), 30 CFR 778.11(c) and (d), as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

40.73(3) Notices of violation.

a. An authorized representative of the administrator shall issue a notice of violation if, on the basis of a State inspection carried out during the enforcement of a State program, the representative finds a violation of Iowa Code chapter 207, these rules, or any condition of a permit or an exploration approval imposed under such program, Iowa Code chapter 207, or these rules, which does not create an imminent danger or harm for which a cessation order must be issued under subrule 40.73(2).

b. A notice of violation shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) The nature of the violation;
- (2) The remedial action required, which may include interim steps;
- (3) A reasonable time for abatement, which may include time for accomplishment of interim steps;

and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

c. An authorized representative of the administrator may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph “*f*” of this subrule. An extended abatement date pursuant to this subrule shall not be granted when the permittee’s failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

d. If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under 40.73(2)“*b.*”

If the permittee fails to meet the time set for accomplishment of any interim step, the authorized representative may issue a cessation order under 40.73(2)“*b.*”

e. An authorized representative of the administrator shall terminate a notice of violation by written notice to the permittee when it is determined that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the division to assess civil penalties for those violations under rule 27—40.74(207).

f. Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which the permittee has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;
(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

g. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

h. If any of the conditions in paragraph “*f*” of this subrule exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the administrator or designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that the permittee is entitled to an extension under the provisions of 40.73(3) “*c*” and “*f*.” In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file the reasons for granting or denying the request. The authorized representative’s immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for concurrence or disapproval in the file.

i. Any determination made under paragraph “*h*” of this subrule shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.

j. No extension granted under paragraph “*h*” of this subrule may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph “*h*” of this subrule.

40.73(4) *Suspension or revocation of permits.*

a. Order for show cause:

(1) The administrator shall issue an order to a permittee requiring the permittee to show cause why the permit and right to mine under Iowa Code chapter 207 should not be suspended or revoked, if the administrator determines that a pattern of violations of any requirements of Iowa Code chapter 207, these rules, or any permit condition required by Iowa Code chapter 207 exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The administrator may determine that a pattern of violations exists or has existed, based upon two or more State inspections of the permit area within any 12-month period, after considering the circumstances, including:

- The number of violations, cited on more than one occasion, of the same or related requirements of Iowa Code chapter 207, these rules, or the permit;
- The number of violations, cited on more than one occasion, of different requirements of Iowa Code chapter 207, these rules, or the permit; and
- The extent to which the violations were isolated departures from lawful conduct.

(3) The administrator shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of Iowa Code chapter 207, these rules, or the permit during three or more State inspections of the permit area within any 12-month period. If, after such review, the administrator determines that a pattern of violations exists or has existed, the administrator shall issue an order to show cause as provided in paragraph “*a*,” subparagraph (1), of this subrule.

b. If the permittee files an answer to the show cause order and requests a hearing under Iowa Code section 207.14, a public hearing shall be provided. The division shall give 30 days’ written notice of

the date, time and place of the hearing to the permittee, and any intervenor. Upon receipt of the notice, the administrator shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations and shall post it in the division.

c. Within 60 days after the hearing, and within the time limits set forth in Iowa Code section 207.14, the division shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the division revokes or suspends the permit and the permittee's right to mine under Iowa Code chapter 207, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under Iowa Code chapter 207 are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under Iowa Code chapter 207 are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

d. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the administrator shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this subrule, and shall issue an order to show cause as appropriate pursuant to subrule 40.73(4), paragraph "a," subparagraph (1).

40.73(5) *Service of notices of violation, cessation orders, and show cause orders.*

a. A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or the person's designated agent promptly after issuance as follows:

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph "a," subparagraph (1), of this subrule, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

b. Designation by any person of an agent for service of notices and orders shall be made in writing to the division.

c. The division may furnish copies of notices and orders to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

40.73(6) *Informal public hearing.*

a. Except as provided in paragraphs "b" and "c" of this subrule, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The purpose of the hearing is to provide the division with information needed to decide whether or not to extend the cessation of mining. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the division and the person to whom the notice or order was issued. The division office shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the division. Expiration of a notice or order shall not affect the division's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this subrule only, "mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

b. A notice of violation or cessation order shall not expire as provided in paragraph "a" of this subrule if the informal public hearing has been waived, or if, with the consent of the person to whom the

notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subrule:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

- Is informed, by written notice served in the manner provided in paragraph “b,” subparagraph (2), of this subrule, that the person will be deemed to have waived an informal public hearing unless one is requested within 30 days after service of the notice; and

- Fails to request an informal public hearing within that time.

(2) The written notice referred to in subrule 40.73(6) “b”(1) shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if a request is received on or after the twenty-first day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the twenty-first day.

c. The division shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to that notice or order.

d. The division shall also post notice of the hearing in the division and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

e. Iowa Code chapter 17A regarding requirements for formal adjudicatory hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the division, who may accept oral or written arguments and any other relevant information from any person attending.

f. Within five days after the close of the informal public hearing, the division shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to the notice or order.

g. The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Iowa Code section 207.14 or 207.15.

h. The person conducting the hearing for the division shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

40.73(7) Formal review of citations.

a. A person issued a notice of violation or cessation order under subrule 40.73(2) or 40.73(3), or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under Iowa Code section 207.14 within 30 days after receiving notice of the action.

b. The filing of an application for review and request for a hearing under this subrule shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

40.73(8) Inability to comply.

a. No cessation order or notice of violation issued under this Part 7 may be vacated because of inability to comply.

b. Inability to comply may not be considered in determining whether a pattern of violations exists.

c. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under rule 27—40.74(207) and of the duration of the suspension of a permit under 40.73(4) “c.”

40.73(9) Compliance conference.

a. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of Iowa Code section 207.13.

b. The division may accept or refuse any request to conduct a compliance conference under paragraph “*a*” of this subrule. Where the division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

c. The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of Iowa Code chapter 207 or any applicable permit or exploration approval.

d. Neither the holding of a compliance conference under this subrule nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

27—40.74(207) Civil penalties. The following is incorporated by reference: 30 CFR Part 845, as in effect on July 1, 2010, with the following exceptions:

40.74(1) Delete from 30 CFR 845.13(b)(1) the words “One point shall be assigned for each past violation contained in a notice of violation” and insert the words “One point shall be assigned for each past notice of violation of a similar nature”.

40.74(2) Delete 30 CFR 845.1.

40.74(3) Delete from 30 CFR 845.2 the words “section 518 of the Act” and insert the words “Iowa Code section 207.15”.

Delete from 30 CFR 845.15(b) the words “section 521(a) of the Act” and insert the words “Iowa Code section 207.14”.

Delete from 30 CFR 845.15(b)(1)(i) the words “section 525(c) of the Act” and insert the words “Iowa Code section 207.14, subsection 7”.

Delete from 30 CFR 845.15(b)(1)(ii) the words “section 526 of the Act” and “section 526(c) of the Act” and insert the words “Iowa Code section 207.15”.

Delete from 30 CFR 845.15(b)(2) the words “section 518(e), 518(f), 521(a)(4), or 521(c) of the Act” and insert the words “Iowa Code sections 207.15(6), 207.15(7), 207.14(3) or 207.14(8)”, respectively.

Delete from 30 CFR 845.15(b)(1)(i) the words “Office of Hearings and Appeals” and insert the word “division”.

40.74(4) Delete from 30 CFR 845.17(c) the phrase “Unless a conference has been requested,” and add a new sentence to the end of the paragraph that reads “The reassessment shall be served as a Notice of Assessment.”

40.74(5) “Procedures for assessment conference” are created by deleting 30 CFR 845.18 and establishing procedures for the same in this subrule.

a. The division will arrange for an assessment conference to review the Notice of Assessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the Notice of Assessment is mailed.

b. The division administrator or the administrator’s designee shall hold the assessment conference.

(1) The assessment conference shall be considered an informal proceeding and shall not be governed by Iowa Code chapter 17A, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days of the date the conference request is received or the end of the abatement period, whichever is later. However, failure by the division to hold such a conference within 60 days from the date of the conference request shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The division shall post notice of the time and place of the conference at least five days prior to the conference. Any person shall have a right to attend and participate in the conference.

(3) The division administrator or the administrator's designee shall consider all relevant information on the violation. Within 30 days after the conference is held, the division shall either:

- Settle the issues, in which case a settlement agreement shall be prepared and signed by the permittee and the division; or

- Affirm, raise, lower, or vacate the penalty.

c. The division shall promptly serve the person assessed with a notice of the agency's action in the manner provided in 30 CFR 845.17(b), and shall provide a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's actions shall be fully documented in the file.

d. Terms of settlement agreement.

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the division within 30 days after the date of signing the settlement agreement, the division may enforce the agreement or rescind it and either affirm, raise, lower, or vacate the penalty within 30 days from the date of the decision.

e. The division may terminate the conference when the administrator or the administrator's designee determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

f. No evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness at a subsequent contested case or judicial proceeding.

40.74(6) Procedures to prepare a Request for a Hearing are created by deleting 30 CFR 845.19 and establishing procedures for the same in this subrule.

a. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty, or if a conference has been held, the reassessed or affirmed penalty to the division (to be held in escrow as provided for in paragraph "b" of this subrule) within 30 days of receipt of the proposed assessment or reassessment or 30 days from the date of service of the division's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under subrule 40.73(7).

b. The division shall hold all funds submitted under paragraph "a" of this subrule in an interest-bearing escrow fund, pending completion of the administrative and judicial review process, at which time funds shall be disbursed as provided in subrule 40.74(7). Interest shall accrue at the prevailing earnings rate for the fiscal year for the pooled investment fund of the State of Iowa.

40.74(7) Procedures for determining Final Assessment are created by deleting 30 CFR 845.20 and establishing procedures for the same in this subrule.

a. If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 40.74(6) "a," the Notice of Assessment shall become a final order of the division and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

b. If any party requests judicial review of a final order of the division, the proposed penalty shall continue to be held in escrow until completion of the review.

c. If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subrule, the division shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund.

d. If the review results in an order increasing the penalty, the person or entity to whom the notice or order was issued shall pay the difference to the division within 15 days after the order is mailed to such person.

40.74(8) Use of civil penalties for reclamation. In accordance with Iowa Code section 207.10(6), the division may expend funds collected from civil penalties to perform reclamation work on sites where the bond has been forfeited and additional funds are needed to complete the reclamation of the site.

40.74(9) Delete 845.21.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.75(207) Individual civil penalties. The following is adopted by reference: 30 CFR Part 846, as in effect on July 1, 2010, with the following exceptions:

40.75(1) Delete 30 CFR 846.1.

40.75(2) Reserved.

40.75(3) Delete 30 CFR 846.17(b)(1) and insert in lieu thereof:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the administrator; or

40.75(4) Delete 30 CFR 846.17(c) and insert in lieu thereof the following:

(c) Service. For purposes of this subrule, service is sufficient if it would satisfy Division III of the Iowa rules of civil procedure for service of an original notice and petition.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.76 to 40.79 Reserved.

PART 8
COAL MINING—BLASTER CERTIFICATION

27—40.80 Reserved.

27—40.81(207) Permanent regulatory program requirements—standards for certification of blasters. The following is incorporated by reference: 30 CFR Part 850, as in effect on July 1, 2010, with the following exceptions:

40.81(1) Amend 30 CFR 850.15 by adding paragraph (f) as follows:

(f) Reciprocal certification.

(1) The division may issue an Iowa blaster certificate to a qualified applicant who holds a valid blaster's certification granted by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

(2) The division may issue an Iowa blaster certificate through reciprocity to a qualified applicant that holds a valid State blaster's certification granted by a State regulatory authority under OSMRE approved blaster certification and regulatory program.

(3) A reciprocal blaster's certification issued in Iowa will expire on the same date as the expiration of the original State's certification. Renewal will be by reexamination.

(4) Blaster's certification from other states will not be honored or recognized in Iowa except by reciprocal issuance as outlined in this rule. Blasters from states without OSMRE approved blaster certification may become certified in Iowa by passing the Iowa certification test.

40.81(2) Delete 30 CFR 850.10.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.82(207) Certification of blasters. The following is incorporated by reference: 30 CFR Part 955, as in effect on July 1, 2010, with the following exceptions:

40.82(1) Delete 30 CFR 955.1 and 955.2.

40.82(2) Delete 30 CFR 955.13(a)(1) and (2).

40.82(3) Delete 30 CFR 955.10.

40.82(4) Delete from 30 CFR 955.5 the definition of "Reciprocity" and delete 30 CFR 955.16.

40.82(5) Delete from 30 CFR 955.17(c) the phrase "to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 and 4.1286" and insert in lieu thereof the phrase "as a contested case action pursuant to Iowa Code chapter 17A".

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.83 to 40.89 Reserved.

PART 9
COAL MINING—CONTESTED CASES AND PUBLIC HEARINGS

27—40.90 Reserved.

27—40.91(17A,207) Procedural rules—contested cases and public hearings. These rules shall govern procedures in contested cases, as defined in Iowa Code section 17A.2(2), and public hearings required to be held pursuant to the provisions of Iowa Code chapter 207.

27—40.92(17A,207) Contested cases. Contested cases include, but are not limited to, the following:

40.92(1) An appeal of a decision to grant or deny a permit pursuant to Iowa Code sections 207.4 and 207.5; approval or failure to approve a transfer pursuant to Iowa Code section 207.12(5); appeal of a decision of the division on an application for coal exploration pursuant to Iowa Code section 207.18.

40.92(2) Permit suspension or revocation proceedings pursuant to Iowa Code sections 207.14(3) and 207.14(4).

40.92(3) Review of a notice or order pursuant to Iowa Code section 207.14(7).

40.92(4) Employee discrimination complaints pursuant to Iowa Code section 207.28.

40.92(5) Suspension or revocation of a mining license pursuant to Iowa Code section 207.3.

40.92(6) Bond forfeiture proceedings pursuant to Iowa Code section 207.14.

40.92(7) Appeal of the determination by the division of the amount of a bond pursuant to Iowa Code section 207.10.

40.92(8) A request to conduct mining in areas where otherwise prohibited by Iowa Code section 207.8 and 30 CFR 761.11, revised July 1, 2010.

40.92(9) A petition requesting designation of an area as unsuitable for mining, or termination of such a designation, pursuant to Iowa Code section 207.8 and rule 27—40.23(207).

40.92(10) Review of a civil penalty pursuant to Iowa Code section 207.15.

[ARC 9575B, IAB 6/29/11, effective 8/3/11]

27—40.93(17A,207) Commencement of proceeding. A notice of order by the division shall be served as in civil actions, delivered by certified mail, or personally served by a division employee with a signed acknowledgment of receipt being taken from an employee or agent of the permittee. In bond forfeiture, the surety shall also be served.

27—40.94(17A,207) Appeals of division notices and orders.

40.94(1) An appeal of a notice or order for which a contested case hearing is requested shall be mailed or personally delivered to the administrator and:

a. Shall be made in writing and signed by the requesting party or representative;

b. Shall identify the notice or order being appealed;

c. Shall be served in a timely manner as stated in Iowa Code section 207.14;

d. May state other relevant information as desired by the requesting party.

40.94(2) In a bond forfeiture proceeding a copy of the notice of appeal shall be served to the surety.

40.94(3) Upon receipt of an appeal, the administrator shall assign a docket number to the appeal as follows: D.S.C. (coal) (State fiscal year in which received)—(number, being consecutively numbered in each year).

27—40.95(17A,207) Prehearing motions. To the greatest extent possible and not inconsistent with Iowa Code chapters 17A and 207, prehearing motions may be filed and ruled upon in a manner consistent with the Iowa rules of civil procedure. In considering a prehearing motion, the administrative law judge may consider the practicality of receiving evidence or consolidating the motion into the full evidentiary hearing.

27—40.96(17A,207) Issuance of notices of hearing.

40.96(1) A hearing date shall be set upon the request of the division or any party and shall be arranged by the division through the department of inspections and appeals. The department of inspections and appeals shall assign an administrative law judge to the proceeding. The request shall be served to all parties of record.

40.96(2) The administrative law judge shall issue notice of hearing to all parties at least 30 days prior to the date of hearing, unless an earlier date is agreed to by all parties.

40.96(3) The notice of hearing shall conform to Iowa Code section 17A.12(2).

27—40.97(17A,207) Hearing procedures.

40.97(1) An administrative law judge selected pursuant to Iowa Code section 17A.11 shall preside at all contested cases.

40.97(2) Oral proceedings of a contested case shall be recorded by electronic or mechanized means or by certified shorthand reporters.

27—40.98(17A,207) Posthearing procedures.

40.98(1) Within 20 days of the conclusion of the hearing, each party may file with the administrative law judge and all parties of record proposed findings of fact, conclusions of law, a proposed order, or a brief in support of specified findings and conclusion. Said brief shall contain all arguments concerning evidentiary rulings made during hearing or challenges to the jurisdiction of the division to conduct the hearing and order the relief requested by the division or a party of record.

40.98(2) Within 20 days of receipt of proposed findings of fact, conclusions of law, order, or brief, parties may file a brief responding to opposing briefs, and may submit additional proposed findings of fact, conclusions of law, or order.

27—40.99(17A,207) Decision of the administrative law judge, procedure in appeals before the committee, extensions of time, public hearings, and judicial review of the committee decision.

40.99(1) *Decision of the administrative law judge.*

a. Decisions of the administrative law judge shall conform to the provisions of Iowa Code section 17A.16(1).

b. A decision of the administrative law judge is a proposed decision pursuant to Iowa Code section 17A.15(2).

c. An appeal to the committee may be initiated by the division or a party of record by filing with the administrator, and serving on all parties, a written statement captioned “Notice of Appeal to the State Soil Conservation and Water Quality Committee,” which shall also state the number of the notice or order involved in the hearing and the docket number assigned by the administrator to the contested case proceeding.

d. Appeal of the decision of the administrative law judge shall be made pursuant to Iowa Code section 17A.15(3). If an application for a rehearing has been filed, appeal to the committee shall be made within 30 days after the issuance of a decision after rehearing, a decision denying a rehearing, or the date on which the rehearing is deemed denied pursuant to Iowa Code section 17A.16(2).

40.99(2) *Procedure in appeals before the committee.*

a. An appeal before the committee shall be conducted according to the provisions of Iowa Code section 17A.15(3).

b. The administrator shall set a date for the committee hearing at least 30 days after receipt of the notice of appeal to the committee.

c. A decision of the committee shall be issued within 60 days of the close of the hearing before them.

40.99(3) *Extensions of time.* The period of time in which an action is required by Part 9 of these rules may be extended for good cause by the administrative law judge or the committee, as appropriate.

40.99(4) Public hearings. Public hearings, also referred to as informal conferences, are held by the division to gather information prior to making a decision regarding the approval of a permitting action, issues relating to lands unsuitable for mining, or the extension of cessation of mining.

The administrator or designee shall act as the administrative law judge.

The division will provide notice to the public by publishing in a newspaper of local circulation at least 14 days prior to the hearing the following: purpose of the hearing, the place, date, and time of the hearing.

40.99(5) Judicial review of committee decision. Judicial review of a decision of the committee shall be in accordance with Iowa Code chapter 17A. In the case of judicial review of a civil penalty assessment, the petitioner shall post a bond in the district court equal to the amount of the assessed penalty or shall deposit a sum equal in amount to the assessed penalty in an interest-bearing escrow fund approved by the division, as required under Iowa Code section 207.15.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

PART 10
COAL MINING—FORMS

Reserved

These rules are intended to implement Iowa Code chapter 207.

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CHAPTER 50
IOWA ABANDONED MINED LAND RECLAMATION PROGRAM
[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 27]

27—50.1 to 50.9 Reserved.

27—50.10(207) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee, to participate in the federal abandoned mined land and reclamation program as established in the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and Iowa Code chapter 207.

These rules will also provide for the establishment of a state abandoned mined land fund for use in conducting the Iowa abandoned mined land reclamation program, and will also establish authority for the division to request, receive and administer grant moneys for use in the program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—50.11(207) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—50.12 to 50.19 Reserved.

27—50.20(207) Definition of terms.

50.20(1) “*Emergency*” means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operation procedures.

50.20(2) “*Extreme danger*” means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

50.20(3) “*Reclamation activities*” means restoration, reclamation, abatement, control or prevention of adverse effects of mining.

50.20(4) “*State reclamation program*” or “*program*” means a program established by the division in this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

50.20(5) “*State abandoned mined land fund*” or “*fund*” means a separate fund established by the division for the purpose of accounting for moneys granted by the director of the office of surface mining reclamation and enforcement (OSM) under an approved state reclamation program and other moneys authorized by these rules to be deposited in the fund.

50.20(6) “*Left or abandoned in either an unreclaimed or inadequately reclaimed condition*” means land and water:

a. Where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, it has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and

b. Which continue in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of the public.

27—50.21 to 50.29 Reserved.

27—50.30(207) State abandoned mined land fund. Revenue to the fund shall include:

50.30(1) Amounts granted to the state by OSM for purpose of conducting the Iowa reclamation plan.

50.30(2) Moneys collected by the state from charges for uses of land acquired or reclaimed with moneys from the fund.

50.30(3) Moneys recovered by the state through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the fund.

50.30(4) Moneys recovered by the state from the sale of lands acquired with moneys from the fund.

50.30(5) Such other moneys as the state decides should be deposited in the fund for use in carrying out the Iowa abandoned mined land program.

27—50.31 to 50.39 Reserved.

27—50.40(207) Eligible lands and water.

50.40(1) Coal mined lands and associated waters are eligible for reclamation activities if:

- a. They were mined or affected by mining processes;
- b. They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
- c. There is no continuing responsibility for reclamation by the operator, permittee or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

50.40(2) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if:

- a. The conditions of subrule 50.40(1) have been met;
- b. The reclamation has been requested by the governor;
- c. All reclamation with respect to abandoned coal mined land and water has been accomplished within the state or the reclamation is necessary for the protection of the public health and safety.

27—50.41 to 50.49 Reserved.

27—50.50(207) Reclamation objectives and priorities.

50.50(1) Reclamation projects shall reflect the priorities set out in Section 403 of Public Law 95-87 (30 U.S.C. 1233) and should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

50.50(2) Reclamation of eligible noncoal mined lands and waters shall comply with the provisions of Section 409 of Public Law 95-87 (30 U.S.C. 1239).

27—50.51 to 50.59 Reserved.

27—50.60(207) Reclamation project evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this rule. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective as 27—50.50(207). Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

50.60(1) The need for reclamation work to accomplish one or more specific reclamation objectives.

50.60(2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.

50.60(3) The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to:

- a. Protection of human life, health, or safety.
- b. Protection of the environment, including air and water quality, abatement of erosion sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.

- c.* Protection of public or private property.
- d.* Abatement of adverse social and economic impacts of past mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices.
- e.* Improvement of environmental conditions which may be considered to generally enhance the quality of human life.
- f.* Improvement of the use of natural resources, including postreclamation land uses which:
 - 1. Increase the productive capability of the land to be reclaimed.
 - 2. Enhance the use of surrounding lands consistent with existing land use plans.
 - 3. Provide for construction or enhancement of public facilities.
 - 4. Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.
- g.* Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.

50.60(4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.

50.60(5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.

50.60(6) The availability of additional coal or other mineral or material resources within the project area which:

- a.* Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or
- b.* Requires special consideration to ensure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

50.60(7) The acceptability of postreclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable state, regional, and local land use plans and laws, and the needs and desires of the community to which the project is located.

50.60(8) The probability of postreclamation management, maintenance and control of the area consistent with the reclamation completed.

27—50.61 to 50.69 Reserved.

27—50.70(207) Consent to entry. The division shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or their authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. This statement shall not include any commitment by the division to perform reclamation work nor to compensate the owner for entry.

27—50.71 to 50.79 Reserved.

27—50.80(207) Entry for studies or exploration.

50.80(1) The division or its agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

50.80(2) If the owner of the land to be entered under this section will not provide consent to entry, the division shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the

owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

27—50.81 to 50.89 Reserved.

27—50.90(207) Entry and consent to reclaim.

50.90(1) The division or its agents, employees, or contractors, may enter upon land to perform reclamation activities if the consent of the owner cannot be obtained.

50.90(2) Prior to entry under this rule, the division shall find in writing with support reasons that:

- a.* Land or water resources have been adversely affected by past coal mining practices;
- b.* The adverse effects have advanced, so that in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control or prevent should be taken; and
- c.* The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or
- d.* The owner will not give permission for the division, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

50.90(3) The division shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this rule. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this rule may be inspected or obtained.

27—50.91 to 50.99 Reserved.

27—50.100(207) Land eligible for acquisition.

50.100(1) Land adversely affected by past coal mining practices may be acquired with moneys from the fund if approved in advance by OSM. OSM will determine if:

- a.* The acquired land will serve recreation, historic, conservation, or reclamation purposes, or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or
- b.* Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

50.100(2) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the fund if approved in advance by OSM and if the acquisition of the land is necessary for successful reclamation and will serve the purposes of the program or if public ownership is desirable to meet an emergency situation and prevent reoccurrence of adverse effects of past coal mining practices.

50.100(3) The division shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interest in improvements on the land, mineral rights, or associated water rights may be acquired if:

- a.* The interests are necessary to the reclamation work planned or the postreclamation use of the land; and
- b.* Adequate written assurance cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

27—50.101 to 50.109 Reserved.

27—50.110(207) Procedures for acquisition.

50.110(1) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on “Uniform Appraisal Standards for Federal Land Acquisitions” (Interagency Land Acquisition Conference, 1973).

50.110(2) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

50.110(3) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

27—50.111 to 50.119 Reserved.

27—50.120(207) Acceptance of gifts of land.

50.120(1) The division may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

50.120(2) Offers to make a gift of the land or interests in land shall be in writing and shall include:

- a. A statement of the interest which is being offered.
- b. A legal description of the land and a description of any improvements on it.
- c. A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.
- d. A statement that:
 1. The donor is the record owner of interest being offered.
 2. The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
 3. There are no adverse claims against the interest offered.
 4. There are not unredeemed tax deeds outstanding against the interest offered.
 5. There is no continuing responsibility by the operator under state or federal statutory law for reclamation.
- e. An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

50.120(3) If the offer is accepted, a deed of conveyance shall be executed, acknowledged and recorded. The deed shall state that it is made “as a gift under the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and Iowa Code chapter 207.” Title to donated land shall be in the name of the state of Iowa.

27—50.121 to 50.129 Reserved.

27—50.130(207) Management of acquired lands.

50.130(1) Land acquired under this rule may be used pending disposition under rule 50.140(207) for any lawful purpose that is not inconsistent with the reclamation activities and postreclamation uses for which it was acquired.

50.130(2) Any user of land acquired under this part shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the cost to the state for providing the benefit, whichever is appropriate. The division may waive the fee if found in writing that such a waiver is in the public interest.

50.130(3) All use fees collected shall be deposited in the state abandoned mined land fund, unless previously appropriated or otherwise authorized by the general assembly, for the specific purpose of operating and maintaining improvement of the land.

27—50.131 to 50.139 Reserved.

27—50.140(207) Disposition of reclaimed lands.

50.140(1) Prior to disposition of any acquired land, the division shall publish a notice which describes the proposed disposition of the land in a newspaper of general circulation in the area where the land is located for a minimum of four successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by a person.

50.140(2) The division may transfer administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

a. The purposes for which the land may be used consistent with the authorization under which the land was acquired; and

b. That the administrative responsibility for the land will revert to the division if, at any time in the future, the land is not used for the purposes specified.

50.140(3) The division may transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by OSM, and maintain a preference right to purchase land from OSM after reclamation is completed. The price shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the division.

50.140(4) The division may sell land acquired under this part by public sale if the land is suitable for industrial, commercial, residential, or recreational development and if the development is consistent with local, state or federal land use plans for the area in which the land is located.

a. Land shall be sold by public sale only if it is found that retention by the state or disposal under other paragraphs of this rule is not in the public interest.

b. Land shall be sold for not less than the fair market value under a system of competitive bidding which includes at a minimum:

1. Publication of a notice once a week for four weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.

2. Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

50.140(5) All moneys received from the disposal of land under this rule shall be deposited in the state abandoned mined land fund.

27—50.141 to 50.149 Reserved.

27—50.150(207) Operations on private land. Reclamation activities may be carried out on private land if a consent to enter is obtained or if entry is required and made.

27—50.151 to 50.159 Reserved.

27—50.160(207) Appraisals.

50.160(1) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained from an independent professional appraiser, with exceptions as noted in 50.160(4). Such appraisal shall meet the quality of appraisal practices found in the handbook on “Uniform Appraisal Standards for Federal Land Acquisitions” (Interagency Land Acquisition Conference, 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. Where an emergency exists, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past mining.

50.160(2) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with 50.160(1) and shall state the market value of the land reclaimed.

50.160(3) The landowner shall receive a statement of the increase in market value, an itemized statement of reclamation expenses and notice that a lien will or will not be filed against the property.

50.160(4) Appraisals for privately owned land which fall under subrule 50.170(1) shall be obtained from an independent professional appraiser.

27—50.161 to 50.169 Reserved.

27—50.170(207) Liens.

50.170(1) The division shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the pre- and postreclamation appraisals.

a. A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operations which necessitated the reclamation work.

b. The division may waive the lien if the cost of filing it, including indirect costs, exceeds the increase in fair market value as a result of reclamation activities.

c. The lien may be waived if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

50.170(2) If a lien is to be filed, the division shall, within six months after completion of the reclamation work, file a statement in the district court of the county for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

50.170(3) Within 60 days after the lien is filed by the division, the landowner may bring civil action in the district court of the county in which the reclaimed land lies to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by law.

27—50.171 to 50.179 Reserved.

27—50.180(207) Satisfaction of liens.

50.180(1) A lien placed on private property shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this paragraph. Testate and intestate transfers are excluded from this rule if the entire parcel of land subject to the lien is transferred and the transferee is related to the transferor within the second degree of consanguinity or affinity.

50.180(2) The department shall maintain or renew liens from time to time as may be required.

50.180(3) Moneys derived from the satisfaction of liens established under this part shall be deposited in the state abandoned mined land fund.

These rules are intended to implement Iowa Code chapter 207.

27—50.181 to 50.189 Reserved.

27—50.190(207) Abandoned mined land (AML) program forms.

50.190(1) *Availability of forms.* Copies of forms utilized in the AML program are available at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

50.190(2) Bidding forms for construction projects.

Form number	Description
AML-001	<i>Proposal.</i> This form is used to document bid proposals from potential contractors for conducting reclamation work on abandoned mined lands. The form also includes a noncollusion affidavit. 2 pages.
AML-002	<i>Proposal Guarantee Bond.</i> This form identifies the bidder and the surety, lists the amount of the bid guarantee bond and provides for notarization of the signatures of the bound parties. 1 page.
AML-003	<i>Nondiscrimination Clause.</i> This form is used to document that the contractor is morally and legally committed to nondiscrimination in employment. 1 page.
AML-004	<i>Minority and Women Business Enterprise Solicitation Reporting Form.</i> This form is used to document the contractor's solicitation of subcontract or subsubcontract bids from minority or women business enterprises. 1 page.
AML-005	<i>Certificate of Nonsegregated Facilities.</i> This form is used to certify that the construction contractor does not maintain or provide employees any segregated facilities at any of contractor's establishments. 1 page.
AML-006	<i>Contract.</i> This form documents the agreement between the contractor and the division for the fulfillment of work in accordance with performance set forth and the payment therefor in accordance with the agreed-upon price. 2 pages.
AML-007	<i>Performance Bond.</i> This form identifies the contractor and the surety and binds them to the state of Iowa performing the contract in accordance with the plans, specifications, and contract documents. The form lists the amount of the bond and provides for notarization of the signatures of the contractor and surety. 2 pages.

This rule is intended to implement Iowa Code section 207.21.

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CHAPTER 60
MINERALS PROGRAM

27—60.1 to 60.9 Reserved.

27—60.10(208) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee, in implementing the requirements of Iowa Code chapter 208 to ensure reclamation upon completion of mining operations for gypsum, clay, stone, sand, gravel, and other ores or mineral solids, except coal.

Information and forms can be obtained on the department's Web site or by contacting: Mines and Minerals Bureau, Division of Soil Conservation and Water Quality, Wallace State Office Building, Des Moines, Iowa 50319. Telephone: (515)242-5003 or (515)281-4246.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—60.11(208) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without the invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—60.12(208) Definitions. When used in this chapter, the following definitions apply:

“Acceptable species” means plant species recognized as desirable permanent species and normally used in conjunction with agriculture, forestry, wildlife or similar plans for reclamation.

“Administrator” means the administrator of the division of soil conservation and water quality, or a designee.

“Affected land” means the area of land from which overburden has been removed or upon which overburden has been deposited, or land which has otherwise been disturbed, changed, influenced, or altered in any way in the course of mining, including processing and stockpile areas but not including roads.

“Angle of repose” means the maximum angle of slope (measured from horizontal) at which loose cohesion materials will come to rest on a pile of similar material.

“Committee” means the state soil conservation and water quality committee.

“Critical slope angle” means the maximum slope incline which the soil and rock materials underlying the slope can support, without failure, under existing climate, vegetation, and land use.

“Department” means the department of agriculture and land stewardship.

“Division” means the division of soil conservation and water quality within the department of agriculture and land stewardship.

“Dredge operation” means an operation to mine sand, gravel, or other nonfuel minerals for sale or for processing or consumption in the regular operation of a business by removing the product directly from its natural state beneath the surface of a river, lake or other body of water.

“Exploration” means the excavation of limited amounts of any mineral to determine the location, quantity, or quality of the mineral deposit.

“Highwall” means the unexcavated face of exposed overburden and mineral in a surface mine.

“Mine” or *“mine site”* means a site where mining is being conducted or has been conducted in the past.

“Mineral” means gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal.

“Mining” means the excavation of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, for sale or for processing or consumption in the regular operation of a business and shall include surface mining and underground mining.

1. *“Surface mining”* means mining by removing the overburden lying above the natural deposits and excavating directly from the natural deposits exposed, or by excavating directly from deposits lying exposed in their natural state, and shall include dredge operations conducted in or on natural or artificially created waterways within the state.

2. “Underground mining” means mining by digging or constructing access tunnels, adits, ramps, or shafts and excavating directly from the natural mineral deposits exposed.

“*Mining operation*” means activities conducted by an operator on a mine site relative to the excavation of minerals and shall include disturbing overburden, excavation and processing of minerals, stockpiling and removal of minerals from a site, and all reclamation activities conducted on a mine site.

“*Official notice*” means service of a written notice or order to an operator via personal service or certified mail to the last-known address. Service shall not be deemed incomplete because of refusal to accept.

“*Operator*” means any person, firm, partnership, corporation, or political subdivision engaged in and controlling a mining operation.

“*Overburden*” means all of the earth and other materials which lie above natural mineral deposits and includes all earth and other materials disturbed from their natural state in the process of mining.

“*Pit floor*” or “*quarry floor*” means the lower limit of a surface excavation to extract minerals.

“*Political subdivision*” means any county, district, city, or other public agency within the state of Iowa.

“*Reclamation*” means the process of restoring disturbed lands to the premined uses of the lands or other productive uses.

“*Registered site*” means a site which meets the requirements of Iowa Code section 208.13 and for which the operator has received a valid registration certificate from the division.

“*Topsail*” means the natural medium located at the surface of the land which contains favorable characteristics for the growth of vegetation.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—60.13 to 60.19 Reserved.

27—60.20(208) License.

60.20(1) *Application for mining license.* All operators wanting to mine minerals in Iowa shall apply for a mining license. The application shall be complete only if submitted on the form supplied by the division, signed by the operator or an authorized representative, and accompanied by a license application fee.

60.20(2) *Fees.* Licensing and license renewal fees are established by Iowa Code section 208.7 at \$50 for an initial license and \$20 for a license renewal.

60.20(3) *License term and expiration.* A license shall be maintained by the operator until all sites have been properly reclaimed or transferred to another licensed operator.

The initial license shall expire on December 31 of the year in which the license was obtained. A license for renewal shall expire on December 31 of the second year in which the license was issued. Any applications for renewal received within 30 days of the expiration date shall be accepted as renewals for the previous license. New licenses obtained after November 1 shall remain valid for a period to include the next calendar year or years.

60.20(4) *License renewal.* Any operator who fails to renew the mining license within the 30-day period following the expiration deadline established in subrule 60.20(3) will be required to apply for an initial license. Failure to renew a license within 30 days after official notice will invalidate all registrations.

60.20(5) *Valid license.* A license to mine is valid only if approved by the division and acknowledged by a license certificate which has been signed by the administrator and lists the operator and the assigned license number.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—60.21 to 60.29 Reserved.

27—60.30(208) Registration.

60.30(1) *Registration required.* All mine sites shall be registered at least seven days prior to the beginning of mining or the removal of overburden. Exploration activities are exempt from registration requirements unless they affect more than 10,000 square feet of surface area.

60.30(2) *Application fee.* The registration application fee shall be \$50 per site.

60.30(3) *Application for registration.* An application for registration shall be acceptable only if completed on the form provided by the division and signed by the operator or an authorized representative and accompanied by a bond or bond increase, a map of the area to be mined, and the registration fee. The completed registration application, registration fee, map, and the bond or bond increase shall be received at least seven days prior to the removal of overburden.

60.30(4) *Valid registration.* A registration is valid only if approved by the division and acknowledged by a registration certificate signed by the division administrator, listing site name, location, and operator to which the site is registered.

Failure to fulfill the requirements of this rule or chapter may result in the invalidation of a site registration following notification to the operator by the division.

The division may request additional information or materials to further distinguish a site from other sites.

A single registration shall consist of contiguous describable tracts of land which can be enclosed by a single unbroken boundary line and including only that property upon which the operator has a legal right to conduct mining.

60.30(5) *Registration conflicts.* If more than one operator is extracting minerals from a given contiguous site within the same time frame, then each operator shall file with the division a statement signed by the operator, including a map defining the scope of operations and bond responsibility of each operator in regard to the final reclamation of the site.

60.30(6) *Registration information.* It shall be the responsibility of the operator to ensure that all information in connection with the application for registration and the registration certificate is correct.

60.30(7) *Registration exclusion.* No site or portion thereof will be released by exclusion from registration under subrules 60.30(1) to 60.30(6).

60.30(8) *Sign.* Any signs required by other governmental bodies may be used to comply with Iowa Code section 208.9(2) provided that the sign is posted at the main entrance of the site or at the scale house, if the scale house is visible from the nearest roadway, and includes the operator's name, telephone number, and the site registration number.

60.30(9) *Duration of registration.* A valid registration shall be maintained by the operator until approval for release has been granted by the division.

27—60.31(208) Registration renewal and fee.

60.31(1) *Registration renewal.* All site registrations shall expire on December 31 of the second year. Registrations shall be renewed by the division upon submittal of renewal fee by the operator within 30 days of the expiration date.

60.31(2) *Notice of registration renewal and fee.* All registrations shall be renewed by the operator upon receipt of a fee statement from the division.

The registration renewal fee shall be \$70 per site.

60.31(3) *Changes in a registration.* If, in the course of operation, any changes in the description, size or boundaries of a site become necessary the licensee shall be required to file a new registration application in accordance with rule 27—60.30(208).

[ARC 3216C, IAB 7/19/17, effective 7/1/17]

27—60.32 to 60.39 Reserved.

27—60.40(208) Bonding. Bond is required by these rules and by Iowa Code chapter 208 to ensure that all applicable mineral operations are properly reclaimed. Failure on the part of an operator to accomplish required reclamation may result in forfeiture of the bond by the division.

60.40(1) Bonding requirements. Each registration application shall be accompanied by a bond or a bond endorsement increasing an already existing bond. The bond or bond increase shall be equal to the amount set forth by a representative of the division or, if no amount is stipulated, the minimum set forth in subrule 60.40(6).

60.40(2) Bond form. All surety bonds shall be written on the form provided and approved by the division. In lieu of a surety bond, the operator may deposit cash or certificates of deposit with the division on the same conditions as prescribed by Iowa Code section 208.23.

60.40(3) Surety bond. A surety bond shall be written by a company authorized to do business in Iowa and shall be made on a form provided by the division. A surety bond shall be signed by the operator or an authorized representative of the operator as well as a representative of the surety.

The surety bond shall be written to cover all acres affected by the mining process pursuant to Iowa Code chapter 208. An attachment shall be included as part of the bond document which lists the sites by name and location (county, township, range, section, and legal description). This attachment shall be signed by representatives of the surety and the principal.

60.40(4) Certificates of deposit. Certificates of deposit posted as bond shall be made payable to the State of Iowa, Division of Soil Conservation and Water Quality AND (Operator). All interest earned shall be paid to the operator.

60.40(5) Cash. Cash deposited as bond does not pay interest to the operator.

60.40(6) Minimum bond. The minimum required bond on each site shall be the greater of \$2,000 per site or \$500 per affected acre on the site.

Actual bond shall be based on factors including, but not limited to, size of the site, thickness of overburden, type of mineral extracted, type of mining process, and stockpiling procedures for topsoil, overburden and product.

60.40(7) Interest-bearing account. Penalties, interest, bond reversions and bond forfeitures collected under the provisions of Iowa Code chapter 208 or these rules shall be deposited in an interest-bearing account and may be used for the cost and administrative expense of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

27—60.41(208) Bond release.

60.41(1) Release of bond. No bond shall be released unless the bonded area has met reclamation requirements of Iowa Code section 208.17, a replacement bond has been filed, or the site has been registered by another licensed operator who agrees, in writing, to complete all remaining required reclamation and has a valid registration for the site(s) in question.

60.41(2) Bond release request. When a bond needs to be decreased, replaced, or is no longer needed, a Request for Bond Release form shall be filed by the operator, a registered agent, or an authorized representative. One Request for Bond Release form shall be filed for each bond.

60.41(3) Return of bond. Upon release of a certificate of deposit or cash posted as bond, the certificate of deposit or cash payment shall be returned to the operator.

Upon the release of a surety bond, the original bond shall be returned to the surety company and the operator shall be notified of the action by the mailing of a courtesy copy.

60.41(4) Reverting of cash bond. If the operator fails to request a release of cash bond after termination or expiration of a mining license, cash bond funds held shall revert to an interest-bearing account maintained by the division, provided a period of at least five years has elapsed since the license expiration. These funds may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

27—60.42 to 60.49 Reserved.

27—60.50(208) Transfers.

60.50(1) Registration transfer request. If control of a registered site is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, then both operators shall

fill out the required portions of a Transfer Application form. The completed form shall then be filed with the division within 30 days of the actual transfer and prior to the start of any work by the new operator.

60.50(2) *Transfer information.* In addition to the Transfer Application form, the new operator shall file a Registration Application form in accordance with rule 27—60.30(208). A Request for Bond Release may be filed by the original operator in accordance with rule 27—60.41(208).

60.50(3) *Transfer action.* No action shall be taken in relation to bond releases for the original operator or registration of the new operator regarding the site in question until the transfer request has been filed with the division and approved.

60.50(4) *Other agreements.* A transfer request does not prevent the new operator from making any agreement with the previous operator or any other party dealing with reclamation or mining of the site.

27—60.51 to 60.59 Reserved.

27—60.60(208) Registration cancellation.

60.60(1) *Reclamation approval request.* Upon completion of reclamation activities on a mine site or any part thereof, the operator may file a Reclamation Approval Request with the division. The form shall be completed and signed by the operator.

60.60(2) *Inspection for approval.* Upon receiving a request the division shall, within 12 months, visit the site in question and shall respond, in writing, to the operator indicating either the approval or disapproval of the site condition.

60.60(3) *Approval denied.* If the site condition is not approved, the division shall notify the operator, in writing, and explain the reason for the disapproval. The operator shall then complete the reclamation specified by the division and reapply for approval.

27—60.61 to 60.64 Reserved.

27—60.65(208) Enforcement actions.

60.65(1) *Notice of violation.* Notice to an operator of violations of these rules or Iowa Code chapter 208 shall include:

- a. A description of the violation, including a citation of the rule or statute violated,
- b. A description of the action required to abate the violation, and
- c. A deadline for abatement.

60.65(2) *Issuance of administrative order.* If an operation fails to complete abatement measures in the time allowed, the division may initiate an administrative order in accordance with these rules and Iowa Code chapter 208.

60.65(3) *Referral to attorney general.* Pursuant to Iowa Code section 208.10A, the division may also notify the attorney general in the event of noncompliance by the operator following notice. The attorney general shall institute a civil action in district court for injunctive relief and for the assessment of a civil penalty not to exceed \$10,000. The division may make such referral either in lieu of or in conjunction with the issuance of an administrative order.

27—60.66 to 60.69 Reserved.

27—60.70(208) Annual mining report.

60.70(1) *Annual reports—surface operations.* Annual reports shall be filed for each site on the form provided by the division. These reports may include, but shall not be limited to, information concerning the location of the mine site, types of material mined, thickness and types of overburden materials, area of land disturbed during the report year, area of land reclaimed during the report year, as well as any other pertinent information concerning the mining operation and deemed necessary by the division.

60.70(2) *Underground mine maps.* The state geologist shall provide the division with copies of each map and map extension received pursuant to Iowa Code section 456.11.

60.70(3) *Filing date.* Reports shall be filed by January 31 for the previous year. Reports not received within 30 days after the specified date shall invalidate the registration of a site.

60.70(4) Final report. Upon conclusion of mining at any site the operator shall file a mining report indicating that all mining activity is completed. This report shall be filed regardless of any other reports filed in connection with subrule 60.70(3).
[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—60.71 to 60.74 Reserved.

27—60.75(208) General mining activities.

60.75(1) Topsoil and overburden stockpiles. Topsoil shall not be buried or mixed with nontopsoil materials. All stockpiles (topsoil and overburden) shall be seeded and stabilized if they are to remain in place for a period of time in excess of 12 months.

60.75(2) Erosion control. Affected areas which will not be disturbed by future operations shall be graded, disked, mulched, fertilized, and seeded as necessary within a period of nine months to attain substantial and appropriate grass, legume, shrub, tree, crop, or other acceptable species and to ensure viable erosion control.

60.75(3) Setback.

a. A minimum excavation setback distance of 25 feet shall be maintained from all registered site boundaries to protect the adjacent property from erosion or damage which might result from mining activities.

b. In areas where excavation depth exceeds 25 feet, a minimum excavation setback distance of at least 50 feet shall be maintained from registered site boundaries.

c. A minimum excavation setback distance of 50 feet shall be maintained from all buildings, dwellings, public right-of-way boundaries and other man-made structures not associated with the mining operation.

d. Excavation on a registered site found to be closer than the allowable minimum setback shall be in violation of this subrule. The operator shall be required to backfill, slope and stabilize to the required limits.

e. The requirements of this subrule shall not apply to registered operations where mining has exceeded the setback limitation as of January 1, 1991, provided that the operator has filed adequate documentation as of July 1, 1991, detailing the area being grandfathered into these requirements.

The operator shall be responsible for maintaining a permanent record of all documentation once approved by the division.

f. The division may grant a variance from this subrule, provided the operator submits a complete application that meets the requirements of rule 27—60.85(208) at least 60 days prior to the proposed starting date of any mining within the setback limitations.

27—60.76 to 60.79 Reserved.

27—60.80(208) Reclamation.

60.80(1) Schedule. The operator, upon filing a mine report indicating the conclusion of all mining activities, will have a period of three years to complete all reclamation activities.

60.80(2) Requirements. The operator shall grade all remaining affected lands, except stockpiles, processing areas, pit floors, and highwalls, to allowable slopes within six months following the filing of the final report. Stockpiles and processing areas shall be graded or the material exported from the site within one year following the final report.

60.80(3) Extension of time. The operator shall be allowed a three-month extension of time on subrule 60.80(2) provided a written request is filed at least 30 days (or 20 working days) prior to the original deadline. Only one extension will be allowed the operator per release request.

60.80(4) Grading. All lands affected by the mining process, with the exception of pit floors, highwalls and water impoundments, shall be graded to slopes having a maximum one-foot vertical rise for every four feet horizontal distance or graded to blend with the surrounding terrain.

60.80(5) Waste disposal. In grading the site all mining-related waste products and machinery incompatible with the care and growth of vegetation shall be removed from the site and disposed of in

a manner consistent and acceptable with state law. Materials acceptable for on-site disposal, such as concrete and clay products free of reinforcing shall be buried a minimum of three feet below final grade.

Boulders and stones incompatible with the proposed postmining use of the site shall be buried or removed from the site.

60.80(6) *Vegetation.* Seeding of an area with grasses and legumes shall be accomplished within three months following the conclusion of all earthwork, weather permitting. Erosion control methods shall be used where necessary to prevent rill and gully formation. The operator shall be responsible for attaining a ground cover of acceptable species of grass, legume, shrub, tree or crop.

The vegetation shall be allowed at least one growing season to become established prior to the filing of a release request by the operator.

If necessary, additional seedings shall be performed to establish a viable vegetative cover.

60.80(7) *Failure to comply.* Failure to adhere to the reclamation schedule may be grounds for an administrative order, revocation of the operator's license to mine, or initiation of bond forfeiture proceedings.

60.80(8) *Variance.* The division may grant a variance from rule 27—60.80(208) provided the operator submits a complete application that meets the requirements of rule 27—60.85(208). Examples of variances would include wetland areas, building sites, or use of overburden materials for protective berms and screens.

27—60.81 to 60.84 Reserved.

27—60.85(208) Criteria for variance application and approval.

60.85(1) *Application for variance.* A complete application for a variance must include:

a. Site name, registration number, and location by county, township, range, section and quarter section.

b. A copy of an aerial photograph or a topographic map of the site on an 8½- × 11-inch page, in a scale not less than 1 to 24,000 (2½" to the mile), showing the areas to be affected by the proposed encroachment.

c. A reclamation plan which will address the final grading and revegetation for the area in question and a statement as to the postmining land use.

d. Name, address, and telephone number for current owner or owners of property adjacent to the area for which the variance is being requested.

e. Estimated time period when the mineral extraction will occur.

f. A brief narrative stating why the variance is being sought and how adverse effects of mining will be mitigated.

g. Other information requested by the division as needed for clarification.

h. Additional bond, if determined to be necessary by the division.

60.85(2) *Criteria for approval of a variance.* A variance filed with the division shall be approved or disapproved within 30 days of receiving a completed application for a variance.

In either approving or disapproving the variance request, the division will consider the reclamation plan, the postmining land use, the effects on the adjacent properties, the extent to which reclamation requirements are being met, and other relevant factors.

27—60.86 to 60.89 Reserved.

27—60.90(208) Administrative orders and assessment of penalties. The division may issue an administrative order directing an operator to desist in an activity or practice which constitutes a violation of these rules or to take corrective action to abate the violation.

60.90(1) *Issuance of administrative order.* Any administrative order issued by the division shall be signed by the division administrator and shall include:

- a. A description of the violation or violations being addressed, including a citation to each rule or provision being violated, a summary of the facts and legal requirements, and a general rationale for the prescribed penalty.
- b. A description of corrective measures or actions required to abate the violation or violations.
- c. A time period for commencing and completing corrective actions called for in the administrative order.
- d. A proposed penalty assessment.
- e. The time allowed for filing an appeal to contest the order.

60.90(2) Assessment of penalty. An administrative order issued by the division shall include a proposed penalty assessment for the violation or violations being cited. The proposed penalty called for in the order shall not exceed \$5,000 for each violation.

a. A point system will be used in assessing each violation. Criteria for assigning points shall be as follows:

- (1) For history, up to 20 points may be assigned based on the history of previous violations.
- (2) For seriousness,
 - 1. Up to 20 points may be assigned based on the seriousness of the violation in terms of its potential or actual damage, or
 - 2. Up to 15 points may be assigned for a violation of the administrative requirements of these rules. Administrative requirements would include items such as license and registration, payment of fees, posting of signs, and submittal of reports.
 - (3) For negligence, up to 10 points may be assigned on the basis of negligence on the part of the operator to whom the order is issued for failing to correct the cause of the violation. Up to 25 points may be assigned for a violation that occurs through a greater degree of fault than negligence, which means reckless, knowing, or intentional conduct. The division may also consider the degree to which the operator gained an economic benefit as a result of failing to comply with these regulations.

A reduction of the assigned points by up to 20 points may be allowed for good-faith efforts by the operator to achieve better than normal compliance.

b. The dollar value for points assigned shall be \$20 for each point from 1 to 25 and \$100 for each point thereafter to a maximum of 70 points. An abridged table summarizing dollar values for point assessments is as follows:

Points	\$		Points	\$
5	100		40	2,000
10	200		45	2,500
15	300		50	3,000
20	400		55	3,500
25	500		60	4,000
30	1,000		70 and above	5,000
35	1,500			

- c. When a penalty will be assessed.
 - (1) The division may assess a penalty for a proposed order that becomes a final order when 30 or fewer points are assigned to the administrative order.
 - (2) The division shall assess a penalty for a proposed assessment that becomes a final order when 31 or more points are assigned to the administrative order.

d. A proposed assessment worksheet shall accompany each administrative order issued by the division.

60.90(3) Waiver of point system. Upon the division administrator’s own initiative or upon written request from an operator within 15 days of receipt of an administrative order, the division may waive the use of the point system as a means of determining a proposed penalty. In so doing, the administrator must determine that the penalty is demonstrably unjust based upon factors present in the particular case.

When the division has waived the use of the point system in determining a penalty, the division administrator shall document the basis for the waiver in the case record and shall also provide a written explanation of the basis for the assessment made to the operator to whom the administrative order was issued.

60.90(4) Submittal of information. Within 15 days of receipt of an administrative order, an operator may provide the division information about the violation or violations addressed in the order. The division will consider any such information in determining the facts of the violation or violations and the amount of the final penalty.

60.90(5) Final assessment and payment of penalty.

a. Unless an appeal contesting the administrative order has been received, the proposed assessment shall become a final order within 30 days following service of the administrative order and the penalty assessed shall become due and payable. If the administrative order is appealed, the proposed assessment shall become a final order and the penalty assessed due and payable within 30 days following service of a final decision on the appeal.

b. All penalties shall be paid within 30 days of the date that the order assessing the penalty becomes final. An operator who fails to pay an administrative penalty assessed by a final order of the division shall pay, in addition, interest at the rate of 1½ percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

(1) Failure to pay all penalties within 30 days of the date that the order assessing the penalty becomes final shall constitute a violation of these rules.

(2) The division may request the attorney general to institute proceedings to recover all penalties assessed in the event of failure of the operator to make payment.

60.90(6) Deposit of penalty moneys. Penalties collected under the provisions of these rules shall be deposited in an interest-bearing account and may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

27—60.91 to 60.94 Reserved.

27—60.95(208) Forms.

Annual Mine Report. This two-sided, one-page form requires identification of the operator and legal description of the mine site. This form requests a listing of the number of acres affected during the report year, the number of acres reclaimed, the number of acres estimated to be affected in the coming year and the number of acres presently bonded.

Assignment Form. This one-page form will be used by the operator to assign a certificate of deposit (CD) to the division when the CD is used in lieu of a surety bond or by the division to assign a CD to the operator, when the division is releasing a CD to the operator.

Bonding Form. This one-page form identifies the operator and the bonding company, lists the amount of the bond, the operator's license number, the bond number, the enforcement date, the surety's mailing address and provides for notarization of the signature for the surety.

Interest Release Form. This one-page form is used by the division to authorize banking authorities to release interest accumulated on a certificate of deposit, held in lieu of bond, to the operator.

License Application. This one-page form is used for both new applications and annual license renewals. This form serves to identify the person, firm, partnership or corporation applying for or renewing the license to mine minerals.

License Certificate. This one-page form is issued by the division upon successful application by the person, firm, partnership or corporation for a mining license.

Reclamation Approval Request. This one-page form identifies the operator and the name and location of the site. This form also requires operator certification that all reclamation work has been completed as set forth in Iowa Code sections 208.17 and 208.19 and rule 27—60.80(208) of the Iowa Administrative Code.

Registration Application. This one-page form is used by the applicant desiring to engage in surface mining. This form includes the name of the licensee, the site name and location, the material produced, the source of the operator's legal right to mine the described area and the owner(s) of the mineral rights and the land to be surface mined.

Registration Certificate. This one-page form is issued by the division upon successful application by an operator for site registration or updated registration.

Request for Bond Release. This one-page form identifies the operator and the bonding company, lists the amount of bond and the bond number, states the reason for the release request, and provides for an approval signature by the division.

Transfer Application. This one-page form identifies the transferee and the transferor and their respective surety companies, lists the site and site location, and provides a prewritten agreement for transfer of all bonding and site reclamation responsibilities to the transferee.

27—60.96 to 60.99 Reserved.

27—60.100(208) Political subdivisions engaged in mining. Any political subdivision of the state of Iowa which engages in or intends to engage in operating a mine as defined under rule 27—60.12(208) shall meet all requirements of this chapter except that the subdivision shall not be required to pay the license fee under rule 27—60.20(208) and shall not be required to post bonds as required under rule 27—60.40(208). An official representative of the political subdivision shall complete a license application form for informational purposes only.

These rules are intended to implement Iowa Code chapter 208.

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ACCOUNTANCY EXAMINING BOARD[193A]

[Prior to 7/13/88, see Accountancy, Board of[10]]

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CHAPTER 3
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[Prior to 7/13/88, see Accountancy, Board of^[10]]

193A—3.1(542) Qualifications for a certificate as a certified public accountant.

3.1(1) A person of good moral character who makes application pursuant to Iowa Code section 542.6 may be granted a certificate as a certified public accountant if the person satisfies all of the following qualifications:

- a.* Satisfactory completion of the educational requirements of Iowa Code section 542.5(7) and rule 193A—3.2(542);
- b.* No less than one year of verified experience including the types of services described in Iowa Code section 542.5(12) and rule 193A—3.12(542); and
- c.* Successful completion of the examination described in Iowa Code section 542.5(8) and rule 193A—3.5(542) and the ethics course and examination outlined in 193A—3.13(542).

3.1(2) An application may be denied if the applicant:

- a.* Has been convicted of a crime described in Iowa Code section 542.5(2);
- b.* Has had a professional license of any kind revoked in this or any other jurisdiction, as provided in Iowa Code section 542.5(3);
- c.* Makes a false statement of material fact on an application for a certificate or is otherwise implicated in the submission of a false application as provided in Iowa Code section 542.5(4);
- d.* Has violated a provision of Iowa Code section 542.20 or has been assessed penalties pursuant to Iowa Code section 542.14 or 193A—Chapter 17;
- e.* Is the subject of a notice of noncompliance as provided in 193—Chapter 8;
- f.* Demonstrates a lack of moral character in a manner which the board reasonably believes will impair the applicant's ability to practice public accountancy in full compliance with the public interest and state policies described in Iowa Code section 542.2. While it is not possible to itemize all actions or behaviors which may demonstrate a lack of moral character, the following nonexclusive list of factors will guide the board in making its determination:

- (1) A pattern and practice of making false or deceptive representations, or of omitting material facts, while providing the public any of the services described in Iowa Code section 542.3(20);
 - (2) Fraud or dishonesty while advertising or selling goods or services to the public;
 - (3) Willful or repeated failure to timely file tax returns or other mandatory submittals due a governmental body;
 - (4) Fiscally irresponsible behavior in the absence of mitigating circumstances;
- g.* Is subject to discipline on any ground that would form the basis for discipline against a licensee;

or

- h.* Has had a practice privilege revoked in this or another jurisdiction.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—3.2(542) Colleges or universities recognized by the board. Iowa Code section 542.5, in providing for educational qualifications for a certificate as a certified public accountant, refers to colleges or universities “recognized by the board.” For such purpose, the board recognizes educational institutions accredited by the Association to Advance Collegiate Schools of Business and the regional accrediting bodies listed in the current publication of the Accredited Institutions of Post Secondary Education, which listing is made a part of these rules by reference.

This rule is intended to implement Iowa Code section 542.5.

[ARC 2152C, IAB 9/30/15, effective 11/4/15]

193A—3.3(542) Accounting concentration.

3.3(1) A candidate will be deemed to have met the educational requirement if, as part of the 150 semester hours of education as outlined in Iowa Code section 542.5, the candidate has met one of the following four conditions:

a. Earned a graduate degree with a concentration in accounting from a program that is accredited in accounting by an accrediting agency recognized by the board.

b. Earned a graduate degree in business from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting including courses covering the subjects of financial accounting, auditing, taxation, and management accounting. Such accounting hours shall not include elementary accounting or principles of accounting, internships or life experience.

c. Earned a baccalaureate degree in business or accounting from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting. Such accounting hours shall not include elementary accounting or principles of accounting, internships or life experience.

d. Earned a baccalaureate or higher degree and completed the following hours from an accredited institution recognized by the board:

(1) At least 24 semester hours in accounting courses above elementary accounting or principles of accounting covering the subjects of financial accounting, auditing, taxation, and management accounting, not including internships or life experience; and

(2) At least 24 additional semester hours in business-related courses, not including internships or life experience. Elementary accounting hours that do not qualify under subparagraph 3.3(1) “*d*”(1) above may apply toward business-related courses.

Quarter hours will be accepted in lieu of semester hours at a 3:2 ratio; that is, three quarter hours is equivalent to two semester hours. Internships and life experience hours may apply toward the total 150 hours’ requirement.

3.3(2) The board will consider correspondence study and study in other schools not meeting the above requirements on an individual basis if the candidate can provide evidence that such study would be acceptable for credit by a college or university recognized by the board; provided, however, that at least 18 of the required hours in accounting and at least 16 of the required hours in business-related subjects must be obtained in a college or university recognized by the board.

3.3(3) The applicant’s claim to college or university credits must be confirmed by an official transcript of credit issued by the institution in question. The applicant shall be responsible for having such transcripts sent to the board’s test administrator at the time of making application. The applicant shall also be responsible for having any institution not listed under rule 193A—3.2(542) furnish the board evidence that it meets the accreditation requirements of the board.

3.3(4) Graduates of foreign colleges or universities shall have their education evaluated by a foreign credentials evaluation advisory service specified by the board.

193A—3.4(542) Examination applications.

3.4(1) An individual desiring to take the certified public accountant examination as an initial candidate should apply to the board’s test administrator. An application shall not be approved until complete in all respects. A complete application includes a completed application form, the designated fee, and all applicable college transcripts.

3.4(2) To be eligible to make application for the examination, a candidate shall fulfill the requirements of rule 193A—3.3(542).

3.4(3) A candidate for the examination who has been convicted in a court of competent jurisdiction in this state, or another state, territory, or a district of the United States, or in a foreign jurisdiction of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral character or dishonesty may be denied admittance to the examination by the board on the grounds of the conviction. For purposes of this subrule, “conviction” means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

3.4(4) A candidate for examination who has had a professional license of any kind revoked in this or any other jurisdiction may be denied admittance to the examination by the board on the grounds of the revocation.

3.4(5) A candidate who makes a false statement of material fact on an application for examination for a certificate, or who causes to be submitted or has been a party to preparing or submitting a false application for a certificate, may be denied a certificate by the board on the grounds of the false statement or submission.

3.4(6) A candidate may be considered as a reexamination applicant regardless of whether or not the candidate sat for the examination once initially approved. Reexamination applicants may apply by telephone to the board's test administrator or may apply on-line if the technology is available.

3.4(7) A nonrefundable proctoring fee shall be collected from a candidate who wishes to be proctored in Iowa.

193A—3.5(542) Content and grading of the examination.

3.5(1) The board may make use of the uniform certified public accountant's examination prepared by the American Institute of Certified Public Accountants or another nationally recognized organization under a plan of cooperation with the boards of all states and territories of the United States.

3.5(2) The board may also make use of the advisory grading service provided by the American Institute of Certified Public Accountants or another nationally recognized organization under a plan of cooperation with the boards of all states and territories of the United States.

3.5(3) A grade of at least 75 in each subject shall be considered passing.

193A—3.6(542) Conditional requirements.

3.6(1) Effective with the implementation of the computer-based examination, a candidate may take the required test subjects individually and in any order. Except as provided in rule 193A—3.7(542), credit for any subjects passed shall be valid for 18 months from the actual date the candidate sat for the subject, without the candidate's having to attain a minimum score on any failed subject(s) and without regard to whether the candidate sat for any other subjects. The candidate shall also be subject to the following:

a. The candidate must pass all four subjects of the examination within a rolling 18-month period that begins on the date that the first subject is passed. If all four subjects are not passed within the 18-month period, credit for any subject taken outside the 18-month period shall expire.

b. If a candidate fails a subject, the candidate cannot retake the same failed subject in an examination window. An examination window refers to a three-month period in which a candidate has the opportunity to take the examination (comprised of two months when the examination is offered and one month when the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, the candidate will be able to sit for the examination two out of three months within an examination window.

3.6(2) A candidate shall be deemed to have passed the examination once the candidate holds, at the same time, valid credit for passing each of the four subjects of the examination. For purposes of this rule, credit for passing a subject of the examination is valid from the actual date of the testing event for that subject, regardless of the date the candidate actually received notice of the passing score.

This rule is intended to implement Iowa Code section 542.5.
[ARC 9482B, IAB 5/4/11, effective 6/8/11]

193A—3.7(542) Extension of conditional status.

3.7(1) The time limit within which a candidate is required to pass all subjects under these rules shall not include any period during which the candidate was serving in the armed forces of the United States. This exception does not apply if the candidate takes an examination while so serving. The board may extend the time limit in particular instances on a case-by-case basis.

3.7(2) The time limit within which a candidate is required to pass all subjects under these rules may be extended for hardship cases, such as when the applicant for the examination is prevented from

attending for such reasons as unexpected illness, verified by a medical doctor, or a death in the family, verified in writing.

3.7(3) The time limit within which a candidate is required to pass all subjects under these rules may be extended if circumstances occur which prevent the score from an examination from reaching the candidate in a reasonable period of time. Such circumstances would allow the candidate the opportunity to retake a failed subject.

193A—3.8(542) Transfer of credit from another jurisdiction.

3.8(1) A candidate requesting transfer of grades from any other jurisdiction will be subject to the same provisions of these rules as an Iowa candidate, provided that the examination given by the licensing authority in the other state was an examination approved by the Iowa board.

3.8(2) A candidate requesting transfer of grades from any other jurisdiction who does not meet the provisions of these rules, but who meets all of the requirements for issuance of an original certificate in the examining state other than residency, may, at the board's discretion, be required to take at least one section of the examination designated by the board.

193A—3.9(542) Examination procedures.

3.9(1) At the examination, a candidate must provide evidence of identification with two forms of official documentation such as a driver's license, student identification, service identification, or passport that contains the candidate's photograph and signature.

3.9(2) The candidate may be photographed by the test administrator at each appearance for the examination. The test administrator may collect from the candidate a fee for the processing of the photograph.

3.9(3) Scratch paper and supplies furnished by the board's test administrator shall remain the administrator's property and must be returned whether used or not.

3.9(4) In the event that a computer malfunction or failure occurs while the examination is being conducted, the liability of the board or its test administrator will be limited to the fee paid by the applicant for the examination.

193A—3.10(542) Conduct of the examination.

3.10(1) Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of certification in Iowa, be barred from accountancy licensing and certification examinations in Iowa, or be subject to the imposition of other sanctions the board deems appropriate.

3.10(2) Conduct that subverts or attempts to subvert the examination process includes, but is not limited to:

a. Conduct which violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion of the licensing examination; aiding by any means in the reproduction or reconstruction of any portion of the licensing examination; selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

b. Conduct which violates the standards of test administration, such as communicating with any other examination candidate during the administration of the licensing examination; communicating with others outside of the examination site during the administration of the examination; copying answers from another candidate or permitting one's answers to be copied by another candidate during the administration of the examination; having in one's possession during the administration of the licensing examination any books, notes, written or printed materials or data of any kind, other than the examination materials distributed.

c. Conduct which violates the examination process, such as falsifying or misrepresenting educational credentials or other information required for admission to the licensing examination; impersonating an examination candidate or having an impersonator take the licensing examination on one's behalf.

3.10(3) Any examination candidate who wishes to appeal a decision of the board under this rule may request a contested case hearing. The request for hearing shall be in writing, shall briefly describe the basis for the appeal, and shall be filed in the board's office within 30 days of the date of the board decision being appealed. Any hearing requested under this subrule shall be governed by the rules applicable to contested case hearings under 193—Chapter 7.

193A—3.11(542) Refunding of examination fees. Examination fees shall not be refunded except in hardship cases, such as when the candidate for the examination is prevented from attending for such reasons as unexpected illness, verified by a medical doctor, a death in the family, or a call to active military service, 50 percent of the fee may be returned. Written documentation including evidence of the hardship shall be provided to the board's test administrator.

193A—3.12(542) Experience for certificate.

3.12(1) Experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. Experience may be gained through employment in government, industry, academia, or public practice.

3.12(2) One year of experience shall consist of full- or part-time employment that extends over a period of no less than one year and no more than three years and includes no fewer than 2,000 hours of performance of services outlined in subrule 3.12(1). Experience may be gained in more than one employment situation, including an internship.

3.12(3) An applicant seeking qualification as an attest CPA shall have at a minimum two years of experience as more fully described in 193A—subrule 6.3(1).

3.12(4) All experience shall be verified by a licensee with direct supervisory control over the applicant or by a licensee who can attest that the experience gained by the applicant meets the requirements of subrule 3.12(1) if the applicant is not supervised by a licensee.

3.12(5) Teaching experience shall be in the employment of an institution of higher education and shall include teaching a minimum of 24 semester hours of accounting courses for which the course participants receive credit on an official transcript. Teaching of noncredit continuing education courses shall not qualify under this rule.

193A—3.13(542) Ethics course and examination. A successful candidate shall also be required to pass an examination covering the code of ethical conduct prior to issuance of the certificate.

193A—3.14(542) Obtaining the certificate.

3.14(1) A candidate who successfully passes the examination, completes the ethics course and examination and meets all of the requirements outlined in rule 193A—3.1(542) shall make application for the certificate on a form which may be obtained from the board office or on the board's Web site. An applicant for a certificate may be denied the certificate for reasons outlined in subrule 3.4(3), 3.4(4), or 3.4(5) regardless of when the incident occurred.

3.14(2) A candidate who meets the requirements for a certificate outlined in rule 193A—3.1(542) shall file an application for a certificate within three years of the date of passing the examination. If the candidate does not file an application for a certificate within the required time frame, the candidate must comply with the basic continuing education requirements outlined in rule 193A—10.5(542) prior to filing an application. The required continuing education hours shall include a minimum of eight hours of continuing education every three years devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates.

[ARC 9482B, IAB 5/4/11, effective 6/8/11]

193A—3.15(542) Use of title.

3.15(1) Only a person who holds an active, unexpired certificate and who complies with the requirements of 193A—Chapters 5 and 10 or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title "certified public accountant" or the abbreviation

“CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

3.15(2) Rules regarding the use of the title “CPA” in a firm name are found in the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

[ARC 7715B, IAB 4/22/09, effective 7/1/09; ARC 9482B, IAB 5/4/11, effective 6/8/11; ARC 3230C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapter 542 and Iowa Code section 546.10.

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CHAPTER 13
RULES OF PROFESSIONAL ETHICS AND CONDUCT
[Prior to 5/1/02, see 193A—Chapter 11]

193A—13.1(542) Applicability.

13.1(1) The rules of professional ethics and conduct, both adopted by reference in subrule 13.1(2) and specifically enumerated herein (collectively referred to herein as the “rules of professional ethics and conduct”), rest upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting and on the implication of professional competence inherent in the authorized use of a legally restricted title relating to the practice of public accountancy imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of professional ethics and conduct are intended to enforce where necessary, include the obligation to maintain independence of thought and action and a continued commitment to learning and professional improvement, to observe applicable generally accepted accounting principles and generally accepted auditing standards, to promote the public interest through sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all professional activities in whatever capacity performed.

13.1(2) In addition to the rules specifically enumerated herein, and only to the extent applicable to certificate holders’ and licensees’ respective scope of practice, all certificate holders and licensees shall comply with the Code of Professional Conduct of the AICPA (AICPA Code of Professional Conduct), effective December 15, 2014, as updated for all official releases through October 31, 2016, and adopted by reference herein. In the event of a conflict or inconsistency between the AICPA Code of Professional Conduct and rules specifically enumerated herein, the rules specifically enumerated herein shall prevail.

13.1(3) The rules of professional ethics and conduct apply to all professional services performed by all CPAs and LPAs whether or not they are engaged in the practice of public accountancy, except where the wording of a rule clearly indicates that the applicability is specifically limited to the practice of public accountancy.

13.1(4) A CPA or LPA who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the board’s rules of professional ethics and conduct, so long as the CPA’s or LPA’s conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which the CPA or LPA is practicing. However, even in such a case, if a CPA’s or LPA’s name is associated with financial statements in such manner as to imply that the CPA or LPA is acting as an independent public accountant and under circumstances that would entitle the reader of the financial statement to assume that United States practices are followed, the CPA or LPA will be expected to comply with applicable generally accepted engagement standards and applicable generally accepted accounting principles.

13.1(5) A CPA or LPA may be held responsible for compliance with the rules of professional ethics and conduct by all persons associated with the accountant in the practice of public accounting who are either under the accountant’s supervision or are licensees, partners or shareholders in the accountant’s practice.

13.1(6) CPAs and CPA firms exercising a practice privilege in Iowa or for a client with a home office in Iowa are subject to the professional standards set forth in this chapter.

13.1(7) These rules complement the grounds for discipline set out in 193A—Chapter 14.
[ARC 3230C, IAB 8/2/17, effective 9/6/17]

193A—13.2(542) Rules applicable to all CPAs and LPAs.

13.2(1) *Cooperation with board inquiry.* A CPA or LPA shall, when requested, respond to communications from the board within 30 days of the mailing of such communications by certified mail.

13.2(2) *Reporting convictions, judgments, and disciplinary actions.* In addition to any other reporting requirement in Iowa Code chapter 542 or these rules, a CPA or LPA shall notify the board within 30 days of:

a. Imposition upon the CPA or LPA of discipline including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, or suspension, revocation or modification of a license, certificate, permit or practice rights by:

(1) The SEC, PCAOB, or IRS (by the Director of Practice); or

(2) Another state board of accountancy for cause other than failure to pay a professional fee by the due date or failure to meet the continuing education requirements of another state board of accountancy; or

(3) Any other federal or state agency regarding the CPA's or LPA's conduct while rendering professional services; or

(4) Any foreign authority or credentialing body that regulates the practice of accountancy;

b. Occurrence of any matter that must be reported by the CPA or LPA to the PCAOB pursuant to Sarbanes-Oxley Section 102(b)(2)(f) and PCAOB rules and forms adopted pursuant thereto;

c. Any judgment, award or settlement of a civil action or arbitration proceeding in which the CPA or LPA was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall notify the board regarding civil judgments, settlements or arbitration awards directly involving the firm's practice of public accounting in this state; or

d. Criminal charges, deferred prosecution or conviction or plea of no contest to which the CPA or LPA is a defendant if the crime is:

(1) Any felony under the laws of the United States or any state of the United States or any foreign jurisdiction; or

(2) Any crime, including a misdemeanor, if an essential element of the offense is dishonesty, deceit or fraud, as more fully described in Iowa Code section 542.5(2).

13.2(3) *Firm's duty to report.* The CPA or LPA designated by each firm as responsible for the proper licensure of the firm or registration of an office of the firm shall report any matter reportable under this rule to which a nonlicensee owner with a principal place of business in this state is a party.

13.2(4) *Solicitation or disclosure of CPA examination questions and answers.* A CPA or LPA who solicits or knowingly discloses a Uniform CPA Examination question(s) or answer(s) without the written authorization of the AICPA shall be considered to have committed an act discreditable to the profession.

13.2(5) *Falsely reporting continuing professional education (CPE).* A CPA or LPA shall be considered to have committed an act discreditable to the profession when the CPA or LPA falsely reports CPE credits during the CPA's or LPA's required reporting renewal or board CPE audit.

13.2(6) *Mandatory ethics continuing professional education.* Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing professional education devoted to ethics and rules of professional conduct during the three-year period ending December 31 or June 30, prior to the July 1 annual renewal date. This requirement is more fully described in 193A—subrule 10.7(2).

[ARC 3230C, IAB 8/2/17, effective 9/6/17]

193A—13.3(542) Rules applicable to CPAs and LPAs who use the titles in offering or rendering products or services to clients.

13.3(1) *Use of title.*

a. *Certified public accountant.* Only a person who holds an active, unexpired certificate and who complies with the requirements of 193A—Chapter 5, Licensure Status and Renewal of Certificates and Licenses, and 193A—Chapter 10, Continuing Education, or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title “certified public accountant” or the abbreviation “CPA” or any other title, designation, word(s), letter(s), abbreviation(s), sign, card, or device tending to indicate that such person is a certified public accountant.

b. *Licensed public accountant.* Only a person holding a license as a licensed public accountant shall use or assume the title “licensed public accountant” or the abbreviation “LPA” or any other title, designation, word(s), letter(s), abbreviation(s), sign, card, or device tending to indicate that such person is a licensed public accountant.

13.3(2) Forms of practice.

a. Certified public accountant firms. A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.7 and these rules as a firm of certified public accountants in order to use the title “CPAs” or “CPA firm,” as more fully described in 193A—Chapter 7.

b. Licensed public accounting firms. A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.8 and these rules as a firm of licensed public accountants in order to use the title “LPAs” or “LPA firm,” as more fully described in 193A—Chapter 8.

13.3(3) Acting through others. A CPA or LPA shall not permit others to carry out on the CPA’s or LPA’s behalf, either with or without compensation, acts which, if carried out by the CPA or LPA, would violate the rules of professional ethics and conduct.

[ARC 3230C, IAB 8/2/17, effective 9/6/17]

193A—13.4(542) Audit, review and other attest services.**13.4(1) Definitions.**

“Attest” or “attest service” means providing any of the following services:

1. An audit or other engagement to be performed in accordance with the statements on auditing standards.
2. A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.
3. Any engagement to be performed in accordance with the statements on standards for attestation engagements.
4. Any engagement to be performed in accordance with the auditing standards of the PCAOB.

The standards specified in the definition of “attest” are those standards adopted by the board, by rule, by reference to the standards developed for general application by the AICPA, the PCAOB, or other recognized national accountancy organization.

“Attest engagement team” means the team of individuals participating in attest service, including those who perform concurring or second partner reviews. The “attest engagement team” includes all employees and contractors retained by the firm who participate in attest service, irrespective of their functional classification.

“Audit” means the procedures performed in accordance with applicable auditing standards for the purpose of expressing or disclaiming an opinion on the fairness with which the historical financial or other information is presented in conformity with generally accepted accounting principles, another comprehensive basis of accounting, or basis of accounting described in the report.

“Review” means to perform inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

13.4(2) Practice privilege. All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa must be performed through a CPA firm that holds an active Iowa firm permit to practice; provided that, an out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code sections 542.20(5) and 542.20(6) and associated rules. Unless Iowa certification is specifically required by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20. LPAs and LPA firms are not authorized to perform attest services.

13.4(3) Peer review required. As a condition of renewal of a permit to practice as a CPA firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11 and Iowa Code section 542.7.

[ARC 3230C, IAB 8/2/17, effective 9/6/17]

193A—13.5(542) Compilation.

13.5(1) Who can perform. Only a CPA licensed under Iowa Code section 542.6 or 542.19, an LPA licensed under Iowa Code section 542.8, or a CPA exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa. (Refer to rule 193A—6.4(542).)

13.5(2) Peer review. All individuals described in 193A—subrule 6.4(1) shall satisfy peer review requirements, individually or through a peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

13.5(3) Mandatory financial statement presentation continuing professional education. In each renewal period in which compilation reports are issued, every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing education devoted to financial statement presentation every three years, such as courses covering the Statements on Standards for Accounting and Review Services (SSARS) and accounting and auditing updates. This requirement is more fully described in 193A—subrule 10.7(1).

[ARC 3230C, IAB 8/2/17, effective 9/6/17]

193A—13.6(542) Rules applicable to tax practice. CPAs, LPAs, and persons who are not CPAs or LPAs may perform tax services in Iowa. The rules of professional ethics and conduct in this chapter shall apply to any CPA or LPA who is licensed in Iowa and to any CPA exercising a practice privilege in Iowa whenever such person informs the client or prospective client that the person is a CPA or LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards or e-mail. Clients and prospective clients who select a tax professional holding oneself out as a CPA or LPA have the right to expect compliance with these rules.

[ARC 3230C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapters 272C and 542.

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CHAPTER 14
DISCIPLINARY AUTHORITY AND GROUNDS FOR DISCIPLINE

193A—14.1(17A,272C,542) Disciplinary authority. The board is empowered to administer Iowa Code chapters 17A, 272C and 542 and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals and firms for the performance of public accounting services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and prosecute disciplinary proceedings, establish standards of professional conduct, and impose discipline, pursuant to Iowa Code sections 17A.13, 272C.3 to 272C.6, 272C.10, 542.4, and 542.10 to 542.16.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—14.2(17A,272C,542) Disciplinary policy.

14.2(1) In exercising its disciplinary authority and in construing the meaning of the phrase “conduct discreditable to the public accounting profession” as used in Iowa Code section 542.10, subsection 1 paragraph “i,” the board shall be guided by the legislative policies, goals and standards set forth in Iowa Code section 542.2.

14.2(2) The board’s disciplinary policy rests upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence inherent in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on persons and firms engaged in such practice certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence of thought and action; to strive continuously to improve one’s professional skills; to observe, where applicable, generally accepted accounting principles, generally accepted auditing standards, and similar principles and standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; and to maintain high standards of personal conduct in all matters affecting one’s fitness to practice public accountancy.

14.2(3) The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

14.2(4) A CPA or LPA firm is subject to discipline for its own violations of Iowa Code chapter 542 and administrative rules and the violations of the firm’s CPAs, LPAs, nonlicensee owners, persons acting or purporting to act under a practice privilege, and others performing professional services on the firm’s behalf. Whether a CPA or LPA firm will be charged based on the acts of such individuals will depend on the circumstances. Among the factors the board will consider are whether the firm took reasonable steps to prevent the violation, whether the violation was or could have been discovered by the firm upon reasonable inquiry, what steps the firm took upon discovering the violation, whether the acts or omissions involved licensees of the board or were committed by persons who are not individually licensed by the board, the nature of the services at issue, and whether the violations are isolated matters or more systemic to the firm’s performance.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—14.3(17A,272C,542) Grounds for discipline. The board may initiate disciplinary action against a CPA or LPA, or a firm of CPAs or LPAs, which holds an active, inactive or lapsed certificate, license or permit to practice on any of the following grounds:

14.3(1) *Fraud or deceit in procuring a license.* Fraud or deceit in procuring or attempting to procure an initial, reciprocal, renewal, or reinstated certificate, license, or permit to practice includes any intentional perversion of the truth when submitting an application to the board, or when submitting information in support of another's application to the board, including:

- a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.
- b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, continuing education certificate, or verification of peer review.
- c. Failing or refusing to provide complete information in response to a question on an application.
- d. Reporting information, such as satisfaction of continuing education, peer review, or attest qualification, in a false manner through overt deceit or with reckless disregard for the truth or accuracy of the information asserted.
- e. Otherwise participating in any form of fraud or misrepresentation by act or omission.

14.3(2) *Professional incompetence.* Professional incompetence includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of public accounting.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.
- d. Failure to conform to the minimum standards of acceptable and prevailing practice of public accounting in this state.
- e. A willful, repeated, or material deviation from generally accepted engagement standards, generally accepted accounting standards, generally accepted auditing standards, or any other nationally recognized standard applicable to the public accounting services at issue.
- f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest.

14.3(3) *Deceptive practices.* Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

- a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of public accounting.
- b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.
- c. Acceptance of any fee by fraud or misrepresentation.
- d. Falsification of business or client records.
- e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule or 193A—Chapter 18.
- f. Knowingly presenting as one's own a certificate, license, or permit to practice, or a certificate, license, or permit number, or the signature of another or of a fictitious licensee, or otherwise falsely impersonating a person holding a CPA certificate or LPA license, or a permit to practice as a firm of CPAs or LPAs.
- g. Representing oneself as a CPA, LPA, CPA firm, or LPA firm when the certificate, license, or permit to practice has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed, except as allowed under Iowa Code section 542.20.
- h. Fraud in representations as to skill or ability.

14.3(4) *Unethical, harmful or detrimental conduct.* Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established.

Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of public accounting or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of public accounting would place the public at risk.

b. A violation of a rule of professional conduct relating to improper conflicts of interest, or lack of integrity, objectivity or independence, as provided in the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

c. A violation of a provision of Iowa Code section 542.13, or aiding or abetting any unlawful activity for which a civil penalty can be imposed under Iowa Code sections 542.13 and 542.14.

14.3(5) *Lack of proper qualifications.* Lack of proper qualifications includes, but is not limited to:

a. Continuing to practice as a CPA or LPA without satisfying the continuing education required for certificate or license renewal.

b. Continuing to perform attest services or compilation services without timely completion of peer review.

c. Performing attest services as an individual without proper certification or attest qualification, or without acting through a CPA firm holding a permit to practice pursuant to Iowa Code section 542.7.

d. Performing attest services as a firm without holding a permit to practice pursuant to Iowa Code section 542.7, or without ensuring that the individuals responsible for supervising attest services or signing or authorizing someone to sign the accountant's report are attest qualified, hold the required certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 and 193A—Chapters 6 and 7.

e. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the CPA's or LPA's ability to practice in a safe and competent manner.

f. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b," or that impairs a practitioner's ability to safely and skillfully practice the profession.

14.3(6) *Negligence in the practice of public accounting.* Negligence in the practice of public accounting includes the following acts, practices, or omissions, whether or not injury results:

a. Failure or refusal without good cause to exercise reasonable diligence in the practice of public accounting.

b. A failure to exercise due care including negligent delegation of duties in the practice of public accounting.

c. Neglect of contractual or other duties to a client.

14.3(7) *Professional misconduct.* Professional misconduct includes, but is not limited to, the following:

a. Violation of a generally accepted engagement standard, generally accepted accounting standard, generally accepted auditing standard, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542), or any other violation of a provision of the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

b. Violation of a regulation or law of this state, another state, the United States, or the PCAOB in the practice of public accounting.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation of a licensed or unlicensed firm, individual, or other entity, or failure to fully cooperate with a disciplinary investigation of a licensee or with an investigation of firms, individuals or other entities that are not licensed by the board, including, without limitation, failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken against a licensee or person or firm exercising a practice privilege by a licensing authority of this state or another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is

overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.

e. Suspension or revocation of the right to practice before any state or federal agency, or the PCAOB.

f. A violation of Iowa Code section 542.17 (confidential communication).

g. A violation of Iowa Code section 542.18 (licensees' working papers—client records).

h. Violating or aiding and abetting another's violation of Iowa Code section 542.13 or 542.20.

i. Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

j. A violation of a practice privilege afforded to an Iowa licensee in another state.

k. Engaging in the practice of public accounting on a lapsed or inactive certificate, license or permit when the acts or practices require active Iowa licensure and, in the case of a firm, allowing such acts or practices by firm CPAs or LPAs.

14.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542 or any administrative rule adopted by the board in the administration or enforcement of such chapters.

14.3(9) *Failure to report.*

a. Failure by a CPA firm to timely report as provided in rule 193A—7.7(542).

b. Failure of an LPA firm to timely report as provided in rule 193A—8.5(542).

c. Failure to timely report judgments and settlements and reportable violations by others as provided in 193A—Chapter 18.

d. Failure to report in writing to the board any issuance, denial, revocation, or suspension of a license by another state, or the voluntary surrender of a license to resolve a pending disciplinary investigation or action, within 30 calendar days of the licensing authority's final action.

e. Failure to report the conviction of any felony, or a crime described in Iowa Code section 542.5(2), within 30 calendar days of the conviction.

f. Failure to report to the board a change in the licensee's physical or mailing address within 30 calendar days of the change.

g. Failure to report as provided in 193A—subrule 13.4(3) or as otherwise required in the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

14.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

14.3(11) *Conviction of a crime.* Conviction, in this state or any other jurisdiction, of any felony, or of any crime described in Iowa Code section 542.5(2). A copy of the record of conviction or plea of guilty shall be conclusive evidence. "Conviction" shall include any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred or suspended, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction shall be vacated.

14.3(12) *Conduct discreditable to the accounting profession.* Conduct discreditable to the accounting profession includes any act or practice that diminishes the public's confidence in the profession, impairs the credibility of the profession, or otherwise compromises the public's trust. While it is not possible to list all conduct that is discreditable to the accounting profession, the following list provides an illustrative range of acts or practices that are implicated:

a. Dishonesty in business or financial affairs, or a pattern of fiscal irresponsibility.

b. Placement on the sex offender registry.

c. Securities fraud or violation of the Iowa consumer fraud Act.

d. Willful or repeated failure to timely file tax returns or other tax documents.

e. False testimony in a court or administrative proceeding, or affidavit, or otherwise under oath.

f. Providing false or misleading information to a financial institution or governmental body or official.

g. Stating or implying an ability to improperly influence a government agency or official, or attempting to do so through deception, bribery or other unlawful means.

h. Violation of a breach of fiduciary duty when acting in the capacity of a trustee, conservator, or other fiduciary, or as the professional advisor to a fiduciary.

i. Any violation of Iowa Code chapter 542 or administrative rules that involves dishonesty, bad faith, or unethical behavior.

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REAL ESTATE COMMISSION[193E]

[Prior to 6/15/88, see Real Estate Commission[700]]

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CHAPTER 3
BROKER LICENSE

[Prior to 6/15/88, see Real Estate Commission[700] Ch 3]

[Prior to 9/4/02, see 193E—2.10(543B) to 193E—2.12(543B) and 193E—3.3(543B)]

193E—3.1(543B) General requirements for broker license. An applicant for a broker license must meet all requirements of Iowa Code section 543B.15.

3.1(1) An applicant for a real estate broker's license must be a person whose application for licensure has not been rejected in this or any other state or jurisdiction within 12 months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to the date of application.

3.1(2) An applicant for a real estate broker license shall be 18 years of age or older. An applicant is not ineligible because of citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information.

3.1(3) An applicant for a real estate broker's license who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, or of any crime involving moral turpitude, 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, may be denied a license by the commission on the grounds of the conviction. "Conviction" is defined in Iowa Code section 543B.15(3) and rule 193E—2.1(543B).

3.1(4) An applicant for a real estate broker's license who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation.

3.1(5) As required by Iowa Code section 543B.15(7) and 193E—subrule 16.3(1), an applicant for licensure as a real estate broker shall complete at least 72 classroom hours of commission-approved real estate education within 24 months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. Effective January 1, 2005, and thereafter, all persons applying for a broker license within their first renewal term must complete the 36-hour salesperson postlicense courses, including 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices, before a broker license can be issued.

3.1(6) As required by Iowa Code section 543B.15(7), an applicant for licensure as a real estate broker must have been an actively licensed real estate salesperson actively engaged in real estate for a period of at least 24 months preceding the date of application or shall have had experience as a former broker or salesperson or otherwise substantially equivalent experience to that which a licensed real estate salesperson would ordinarily receive during a period of 24 months.

a. An applicant for a broker license may use active experience as a former Iowa salesperson or active salesperson experience in another state or jurisdiction, or a combination of both, to satisfy the experience requirement for a broker license only if the former Iowa salesperson or applicant from another state or jurisdiction was actively licensed for not less than 24 months and if the license on which the experience is based has not been expired for more than three years prior to the date the completed broker application with fee is filed with the commission.

b. For waiver of commission rules or substitution of experience, see Iowa Code section 543B.15 and the uniform rules for the professional licensing and regulation bureau at 193—Chapter 5.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—3.2(543B) License examination. Examinations for licensure as a real estate broker shall be conducted by the commission or its authorized representative.

3.2(1) Testing service. The commission shall negotiate an agreement with a testing service relating to examination development, test scheduling, examination sites, grade reporting and analysis. The commission shall approve the form, contract, and method of administration. The examination shall be conducted in accordance with approved procedures formulated by the testing agency. Applicants shall register and pay examination fees directly to the testing service.

3.2(2) Requests for waiver or variance. An examinee must meet the requirements set out in Iowa Code section 543B.15. Requests for waiver or variance of commission rules or of the qualifications for licensure as permitted by Iowa Code section 543B.15 shall be submitted in writing and as provided by the commission's rules regarding waivers and variances, which can be found in the uniform rules for the professional licensing and regulation bureau at 193—Chapter 5. The commission will consider each case on an individual basis. The commission may require additional supporting information. If the applicant's experience or prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a waiver is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

3.2(3) Evidence of completion of prelicense education required. An examinee shall be required to show evidence at the examination site that required prelicense education has been completed. If the commission has granted a waiver or variance of prelicense education, the letter granting the waiver or variance will serve as evidence of completion. Persons planning to qualify under rule 193E—5.3(543B) must obtain written authorization from the commission to show at the examination site.

3.2(4) Failure to pass examination. An examinee who takes an examination and fails shall be eligible to apply to retake the examination at any time the examination is offered by filing a new registration form and paying the examination fee, unless the qualifying time period for the prelicense education or granted waiver has expired.

3.2(5) The commission may waive the examination requirement for a nonresident applicant licensed by examination under the laws of a state or jurisdiction having similar requirements and which has a current reciprocal licensing agreement or memorandum in place with Iowa that extends similar recognition to Iowa licensees, as provided in Iowa Code section 543B.21.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—3.3(543B) Application for broker license. An applicant who passes a qualifying broker examination will receive a passing score report and an application form for licensure from the testing service. An applicant who passes a qualifying examination and applies for a license must file with the commission a completed application, license fee, proof of required education, and score report not later than the last working day of the sixth calendar month following the qualifying real estate examination. As required by Iowa Code section 543B.15(9), the completed application must be received within 210 calendar days of the completion of the criminal history check.

3.3(1) Application contents. The application form requires detailed personal, financial, and business information concerning the applicant; and the applicant for licensure shall attest to its accuracy.

3.3(2) License terms. Real estate broker, salesperson, trade name, branch office, and firm licenses are issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term. Branch office licenses and trade name licenses are issued for the remaining portion of the license term of the license to which each is assigned.

3.3(3) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—3.4(543B) Broker continuing education requirements.

3.4(1) As a requirement of license renewal in active status, each broker or broker associate shall complete a minimum of 36 hours of approved programs, courses or activities. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license term.

3.4(2) Brokers and broker associates renewing December 2001 and thereafter shall complete approved courses in the following subjects to renew to active status, except in accordance with 193E—Chapter 16.

Law Update	8 hours
Ethics	4 hours

Electives..... 24 hours

3.4(3) A license may be renewed without the required continuing education, but it can only be renewed to inactive status. Prior to reactivating a license which has been issued inactive due to the licensee's failure to submit evidence of continuing education, the licensee must submit evidence that all deficient continuing education hours have been completed. The maximum continuing education hours shall not exceed the prescribed number of hours of one license renewal period and must be completed during the three calendar years preceding activation of the license.

193E—3.5(17A,272C,543B) Renewing a broker license. To remain authorized to act as a real estate broker, a broker must renew a real estate license before the expiration date of the license. Brokers who fail to renew a real estate license before expiration are not authorized to practice as real estate brokers in Iowa. Termination of a broker's authority to practice real estate in Iowa automatically terminates the authority of all salespersons employed by or assigned to the broker.

3.5(1) Application forms. Application forms for renewal of a broker's license may be obtained from the commission office or may be found on the commission's Web site. Brokers may renew electronically or by submitting a written application. While the commission generally mails renewal application forms or reminders to brokers in the November preceding license expiration, the failure of the commission to mail an application form or reminder or the failure of a broker to receive an application form or reminder shall not excuse the broker from the requirement to timely renew.

3.5(2) Qualifications for renewal. The commission shall grant an application to renew a broker's license if:

a. The application is timely received by the commission by December 31, or within the 30-day grace period after expiration as provided by Iowa Code section 543B.28.

b. The application is accompanied by the regular renewal fee and, if received by the commission, or postmarked, after midnight December 31 but prior to midnight January 30, is accompanied by a penalty of \$25.

c. The application is fully completed with all necessary information, including proper disclosure of required continuing education and errors and omissions insurance.

d. The application fails to reveal grounds to deny a license, such as the revocation of a license in another jurisdiction or a criminal conviction.

3.5(3) Incomplete or untimely applications to renew. Renewal applications received by the commission, or postmarked, after midnight January 30 shall be treated as applications to reinstate an expired license under rule 193E—3.6(272C,543B).

a. Applications to renew or reinstate a broker's license which are incomplete or which are not accompanied by the proper fee may be returned to the broker for additional information or fee.

b. Alternatively, the commission may retain the application, and notify the applicant that the application cannot be granted without further information or fee.

3.5(4) Insufficient continuing education. Renewal applications which do not report completion of required continuing education, but which are otherwise timely and sufficient and accompanied with the proper fee, shall be renewed in inactive status. In the event of a factual dispute regarding the broker's intent to renew in inactive status or a broker's compliance with continuing education requirements, the commission may deny the application and provide the applicant with an opportunity for hearing according to the procedures set forth in rule 193—7.39(546,272C).

3.5(5) Denial of application to renew. An application to renew may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application to renew shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

3.5(6) Renewal of inactive or suspended license. An inactive or suspended license must be timely renewed or it shall expire. The status of a license does not affect the requirement to renew.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—3.6(272C,543B) Reinstatement of an expired broker license. A real estate broker who fails to renew or file a completed renewal application by midnight January 30 of the first year following expiration may reinstate the license within three years of expiration by submitting a complete and sufficient application accompanied by the regular renewal fee and an additional reinstatement fee of \$25 for each partial or full month following expiration. From the date of expiration to the date of reinstatement, the broker is not authorized to practice as a real estate broker in Iowa.

3.6(1) Continuing education. An application to reinstate an expired broker license must report that the broker either fully satisfied all required continuing education or has retaken and passed the broker examination. A broker holding an expired license who wishes to retake the broker examination must obtain written authorization from the commission to show at the examination site.

3.6(2) Deposit of reinstatement fees. Reinstatement fees collected under this rule shall be transmitted to the treasurer's office and credited to the education fund established in Iowa Code section 543B.54.

3.6(3) Starting over. A broker who fails to reinstate an expired license by December 31 of the third year following expiration shall be treated as if the former broker had never been licensed in Iowa. Such a former broker must start over in the licensing process and first qualify and apply for a salesperson license.

3.6(4) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 4
SALESPERSON LICENSE

[Prior to 9/4/02, see 193E—2.10(543B), 193E—2.11(543B), 193E—3.2(543B), and 193E—3.3(543B)]

193E—4.1(543B) General requirements for salesperson license. A person who is licensed under and employed by or otherwise associated with a real estate broker or firm is a “salesperson” as defined in Iowa Code section 543B.5(20) and rule 193E—2.1(543B).

4.1(1) An original application for a salesperson license cannot be issued to inactive status. An applicant for a salesperson license must be recommended by an affiliating broker to be granted a license as provided in Iowa Code section 543B.16.

4.1(2) The salesperson license is issued to the custody and control of the broker as provided in Iowa Code section 543B.24. If the salesperson is terminated, or terminates the employment or association, the license must be returned to the commission. Once the license is returned or mailed to the commission, it is unlawful for that salesperson to perform any acts requiring a real estate license as provided in Iowa Code section 543B.33. However, if the license is transferred, as provided in rule 193E—6.2(543B), the salesperson may work immediately for the new broker.

4.1(3) A salesperson must be assigned to a licensed broker or firm and cannot conduct business independently.

4.1(4) Except as provided in Iowa Code section 543B.21, an applicant for a salesperson license must meet all requirements of Iowa Code section 543B.15.

4.1(5) An applicant for a real estate salesperson license must be a person whose application for licensure has not been rejected in this or any other state or jurisdiction within 12 months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to the date of application.

4.1(6) An applicant for a real estate salesperson license shall be 18 years of age or older. An applicant is not ineligible because of citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information.

4.1(7) An applicant for a real estate salesperson license who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, or of any crime involving moral turpitude, in a court of competent jurisdiction in this state or in any other state, jurisdiction, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction. “Conviction” is defined in Iowa Code section 543B.15(3) and rule 193E—2.1(543B).

4.1(8) An applicant for a real estate salesperson license who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation.

4.1(9) Salesperson prelicense education requirements. As required by Iowa Code section 543B.15(8) and 193E—Chapter 16, the required course of study for the salesperson licensing examination shall consist of 60 classroom or computer-based hours of real estate principles and practices. To be eligible to take the examination, the applicant must complete the 60 classroom or computer-based hours of real estate principles and practices during the 12 months prior to taking the examination. The applicant must also provide evidence of successful completion of the following courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. The applicant must complete all the required prelicense education during the 12 months prior to the date of application.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—4.2(543B) License examination. Examinations for licensure as a real estate salesperson shall be conducted by the commission or its authorized representative.

4.2(1) Testing service. The commission shall negotiate an agreement with a testing service relating to examination development, test scheduling, examination sites, grade reporting and analysis. The commission shall approve the form, contract, and method of administration. The examination shall be

conducted in accordance with approved procedures formulated by the testing service. Applicants shall register and pay examination fees directly to the testing service.

4.2(2) Requests for waiver or variance. An examinee must meet the requirements set out in Iowa Code section 543B.15. Requests for waiver or variance of the qualifications for licensure as required by Iowa Code section 543B.15 shall be submitted in writing and as provided by the commission's rules regarding waivers and variances, which can be found in the uniform rules for the professional licensing and regulation bureau at 193—Chapter 5. The commission will consider each case on an individual basis. The commission may require additional supporting information. If the applicant's prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a waiver or variance is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

4.2(3) Evidence of completion of prelicense education required. An examinee shall be required to show evidence at the examination site that 60 classroom or computer-based hours of real estate principles and practices have been completed. If the commission has granted a waiver or variance of prelicense education, the letter granting the waiver or variance will serve as evidence of completion. Persons planning to qualify under rule 193E—5.3(543B) must obtain written authorization from the commission to show at the examination site.

4.2(4) Failure to pass examination. An examinee who takes an examination and fails shall be eligible to apply to retake the examination at any time the examination is offered by filing a new registration form and paying the examination fee, unless the qualifying time period for the prelicense education or waiver granted has expired.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—4.3(543B) Application for salesperson license. An applicant who passes a qualifying salesperson examination will receive a passing score report and an application form for licensure from the testing service. An applicant who passes a qualifying examination and applies for a license must file with the commission a completed application with license fee, proof of required education, and score report not later than the last working day of the sixth calendar month following the qualifying real estate examination. As required by Iowa Code section 543B.15(9), the completed application must be received within 210 calendar days of the completion of the criminal history check.

4.3(1) Application contents. The application form requires detailed personal, financial, and business information concerning the applicant, and the applicant for licensure shall attest to its accuracy.

4.3(2) License terms. A salesperson license is issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term.

4.3(3) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—4.4(543B) Salesperson continuing education requirements.

4.4(1) As a requirement of license renewal in active status, each salesperson shall complete a minimum of 36 hours of approved programs, courses or activities. The continuing education must be completed during the three calendar years of the license term and cannot be carried over to another license term.

4.4(2) Salespersons renewing licenses shall complete approved courses in the following subjects to renew to active status, except in accordance with 193E—Chapter 16.

Law Update	8 hours
Ethics	4 hours
Electives	24 hours

4.4(3) A salesperson license may be renewed without the required continuing education, but it may only be renewed to inactive status. Prior to reactivating a license which has been issued inactive due to failure to submit evidence of continuing education, the licensee must submit evidence that all deficient

continuing education hours have been completed. The maximum continuing education hours shall not exceed the prescribed number of hours of one license renewal period and must be completed during the three calendar years preceding activation of the license.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—4.5(543B) Renewing a license. To remain authorized to act as a real estate salesperson, a salesperson must renew a real estate license before the expiration date of the license. Salespersons who fail to renew a real estate license before expiration are not authorized to practice as real estate salespersons in Iowa.

4.5(1) Application forms. Application forms for renewal of a salesperson license may be obtained from the commission office or may be found on the commission's Web site. Salespersons may renew electronically or by submitting a written application. While the commission generally mails renewal application forms or reminders to salespersons in the November preceding license expiration, the failure of the commission to mail an application form or reminder or the failure of a salesperson to receive an application form or reminder shall not excuse the salesperson from the requirement to timely renew.

4.5(2) Qualifications for renewal. The commission shall grant an application to renew a salesperson license if:

a. The application is timely received by the commission by December 31, or within the 30-day grace period after expiration as provided by Iowa Code section 543B.28.

b. The application is accompanied by the regular renewal fee and, if received by the commission, or postmarked, after midnight December 31, but prior to midnight January 30, is accompanied by a penalty of \$25.

c. The application is fully completed with all necessary information, including proper disclosure of required continuing education and errors and omissions insurance.

d. The application fails to reveal grounds to deny a license, such as a criminal conviction or the revocation of a license in another jurisdiction.

4.5(3) Incomplete or untimely applications to renew. Renewal applications received by the commission, or postmarked, after midnight January 30 shall be treated as applications to reinstate an expired license under rule 193E—4.6(272C,543B).

a. Applications to renew or reinstate a salesperson license which are incomplete or which are not accompanied by the proper fee may be returned to the salesperson for additional information or fee.

b. Alternatively, the commission may retain the application and notify the applicant that the application cannot be granted without further information or fee.

4.5(4) Insufficient continuing education. Renewal applications which do not report completion of required continuing education, but which are otherwise timely and sufficient and accompanied with proper fee, shall be renewed in inactive status. In the event of a factual dispute regarding the salesperson's intent to renew in inactive status or a salesperson's compliance with continuing education requirements, the commission may deny the application and provide the applicant with an opportunity for hearing according to the procedures set forth in rules 193—7.39(546,272C) and 193E—18.13(543B).

4.5(5) Denial of application to renew. An application to renew may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application to renew shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

4.5(6) Renewal of inactive or suspended license. An inactive or suspended license must be timely renewed or it shall expire. The status of a license does not affect the requirement to renew.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—4.6(272C,543B) Reinstatement of an expired salesperson license. A real estate salesperson who fails to renew or fails to file a complete renewal application form by midnight January 30 of the first year following expiration may reinstate the license within three years of expiration by submitting a complete and sufficient application accompanied by the regular renewal fee and an additional reinstatement fee of \$25 for each partial or full month following expiration. From the date of expiration

to the date of reinstatement, the salesperson is not authorized to practice as a real estate salesperson in Iowa.

4.6(1) *Continuing education.* An application to reinstate an expired salesperson license must report that the salesperson either fully satisfied all required continuing education or has retaken and passed the salesperson examination. A salesperson holding an expired license who wishes to retake the salesperson examination must obtain written authorization from the commission to show at the examination site.

4.6(2) *Deposit of reinstatement fees.* Reinstatement fees collected under this rule shall be transmitted to the treasurer's office and credited to the education fund established in Iowa Code section 543B.54.

4.6(3) *Starting over.* A salesperson who fails to reinstate an expired license by December 31 of the third year following expiration shall be treated as if the former salesperson had never been licensed in Iowa. Such a former salesperson must start over in the licensing process and qualify and apply for a salesperson license.

4.6(4) *Denial of application.* An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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CHAPTER 5
LICENSEES OF OTHER JURISDICTIONS AND RECIPROCITY
[Prior to 9/4/02, see 193E—2.3(543B)]

193E—5.1(543B) Licensees of other jurisdictions. As provided in Iowa Code section 543B.21, a nonresident of this state may be licensed as a real estate broker or a real estate salesperson upon complying with all requirements of Iowa law and with all the provisions and conditions of Iowa Code chapter 543B and commission rules relative to resident brokers or salespersons.

5.1(1) A person licensed in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) may qualify for a salesperson license in Iowa.

5.1(2) A person licensed as a broker or broker associate in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) may qualify for the same type of broker or broker associate license in Iowa. The person must have met all requirements for an Iowa broker license as provided in rule 193E—3.1(543B). If the person does not meet the requirements, the person shall meet, at a minimum, the requirements for an Iowa salesperson license as provided in 193E—Chapter 4 and shall only qualify for a salesperson license.

5.1(3) A person shall not perform any activities in Iowa as provided by Iowa Code chapter 543B without qualifying for and being issued a real estate license.
[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—5.2(543B) Nonresident application. Each applicant under rule 193E—5.3(543B) or under a reciprocal licensing agreement or memorandum must apply on forms provided by the commission as required by Iowa Code section 543B.16. The application shall include but not be limited to a certification of license from the state of original licensure containing all information required by Iowa Code section 543B.21 and an affidavit certifying that the applicant has reviewed and is familiar with and will be bound by the Iowa real estate license law and the rules of the commission.

193E—5.3(543B) License by examination. A nonresident applicant licensed as a real estate salesperson or broker in a state or jurisdiction which does not have a reciprocal licensing agreement or memorandum with Iowa, or an applicant who does not qualify for reciprocal licensing, may be issued a comparable Iowa license by passing the real estate examination under the following circumstances:

5.3(1) Broker. The person has been actively licensed as a broker or broker associate, the person meets all requirements for an Iowa broker's license as provided in rule 193E—3.1(543B), and the license has not been inactive or expired for more than six months immediately preceding the date of passage of the national portion and Iowa portion of the broker real estate examination.

5.3(2) Salesperson. The person has been actively licensed as a salesperson and the license has not been inactive or expired for more than six months immediately preceding the date of passage of the Iowa portion of the salesperson real estate examination.

5.3(3) The applicant must submit a written request for authorization to sit for the appropriate examination.

5.3(4) The applicant must submit certification of the applicant's current qualifying license from the licensing authority that issued the license.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—5.4(543B) Licensure by reciprocity. The commission may, as provided in Iowa Code section 543B.21, enter into specific written reciprocal licensing agreements or memorandums with other individual states or jurisdictions having similar licensing requirements and grant an Iowa license to licensees from those states or jurisdictions on the same basis as Iowa licensees are granted licenses by those states or jurisdictions.

5.4(1) The applicant shall not be a resident of Iowa.

5.4(2) A license issued pursuant to this rule must be based upon a nonresident salesperson or broker license issued by examination.

5.4(3) A license issued pursuant to this rule must be assigned to the same broker or firm as the nonresident license upon which it is based.

5.4(4) If an applicant establishes residency in Iowa, that person does not qualify for licensure by reciprocal licensing agreement or memorandum.

5.4(5) An Iowa license issued by reciprocity is based upon the nonresident license issued by examination in that other state or jurisdiction and must be issued to the same broker and location as the nonresident license. The nonresident broker and firm, if applicable, must also be licensed in Iowa.

5.4(6) A reciprocity agreement or memorandum of understanding is only a method to apply for licensure and does not grant any exception to mandatory license laws of Iowa or the other state or jurisdiction.

5.4(7) An Iowa licensee wishing to obtain a license in any other state or jurisdiction should contact that state's or jurisdiction's licensing board for information and applications. Contact information and a list of states and jurisdictions that have entered into reciprocal licensing agreements or memorandums with Iowa, including addresses and telephone numbers, are available on the commission's Web site located at <https://plb.iowa.gov/>.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—5.5(543B) Renewal of a license issued by reciprocity. All renewal requirements for a real estate broker or salesperson license issued by examination shall apply to a license issued by reciprocity.

Continuing education reciprocity must be specifically provided for in the reciprocal license agreement or memorandum, or in a separate reciprocal continuing education agreement or memorandum.

193E—5.6(543B) Reinstatement of a license issued by reciprocity. All reinstatement requirements for a real estate broker license or salesperson license issued by examination shall apply to a license issued by reciprocity.

5.6(1) Starting over. A broker or salesperson who fails to file a complete application to reinstate an expired license by midnight December 31 of the third year following expiration shall be treated as if the former broker or salesperson had never been licensed in Iowa.

5.6(2) A broker or salesperson must qualify for reciprocity in order to reinstate an expired reciprocal broker or salesperson license.

5.6(3) If the broker or salesperson has moved into Iowa and no longer qualifies for reciprocity, the expired license must be reinstated in the same manner as a license issued by examination as provided in rule 193E—3.6(272C,543B) for brokers and rule 193E—4.6(272C,543B) for salespersons.

[ARC 3242C, IAB 8/2/17, effective 9/6/17]

193E—5.7(543B) Nonresident real estate offices and licenses required. All nonresident applicants for licensure in Iowa shall qualify for and obtain a license pursuant to Iowa Code section 543B.2(2) and rule 193E—7.1(543B).

5.7(1) If the applicant is a broker associate or salesperson of a nonresident broker, the nonresident employing broker must have an Iowa broker license.

5.7(2) If the applicant is employed by or otherwise associated with a nonresident real estate firm as defined in rule 193E—2.1(543B), that firm must apply and qualify for an Iowa license.

a. No firm as defined in rule 193E—2.1(543B) shall be granted an Iowa license unless at least one member or officer of the firm applies for and is granted an Iowa broker license.

b. Every member or officer of the firm and every employee or associated real estate licensee who acts as a real estate broker, broker associate, or salesperson in Iowa must apply for and be granted an Iowa license.

5.7(3) As provided by Iowa Code section 543B.22, a nonresident broker or firm is not required to maintain a definite place of business in Iowa if that broker or firm maintains an active place of business within the resident state or jurisdiction.

193E—5.8(543B) License as prerequisite. A person is prohibited from bringing action in Iowa courts for the collection of compensation for real estate services performed in Iowa without providing proof of Iowa real estate licensure, as required by Iowa Code section 543B.30.

193E—5.9(543B) Actions against nonresidents. The application for a nonresident license must be accompanied by an executed irrevocable written consent to suits and actions at law or in equity as provided in Iowa Code section 543B.23.

193E—5.10(543B) Nonresident continuing education. Nonresident licensees shall fully comply with all continuing education requirements unless a separate education agreement is in place between Iowa and the nonresident state or jurisdiction.

193E—5.11(543B) License discipline reporting required. If a nonresident Iowa licensee has a real estate license disciplined, suspended or revoked by any other state or jurisdiction, that disciplinary action will be considered prima facie evidence of violation of Iowa Code section 543B.29 or 543B.34 or both, and a hearing may be held to determine whether similar disciplinary action should be taken against the Iowa licensee. Failure to notify the commission within 15 days of an adverse action taken by another state or jurisdiction shall be cause for disciplinary action.

[ARC 9619B, IAB 7/27/11, effective 8/31/11]

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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Former Commerce Commission[250] renamed Utilities Division[199]
under the “umbrella” of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

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CHAPTER 36
ENERGY EFFICIENCY PLANNING AND REPORTING
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199—36.1(476) Utilities not required to be rate-regulated. Each natural gas and electric utility not required to be rate-regulated shall file energy efficiency plans and reports as provided in this chapter.
[ARC 3246C, IAB 8/2/17, effective 9/6/17]

199—36.2(476) Definitions. The following words and terms, when used in this chapter, shall have the following meanings:

“*Annual*” means during each calendar year.

“*Demand savings*” means the change in the rate of energy usage measured over a period, which period shall be specified.

“*Energy efficiency programs*” shall include efficiency improvements to a utility infrastructure and system and activities conducted by a utility intended to enable or encourage customers to increase the amount of heat, light, cooling, motive power, or other forms of work performed per unit of energy used. “Energy efficiency programs” also means activities which lessen the amount of heating, cooling, or other forms of work which must be performed, including but not limited to: energy studies or audits, general information, financial assistance, direct rebates to customers or vendors of energy-efficient products, research projects, direct installation by the utility of energy-efficient equipment, direct or indirect load control, and time-of-use rates, tree planting programs, educational programs, and hot water insulation distribution programs. In the case of a municipal utility, other utilities and departments of the municipal utility shall be considered customers to the same extent that such utilities and departments would be considered customers if served by an electric or natural gas utility that is not a municipal utility.

“*Energy savings*” means the amount of energy not used because of an energy efficiency program, measured in kilowatt-hours (kWh) of electricity, thousands of cubic feet (Mcf) of natural gas, or dekatherms (dth) of natural gas.

“*Filing year*” means the calendar year during which an energy efficiency plan or report is filed.

“*Peak demand savings*” means the change in the rate of energy use at the time of the utility’s highest annual use, measured in kilowatts (kW), thousands of cubic feet per day (Mcf/day) of natural gas, or dekatherms per day (dth/day) of natural gas.

“*Year*” means calendar year.

[ARC 3246C, IAB 8/2/17, effective 9/6/17]

199—36.3(476) Initial energy efficiency plan filing. Each utility not required to be rate-regulated shall offer energy efficiency programs to its customers through an energy efficiency plan. The utility shall assess the maximum potential energy and capacity savings available through cost-effective energy efficiency measures and programs; establish an energy efficiency goal; and establish cost-effective energy efficiency programs designed to meet the energy efficiency goal. Each utility’s energy efficiency plan shall include a description of the procedures or criteria used to continue current and to select future energy efficiency programs for implementation.

[ARC 3246C, IAB 8/2/17, effective 9/6/17]

199—36.4(476) Joint filing of plans. Rescinded ARC 3246C, IAB 8/2/17, effective 9/6/17.

199—36.5(476) Energy efficiency report and plan update requirements. Each utility not required to be rate-regulated shall file a biennial report containing the results of its energy efficiency programs on or before December 31 of each odd-numbered year. The utility may submit any forms or reports required by and prepared for a federal agency in lieu of this report.

36.5(1) The report on the results of the utility’s energy efficiency programs in place during each of the two previous completed calendar years shall include:

a. Total incremental annual energy and peak demand savings for all energy efficiency programs by customer class for each year;

- b. Total peak demand savings for any demand response programs by customer class for each year;
- c. Total reporting year incremental costs for all energy efficiency programs by customer class for each year;
- d. Total reporting year incremental costs for any demand response programs by customer for each year; and
- e. Other relevant information.

36.5(2) Each utility shall document and maintain any updates or amendments to the utility's initial energy efficiency plan including the goals and the projected results of all energy efficiency programs the utility plans to implement.

[ARC 3246C, IAB 8/2/17, effective 9/6/17]

199—36.6(476) Joint filing of initial energy efficiency plans or energy efficiency reports. A utility may file its initial energy efficiency plan or energy efficiency report jointly with other utilities not required to be rate-regulated or their agents. A joint plan or report shall contain the information required by rule 199—36.3(476) or 199—36.5(476) for each utility participating in the joint plan or report, whether jointly filed or individually filed. If a plan or report is filed jointly for several utilities by a person acting as an agent for the utilities, this information for each utility shall be separately identified. The agent shall state to the board the authority to act on behalf of the utilities.

[ARC 3246C, IAB 8/2/17, effective 9/6/17]

199—36.7(476) New Structure energy conservation standards. A utility providing natural gas or electric service shall not provide such service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under 661—Chapter 303. If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not governed by 661—Chapter 303.

[ARC 3246C, IAB 8/2/17, effective 9/6/17]

199—36.8(476) Exterior flood lighting.

36.8(1) Newly installed lighting. All newly installed public utility-owned exterior flood lighting shall be high-pressure sodium lighting or lighting with equivalent or better energy efficiency.

36.8(2) In-service lighting replacement schedule. In-service lighting shall be replaced with high-pressure sodium lighting or lighting with equivalent or better energy efficiency when worn out due to ballast or fixture failure for any other reason, such as vandalism or storm damage. Each utility shall file with the board as part of its annual report required in 199—Chapter 23 a report stating progress to date in converting to high-pressure sodium lighting or lighting with equivalent or higher energy efficiency.

36.8(3) Efficiency standards. Lighting other than high-pressure sodium has equivalent or better energy efficiency if one or more of the following can be established:

- a. For lamps less than 120 watts, the lumens-per-watt lamp rating is greater than 77.1, or
- b. For lamps between 120 and 500 watts, the lumens-per-watt lamp rating is greater than 96, or
- c. For lamps greater than 500 watts, the lumens-per-watt lamp rating is greater than 126, or
- d. The new lighting uses no more energy per installation than comparable, suitably sized high-pressure sodium lighting, or
- e. The new lighting consists of solid-state lighting (SSL) luminaries that have an efficacy rating equal to or greater than 66 lumens per watt according to a Department of Energy (DOE) Lighting Facts label, testing under the DOE Commercially Available LED Product Evaluation and Reporting Program

(CALiPER), or any other test that follows Illuminating Engineering Society of North America LM-79-08 test procedures.

[ARC 9136B, IAB 10/6/10, effective 11/10/10]

These rules are intended to implement Iowa Code sections 476.1A(6), 476.1B(1)“l,” and 476.2(5) to 476.2(7).

[Filed 1/29/92, Notice 10/30/91—published 2/19/92, effective 3/25/92]

[Filed 10/24/03, Notices 2/5/03, 4/2/03—published 11/12/03, effective 12/17/03]

[Filed ARC 9136B (Notice ARC 8931B, IAB 7/14/10), IAB 10/6/10, effective 11/10/10]

[Filed ARC 3246C (Notice ARC 2910C, IAB 1/18/17), IAB 8/2/17, effective 9/6/17]

EARLY CHILDHOOD IOWA STATE BOARD[249]

[Created by 2010 Iowa Acts, chapter 1031, division XXIV]
[Prior to 1/26/11, see Empowerment Board, Iowa[349]]

CHAPTER 1

EARLY CHILDHOOD IOWA INITIATIVE

- 1.1(256I) Purpose
- 1.2(256I) Scope of the rules
- 1.3(256I) Definitions
- 1.4(256I) Early childhood Iowa state board responsibility
- 1.5(256I) Early childhood Iowa coordination staff
- 1.6(256I) Early childhood Iowa areas
- 1.7(256I) Early childhood stakeholders alliance

CHAPTER 1
EARLY CHILDHOOD IOWA INITIATIVE

249—1.1(256I) Purpose. This chapter establishes the early childhood Iowa initiative enacted by the general assembly.

[ARC 9346B, IAB 1/26/11, effective 3/2/11]

249—1.2(256I) Scope of the rules. The rules for the initiative are promulgated under Iowa Code section 256I.4. No rule shall, in any way, relieve a person affected by or subject to these rules, or any person affected by or subject to the rules promulgated by the early childhood Iowa initiative, from any duty under the laws of this state.

[ARC 9346B, IAB 1/26/11, effective 3/2/11]

249—1.3(256I) Definitions. For the purpose of these rules, the following definitions apply:

“*Alignment*” means state- and community-level efforts to integrate early care, health, and education systems and to enhance state and community partnerships through innovative approaches.

“*Assessment*” means to identify for children and their families all formal and informal supports, assets and resources, as well as gaps, in an early childhood Iowa area. An assessment includes communitywide data, statistics, and facts upon which to base decisions to develop a community plan and to identify priorities to reach the desired results.

“*Citizen representative*” means a member of an early childhood Iowa board who is not an elected official or a paid staff member of an agency whose services fall under the plan or purview of the area board either directly or indirectly.

“*Community partners*” means individuals, early childhood service providers, and staff of other programs or agencies that communicate, coordinate and collaborate with an area board.

“*Community plan*” means the local plan adopted by the area board following input from the community. The plan elements include a comprehensive analysis of needs, gaps, and strengths, and the goals, objectives and action steps to implement the plan in the early childhood Iowa area. The community plan is also referred to in Iowa Code chapter 256I as the school ready children grant plan.

“*Decategorization project*” means the human services decategorization of child welfare and juvenile justice funding project operated under Iowa Code section 232.188.

“*Department*” means the Iowa department of management.

“*Designation*” means the status awarded by the state board to an early childhood Iowa area meeting the criteria established by the state board.

“*Early childhood Iowa area*” or “*area*” means a geographic area as defined by the local community and designated by the state board.

“*Early childhood Iowa area board*” or “*area board*” means the governing board for an early childhood Iowa area.

“*Early childhood Iowa fund*” means a fund created in the state treasury from which moneys are distributed to early childhood Iowa areas for the purpose of supporting children and their families.

“*Early childhood Iowa office*” means a state unit within the department of management to coordinate the early childhood Iowa initiative.

“*Early childhood Iowa state board*” or “*state board*” means the state of Iowa’s early childhood Iowa board as appointed by the governor that meets the membership criteria of citizens and state agency directors as voting members and legislators as nonvoting members.

“*Early childhood stakeholders alliance*” or “*early childhood Iowa stakeholders alliance*” means the early childhood stakeholders alliance created in Iowa Code chapter 256I.

“*Elected official*” means a member of a board or governing body elected through a public election.

“*Evidence-based*” means that a program has completed a randomized control trial conducted by an independent researcher and has demonstrated positive results for children and families. “Evidence-based” may also include research conducted by the program that has been published in a peer-reviewed journal that also demonstrates positive results for children and families. To be evidence-based, the program must include stringent standards for program replication including

standards for implementation and monitoring to ensure that the program is being operated with fidelity to the original model.

“Family support programs” includes group-based parent education or home visiting programs that are designed to strengthen protective factors, including parenting skills, increasing parental knowledge of child development, and increasing family functioning and problem solving skills.

“First years first” means a public-private partnership for early childhood in Iowa, which includes an account created in the early childhood Iowa fund under the authority of the department of management to be used for first years first.

“Fiscal agent,” as designated by an area board, means a public agency as defined in Iowa Code section 28E.2; a community action agency as defined in Iowa Code section 216A.91; a nonprofit corporation; or an area education agency as defined in Iowa Code chapter 273.

“Funding sources” means a comprehensive fiscal assessment of identified sources and amounts to support children zero through five years of age.

“Home visitation” means a strategy to deliver family support or parent education services. A home visit is a face-to-face visit with a family in the family’s home or other alternate location to facilitate meeting the family’s goals.

“Indicator” means a measure that indirectly quantifies the achievement of a result.

“Members of the public” means individuals who meet the definition of citizen representative on an area board.

“Parent” or *“grandparent”* or *“guardian”* means a parent or primary caregiver of a child from birth to kindergarten entry, including a grandparent, other relative of the child, or foster parent; or a noncustodial parent who has an ongoing relationship with, and at times provides physical care for, the child.

“Performance measure” means a measure that assesses a program, activity, or service.

“Result” means the effect desired for Iowans.

“State agency” means a department of the executive branch including, but not limited to, the departments of economic development, education, human rights, human services, public health, and workforce development.

“Technical assistance” means an ongoing, systematic and interactive process that is designed to achieve results and that enables knowledge from research, policy and evidence-based practices to be shared in partnerships through a variety of strategies with specific groups, agencies, communities and other partners to use within their unique contexts.

“Technical assistance team” means the early childhood Iowa office in the department of management and identified personnel from the state departments of economic development, education, human rights, human services, public health, and workforce development that provide the day-to-day operational work of local- and state-level early childhood Iowa and support to the state board.

[ARC 9346B, IAB 1/26/11, effective 3/2/11; ARC 3249C, IAB 8/2/17, effective 9/6/17]

249—1.4(256I) Early childhood Iowa state board responsibility.

1.4(1) The state board shall provide leadership and coordination for the development of Iowa’s early care, health and education system in cooperation with area boards, community partners and other state agencies.

1.4(2) The state board shall:

a. Develop and implement a process for designating area boards. The state board shall review the process at the close of each designation cycle.

b. Adopt state-level indicators with input from area boards and the early childhood stakeholders alliance. The state board shall report on indicators each fiscal year and compare the data against baseline data and data from prior fiscal years as available. Indicators shall measure all result areas of the early care, health and education system.

c. Adopt minimum standards to promote equal access to services subject to the authority of the area boards.

d. Adopt guidelines and standards for services provided under a school ready children grant. All guidelines and standards shall be found in the online toolkit available on the official Web site of early childhood Iowa at www.earlychildhoodiowa.org.

e. In cooperation with the early childhood stakeholders alliance:

(1) Further the development of an early childhood integrated data system across state agencies and other partners.

(2) Develop guidance to identify and improve the quality of services in early care, health and education programs, including evidence-based practices.

(3) Promote other measures to advance the initiative.

[ARC 9346B, IAB 1/26/11, effective 3/2/11; ARC 0179C, IAB 6/27/12, effective 8/1/12; ARC 3249C, IAB 8/2/17, effective 9/6/17]

249—1.5(256I) Early childhood Iowa coordination staff. In consultation with the state board, the department shall provide fiscal oversight of the early childhood Iowa initiative. The fiscal oversight measures are defined in department of management 541—Chapter 9, Iowa Administrative Code.

[ARC 9346B, IAB 1/26/11, effective 3/2/11]

249—1.6(256I) Early childhood Iowa areas.

1.6(1) The state board shall approve early childhood Iowa area boundaries and the creation of area boards. Minimum criteria for areas and approval of area boards are set forth in Iowa Code section 256I.6.

1.6(2) The state board may waive any of the minimum criteria referenced in Iowa Code section 256I.6, if it is determined that exceptional circumstances exist. The state board further defines exceptional circumstances to include when the proposed change of boundaries creates hardship that reduces performance or quality of services within the area. The area board must provide compelling documentation of the hardship and clearly document the impact to performance or quality of services or both.

[ARC 9346B, IAB 1/26/11, effective 3/2/11; ARC 3249C, IAB 8/2/17, effective 9/6/17]

249—1.7(256I) Early childhood stakeholders alliance. The early childhood stakeholders alliance shall assist the state board in the development and implementation of the state board's strategic plan.

[ARC 9346B, IAB 1/26/11, effective 3/2/11]

249—1.8(83GA,SF2088) Transition. Rescinded ARC 3249C, IAB 8/2/17, effective 9/6/17.

These rules are intended to implement Iowa Code sections 256I.1 to 256I.12 and 2010 Iowa Acts, Senate File 2088, section 310.

[Filed ARC 9346B (Notice ARC 9137B, IAB 10/6/10), IAB 1/26/11, effective 3/2/11]

[Filed ARC 0179C (Notice ARC 0058C, IAB 4/4/12), IAB 6/27/12, effective 8/1/12]

[Filed ARC 3249C (Notice ARC 3011C, IAB 4/12/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 83
MEDICAID WAIVER SERVICES

PREAMBLE

Medicaid waiver services are services provided to maintain persons in their own homes or communities who would otherwise require care in a medical institution, including support for persons to seek and maintain employment in the community. Provision of these services must be cost-effective. Services are limited to certain targeted client groups for whom a federal waiver has been requested and approved. Services provided through the waivers are not available to other Medicaid recipients as the services are beyond the scope of the Medicaid state plan.

[ARC 2471C, IAB 3/30/16, effective 5/4/16]

DIVISION I—HCBS HEALTH AND DISABILITY WAIVER SERVICES

441—83.1(249A) Definitions.

“Attorney in fact under a durable power of attorney for health care” means an individual who is designated by a durable power of attorney for health care, pursuant to Iowa Code chapter 144B, as an agent to make health care decisions on behalf of an individual and who has consented to act in that capacity.

“Basic individual respite” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

“Blind individual” means an individual who has a central visual acuity of 20/200 or less in the better eye with the use of corrective lens or visual field restriction to 20 degrees or less.

“Client participation” means the amount of the recipient income that the person must contribute to the cost of health and disability waiver services exclusive of medical vendor payments before Medicaid will participate.

“Deeming” means the specified amount of parental or spousal income and resources considered in determining eligibility for a child or spouse according to current supplemental security income guidelines.

“Disabled person” means an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has lasted or is expected to last for a continuous period of not less than 12 months. A child under the age of 18 is considered disabled if the child suffers a medically determinable physical or mental impairment of comparable severity.

“Financial participation” means client participation and medical payments from a third party including veterans’ aid and attendance.

“Group respite” is respite provided on a staff-to-consumer ratio of less than one to one.

“Guardian” means a guardian appointed in probate court.

“Intermediate care facility for persons with an intellectual disability level of care” means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

“Intermittent homemaker service” means homemaker service provided from one to three hours a day for not more than four days per week.

“Intermittent respite service” means respite service provided from one to three times a week.

“Managed care organization” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” as defined in Iowa Code section 514B.1.

“*Medical assessment*” means a visual and physical inspection of the consumer, noting deviations from the norm, and a statement of the consumer’s mental and physical condition that can be amendable to or resolved by appropriate actions of the provider.

“*Medical institution*” means a nursing facility or an intermediate care facility for persons with an intellectual disability which has been approved as a Medicaid vendor.

“*Medical intervention*” means consumer care in the areas of hygiene, mental and physical comfort, assistance in feeding and elimination, and control of the consumer’s care and treatment to meet the physical and mental needs of the consumer in compliance with the plan of care in areas of health, prevention, restoration, and maintenance.

“*Medical monitoring*” means observation for the purpose of assessing, preventing, maintaining, and treating disease or illness based on the consumer’s plan of care.

“*Nursing facility level of care*” means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member’s daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member’s capacity to live independently.

2. The member’s physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

“*Service plan*” means a written consumer-centered, outcome-based plan of services developed using an interdisciplinary process, which addresses all relevant services and supports being provided. It may involve more than one provider.

“*Skilled nursing facility level of care*” means that the following conditions are met:

1. The member’s medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.

2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).

3. Documentation submitted for review indicates that the member has:

a. A physician order for all skilled services.

b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.

c. An individualized care plan that identifies support needs.

d. Confirmation that skilled services are provided to the member.

e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.

f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

“*Specialized respite*” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

“*Substantial gainful activity*” means productive activities which add to the economic wealth, or produce goods or services to which the public attaches a monetary value.

“*Third-party payments*” means payments from an attorney, individual, institution, corporation, or public or private agency which is liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant or a past or present recipient of medical assistance.

“*Usual caregiver*” means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0757C, IAB 5/29/13, effective 8/1/13; ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.2(249A) Eligibility. To be eligible for health and disability waiver services, a person must meet certain eligibility criteria and be determined to need a service(s) allowable under the program.

83.2(1) Eligibility criteria.

a. The person must be under the age of 65 and blind or disabled as determined by the receipt of social security disability benefits or by a disability determination made through the department.

Disability determinations are made according to supplemental security income guidelines under Title XVI of the Social Security Act.

b. The person must be ineligible for Supplemental Security Income (SSI) if the person is 21 years of age or older, except that persons who are receiving health and disability waiver services upon reaching the age of 21 may continue to be eligible regardless of SSI eligibility until they reach the age of 25.

c. Persons shall meet the eligibility requirements of the supplemental security income program except for the following:

(1) The person is under 18 years of age, unmarried and not the head of a household and is ineligible for supplemental security income because of the deeming of the parent's(s') income.

(2) The person is married and is ineligible for supplemental security income because of the deeming of the spouse's income or resources.

(3) The person is ineligible for supplemental security income due to excess income and the person's income does not exceed 300 percent of the maximum monthly payment for one person under supplemental security income.

(4) The person is under 18 years of age and is ineligible for supplemental security income because of excess resources.

d. The person must be certified as being in need of nursing facility or skilled nursing facility level of care or as being in need of care in an intermediate care facility for persons with an intellectual disability, based on information submitted on a completed information submission tool Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 to 64 and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC) and the interRAI - Home Care (HC) are available upon request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager or managed care organization.

(1) The member's designated case manager shall use the completed assessment to develop the comprehensive service plan as specified in rule 441—90.5(249A).

(2) The IME medical services unit shall be responsible for the initial determination of the member's level of care certification. The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

(3) Health and disability waiver services will not be provided when the person is an inpatient in a medical institution.

(4) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

e. To be eligible for interim medical monitoring and treatment services the consumer must be:

(1) Under the age of 21;

(2) Currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. (The home health aide services for which the consumer is eligible must be maximized before the consumer accesses interim medical monitoring and treatment.);

(3) Residing in the consumer's family home or foster family home; and

(4) In need of interim medical monitoring and treatment as ordered by a physician or a physician assistant.

f. The person must meet income and resource guidelines for Medicaid as if in a medical institution pursuant to 441—Chapter 75. When a husband and wife who are living together both apply for the waiver, income and resource guidelines as specified at 441—paragraphs 75.5(2) "b" and 75.5(4) "c" shall be applied.

g. The person must have service needs that can be met by this waiver program. At a minimum a person must receive one billable unit of service under the waiver per calendar quarter.

h. To be eligible for the consumer choices option as set forth in 441—subrule 78.34(13), a person cannot be living in a residential care facility.

83.2(2) Need for services.

a. The member shall have a service plan approved by the department which is developed by the designated case manager. This service plan must be completed prior to services provision and annually thereafter.

The designated case manager shall establish the interdisciplinary team for the member and, with the team, identify the member's need for service based on the member's needs and desires as well as the availability and appropriateness of services, using the following criteria:

(1) This service plan shall be based, in part, on information in the completed information submission tool listed in paragraph 83.2(1)“*d*” and other supporting documentation as relevant. The designated case manager shall have a face-to-face visit with the member at least quarterly.

(2) Service plans for persons aged 20 or under shall be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services. The designated case manager shall list all nonwaiver Medicaid services in the service plan.

(3) Service plans for persons aged 20 or under that include home health or nursing services shall not be approved until a home health agency has made a request to cover the member's service needs through nonwaiver Medicaid services.

b. Except as provided below, the total monthly cost of the health and disability waiver services, excluding the cost of home and vehicle modification services, shall not exceed the established aggregate monthly cost for level of care as follows:

<u>Skilled level of care</u>	<u>Nursing level of care</u>	<u>ICF/ID</u>
\$2,792.65	\$959.50	\$3,742.93

For members eligible for SSI who remain eligible for health and disability waiver services until the age of 25 because they are receiving health and disability waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the member would be eligible under 441—subrule 78.9(10) if still under 21 years of age.

c. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker or targeted case manager. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) Absence from the home due to hospitalization, treatment for physical or mental illness, or death of the usual caregiver. Interim medical monitoring and treatment services under this subparagraph are limited to a maximum of 30 days.

(4) Search for employment.

1. Care during job search shall be limited to only those hours the usual caregiver is actually looking for employment, including travel time.

2. Interim medical monitoring and treatment services may be provided under this paragraph only during the execution of one job search plan of up to 30 working days in a 12-month period, approved by the department service worker or targeted case manager pursuant to 441—subparagraph 170.2(2)“*b*”(5).

3. Documentation of job search contacts shall be furnished to the department service worker or targeted case manager.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0548C, IAB 1/9/13, effective 1/1/13; ARC 0665C, IAB 4/3/13, effective 6/1/13; ARC 0757C, IAB 5/29/13, effective 8/1/13; ARC 0842C, IAB 7/24/13, effective 7/1/13; ARC 1056C, IAB 10/2/13, effective 11/6/13; ARC 1445C, IAB 4/30/14, effective 7/1/14; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 2848C, IAB 12/7/16, effective 11/15/16; ARC 2936C, IAB 2/1/17, effective 3/8/17; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.3(249A) Application.

83.3(1) *Application for HCBS health and disability waiver services.* The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed.

83.3(2) *Application and services program limit.* The number of persons who may be approved for the HCBS health and disability waiver shall be subject to the number of members to be served as set forth in the federally approved HCBS health and disability waiver. The number of members to be served is set forth at the time of each five-year renewal of the waiver or in amendments to the waiver approved by the Centers for Medicare and Medicaid Services (CMS). When the number of applicants exceeds the number of members specified in the approved waiver, the applicant's name shall be placed on a waiting list maintained by the bureau of long-term care.

a. The county department office shall enter all waiver applications into the individualized services information system (ISIS) to determine if a payment slot is available.

(1) For applicants not currently receiving Medicaid, the county department office shall make the entry by the end of the fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid members, the county department office shall make the entry by the end of the fifth working day after receipt of a written request signed and dated by the applicant.

(3) A payment slot shall be assigned to the applicant upon confirmation of an available slot.

(4) Once a payment slot is assigned, the county department office shall give written notice to the applicant. The department shall hold the payment slot for the applicant as long as reasonable efforts are being made to arrange services and the applicant has not been determined to be ineligible for the program. If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next person on the waiting list, if applicable. The applicant originally assigned the slot must reapply for a new slot.

b. If no payment slot is available, the department shall enter persons on a waiting list according to the following:

(1) Applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is received by the department or upon receipt of disability determination, whichever is later.

(2) Applicants currently eligible for Medicaid shall be added to the waiting list on the basis of the date a request as specified in 83.3(2)“a”(2) is received by the department.

(3) In the event that more than one application is received at one time, persons shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

(4) Applicants who do not fall within the available slots shall have their application rejected, and their names shall be maintained on the waiting list. They shall be contacted to reapply as slots become available based on their order on the waiting list so that the number of approved persons on the program is maintained. The bureau of long-term care shall contact the county department office when a slot becomes available.

(5) Once a payment slot is assigned, the county department office shall give written notice to the person within five working days. The department shall hold the payment slot for 30 days for the person to file a new application. If an application has not been filed within 30 days, the slot shall revert for use by the next person on the waiting list, if applicable. The person originally assigned the slot must reapply for a new slot.

c. The county department office shall notify the bureau of long-term care within five working days of the receipt of an application and of any action on or withdrawal of an application.

83.3(3) Approval of application.

a. Applications for the HCBS health and disability waiver program shall be processed in 30 days unless one or more of the following conditions exist:

(1) An application has been filed and is pending for federal supplemental security income benefits.

(2) The application is pending because the department has not received information which is beyond the control of the client or the department.

(3) The application is pending due to the disability determination process performed through the department.

(4) The application is pending because a level of care determination has not been made although the required assessment has been submitted to the IME medical services unit.

(5) The application is pending because the required assessment has not been completed. When a determination is not completed 90 days from the date of application due to the lack of a completed assessment, the application shall be denied.

b. Decisions shall be mailed or given to the applicant on the date when income maintenance eligibility and level of care determinations are completed.

c. An applicant must be given the choice between HCBS health and disability waiver services and institutional care. The applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care shall sign the assessment and indicate that the applicant has elected home- and community-based services.

d. Waiver services provided prior to approval of eligibility for the waiver cannot be paid.

e. A member may be enrolled in only one waiver program at a time. Costs for waiver services are not reimbursable while the member is in a medical institution (hospital or nursing facility) or residential facility. Services may not be simultaneously reimbursed for the same time period as Medicaid or other Medicaid waiver services.

83.3(4) *Effective date of eligibility.*

a. Deeming of parental or spousal income and resources ceases and eligibility shall be effective on the date the income and resource eligibility and level of care determinations are completed but shall not be earlier than the first of the month following the date of application.

b. The effective date of eligibility for the health and disability waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom paragraphs 83.3(4) “*a*” and “*c*” do not apply is the date on which the income eligibility and level of care determinations are completed.

c. Eligibility for persons covered under subparagraph 83.2(1) “*c*”(3) shall exist on the date the income and resource eligibility and level of care determinations are completed but shall not be earlier than the first of the month following the date of application.

d. Eligibility continues until the member has been in a medical institution for 120 consecutive days for other than respite care. Members who are inpatients in a medical institution for 120 or more consecutive days for other than respite care shall be terminated from health and disability waiver services and reviewed for eligibility for other Medicaid coverage groups. The member will be notified of that decision through Form 470-0602, Notice of Decision. If the member returns home before the effective date of the notice of decision and the member’s condition has not substantially changed, the denial may be rescinded and eligibility may continue.

83.3(5) *Attribution of resources.* For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver applicant met the level of care criteria in a medical institution as established by the peer review organization shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for prior institutionalizations shall be applied to the waiver application.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0757C, IAB 5/29/13, effective 8/1/13; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.4(249A) Financial participation. Persons must contribute their predetermined financial participation to the cost of health and disability waiver services or other Medicaid services, as applicable.

83.4(1) *Maintenance needs of the individual.* The maintenance needs of the individual shall be computed by deducting an amount which is 300 percent of the maximum monthly payment for one person under supplemental security income (SSI) from the client’s total income.

83.4(2) *Limitation on payment.* If the sum of the third-party payment and client participation equals or exceeds the reimbursement established by the service worker or targeted case manager for health and disability waiver services, Medicaid shall make no payments to health and disability waiver service providers. However, Medicaid shall make payments to other medical vendors, as applicable.

83.4(3) Maintenance needs of spouse and other dependents. Rescinded IAB 4/9/97, effective 6/1/97.
[ARC 0757C, IAB 5/29/13, effective 8/1/13]

441—83.5(249A) Redetermination. A complete redetermination of eligibility for the health and disability waiver shall be completed at least once every 12 months or when there is significant change in the person's situation or condition.

A redetermination of continuing eligibility factors shall be made in accordance with rules 441—76.7(249A) and 441—83.2(249A). A redetermination shall include verification of the existence of a current service plan meeting the requirements listed in rule 441—83.7(249A).

83.5(1) The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

83.5(2) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

[ARC 0757C, IAB 5/29/13, effective 8/1/13; ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.6(249A) Allowable services. Services allowable under the health and disability waiver are homemaker, home health, adult day care, respite care, nursing, counseling, consumer-directed attendant care, interim medical monitoring and treatment, home and vehicle modification, personal emergency response system, home-delivered meals, nutritional counseling, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.34(249A).

[ARC 0757C, IAB 5/29/13, effective 8/1/13]

441—83.7(249A) Service plan. A service plan shall be prepared for health and disability waiver members in accordance with 441—paragraph 90.5(1) "b." Service plans for both children and adults shall be completed every 12 months or when there is significant change in the person's situation or condition.

83.7(1) The service plan shall include the frequency of the health and disability waiver services and the types of providers who will deliver the services.

83.7(2) The service plan shall indicate whether the member has elected the consumer choices option. If the member has elected the consumer choices option, the service plan shall identify:

- a. The independent support broker selected by the member; and
- b. The financial management service selected by the member.

83.7(3) The service plan shall also list all nonwaiver Medicaid services.

83.7(4) The service plan shall identify a plan for emergencies and the supports available to the member in an emergency.

[ARC 0757C, IAB 5/29/13, effective 8/1/13; ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.8(249A) Adverse service actions.

83.8(1) Denial. An application for services shall be denied when it is determined by the department that:

- a. The client is not eligible for or in need of services.
- b. Needed services are not available or received from qualified providers.
- c. Service needs exceed the aggregate monthly costs established in 83.2(2) "b," or are not met by the services provided.
- d. Needed services are not available or received from qualifying providers.

83.8(2) Termination. A particular service may be terminated when the department determines that:

- a. The provisions of 441—paragraph 130.5(2) "a," "b," "c," "g," or "h" apply.
- b. The costs of the health and disability waiver service for the person exceed the aggregate monthly costs established in 83.2(2) "b."

c. The member receives care in a hospital, nursing facility, or intermediate care facility for persons with an intellectual disability for 120 days in any one stay for purposes other than respite care.

d. The member receives health and disability waiver services and the physical or mental condition of the member requires more care than can be provided in the member's own home as determined by the designated case manager.

e. Service providers are not available.

83.8(3) Reduction of services shall apply as in 441—subrule 130.5(3), paragraphs “a” and “b.”
[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0757C, IAB 5/29/13, effective 8/1/13; ARC 3184C, IAB 7/5/17, effective 8/9/17; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.9(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

441—83.10(249A) County reimbursement. Rescinded IAB 4/9/97, effective 6/1/97.

441—83.11(249A) Conversion to the X-PERT system. Rescinded IAB 8/7/02, effective 10/1/02.

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

441—83.12 to 83.20 Reserved.

DIVISION II—HCBS ELDERLY WAIVER SERVICES

441—83.21(249A) Definitions.

“*Attorney in fact under a durable power of attorney for health care*” means an individual who is designated by a durable power of attorney for health care, pursuant to Iowa Code chapter 144B, as an agent to make health care decisions on behalf of an individual and who has consented to act in that capacity.

“*Basic individual respite*” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

“*Client participation*” means the amount of the recipient income that the person must contribute to the cost of elderly waiver services exclusive of medical vendor payments before Medicaid will participate.

“*Group respite*” is respite provided on a staff-to-consumer ratio of less than one to one.

“*Guardian*” means a guardian appointed in probate court.

“*Interdisciplinary team*” means a collection of persons with varied professional backgrounds who develop one plan of care to meet a client's need for services.

“*Managed care organization*” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” as defined in Iowa Code section 514B.1.

“*Medical institution*” means a nursing facility which has been approved as a Medicaid vendor.

“*Nursing facility level of care*” means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member's daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member's capacity to live independently.

2. The member's physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

“*Service plan*” means a written consumer-centered, outcome-based plan of services developed using an interdisciplinary process, which addresses all relevant services and supports being provided. It may involve more than one provider.

“*Skilled nursing facility level of care*” means that the following conditions are met:

1. The member’s medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.
2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).
3. Documentation submitted for review indicates that the member has:
 - a. A physician order for all skilled services.
 - b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.
 - c. An individualized care plan that identifies support needs.
 - d. Confirmation that skilled services are provided to the member.
 - e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.
 - f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

“*Specialized respite*” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

“*Third-party payments*” means payments from an individual, institution, corporation, or public or private agency which is liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant or a past or present recipient of medical assistance.

“*Usual caregiver*” means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

[ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.22(249A) Eligibility. To be eligible for elderly waiver services a person must meet certain eligibility criteria and be determined to need a service(s) allowable under the program.

83.22(1) Eligibility criteria. All of the following criteria must be met. The person must be:

- a. Sixty-five years of age or older.
- b. A resident of the state of Iowa.
- c. Eligible for Medicaid as if in a medical institution pursuant to 441—Chapter 75. When a husband and wife who are living together both apply for the waiver, income and resource guidelines as specified at 441—paragraphs 75.5(2) “b” and 75.5(4) “c” shall be applied.
- d. Certified as being in need of the intermediate or skilled level of care based, in part, on information submitted on the interRAI - Home Care (HC). The interRAI - Home Care (HC) is available on request from IME medical services unit and other supporting documentation as relevant. Copies of the completed interRAI - Home Care (HC) for an individual are available to that individual from the individual’s case manager or managed care organization.

(1) The assessment shall be completed when the person applies for waiver services, upon request to report a significant change in the person’s condition, and annually for reassessment of the person’s level of care. The IME medical services unit shall be responsible for determination of the initial level of care.

(2) The IME medical services unit or the member’s managed care organization shall be responsible for annual redetermination of the level of care.

(3) Elderly waiver services will not be provided when the person is an inpatient in a medical institution.

(4) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member’s level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

e. Determined to need services as described in subrule 83.22(2).

- f.* Rescinded IAB 10/11/06, effective 10/1/06.
- g.* For the consumer choices option as set forth in rule 441—subrule 78.37(16), residing in a living arrangement other than a residential care facility.

83.22(2) Need for services, service plan, and cost.

a. Case management. Consumers under the elderly waiver shall receive case management services from a provider qualified pursuant to rule 441—77.29(249A). Case management services shall be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A).

b. Interdisciplinary team. The case manager shall establish an interdisciplinary team for the consumer.

(1) *Composition.* The interdisciplinary team shall include the case manager and the consumer and, if appropriate, the consumer's legal representative, family, service providers, and others directly involved in the consumer's care.

(2) *Role.* The team shall identify:

1. The consumer's need for services based on the consumer's needs and desires.
2. Available and appropriate services to meet the consumer's needs.
3. Health and safety issues for the consumer that indicate the need for an emergency plan, based on a risk assessment conducted before the team meeting.

4. Emergency backup support and a crisis response system to address problems or issues arising when support services are interrupted or delayed or when the consumer's needs change.

c. Service plan. An applicant for elderly waiver services shall have a service plan developed by a qualified provider of case management services under the elderly waiver.

(1) Services included in the service plan shall be appropriate to the problems and specific needs or disabilities of the consumer.

(2) Services must be the least costly available to meet the service needs of the member. The total monthly cost of the elderly waiver services exclusive of case management services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs, excluding the cost of case management and home and vehicle modifications, are limited as follows:

<u>Skilled level of care</u>	<u>Nursing level of care</u>
\$2,792.65	\$1,365.78

(3) The service plan must be completed before services are provided.

(4) The service plan must be reviewed at least annually and when there is any significant change in the consumer's needs.

d. Content of service plan. The service plan shall include the following information based on the consumer's current assessment and service needs:

- (1) Observable or measurable individual goals.
- (2) Interventions and supports needed to meet those goals.
- (3) Incremental action steps, as appropriate.
- (4) The names of staff, people, businesses, or organizations responsible for carrying out the interventions or supports.
- (5) The desired individual outcomes.
- (6) The identified activities to encourage the consumer to make choices, to experience a sense of achievement, and to modify or continue participation in the service plan.
- (7) Description of any restrictions on the consumer's rights, including the need for the restriction and a plan to restore the rights. For this purpose, rights include maintenance of personal funds and self-administration of medications.

(8) A list of all Medicaid and non-Medicaid services that the consumer received at the time of waiver program enrollment that includes:

1. The name of the service provider responsible for providing the service.
2. The funding source for the service.
3. The amount of service that the consumer is to receive.

(9) Indication of whether the consumer has elected the consumer choice option and, if so, the independent support broker and the financial management service that the consumer has selected.

(10) The determination that the services authorized in the service plan are the least costly.

(11) A plan for emergencies that identifies the supports available to the consumer in situations for which no approved service plan exists and which, if not addressed, may result in injury or harm to the consumer or other persons or in significant amounts of property damage. Emergency plans shall include:

1. The consumer's risk assessment and the health and safety issues identified by the consumer's interdisciplinary team.

2. The emergency backup support and crisis response system identified by the interdisciplinary team.

3. Emergency, backup staff designated by providers for applicable services.

83.22(3) Providers—standards. Rescinded IAB 10/11/06, effective 10/1/06.

[ARC 7957B, IAB 7/15/09, effective 7/1/09; ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12; ARC 0548C, IAB 1/9/13, effective 1/1/13; ARC 0665C, IAB 4/3/13, effective 6/1/13; ARC 0842C, IAB 7/24/13, effective 7/1/13; ARC 1056C, IAB 10/2/13, effective 11/6/13; ARC 1445C, IAB 4/30/14, effective 7/1/14; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 2848C, IAB 12/7/16, effective 11/15/16; ARC 2936C, IAB 2/1/17, effective 3/8/17; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.23(249A) Application.

83.23(1) Application for HCBS elderly waiver. The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed.

83.23(2) Application for services. Rescinded IAB 12/6/95, effective 2/1/96.

83.23(3) Approval of application.

a. Applications for the elderly waiver program shall be processed in 30 days unless the worker can document difficulty in locating and arranging services or circumstances beyond the worker's control. In these cases a decision shall be made as soon as possible.

b. Decisions shall be mailed or given to the applicant on the date when both service and income maintenance eligibility determinations are completed.

c. An applicant must be given the choice between elderly waiver services and institutional care. The applicant, guardian, or attorney in fact under a durable power of attorney for health care shall sign the information submission tool specified in 83.22(1) "d," indicating that the applicant has elected waiver services.

d. Waiver services provided prior to approval of eligibility for the waiver cannot be paid.

83.23(4) Effective date of eligibility.

a. The effective date of eligibility is the date on which the income eligibility and level of care determinations are completed.

b. Eligibility for persons whose income exceeds supplemental security income guidelines shall not exist until the persons require care in a medical institution for a period of 30 consecutive days and shall be effective no earlier than the first day of the month in which the 30-day period begins.

c. Eligibility continues until the consumer has been in a medical institution for 120 consecutive days for other than respite care or fails to meet eligibility criteria listed in rule 441—83.22(249A). Consumers who are inpatients in a medical institution for 120 or more consecutive days for other than respite care shall be terminated from elderly waiver services and reviewed for eligibility for other Medicaid coverage groups. The consumer will be notified of that decision through Form 470-0602, Notice of Decision. If the consumer returns home before the effective date of the notice of decision and the consumer's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

83.23(5) Attribution of resources. For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver applicant met the level of care criteria in a medical institution as established by the peer review organization shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for prior institutionalizations shall be applied to the waiver application.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.24(249A) Client participation. Persons must contribute their predetermined client participation to the cost of elderly waiver services.

83.24(1) Computation of client participation. Client participation shall be computed by deducting an amount for the maintenance needs of the individual which is 300 percent of the maximum SSI grant for an individual from the client's total income.

83.24(2) Limitation on payment. If the sum of the third-party payment and client participation equals or exceeds the reimbursement established by the service worker, Medicaid will make no payments for elderly waiver service providers. However, Medicaid will make payments to other medical vendors.

441—83.25(249A) Redetermination. A complete redetermination of eligibility for elderly waiver services shall be done at least once every 12 months.

A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.22(249A). A redetermination shall contain the components listed in rule 441—83.27(249A).

83.25(1) The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

83.25(2) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

[ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.26(249A) Allowable services. Services allowable under the elderly waiver are case management, adult day care, emergency response system, homemaker, home health aide, nursing, respite care, chore, home-delivered meals, home and vehicle modification, mental health outreach, transportation, nutritional counseling, assistive devices, senior companions, consumer-directed attendant care, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.37(249A).

441—83.27(249A) Service plan. The service plan shall be completed jointly by the consumer, the elderly waiver case manager, and any other person identified by the consumer.

83.27(1) The service plan shall indicate whether the consumer has elected the consumer choices option. If the consumer has elected the consumer choices option, the service plan shall identify:

- a. The independent support broker selected by the consumer; and
- b. The financial management service selected by the consumer.

83.27(2) The service plan shall identify a plan for emergencies and the supports available to the consumer in an emergency.

441—83.28(249A) Adverse service actions.

83.28(1) Denial. An application for services shall be denied when it is determined by the department that:

- a. The client is not eligible for or in need of services.
- b. Except for respite care, the elderly waiver services are not needed on a regular basis.
- c. Service needs exceed the aggregate monthly costs established in 83.22(2) "b," or are not met by services provided.
- d. Needed services are not available or received from qualifying providers.
- e. Rescinded IAB 3/2/94, effective 3/1/94.

83.28(2) Termination. A particular service may be terminated when the department determines that:

- a. The provisions of 441—subrule 130.5(2), paragraph "a," "b," "c," "d," "g," or "h" apply.
- b. The costs of the elderly waiver services for the person exceed the aggregate monthly costs established in 83.22(2) "b."

c. The client receives care in a hospital or nursing facility for 120 days in any one stay for purposes other than respite care.

d. The client receives elderly waiver services and the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the case manager and the interdisciplinary team.

e. Service providers are not available.

83.28(3) Reduction of services shall apply as in 441—subrule 130.5(3), paragraphs “a” and “b.”
[ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.29(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).
[ARC 0306C, IAB 9/5/12, effective 11/1/12]

441—83.30(249A) Enhanced services. When a household has one person receiving service in accordance with rules set forth in 441—Chapter 24 and another receiving elderly waiver services, the persons providing case management shall cooperate to make the best plan for both clients. When a person is eligible for services as set forth in 441—Chapter 24 and eligible for services under the elderly waiver, the person's primary diagnosis will determine which services shall be used.

441—83.31(249A) Conversion to the X-PERT system. Rescinded IAB 8/7/02, effective 10/1/02.
These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

441—83.32 to 83.40 Reserved.

DIVISION III—HCBS AIDS/HIV WAIVER SERVICES

441—83.41(249A) Definitions.

“*AIDS*” means a medical diagnosis of acquired immunodeficiency syndrome based on the Centers for Disease Control “Revision of the CDC Surveillance Case Definition for Acquired Immunodeficiency Syndrome,” August 14, 1987, Vol. 36, No. 1S issue of “Morbidity and Mortality Weekly Report.”

“*Attorney in fact under a durable power of attorney for health care*” means an individual who is designated by a durable power of attorney for health care, pursuant to Iowa Code chapter 144B, as an agent to make health care decisions on behalf of an individual and who has consented to act in that capacity.

“*Basic individual respite*” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

“*Client participation*” means the amount of the recipient's income that the person must contribute to the cost of AIDS/HIV waiver services exclusive of medical vendor payments before Medicaid will participate.

“*Deeming*” means the specified amount of parental or spousal income and resources considered in determining eligibility for a child or spouse according to current supplemental security income guidelines.

“*Financial participation*” means client participation and medical payments from a third party including veterans' aid and attendance.

“*Group respite*” is respite provided on a staff-to-consumer ratio of less than one to one.

“*Guardian*” means a guardian appointed in probate court.

“*HIV*” means a medical diagnosis of human immunodeficiency virus infection based on a positive HIV-related test.

“*Managed care organization*” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” as defined in Iowa Code section 514B.1.

“Medical institution” means a nursing facility or hospital which has been approved as a Medicaid vendor.

“Nursing facility level of care” means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member’s daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member’s capacity to live independently.
2. The member’s physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

“Service plan” means a written consumer-centered, outcome-based plan of services developed using an interdisciplinary process, which addresses all relevant services and supports being provided. It may involve more than one provider.

“Skilled nursing facility level of care” means that the following conditions are met:

1. The member’s medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.
2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).
3. Documentation submitted for review indicates that the member has:
 - a. A physician order for all skilled services.
 - b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.
 - c. An individualized care plan that identifies support needs.
 - d. Confirmation that skilled services are provided to the member.
 - e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.
 - f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

“Specialized respite” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

“Third-party payments” means payments from an attorney, individual, institution, corporation, or public or private agency which is liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant or a past or present recipient of medical assistance.

“Usual caregiver” means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

[ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.42(249A) Eligibility. To be eligible for AIDS/HIV waiver services a person must meet certain eligibility criteria and be determined to need a service(s) allowable under the program.

83.42(1) Eligibility criteria. All of the following criteria must be met. The person must:

- a. Be diagnosed by a physician as having AIDS or HIV infection.
- b. Be certified in need of the level of care that, but for the waiver, would otherwise be provided in a nursing facility or hospital based, in part, on information submitted on a completed Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC), and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual’s case manager or managed care organization.

(1) The assessment as listed in 83.42(1)“b” shall be completed when the person applies for waiver services, upon request to report a significant change in the person’s condition, and annually for reassessment of the person’s level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care, and the IME medical services unit or a managed care organization will be responsible for annual redeterminations.

(3) AIDS/HIV waiver services shall not be provided when the person is an inpatient in a medical institution.

c. Be eligible for medical assistance under SSI, SSI-related, FMAP, or FMAP-related coverage groups; medically needy at hospital level of care; or a special income level (300 percent group); or become eligible through application of the institutional deeming rules.

d. Require, and use at least quarterly, one service available under the waiver as determined through an evaluation of need described in subrule 83.42(2).

e. Have service needs such that the costs of the waiver services are not likely to exceed the costs of care that would otherwise be provided in a medical institution.

f. Have income which does not exceed 300 percent of the maximum monthly payment for one person under supplemental security income.

g. For the consumer choices option as set forth in 441—subrule 78.38(9), not be living in a residential care facility.

83.42(2) Need for services.

a. The designated case manager shall review the assessment of the person's need for waiver services and determine the availability and appropriateness of services. This review shall be based, in part, on information in the completed information submission tool designated in 83.42(1) "b" and other supporting documentation as relevant.

b. The total monthly cost of the AIDS/HIV waiver services shall not exceed the established aggregate monthly cost for level of care. The monthly cost of AIDS/HIV waiver services cannot exceed the established limit of \$1,876.80.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0548C, IAB 1/9/13, effective 1/1/13; ARC 0665C, IAB 4/3/13, effective 6/1/13; ARC 0842C, IAB 7/24/13, effective 7/1/13; ARC 1056C, IAB 10/2/13, effective 11/6/13; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 2848C, IAB 12/7/16, effective 11/15/16; ARC 2936C, IAB 2/1/17, effective 3/8/17; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.43(249A) Application.

83.43(1) Application for HCBS AIDS/HIV waiver services. The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed.

83.43(2) Application for services. Rescinded IAB 12/6/95, effective 2/1/96.

83.43(3) Approval of application.

a. Applications for the HCBS AIDS/HIV waiver program shall be processed in 30 days unless one or more of the following conditions exist:

(1) The application is pending because the department has not received information, which is beyond the control of the client or the department.

(2) The application is pending because a level of care determination has not been made although the completed assessment has been submitted to the IME medical services unit.

(3) Rescinded IAB 3/7/01, effective 5/1/01.

b. Decisions shall be mailed or given to the applicant on the date when income maintenance eligibility and level of care determinations and the consumer service plan are completed.

c. An applicant must be given the choice between HCBS AIDS/HIV waiver services and institutional care. The applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care shall sign the assessment and indicate that the applicant has elected home- and community-based services.

d. Waiver services provided prior to approval of eligibility for the waiver cannot be paid.

83.43(4) Effective date of eligibility.

a. The effective date of eligibility for the AIDS/HIV waiver for persons who are already determined eligible for Medicaid is the date on which the income and resource eligibility and level of care determinations are completed.

b. The effective date of eligibility for the AIDS/HIV waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom 441—subrule 75.1(7) and rule 441—75.5(249A)

do not apply is the date on which income and resource eligibility and level of care determinations are completed.

c. Eligibility for the waiver continues until the recipient has been in a medical institution for 120 consecutive days for other than respite care or fails to meet eligibility criteria listed in rule 441—83.42(249A). Recipients who are inpatients in a medical institution for 120 or more consecutive days for other than respite care shall be reviewed for eligibility for other Medicaid coverage groups and terminated from AIDS/HIV waiver services if found eligible under another coverage group. The recipient will be notified of that decision through Form 470-0602, Notice of Decision. If the consumer returns home before the effective date of the notice of decision and the person's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

d. The effective date of eligibility for the AIDS/HIV waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom the eligibility factors set forth in 441—subrule 75.1(7) and, for married persons, in rule 441—75.5(249A) have been satisfied is the date on which the income eligibility and level of care determinations are completed but shall not be earlier than the first of the month following the date of application.

83.43(5) Attribution of resources. For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver applicant met the level of care criteria in a medical institution as established by the peer review organization shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for prior institutionalizations shall be applied to the waiver application.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.44(249A) Financial participation. Persons must contribute their predetermined financial participation to the cost of AIDS/HIV waiver services or other Medicaid services, as applicable.

83.44(1) Maintenance needs of the individual. The maintenance needs of the individual shall be computed by deducting an amount which is 300 percent of the maximum monthly payment for one person under supplemental security income (SSI) from the client's total income.

83.44(2) Limitation on payment. If the amount of the financial participation equals or exceeds the reimbursement established by the service worker for AIDS/HIV services, Medicaid will make no payments to AIDS/HIV waiver service providers. Medicaid will, however, make payments to other medical vendors.

83.44(3) Maintenance needs of spouse and other dependents. Rescinded IAB 4/9/97, effective 6/1/97.

441—83.45(249A) Redetermination. A complete redetermination of eligibility for AIDS/HIV waiver services shall be completed at least once every 12 months or when there is significant change in the person's situation or condition. A redetermination of continuing eligibility factors shall be made in accordance with rules 441—76.7(249A) and 441—83.42(249A). A redetermination shall include the components listed in rule 441—83.47(249A).

83.45(1) The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

83.45(2) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

[ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.46(249A) Allowable services. Services allowable under the AIDS/HIV waiver are counseling, home health aide, homemaker, nursing care, respite care, home-delivered meals, adult day care, consumer-directed attendant care, financial management, independent support brokerage, self-directed

personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.38(249A).

441—83.47(249A) Service plan. A service plan shall be prepared for AIDS/HIV waiver consumers in accordance with rule 441—130.7(234) except that service plans for both children and adults shall be completed every 12 months or when there is significant change in the person's situation or condition.

83.47(1) The service plan shall include the frequency of the AIDS/HIV waiver services and the types of providers who will deliver the services.

83.47(2) The service plan shall indicate whether the consumer has elected the consumer choices option. If the consumer has elected the consumer choices option, the service plan shall identify:

- a. The independent support broker selected by the consumer; and
- b. The financial management service selected by the consumer.

83.47(3) Service plans for consumers aged 20 or under must be developed to reflect use of all appropriate nonwaiver Medicaid services so as not to replace or duplicate those services.

83.47(4) The service plan shall identify a plan for emergencies and the supports available to the consumer in an emergency.

441—83.48(249A) Adverse service actions.

83.48(1) Denial. An application for services shall be denied when it is determined by the department that:

- a. The client is not eligible for or in need of services.
- b. Except for respite care, the AIDS/HIV waiver services are not needed on a regular basis.
- c. Service needs exceed the aggregate monthly costs established in 83.42(2) "b" or cannot be met by the services provided under the waiver.
- d. Needed services are not available from qualified providers.

83.48(2) Termination. Participation in the AIDS/HIV waiver program may be terminated when the department determines that:

- a. The provisions of 441—subrule 130.5(2), paragraph "a," "b," "c," "d," "g," or "h" apply.
- b. The costs of the AIDS/HIV waiver services for the person exceed the aggregate monthly costs established in 83.42(2) "b."
- c. The client receives care in a hospital or nursing facility for 120 days or more in any one stay for purposes other than respite care.
- d. The client receives AIDS/HIV waiver services and the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the service worker.
- e. Service providers are not available.

83.48(3) Reduction of services shall apply as in 441—subrule 130.5(3), paragraphs "a" and "b."
[ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.49(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

[ARC 0306C, IAB 9/5/12, effective 11/1/12]

441—83.50(249A) Conversion to the X-PERT system. Rescinded IAB 8/7/02, effective 10/1/02.

These rules are intended to implement Iowa Code section 249A.4.

441—83.51 to 83.59 Reserved.

DIVISION IV—HCBS INTELLECTUAL DISABILITY WAIVER SERVICES

441—83.60(249A) Definitions.

"Adaptive" means age-appropriate skills related to taking care of one's self and one's ability to relate to others in daily living situations. These skills include limitations that occur in the areas of

communication, self-care, home-living, social skills, community use, self-direction, safety, functional activities of daily living, leisure or work.

“*Adult*” means a person with an intellectual disability aged 18 or over.

“*Appropriate*” means that the services or supports or activities provided or undertaken by the organization are relevant to the consumer’s needs, situation, problems, or desires.

“*Attorney in fact under a durable power of attorney for health care*” means an individual who is designated by a durable power of attorney for health care, pursuant to Iowa Code chapter 144B, as an agent to make health care decisions on behalf of an individual and who has consented to act in that capacity.

“*Basic individual respite*” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

“*Behavior*” means skills related to regulating one’s own behavior including coping with demands from others, making choices, controlling impulses, conforming conduct to laws, and displaying appropriate sociosexual behavior.

“*Case management services*” means those services established pursuant to Iowa Code chapter 225C.

“*Child*” means a person with an intellectual disability aged 17 or under.

“*Client participation*” means the posteligibility amount of the consumer’s income that persons eligible through a special income level must contribute to the cost of the home and community-based waiver service.

“*Counseling*” means face-to-face mental health services provided to the consumer and caregiver by a qualified intellectual disability professional (QIDP) to facilitate home management of the consumer and prevent institutionalization.

“*Deemed status*” means acceptance of certification or licensure of a program or service by another certifying body in place of certification based on review and evaluation.

“*Department*” means the Iowa department of human services.

“*Direct service*” means services involving face-to-face assistance to a consumer such as transporting a consumer or providing therapy.

“*Fiscal accountability*” means the development and maintenance of budgets and independent fiscal review.

“*Group respite*” is respite provided on a staff-to-consumer ratio of less than one to one.

“*Guardian*” means a guardian appointed in probate court.

“*Health*” means skills related to the maintenance of one’s health including eating; illness identification, treatment and prevention; basic first aid; physical fitness; regular physical checkups and personal habits.

“*Immediate jeopardy*” means circumstances where the life, health, or safety of a person will be severely jeopardized if the circumstances are not immediately corrected.

“*Intellectual disability*” means a diagnosis of intellectual disability (intellectual developmental disorder), global developmental delay, or unspecified intellectual disability (intellectual developmental disorder) which shall be made only when the onset of the person’s condition was during the developmental period and shall be based on an assessment of the person’s intellectual functioning and level of adaptive skills. The diagnosis shall be made by a person who is a licensed psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person’s adaptive skills. The diagnosis shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published by the American Psychiatric Association.

“*Intermediate care facility for persons with an intellectual disability (ICF/ID)*” means an institution that is primarily for the diagnosis, treatment, or rehabilitation of persons with an intellectual disability or persons with related conditions and that provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination and integration of health or related services to help each person function at the greatest ability and is an approved Medicaid vendor.

“Intermediate care facility for persons with an intellectual disability level of care” means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

“Intermittent supported community living service” means supported community living service provided not more than 52 hours per month.

“Maintenance needs” means costs associated with rent or mortgage, utilities, telephone, food and household supplies.

“Managed care” means a system that provides the coordinated delivery of services and supports that are necessary and appropriate, delivered in the least restrictive settings and in the least intrusive manner. Managed care seeks to balance three factors:

1. Achieving high-quality outcomes for participants.
2. Coordinating access.
3. Containing costs.

“Managed care organization” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” as defined in Iowa Code section 514B.1.

“Medical assessment” means a visual and physical inspection of the consumer, noting deviations from the norm, and a statement of the consumer’s mental and physical condition that can be amendable to or resolved by appropriate actions of the provider.

“Medical institution” means a nursing facility, intermediate care facility for persons with an intellectual disability, or hospital which has been approved as a Medicaid vendor.

“Medical intervention” means consumer care in the areas of hygiene, mental and physical comfort, assistance in feeding and elimination, and control of the consumer’s care and treatment to meet the physical and mental needs of the consumer in compliance with the plan of care in areas of health, prevention, restoration, and maintenance.

“Medical monitoring” means observation for the purpose of assessing, preventing, maintaining, and treating disease or illness based on the consumer’s plan of care.

“Natural supports” means services and supports identified as wanted or needed by the consumer and provider by persons not for pay (family, friends, neighbors, coworkers, and others in the community) and organizations or entities that serve the general public.

“Organization” means the entity being certified.

“Organizational outcome” means a demonstration by the organization of actions taken by the organization to provide for services or supports to consumers.

“Outcome” means an action or event that follows as a result or consequence of the provision of a service or support.

“Procedures” means the steps to be taken to implement a policy.

“Process” means service or support provided by an agency to a consumer that will allow the consumer to achieve an outcome. This can include a written, formal, consistent trackable method or an informal process that is not written but is trackable.

“Program” means a set of related resources and services directed to the accomplishment of a fixed set of goals and objectives for the population of a specified geographic area or for special target populations. It can mean an agency, organization, or unit of an agency, organization or institution.

“Qualified intellectual disability professional” means a person who has at least one year of experience working directly with persons with an intellectual disability or other developmental disabilities and who is one of the following:

1. A doctor of medicine or osteopathy.
2. A registered nurse.

3. An occupational therapist eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

4. A physical therapist eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

5. A speech-language pathologist or audiologist eligible for certification of Clinical Competence in Speech-Language Pathology or Audiology by the American Speech-Language Hearing Association or another comparable body or who meets the educational requirements for certification and who is in the process of accumulating the supervised experience required for certification.

6. A psychologist with a master's degree in psychology from an accredited school.

7. A social worker with a graduate degree from a school of social work, accredited or approved by the Council on Social Work Education or another comparable body or who holds a bachelor of social work degree from a college or university accredited or approved by the Council of Social Work Education or another comparable body.

8. A professional recreation staff member with a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.

9. A professional dietitian who is eligible for registration by the American Dietetics Association.

10. A human services professional who must have at least a bachelor's degree in a human services field including, but not limited to, sociology, special education, rehabilitation counseling and psychology.

"Related condition" means a severe, chronic disability that meets all the following conditions:

1. It is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability and requires treatment or services similar to those required for a person with an intellectual disability.

2. It is manifested before the age of 22.

3. It is likely to continue indefinitely.

4. It results in substantial functional limitations in three or more of the following areas of major life activity:

- Self-care.
- Understanding and use of language.
- Learning.
- Mobility.
- Self-direction.
- Capacity for independent living.

"Service plan" means a written consumer-centered, outcome-based plan of services developed using an interdisciplinary process, which addresses all relevant services and supports being provided. It may involve more than one provider.

"SIS assessment" means the Supports Intensity Scale® assessment developed and licensed by the American Association on Intellectual and Developmental Disabilities for use in the assessment of the support and service needs of individuals.

"Specialized respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

"Staff" means a person under the direction of the organization to perform duties and responsibilities of the organization.

"Third-party payments" means payments from an attorney, individual, institution, corporation, insurance company, or public or private agency which is liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant or a past or present recipient of Medicaid.

"Usual caregiver" means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

[ARC 9650B, IAB 8/10/11, effective 10/1/11; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2050C, IAB 7/8/15, effective 7/1/15; ARC 2168C, IAB 9/30/15, effective 11/4/15; ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.61(249A) Eligibility. To be eligible for HCBS intellectual disability waiver services a person must meet certain eligibility criteria and be determined to need a service(s) available under the program.

83.61(1) Eligibility criteria. All of the following criteria must be met. The person must:

a. Have a diagnosis of intellectual disability as defined in rule 441—83.60(249A). The diagnosis shall be initially established and recertified as follows:

Age	Initial application to HCBS intellectual disability waiver program	Recertification for persons with a diagnosis of moderate, severe or profound level of severity	Recertification for persons with a diagnosis of mild or unspecified level of severity
0 through 17 years	Psychological documentation within three years of the application date substantiating a diagnosis of intellectual disability as defined in rule 441—83.60(249A)	After the initial psychological evaluation, substantiate a diagnosis of intellectual disability as defined in rule 441—83.60(249A) every six years and when a significant change occurs	After the initial psychological evaluation, substantiate a diagnosis of intellectual disability as defined in rule 441—83.60(249A) every three years and when a significant change occurs
18 years and above	Current psychological documentation substantiating a diagnosis of intellectual disability if the last testing date was (1) more than six years ago for an applicant with a diagnosis of mild or unspecified severity, or (2) more than ten years ago for an applicant with a diagnosis of moderate, severe or profound level of severity	Psychological documentation substantiating a diagnosis of intellectual disability made since the member reached 22 years of age	Psychological documentation substantiating a diagnosis of intellectual disability every six years and whenever a significant change occurs

b. Be eligible for Medicaid under SSI, SSI-related, FMAP, or FMAP-related coverage groups; eligible under the special income level (300 percent) coverage group; or become eligible through application of the institutional deeming rules or would be eligible for Medicaid if in a medical institution.

c. Be certified as being in need for long-term care that, but for the waiver, would otherwise be provided in an ICF/ID. The IME medical services unit shall be responsible for the initial approval, and the IME medical services unit or a managed care organization will be responsible for the annual approval of the certification of the level of care based on the data collected by the case manager and interdisciplinary team on a tool designated by the department.

d. Be a recipient of the Medicaid case management services or be identified to receive Medicaid case management services immediately following program enrollment.

e. Have service needs that can be met by this waiver program. At a minimum, a consumer must receive one billable unit of service per calendar quarter under this program.

f. Have a service plan completed annually and approved by the department in accordance with rule 441—83.67(249A).

g. For individual supported employment and long-term job coaching services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Not reside in a medical institution.

(4) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

h. For small-group supported employment services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).
- (3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.
- (4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.
- (5) Not reside in a medical institution.
 - i.* For prevocational services:
 - (1) Be at least 16 years of age.
 - (2) The services must not be available to the member through one of the following:
 1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or
 2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).
 - (3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.
 - (4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.
 - (5) Not reside in a medical institution.
 - j.* Choose HCBS intellectual disability waiver services rather than ICF/ID services.
 - k.* To be eligible for interim medical monitoring and treatment services the consumer must be:
 - (1) Under the age of 21;
 - (2) Currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. (The home health aide services for which the consumer is eligible must be maximized before the consumer accesses interim medical monitoring and treatment.);
 - (3) Residing in the consumer's family home or foster family home; and
 - (4) In need of interim medical monitoring and treatment as ordered by a physician.
 - l.* Be assigned an HCBS intellectual disability payment slot pursuant to subrule 83.61(4).
 - m.* For residential-based supported community living services, meet all of the following additional criteria:
 - (1) Be less than 18 years of age.
 - (2) Be preapproved as appropriate for residential-based supported community living services by the bureau of long-term care. Requests for approval shall be submitted in writing to the DHS Bureau of Long-Term Care, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, and shall include the following:
 1. Social history;
 2. Case history that includes previous placements and service programs;
 3. Medical history that includes major illnesses and current medications;
 4. Current psychological evaluations and consultations;
 5. Summary of all reasonable and appropriate service alternatives that have been tried or considered;
 6. Any current court orders in effect regarding the child;
 7. Any legal history;
 8. Whether the child is at risk of out-of-home placement or the proposed placement would be less restrictive than the child's current placement for services;
 9. Whether the proposed placement would be safe for the child and for other children living in that setting; and
 10. Whether the interdisciplinary team is in agreement with the proposed placement.
- (3) Either:
 1. Be residing in an ICF/ID;

2. Be at risk of ICF/ID placement, as documented by an interdisciplinary team assessment pursuant to paragraph 83.61(2)“a”; or

3. Be a child whose long-term placement outside the home is necessary because continued stay in the home would be a detriment to the health and welfare of the child or the family, and all service options to keep the child in the home have been reviewed by an interdisciplinary team, as documented in the service file.

n. For day habilitation, be 16 years of age or older.

o. For the consumer choices option as set forth in 441—subrule 78.41(5), not be living in a residential care facility.

83.61(2) Need for services.

a. Applicants currently receiving Medicaid case management shall have the applicable staff coordinate with the department to arrange completion of Form 470-4694 for children under the age of five and, for all others, an SIS assessment.

b. Applicants not receiving services as set forth in paragraph 83.61(2)“a” shall have a department service worker or case manager:

(1) Arrange for completion of Form 470-4694 for children under the age of five and, for all others, an SIS assessment for the initial level of care determination;

(2) Establish an initial interdisciplinary team for HCBS intellectual disability waiver services; and

(3) With the initial interdisciplinary team, identify the applicant’s needs and desires as well as the availability and appropriateness of services.

c. Applicants meeting other eligibility criteria who do not have a Medicaid case manager shall be referred to a Medicaid case manager.

d. Services shall not exceed the number of maximum units established for each service.

e. The cost of services shall not exceed unit expense maximums. Requests shall only be reviewed for funding needs exceeding the supported community living service unit cost maximum. Requests require special review by the department and may be denied as not cost-effective.

f. The case manager shall coordinate with the department for completion of Form 470-4694 for children under the age of five and, for all others, to arrange an SIS assessment for the initial level of care determination within 30 days from the date of the HCBS application unless the case manager can document difficulty in locating information necessary to arrange the assessment or other circumstances beyond the case manager’s control.

g. At initial enrollment, the case manager shall establish an interdisciplinary team for each applicant and, with the team, identify the applicant’s need for service based on the applicant’s needs and desires as well as the availability and appropriateness of services. The Medicaid case manager shall complete an annual review thereafter. The following criteria shall be used for the initial and ongoing identification of need for services:

(1) The assessment shall be based on the results of the most recent Form 470-4694 for children under the age of five and, for all others, the SIS assessment or of the SIS contractor’s off-year review.

(2) Service plans must be developed or reviewed to reflect use of all appropriate nonwaiver Medicaid services so as not to replace or duplicate those services.

(3) Service plans for applicants aged 20 or under which include supported community living services beyond intermittent shall be approved (signed and dated) by the designee of the bureau of long-term care. The service worker, department QIDP, or Medicaid case manager shall attach a written request for a variance from the maximum for intermittent supported community living with a summary of services and service costs. The written request for the variance shall provide a rationale for requesting supported community living beyond intermittent. The rationale shall contain sufficient information for the designee to make a decision regarding the need for supported community living beyond intermittent.

h. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) Absence from the home due to hospitalization, treatment for physical or mental illness, or death of the usual caregiver. Interim medical monitoring and treatment services under this subparagraph are limited to a maximum of 30 days.

(4) Search for employment.

1. Care during job search shall be limited to only those hours the usual caregiver is actually looking for employment, including travel time.

2. Interim medical monitoring and treatment services may be provided under this paragraph only during the execution of one job search plan of up to 30 working days in a 12-month period, approved by the department service worker or targeted case manager pursuant to 441—subparagraph 170.2(2) “b”(5).

3. Documentation of job search contacts shall be furnished to the department service worker or targeted case manager.

83.61(3) *HCBS intellectual disability waiver program limit.* The number of persons receiving HCBS intellectual disability waiver services in the state shall be limited to the number of payment slots provided in the HCBS intellectual disability waiver approved by the Centers for Medicare and Medicaid Services (CMS). The department shall make a request to CMS to adjust the program limit as deemed necessary.

a. The payment slots are available on a statewide basis. These slots shall be available based on the prioritized need of an applicant pursuant to subrule 83.61(4).

b. When services are denied because the limit is reached, a notice of decision denying service based on the limit and stating that the person’s name will be put on a waiting list shall be sent to the person by the department.

83.61(4) *Securing a payment slot.* The department shall determine if a payment slot is available for each applicant for the HCBS intellectual disability waiver.

a. A payment slot shall be assigned to the applicant upon confirmation of an available slot.

(1) Once a payment slot is assigned, the department shall give written notice to the applicant.

(2) The department shall hold the payment slot for the applicant as long as reasonable efforts are being made to arrange services and the applicant has not been determined to be ineligible for the program. If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next person on the waiting list, if applicable. The applicant originally assigned the slot must reapply for a new slot.

b. If no payment slot is available, the applicant shall be placed on a statewide priority waiting list. The department shall assess each applicant to determine the applicant’s priority need. The assessment shall be made for all applicants who are on a waiting list maintained by the state or a county on September 30, 2011, and for all new applications received on or after October 1, 2011.

(1) Emergency need criteria are as follows:

1. The usual caregiver has died or is incapable of providing care, and no other caregivers are available to provide needed supports.

2. The applicant has lost primary residence or will be losing housing within 30 days and has no other housing options available.

3. The applicant is living in a homeless shelter and no alternative housing options are available.

4. There is founded abuse or neglect by a caregiver or others living within the home of the applicant, and the applicant must move from the home.

5. The applicant cannot meet basic health and safety needs without immediate supports.

(2) Urgent need criteria are as follows:

1. The caregiver will need support within 60 days in order for the applicant to remain living in the current situation.

2. The caregiver will be unable to continue to provide care within the next 60 days.

3. The caregiver is 55 years of age or older and has a chronic or long-term physical or psychological condition that limits the ability to provide care.
4. The applicant is living in temporary housing and plans to move within 31 to 120 days.
5. The applicant is losing permanent housing and plans to move within 31 to 120 days.
6. The caregiver will be unable to be employed if services are not available.
7. There is a potential risk of abuse or neglect by a caregiver or others within the home of the applicant.
8. The applicant has behaviors that put the applicant at risk.
9. The applicant has behaviors that put others at risk.
10. The applicant is at risk of facility placement when needs could be met through community-based services.

(3) Applicants who meet an emergency need criterion shall be placed on the priority waiting list based on the total number of criteria in subparagraph 83.61(4) "b"(1) that are met. If applicants meet an equal number of criteria, the position on the waiting list shall be based on the date of application and the age of the applicant. The applicant who has been on the waiting list longer shall be placed higher on the waiting list. If the application date is the same, the older applicant shall be placed higher on the waiting list.

(4) Applicants who meet an urgent need criterion shall be placed on the priority waiting list after applicants who meet emergency need criteria. The position on the waiting list shall be based on the total number of criteria in subparagraph 83.61(4) "b"(2) that are met. If applicants meet an equal number of criteria, the position on the waiting list shall be based on the date of application and the age of the applicant. The applicant who has been on the waiting list longer shall be placed higher on the waiting list. If the application date is the same, the older applicant shall be placed higher on the waiting list.

(5) Applicants who do not meet emergency or urgent need criteria shall be placed lower on the waiting list than the applicants meeting urgent need criteria, based on the date of application. If the application date is the same, the older applicant shall be placed higher on the waiting list.

(6) Applicants shall remain on the waiting list until a payment slot has been assigned to them for use, they withdraw from the list, or they become ineligible for the waiver. If there is a change in an applicant's need, the applicant may contact the local department office and request that a new assessment be completed. The outcome of the assessment shall determine placement on the waiting list as directed in this subrule.

c. To maintain the approved number of members in the program, persons shall be selected from the waiting list as payment slots become available, based on their priority order on the waiting list.

(1) Once a payment slot is assigned, the department shall give written notice to the person within five working days.

(2) The department shall hold the payment slot for 30 days for the person to file a new application. If an application has not been filed within 30 days, the slot shall revert for use by the next person on the waiting list, if applicable. The person originally assigned the slot must reapply for a new slot.

[ARC 9650B, IAB 8/10/11, effective 10/1/11; ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12; ARC 2050C, IAB 7/8/15, effective 7/1/15; ARC 2168C, IAB 9/30/15, effective 11/4/15; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 2471C, IAB 3/30/16, effective 5/4/16; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.62(249A) Application.

83.62(1) *Application for HCBS intellectual disability waiver services.* The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed.

83.62(2) Rescinded IAB 6/5/96, effective 8/1/96.

83.62(3) *Approval of application.*

a. Applications for the HCBS intellectual disability waiver program shall be processed in 30 days unless the case manager or worker can document difficulty in locating and arranging services or other circumstance beyond the worker's control. In these cases a decision shall be made as soon as possible.

b. Decisions shall be mailed or given to the applicant on the date when both service and income maintenance eligibility determinations are completed.

c. An applicant shall be given the choice between HCBS waiver services and ICF/ID care. The case manager or worker shall have the consumer or legal representative indicate the consumer's choice of care.

d. HCBS intellectual disability waiver services provided before eligibility for the waiver is approved shall not be reimbursed by the HCBS waiver program.

e. Services provided when the person is a consumer of group foster care services or is an inpatient in a medical institution shall not be reimbursed.

f. HCBS intellectual disability waiver services are not available in conjunction with other Medicaid waiver services or group foster care services.

g. Rescinded IAB 5/6/09, effective 7/1/09.

83.62(4) Effective date of eligibility.

a. Deeming of parental income and resources ceases the month following the month in which a person requires care in a medical institution.

b. The effective date of eligibility for the waiver for persons who are already determined eligible for Medicaid is the date on which the person is determined to meet the criteria set forth in rule 441—83.61(249A).

c. The effective date of eligibility for the waiver for persons who qualify for Medicaid due to eligibility for the waiver services is the date on which the person is determined to meet criteria set forth in rule 441—83.61(249A) and when the eligibility factor set forth in 441—subrule 75.1(7) and for married persons, in rule 441—75.5(249A) have been satisfied.

d. Eligibility continues until the consumer fails to meet eligibility criteria listed in rule 441—83.61(249A). Consumers who are inpatients in a medical institution for 120 consecutive days shall receive a review by the interdisciplinary team to determine additional inpatient needs for possible termination from the HCBS program. Consumers shall be reviewed for eligibility under other Medicaid coverage groups. The consumer or legal representative shall participate in the review and receive formal notification of that decision through Form 470-0602, Notice of Decision.

If the consumer returns home before the effective date of the notice of decision and the consumer's needs can still be met by the HCBS waiver services, the denial may be rescinded and eligibility may continue.

e. Eligibility and service reimbursement are effective through the last day of the month of the previous annual service plan staffing meeting and the corresponding long-term care need determination.

83.62(5) Attribution of resources. For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver applicant met the level of care criteria in a medical institution as established by the peer review organization shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for prior institutionalizations shall be applied to the waiver application.

[ARC 7741B, IAB 5/6/09, effective 7/1/09; ARC 9650B, IAB 8/10/11, effective 10/1/11; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2168C, IAB 9/30/15, effective 11/4/15; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.63(249A) Client participation. Persons who are eligible under the 300 percent group must contribute a predetermined client participation amount to the costs of the services.

83.63(1) Computation of client participation. Client participation shall be computed by deducting an amount for the maintenance needs of the individual which is 300 percent of the maximum SSI grant for an individual from the client's total income.

83.63(2) Limitation on payment. If the sum of the third-party payment and client participation equals or exceeds the reimbursement for the specific HCBS waiver service, Medicaid will make no payments for the HCBS waiver service. However, Medicaid will make payments to other medical vendors.

441—83.64(249A) Redetermination. A redetermination of nonfinancial eligibility for HCBS intellectual disability waiver services shall be completed at least once every 12 months. In years in which an SIS assessment is not completed for an individual five years of age or older, the SIS contractor shall conduct a review in collaboration with the case manager, documenting any changes in

the member's functional status since the previous SIS or other full assessment. Form 470-4694 shall be completed annually for children under the age of five.

A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.61(249A).

83.64(1) The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

83.64(2) The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

[ARC 9650B, IAB 8/10/11, effective 10/1/11; ARC 2168C, IAB 9/30/15, effective 11/4/15; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.65(249A) Rescinded IAB 6/5/96, effective 8/1/96.

441—83.66(249A) Allowable services. Services allowable under the HCBS intellectual disability waiver are supported community living, respite, personal emergency response system, nursing, home health aide, home and vehicle modification, supported employment, consumer-directed attendant care, interim medical monitoring and treatment, transportation, adult day care, day habilitation, prevocational services, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.41(249A).

[ARC 9650B, IAB 8/10/11, effective 10/1/11]

441—83.67(249A) Service plan. A service plan shall be prepared for each HCBS intellectual disability waiver consumer.

83.67(1) Development. The service plan shall be developed by the interdisciplinary team, which includes the consumer, and, if appropriate, the legal representative, consumer's family, case manager or service worker, service providers, and others directly involved.

83.67(2) Retention. The service plan shall be stored by the case manager for a minimum of three years.

83.67(3) Interdisciplinary team meeting. The interdisciplinary team meeting shall be conducted before the current service plan expires.

83.67(4) Information in plan. The plan shall be in accordance with 441—subrule 24.4(3) and shall additionally include the following information to assist in evaluating the program:

- a. A listing of all services received by a consumer at the time of waiver program enrollment.
- b. For supported community living:
 - (1) The consumer's living environment at the time of waiver enrollment.
 - (2) The number of hours per day of on-site staff supervision needed by the consumer.
 - (3) The number of other waiver consumers who will live with the consumer in the living unit.
- c. An identification and justification of any restriction of the consumer's rights including, but not limited to:
 - (1) Maintenance of personal funds.
 - (2) Self-administration of medications.
- d. The name of the service provider responsible for providing each service.
- e. The service funding source.
- f. The amount of the service to be received by the consumer.
- g. Whether the consumer has elected the consumer choices option and, if so:
 - (1) The independent support broker selected by the consumer; and
 - (2) The financial management service selected by the consumer.
- h. A plan for emergencies and identification of the supports available to the consumer in an emergency.

83.67(5) Documentation. The Medicaid case manager shall ensure that the consumer's case file contains the consumer's service plan and documentation supporting the diagnosis of mental retardation.

83.67(6) Approval of plan. The plan shall be approved through the Individualized Services Information System (ISIS). Services shall be entered into ISIS based on the service plan.

a. Services must be authorized and entered into ISIS before the plan implementation date.

b. The department has 15 working days after receipt of the summary and service costs in which to approve the services and service cost or request modification of the service plan unless the parties mutually agree to extend that time frame.

c. If the department and the service worker or case manager are unable to agree on the terms of the services or service cost within 10 days, the department has final authority regarding the services and service cost.

[ARC 9650B, IAB 8/10/11, effective 10/1/11; ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12]

441—83.68(249A) Adverse service actions.

83.68(1) Denial. An application for services shall be denied when it is determined by the department that:

a. The applicant is not eligible for the services.

b. Service needs exceed the service unit or reimbursement maximums.

c. Service needs are not met by the services provided.

d. Needed services are not available or received from qualifying providers.

e. No HCBS intellectual disability waiver service is identified in the applicant's service plan.

f. There is another community resource available to provide the service or a similar service free of charge to the applicant that will meet the applicant's needs.

g. Completion or receipt of required documents by the department for the HCBS program applicant has not occurred.

83.68(2) Reduction. A particular service may be reduced when the department determines that the provisions of 441—subrule 130.5(3), paragraph "a" or "b," apply.

83.68(3) Termination. A particular service may be terminated when the department determines that:

a. The provisions of 441—subrule 130.5(2) paragraph "d," "g," or "h," apply.

b. Needed services are not available or received from qualifying providers.

c. No HCBS intellectual disability waiver service is identified in the member's annual service plan.

d. Service needs are not met by the services provided.

e. Services needed exceed the service unit or reimbursement maximums.

f. Completion or receipt of required documents by the department for the HCBS program consumer has not occurred.

g. The consumer receives services from other Medicaid waiver programs.

h. The consumer or legal representative through the interdisciplinary process requests termination from the services.

[ARC 9650B, IAB 8/10/11, effective 10/1/11]

441—83.69(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

[ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12]

441—83.70(249A) County reimbursement. Rescinded ARC 0191C, IAB 7/11/12, effective 7/1/12.

441—83.71(249A) Conversion to the X-PERT system. Rescinded IAB 8/7/02, effective 10/1/02.

441—83.72(249A) Rent subsidy program. Members in the HCBS intellectual disability waiver program may be eligible for a rent subsidy. See 265—Chapter 24.

[ARC 9650B, IAB 8/10/11, effective 10/1/11]

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

441—83.73 to 83.80 Reserved.

DIVISION V—BRAIN INJURY WAIVER SERVICES

441—83.81(249A) Definitions.

“*Adaptive*” means age appropriate skills related to taking care of one’s self and the ability to relate to others in daily living situations. These skills include limitations that occur in the areas of communication, self-care, home living, social skills, community use, self-direction, safety, functional academics, leisure and work.

“*Adult*” means a person with a brain injury aged 18 years or over.

“*Appropriate*” means that the services or supports or activities provided or undertaken by the organization are relevant to the consumer’s needs, situation, problems, or desires.

“*Assessment*” means the review of the consumer’s current functioning in regard to the consumer’s situation, needs, strengths, abilities, desires and goals.

“*Attorney in fact under a durable power of attorney for health care*” means an individual who is designated by a durable power of attorney for health care, pursuant to Iowa Code chapter 144B, as an agent to make health care decisions on behalf of an individual and who has consented to act in that capacity.

“*Basic individual respite*” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

“*Behavior*” means skills related to regulating one’s own behavior including coping with demands from others, making choices, conforming conduct to laws, and displaying appropriate sociosexual behavior.

“*Brain injury*” means clinically evident damage to the brain resulting directly or indirectly from trauma, infection, anoxia, vascular lesions or tumor of the brain, not primarily related to degenerative or aging processes, which temporarily or permanently impairs a person’s physical, cognitive, or behavioral functions. The person must have a diagnosis from the following list:

- Malignant neoplasms of brain, cerebrum.
- Malignant neoplasms of brain, frontal lobe.
- Malignant neoplasms of brain, temporal lobe.
- Malignant neoplasms of brain, parietal lobe.
- Malignant neoplasms of brain, occipital lobe.
- Malignant neoplasms of brain, ventricles.
- Malignant neoplasms of brain, cerebellum.
- Malignant neoplasms of brain, brain stem.
- Malignant neoplasms of brain, other part of brain, includes midbrain, peduncle, and medulla oblongata.
- Malignant neoplasms of brain, cerebral meninges.
- Malignant neoplasms of brain, cranial nerves.
- Secondary malignant neoplasm of brain.
- Secondary malignant neoplasm of other parts of the nervous system, includes cerebral meninges.
- Benign neoplasm of brain and other parts of the nervous system, brain.
- Benign neoplasm of brain and other parts of the nervous system, cranial nerves.
- Benign neoplasm of brain and other parts of the nervous system, cerebral meninges.
- Encephalitis, myelitis and encephalomyelitis.
- Intracranial and intraspinal abscess.
- Anoxic brain damage.
- Subarachnoid hemorrhage.
- Intracerebral hemorrhage.
- Other and unspecified intracranial hemorrhage.
- Occlusion and stenosis of precerebral arteries.

Occlusion of cerebral arteries.
Transient cerebral ischemia.
Acute, but ill-defined, cerebrovascular disease.
Other and ill-defined cerebrovascular diseases.
Fracture of vault of skull.
Fracture of base of skull.
Other and unqualified skull fractures.
Multiple fractures involving skull or face with other bones.
Concussion.
Cerebral laceration and contusion.
Cerebral edema.
Cerebral palsy.
Subarachnoid, subdural, and extradural hemorrhage following injury.
Other and unspecified intracranial hemorrhage following injury.
Intracranial injury of other and unspecified nature.
Poisoning by drugs, medicinal and biological substances.
Toxic effects of substances.
Effects of external causes.
Drowning and nonfatal submersion.
Asphyxiation and strangulation.
Child maltreatment syndrome.
Adult maltreatment syndrome.
Status epilepticus.

“Case management services” means those services established pursuant to Iowa Code chapter 225C.

“Child” means a person with a brain injury aged 17 years or under.

“Client participation” means the amount of the consumer’s income that the person must contribute to the cost of brain injury waiver services, exclusive of medical vendor payments, before Medicaid will provide additional reimbursement.

“Deemed status” means acceptance of certification or licensure of a program or service by another certifying body in place of certification based on review and evaluation.

“Department” means the Iowa department of human services.

“Direct service” means services involving face-to-face assistance to a consumer such as transporting a consumer or providing therapy.

“Fiscal accountability” means the development and maintenance of budgets and independent fiscal review.

“Group respite” is respite provided on a staff-to-consumer ratio of less than one to one.

“Guardian” means a guardian appointed in probate court.

“Health” means skills related to the maintenance of one’s health including eating; illness identification, treatment and prevention; basic first aid; physical fitness; regular physical checkups and personal habits.

“Immediate jeopardy” means circumstances where the life, health, or safety of a person will be severely jeopardized if the circumstances are not immediately corrected.

“Intermediate care facility for persons with an intellectual disability level of care” means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

“Intermittent supported community living service” means supported community living service provided from one to three hours a day for not more than four days a week.

“Managed care organization” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” as defined in Iowa Code section 514B.1.

“Medical assessment” means a visual and physical inspection of the consumer, noting deviations from the norm, and a statement of the consumer’s mental and physical condition that can be amendable to or resolved by appropriate actions of the provider.

“Medical institution” means a nursing facility, a skilled nursing facility, intermediate care facility for persons with an intellectual disability, or hospital which has been approved as a Medicaid vendor.

“Medical intervention” means consumer care in the areas of hygiene, mental and physical comfort, assistance in feeding and elimination, and control of the consumer’s care and treatment to meet the physical and mental needs of the consumer in compliance with the plan of care in areas of health, prevention, restoration, and maintenance.

“Medical monitoring” means observation for the purpose of assessing, preventing, maintaining, and treating disease or illness based on the consumer’s plan of care.

“Natural supports” means services and supports identified as wanted or needed by the consumer and provider by persons not for pay (family, friends, neighbors, coworkers, and others in the community) and organizations or entities that serve the general public.

“Nursing facility level of care” means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member’s daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member’s capacity to live independently.

2. The member’s physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

“Organization” means the entity being certified.

“Organizational outcome” means a demonstration by the organization of actions taken by the organization to provide for services or supports to consumers.

“Outcome” means an action or event that follows as a result or consequence of the provision of a service or support.

“Procedures” means the steps to be taken to implement a policy.

“Process” means service or support provided by an agency to a consumer that will allow the consumer to achieve an outcome. This can include a written, formal, consistent trackable method or an informal process that is not written but is trackable.

“Program” means a set of related resources and services directed to the accomplishment of a fixed set of goals and objectives for the population of a specified geographic area or for special target populations. It can mean an agency, organization, or unit of an agency, organization or institution.

“Qualified brain injury professional” means one of the following who meets the educational and licensure or certification requirements for the profession as required in the state of Iowa and who has two years’ experience working with people living with a brain injury: a psychologist; psychiatrist; physician; physician assistant; registered nurse; certified teacher; social worker; mental health counselor; physical, occupational, recreational, or speech therapist; or a person with a bachelor of arts or science degree in psychology, sociology, or public health or rehabilitation services.

“Service coordination” means activities designed to help individuals and families locate, access, and coordinate a network of supports and services that will allow them to live a full life in the community.

“Service plan” means a written consumer-centered, outcome-based plan of services developed using an interdisciplinary process, which addresses all relevant services and supports being provided. It may involve more than one provider.

“Skilled nursing facility level of care” means that the following conditions are met:

1. The member’s medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.

2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).

3. Documentation submitted for review indicates that the member has:

- a. A physician order for all skilled services.
- b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.
- c. An individualized care plan that identifies support needs.
- d. Confirmation that skilled services are provided to the member.
- e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.
- f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

“*Specialized respite*” means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

“*Staff*” means a person under the direction of the organization to perform duties and responsibilities of the organization.

“*Third-party payments*” means payments from an individual, institution, corporation, or public or private provider which is liable to pay part or all of the medical costs incurred as a result of injury or disease on behalf of a consumer of medical assistance.

“*Usual caregiver*” means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.82(249A) Eligibility. To be eligible for brain injury waiver services a consumer must meet eligibility criteria and be determined to need a service allowable under the program.

83.82(1) Eligibility criteria. All of the following criteria must be met. The person must:

- a. Have a diagnosis of brain injury.
- b. Be eligible for Medicaid under SSI, SSI-related, FMAP, or FMAP-related coverage groups or be eligible under the special income level (300 percent) coverage group consistent with a level of care in a medical institution.
- c. Be at least one month of age.
- d. Be a U.S. citizen and Iowa resident.
- e. Rescinded IAB 7/11/01, effective 7/1/01.
- f. Be determined by the IME medical services unit as in need of intermediate care facility for persons with an intellectual disability (ICF/ID), skilled nursing, or ICF level of care based on information submitted on a completed Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC), and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual’s case manager or managed care organization.
- g. Be assessed by the IME medical services unit as able to live in a home- or community-based setting where all medically necessary service needs can be met within the scope of this waiver.
- h. At a minimum, receive a waiver service each quarter in addition to case management.
- i. Choose HCBS.
- j. To be eligible for interim medical monitoring and treatment services the consumer must be:
 - (1) Under the age of 21;
 - (2) Currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. (The home health aide services for which the consumer is eligible must be maximized before the consumer accesses interim medical monitoring and treatment.);
 - (3) Residing in the consumer’s family home or foster family home; and
 - (4) In need of interim medical monitoring and treatment as ordered by a physician.
- k. Receive services in a community, not an institutional, setting.

l. Be assigned a state payment slot within the yearly total approved by the Centers for Medicare and Medicaid Services.

m. For the consumer choices option as set forth in rule 441—subrule 78.43(15), not be living in a residential care facility.

n. For individual supported employment and long-term job coaching services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Not reside in a medical institution.

(4) Have documented in the waiver service plan a goal to achieve or to sustain individual employment and an expectation that this service will result in this outcome.

o. For small-group supported employment services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

(4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.

(5) Not reside in a medical institution.

p. For prevocational services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment and an expectation that this service will result in community employment.

(4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive prevocational services was made.

83.82(2) *Need for services.*

a. The applicant shall have a service plan approved by the department that is developed by the certified case manager for this waiver as identified by the county of residence. This must be completed before services provision and annually thereafter. The case manager shall establish the interdisciplinary team for the applicant and, with the team, identify the applicant's need for service based on the applicant's needs and desires as well as the availability and appropriateness of services using the following criteria:

(1) The assessment shall be based, in part, on information provided to the IME medical services unit.

(2) Service plans must be developed to reflect use of all appropriate nonwaiver Medicaid state services so as not to replace or duplicate those services.

(3) Service plans for applicants aged 20 or under which include supported community living services beyond intermittent shall not be approved until a home health provider has made a request to cover the service through all nonwaiver Medicaid services.

(4) Service plans for applicants aged 20 or under which include supported community living services beyond intermittent must be approved (signed and dated) by the designee of the bureau of long-term care. The Medicaid case manager must request in writing more than intermittent supported

community living with a summary of services and service costs, and submit a written justification with the service plan. The rationale must contain sufficient information for the bureau's designee to make a decision regarding the need for supported community living beyond intermittent.

b. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) Absence from the home due to hospitalization, treatment for physical or mental illness, or death of the usual caregiver. Interim medical monitoring and treatment services under this subparagraph are limited to a maximum of 30 days.

(4) Search for employment.

1. Care during job search shall be limited to only those hours the usual caregiver is actually looking for employment, including travel time.

2. Interim medical monitoring and treatment services may be provided under this paragraph only during the execution of one job search plan of up to 30 working days in a 12-month period, approved by the department service worker or targeted case manager pursuant to 441—subparagraph 170.2(2)“b”(5).

3. Documentation of job search contacts shall be furnished to the department service worker or targeted case manager.

c. The consumer shall access, if a child, all other services for which the person is eligible and which are appropriate to meet the person's needs as a precondition of eligibility for the HCBS BI waiver.

d. The total cost of brain injury waiver services, excluding the cost of case management and home and vehicle modifications, shall not exceed \$3,013.08 per month.

83.82(3) *HCBS brain injury (BI) waiver program limit for persons requiring the ICF/MR level of care.* Rescinded IAB 7/11/01, effective 7/1/01.

83.82(4) *Securing a state payment slot.*

a. The county department office shall enter all waiver applications into the individualized services information system (ISIS) to determine if a payment slot is available for all new applicants for the HCBS BI waiver program.

(1) For applicants not currently receiving Medicaid, the county department office shall make the entry by the end of the fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid members, the county department office shall make the entry by the end of the fifth working day after receipt of a written request signed and dated by the waiver applicant.

b. If no payment slot is available, the department shall enter the applicant on a waiting list according to the following:

(1) Applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is received by the department or upon receipt of disability determination, whichever is later. Applicants currently eligible for Medicaid shall be added to the waiting list on the basis of the date the applicant requests HCBS BI program services.

(2) In the event that more than one application is received at one time, applicants shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

c. Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the waiting list. As slots become available, persons shall be selected from

the waiting list to maintain the number of approved persons on the program based on their order on the waiting list.

[ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12; ARC 0548C, IAB 1/9/13, effective 1/1/13; ARC 0665C, IAB 4/3/13, effective 6/1/13; ARC 0842C, IAB 7/24/13, effective 7/1/13; ARC 1056C, IAB 10/2/13, effective 11/6/13; ARC 1445C, IAB 4/30/14, effective 7/1/14; ARC 2471C, IAB 3/30/16, effective 5/4/16; ARC 2848C, IAB 12/7/16, effective 11/15/16; ARC 2936C, IAB 2/1/17, effective 3/8/17; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.83(249A) Application.

83.83(1) Application for financial eligibility. The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed.

83.83(2) Approval of application for eligibility.

a. Applications for the determination of ability of the consumer to have all medically necessary service needs met within the scope of this waiver shall be initiated on behalf of the consumer and with the consumer's consent or with the consent of the consumer's legal representative by the discharge planner of the medical facility where the consumer resides at the time of application or the case manager. The discharge planner or case manager shall provide to the IME medical services unit all appropriate information needed regarding all the medically necessary service needs of the consumer. After completing the determination of ability to have all medically necessary service needs met within the scope of this waiver, the IME medical services unit shall inform the discharge planner or case manager on behalf of the consumer or the consumer's legal representative and send to the income maintenance worker a copy of the decision as to whether all of the consumer's service needs can be met in a home- or community-based setting.

b. Eligibility for the HCBS BI waiver shall be effective as of the date when both the service eligibility and financial eligibility have been completed. Decisions shall be mailed or given to the consumer or the consumer's legal representative on the date when each eligibility determination is completed.

c. An applicant shall be given the choice between waiver services and institutional care. The applicant or legal representative shall sign the applicable information submission tool listed in paragraph 83.82(1) "f," indicating that the applicant has elected home- and community-based services. This shall be arranged by the medical facility discharge planner or case manager.

d. The medical facility discharge planner, if there is one involved, shall contact the consumer's managed care organization or the designated case manager to initiate development of the consumer's service plan and initiation of waiver services.

e. HCBS BI waiver services provided prior to both approvals of eligibility for the waiver cannot be paid.

f. HCBS BI waiver services are not available in conjunction with other HCBS waiver programs or group foster care services.

g. The Medicaid case manager shall establish an HCBS BI waiver interdisciplinary team for each consumer and, with the team, identify the consumer's "need for service" based on the consumer's needs and desires as well as the availability and appropriateness of services.

83.83(3) Effective date of eligibility.

a. The effective date of eligibility for the waiver for persons who are already determined eligible for Medicaid is the date on which the person is determined to meet all of the criteria set forth in rule 441—83.82(249A).

b. The effective date of eligibility for the waiver for persons who qualify for Medicaid due to eligibility for the waiver services is the date on which the person is determined to meet all of the criteria set forth in rule 441—83.82(249A) and when the eligibility factors set forth in 441—subrule 75.1(7) and for married persons, in rule 441—75.5(249A), have been satisfied.

c. Eligibility for the waiver continues until the consumer fails to meet eligibility criteria listed in rule 441—83.82(249A). Consumers who return to inpatient status in a medical institution for more than 120 consecutive days shall be reviewed by the IME medical services unit to determine additional inpatient needs for possible termination from the brain injury waiver. The consumer shall be reviewed

for eligibility under other Medicaid coverage groups in accordance with rule 441—76.11(249A). The consumer shall be notified of that decision through Form 470-0602, Notice of Decision.

If the consumer returns home before the effective date of the notice of decision and the consumer's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

83.83(4) Attribution of resources. For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver consumer meets the level of care criteria in a medical institution as established by the peer review organization shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for prior institutionalizations shall be applied to the waiver application.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 3184C, IAB 7/5/17, effective 8/9/17; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.84(249A) Client participation. Consumers who are financially eligible under 441—subrule 75.1(7) (the 300 percent group) must contribute a predetermined participation amount to the cost of brain injury waiver services.

83.84(1) Computation of client participation. Client participation shall be computed by deducting an amount for the maintenance needs of the consumer which is 300 percent of the maximum SSI grant for an individual from the consumer's total income. For a couple, client participation is determined as if each person were an individual.

83.84(2) Limitation on payment. If the sum of the third-party payment and client participation equals or exceeds the reimbursement for the specific brain injury waiver service, Medicaid shall make no payments for the waiver service. However, Medicaid shall make payments to other medical providers.

441—83.85(249A) Redetermination. A complete financial redetermination of eligibility for brain injury waiver shall be completed at least once every 12 months. A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.82(249A). A redetermination shall contain the components listed in rule 441—83.82(249A).

441—83.86(249A) Allowable services. Services allowable under the brain injury waiver are case management, respite, personal emergency response, supported community living, behavioral programming, family counseling and training, home and vehicle modification, specialized medical equipment, prevocational services, transportation, supported employment, adult day care, consumer-directed attendant care, interim medical monitoring and treatment, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.43(249A).

441—83.87(249A) Service plan. A service plan shall be prepared and utilized for each HCBS BI waiver consumer. The service plan shall be developed by an interdisciplinary team, which includes the consumer, and, if appropriate, the legal representative, consumer's family, case manager, providers, and others directly involved. The service plan shall be stored by the case manager for a minimum of three years. The service plan staffing shall be conducted before the current service plan expires.

83.87(1) Information in plan. The plan shall be in accordance with 441—subrule 24.4(3) and shall additionally include the following information to assist in evaluating the program:

- a. A listing of all services received by a consumer at the time of waiver program enrollment.
- b. For supported community living:
 - (1) The consumer's living environment at the time of waiver enrollment.
 - (2) The number of hours per day of on-site staff supervision needed by the consumer.
 - (3) The number of other waiver consumers who will live with the consumer in the living unit.
- c. An identification and justification of any restriction of a consumer's rights including, but not limited to:
 - (1) Maintenance of personal funds.
 - (2) Self-administration of medications.
- d. The names of all providers responsible for providing all services.

- e. All service funding sources.
- f. The amount of the service to be received by the consumer.
- g. Whether the consumer has elected the consumer choices option and, if so:
 - (1) The independent support broker selected by the consumer; and
 - (2) The financial management service selected by the consumer.
- h. A plan for emergencies and identification of the supports available to the consumer in an emergency.

83.87(2) Use of nonwaiver services. Service plans must be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services. Service plans for members aged 20 or under which include supported community living services beyond intermittent must be approved (signed and dated) by the designee of the bureau of long-term care. The Medicaid case manager shall attach a written request for a variance from the limitation on supported community living to intermittent.

83.87(3) Annual assessment. The IME medical services unit shall assess the member annually and certify the member's need for long-term care services. The IME medical services unit shall be responsible for determining the level of care based on the completed information submission tool listed in paragraph 83.82(1) "f" and other supporting documentation as relevant.

a. The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

b. The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

83.87(4) Service file. The Medicaid case manager must ensure that the consumer service file contains the consumer's service plan.

a. to d. Rescinded IAB 8/7/02, effective 10/1/02.

[ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.88(249A) Adverse service actions.

83.88(1) Denial. An application for services shall be denied when it is determined by the department that:

- a. The consumer is not eligible for the services because all of the medically necessary service needs cannot be met in a home- or community-based setting.
- b. Service needs exceed the service unit or reimbursement maximums.
- c. Service needs are not met by the services provided.
- d. Needed services are not available or received from qualifying providers.
- e. The brain injury waiver service is not identified in the consumer's service plan.
- f. There is another community resource available to provide the service or a similar service free of charge to the consumer that will meet the consumer's needs.
- g. The consumer receives services from other Medicaid waiver providers.
- h. The consumer or legal representative through the interdisciplinary process requests termination from the services.

83.88(2) Reduction. A particular service may be reduced when the department determines that the provisions of 441—subrule 130.5(3), paragraph "a" or "b," apply.

83.88(3) Termination. A particular service may be terminated when the department determines that:

- a. The provisions of 441—subrule 130.5(2), paragraph "d," "g," or "h," apply.
- b. Needed services are not available or received from qualifying providers.
- c. The brain injury waiver service is not identified in the consumer's annual service plan.
- d. Service needs are not met by the services provided.
- e. Services needed exceed the service unit or reimbursement maximums.

f. Completion or receipt of required documents by the department or the medical facility discharge planner for the brain injury waiver service consumer has not occurred.

g. The consumer receives services from other Medicaid providers.

h. The consumer or legal representative through the interdisciplinary process requests termination from the services.

441—83.89(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

[ARC 0191C, IAB 7/11/12, effective 7/1/12; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0359C, IAB 10/3/12, effective 12/1/12]

441—83.90(249A) County reimbursement. Rescinded ARC 0191C, IAB 7/11/12, effective 7/1/12.

441—83.91(249A) Conversion to the X-PERT system. Rescinded IAB 8/7/02, effective 10/1/02.

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

441—83.92 to 83.100 Reserved.

DIVISION VI—PHYSICAL DISABILITY WAIVER SERVICES

441—83.101(249A) Definitions.

“Adaptive” means age-appropriate skills related to taking care of one’s self and the ability to relate to others in daily living situations. These skills include limitations that occur in the areas of communication, self-care, home living, social skills, community use, self-direction, safety, functional academics, leisure and work.

“Adult” means a person with a physical disability aged 18 years to 64 years.

“Appropriate” means that the services or supports or activities provided or undertaken by the organization are relevant to the consumer’s needs, situation, problems, or desires.

“Assessment” means the review of the consumer’s current functioning in regard to the consumer’s situation, needs, strengths, abilities, desires and goals.

“Attorney in fact under a durable power of attorney for health care” means an individual who is designated by a durable power of attorney for health care, pursuant to Iowa Code chapter 144B, as an agent to make health care decisions on behalf of an individual and who has consented to act in that capacity.

“Behavior” means skills related to regulating one’s own behavior including coping with demands from others, making choices, controlling impulses, conforming conduct to laws, and displaying appropriate sociosexual behavior.

“Client participation” means the amount of the consumer’s income that the person must contribute to the cost of physical disability waiver services, exclusive of medical vendor payments, before Medicaid will provide additional reimbursement.

“Department” means the Iowa department of human services.

“Guardian” means a guardian appointed in probate court for an adult.

“Intermediate care facility for persons with an intellectual disability level of care” means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

“Managed care organization” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” as defined in Iowa Code section 514B.1.

“Medical institution” means a nursing facility, a skilled nursing facility, intermediate care facility for persons with an intellectual disability, or hospital which has been approved as a Medicaid vendor.

“Nursing facility level of care” means that the following conditions are met:

1. The presence of a physical or mental impairment which restricts the member’s daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member’s capacity to live independently.
2. The member’s physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

“Physical disability” means a severe, chronic condition that is attributable to a physical impairment that results in substantial limitations of physical functioning in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

“Service plan” means a written consumer-centered, outcome-based plan of services developed using an interdisciplinary process which addresses all relevant services and supports being provided. It may involve more than one provider.

“Skilled nursing facility level of care” means that the following conditions are met:

1. The member’s medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34.
2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).
3. Documentation submitted for review indicates that the member has:
 - a. A physician order for all skilled services.
 - b. Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.
 - c. An individualized care plan that identifies support needs.
 - d. Confirmation that skilled services are provided to the member.
 - e. Skilled services that are provided by, or under the supervision of, medical personnel as described above.
 - f. Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

“Third-party payments” means payments from an individual, institution, corporation, or public or private provider which is liable to pay part or all of the medical costs incurred as a result of injury or disease on behalf of a consumer of medical assistance.

“Waiver year” means a 12-month period commencing on April 1 of each year.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16]

441—83.102(249A) Eligibility. To be eligible for physical disability waiver services, a consumer must meet eligibility criteria set forth in subrule 83.102(1) and be determined to need a service allowable under the program per subrule 83.102(2).

83.102(1) Eligibility criteria. All of the following criteria must be met. The person must:

- a. Have a physical disability.
- b. Be blind or disabled as determined by the receipt of social security disability benefits or by a disability determination made through the department. Disability determinations are made according to supplemental security income guidelines under Title XVI of the Social Security Act or the disability guidelines for the Medicaid employed people with disabilities coverage group.
- c. Be ineligible for the HCBS intellectual disability waiver.
- d. Have the ability to hire, supervise, and fire the provider as determined by the service worker, and be willing to do so, or have a parent or guardian named by probate court, or attorney in fact under a durable power of attorney for health care who will take this responsibility on behalf of the consumer.
- e. Be eligible for Medicaid under 441—Chapter 75.
- f. Be aged 18 years to 64 years.
- g. Rescinded IAB 2/7/01, effective 2/1/01.

h. Be in need of skilled nursing or intermediate care facility level of care based on information submitted on a completed interRAI - Pediatric Home Care (PEDS-HC) for those aged 18 to 20 or the interRAI - Home Care (HC) for those aged 21 and over and other supporting documentation as relevant. The interRAI - Pediatric Home Care (PEDS-HC) and the interRAI - Home Care (HC) are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager or managed care organization.

(1) Initial decisions on level of care shall be made for the department by the IME medical services unit within two working days of receipt of medical information. The IME medical services unit determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

(2) Adverse decisions by the IME medical services unit may be appealed to the department pursuant to 441—Chapter 7.

i. Choose HCBS.

j. Use a minimum of one unit of service per calendar quarter under this program.

k. For the consumer choices option as set forth in 441—subrule 78.46(6), not be living in a residential care facility.

83.102(2) Need for services.

a. The applicant shall have a service plan which is developed by the applicant and a department service worker. The plan must be completed and approved before service provision.

(1) The designated case manager shall identify the need for service based on the needs of the applicant, as documented in the information submission tool listed in 83.102(1)“*h*,” as well as the availability and appropriateness of services.

(2) The service worker shall have a face-to-face visit with the member at least annually.

b. The total cost of physical disability waiver services, excluding the cost of home and vehicle modifications, shall not exceed \$705.84 per month.

83.102(3) Slots. The total number of persons receiving HCBS physical disability waiver services in the state shall be limited to the number provided in the waiver approved by the Secretary of the U.S. Department of Health and Human Services. These slots shall be available on a first-come, first-served basis.

83.102(4) County payment slots for persons requiring the ICF/MR level of care. Rescinded IAB 10/6/99, effective 10/1/99.

83.102(5) Securing a slot.

a. The county department office shall enter all waiver applications into the individualized services information system (ISIS) to determine if a slot is available for all new applicants for the HCBS physical disability waiver program.

(1) For applicants not currently receiving Medicaid, the county department office shall make the entry by the end of the fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid members, the county department office shall make the entry by the end of the fifth working day after receipt of a written request signed and dated by the waiver applicant.

b. If no slot is available, the department shall enter applicants on the HCBS physical disabilities waiver waiting list according to the following:

(1) Applicants not currently eligible for Medicaid shall be entered on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is received by the department or upon receipt of disability determination, whichever is later. Applicants currently eligible for Medicaid shall be added on the basis of the date the applicant requests HCBS physical disability program services. In the event that more than one application is received on the same day, applicants shall be entered on the waiting list on the basis of the day of the month of their birthday, the lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the waiting list. As slots become available, persons shall be selected from the waiting list to maintain the number of approved persons on the program based on their order on the waiting list.

83.102(6) *Securing a county payment slot.* Rescinded IAB 10/6/99, effective 10/1/99.

83.102(7) *HCBS physical disability waiver waiting list.* When services are denied because the limit on the number of slots is reached, a notice of decision denying service based on the limit and stating that the person's name shall be put on a waiting list shall be sent to the person by the department.

[**ARC 9650B**, IAB 8/10/11, effective 10/1/11; **ARC 0306C**, IAB 9/5/12, effective 11/1/12; **ARC 0548C**, IAB 1/9/13, effective 1/1/13; **ARC 0665C**, IAB 4/3/13, effective 6/1/13; **ARC 0842C**, IAB 7/24/13, effective 7/1/13; **ARC 1056C**, IAB 10/2/13, effective 11/6/13; **ARC 1445C**, IAB 4/30/14, effective 7/1/14; **ARC 2848C**, IAB 12/7/16, effective 11/15/16; **ARC 2936C**, IAB 2/1/17, effective 3/8/17; **ARC 3184C**, IAB 7/5/17, effective 8/9/17]

441—83.103(249A) Application.

83.103(1) *Application for financial eligibility.* The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed. Applications for this program may only be filed on or after April 1, 1999.

83.103(2) *Approval of application for eligibility.*

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application.

(1) The discharge planner shall contact the member's managed care organization or designated case manager to arrange for completion of the appropriate information submission tool as listed in paragraph 83.102(1) "h."

(2) After completing the determination of the level of care needed by the applicant, the IME medical services unit shall inform the income maintenance worker and the discharge planner of the IME medical services unit's decision.

b. Applications for this waiver shall be initiated by the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care on behalf of the applicant who is residing in the community.

(1) The applicant's managed care organization or the designated case manager shall arrange for the completion of the appropriate information submission tool as listed in paragraph 83.102(1) "h" and submit it to the IME medical services unit.

(2) After completing the determination of the level of care needed by the applicant, the IME medical services unit shall inform the income maintenance worker and the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care.

c. Eligibility for this waiver shall be effective as of the date when both the eligibility criteria in subrule 83.102(1) and need for services in subrule 83.102(2) have been established. Decisions shall be mailed or given to the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care on the date when each eligibility determination is completed.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant or the applicant's parent, legal guardian, or attorney in fact under a durable power of attorney for health care shall sign the information submission tool, indicating that the applicant has elected home- and community-based services.

e. The applicant, the applicant's parent or guardian, or the applicant's attorney in fact under a durable power of attorney for health care shall cooperate with the designated case manager in the development of the service plan prior to the start of services.

f. HCBS physical disability waiver services provided prior to both approvals of eligibility for the waiver cannot be paid.

g. HCBS physical disability waiver services are not available in conjunction with other HCBS waiver programs. The consumer may also receive in-home health-related care service if eligible for that program.

83.103(3) Effective date of eligibility.

a. The effective date of eligibility for the waiver for persons who are already determined eligible for Medicaid is the date on which the person is determined to meet all of the criteria set forth in subrule 83.102(1).

b. The effective date of eligibility for the waiver for persons who qualify for Medicaid due to eligibility for the waiver services is the date on which the person is determined to meet all of the criteria set forth in subrule 83.102(1) and when the eligibility factors set forth in 441—subrule 75.1(7) and, for married persons, in rule 441—75.5(249A), have been satisfied.

c. Eligibility for the waiver continues until the consumer fails to meet eligibility criteria listed in subrule 83.102(1). Consumers who return to inpatient status in a medical institution for more than 120 consecutive days shall be reviewed by the IME medical services unit to determine additional inpatient needs for possible termination from the physical disability waiver. The consumer shall be reviewed for eligibility under other Medicaid coverage groups in accordance with rule 441—76.11(249A). The consumer shall be notified of that decision through Form 470-0602, Notice of Decision.

If the consumer returns home before the effective date of the notice of decision and the consumer's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

83.103(4) Attribution of resources. For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver consumer meets the institutional level of care requirement as determined by the IME medical services unit or an appeal decision shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for a prior institutionalization shall be applied to the waiver application.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.104(249A) Client participation. Consumers who are financially eligible under 441—subrule 75.1(7) (the 300 percent group) must contribute a client participation amount to the cost of physical disability waiver services.

83.104(1) Computation of client participation. Client participation shall be computed by deducting a maintenance needs allowance equal to 300 percent of the maximum SSI grant for an individual from the consumer's total income. For a couple, client participation is determined as if each person were an individual.

83.104(2) Limitation on payment. If the sum of the third-party payment and client participation equals or exceeds the reimbursement for the specific physical disability waiver service, Medicaid shall make no payments for the waiver service. However, Medicaid shall make payments to other medical providers.

441—83.105(249A) Redetermination. A complete financial redetermination of eligibility for the physical disability waiver shall be completed at least once every 12 months. A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.102(249A). A redetermination shall contain the components listed in rule 441—83.102(249A).

441—83.106(249A) Allowable services. The services allowable under the physical disability waiver are consumer-directed attendant care, home and vehicle modification, personal emergency response system, transportation, specialized medical equipment, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.46(249A).

441—83.107(249A) Individual service plan. An individualized service plan shall be prepared and used for each HCBS physical disability waiver consumer. The service plan shall be developed and approved

by the consumer, the consumer's interdisciplinary team and the designated case manager prior to services beginning and payment being made to the provider.

83.107(1) Information in plan. The plan shall be in accordance with 441—subrule 24.4(3) and shall additionally include the following information to assist in evaluating the program:

- a. A listing of all services received by a consumer at the time of waiver program enrollment.
- b. The name of all providers responsible for providing all services.
- c. All service funding sources.
- d. The amount of the service to be received by the consumer.
- e. Whether the consumer has elected the consumer choices option and, if so:
 - (1) The independent support broker selected by the consumer; and
 - (2) The financial management service selected by the consumer.
- f. A plan for emergencies and identification of the supports available to the consumer in an emergency.

83.107(2) Annual assessment. The IME medical services unit or a managed care organization shall review the member's need for continued care annually and recertify the member's need for long-term care services, pursuant to paragraph 83.102(1) "h" and the appeal process at rule 441—83.109(249A), based on the appropriate information submission tool as listed in paragraph 83.102(1) "h" and other supporting documentation as relevant.

a. The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

b. The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

83.107(3) Case file. Rescinded IAB 8/7/02, effective 10/1/02.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.108(249A) Adverse service actions.

83.108(1) Denial. An application for services shall be denied when it is determined by the department that:

- a. All of the medically necessary service needs cannot be met in a home- or community-based setting.
- b. Service needs exceed the reimbursement maximums.
- c. Service needs are not met by the services provided.
- d. Needed services are not available or received from qualifying providers.
- e. The physical disability waiver service is not identified in the consumer's service plan.
- f. There is another community resource available to provide the service or a similar service free of charge to the consumer that will meet the consumer's needs.
- g. The consumer receives services from other Medicaid waiver providers.
- h. The consumer or legal representative requests termination from the services.

83.108(2) Reduction. A particular service may be reduced when the department determines that the provisions of 441—subrule 130.5(3), paragraph "a" or "b," apply.

83.108(3) Termination. A particular service may be terminated when the department determines that:

- a. The provisions of 441—subrule 130.5(2), paragraph "d," "g," or "h," apply.
- b. Needed services are not available or received from qualifying providers.
- c. The physical disability waiver service is not identified in the consumer's annual service plan.
- d. Service needs are not met by the services provided.
- e. Services needed exceed the service unit or reimbursement maximums.
- f. Completion or receipt of required documents by the consumer for the physical disability waiver service has not occurred.

- g. The consumer receives services from other Medicaid providers.
- h. The consumer or legal representative requests termination from the services.

441—83.109(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

83.109(1) Appeal to county. Rescinded IAB 2/7/01, effective 2/1/01.

83.109(2) Reconsideration request to IME medical services unit. Rescinded IAB 9/5/12, effective 11/1/12.

[ARC 0306C, IAB 9/5/12, effective 11/1/12]

441—83.110(249A) County reimbursement. Rescinded IAB 10/6/99, effective 10/1/99.

441—83.111(249A) Conversion to the X-PERT system. Rescinded IAB 8/7/02, effective 10/1/02.

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

441—83.112 to 83.120 Reserved.

DIVISION VII—HCBS CHILDREN’S MENTAL HEALTH WAIVER SERVICES

441—83.121(249A) Definitions.

“*Assessment*” means the review of the consumer’s current functioning in regard to the consumer’s situation, needs, abilities, desires, and goals.

“*Care coordinator*” means the professional who assists members in care coordination as described in 441—paragraph 78.53(1)“b.”

“*Case manager*” means the person designated to provide Medicaid targeted case management services for the consumer.

“*CMS*” means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.

“*Consumer*” means an individual up to the age of 18 who is included in a Medicaid coverage group listed in 441—75.1(249A) and is a recipient of children’s mental health waiver services.

“*Deeming*” means considering parental or spousal income or resources as income or resources of a consumer in determining eligibility for a consumer according to Supplemental Security Income program guidelines.

“*Department*” means the Iowa department of human services.

“*Guardian*” means a parent of a consumer or a legal guardian appointed by the court.

“*HCBS*” means home- and community-based services provided under a Medicaid waiver.

“*IME*” means the Iowa Medicaid enterprise.

“*IME medical services unit*” means the contracted entity in the Iowa Medicaid enterprise that determines level of care for consumers initially applying for or continuing to receive children’s mental health waiver services.

“*Integrated health home*” means the provision of services to enrolled members as described in 441—subrule 78.53(1).

“*Interdisciplinary team*” means the consumer, the consumer’s family, and persons of varied professional and nonprofessional backgrounds with knowledge of the consumer’s needs, as designated by the consumer and the consumer’s family, who meet to develop a service plan based on the individualized needs of the consumer.

“*ISIS*” means the department’s individualized services information system.

“*Local office*” means a department of human services office as described in 441—subrule 1.4(2).

“*Managed care organization*” means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” as defined in Iowa Code section 514B.1.

“Medical institution” means a nursing facility, an intermediate care facility for persons with an intellectual disability, a psychiatric hospital or psychiatric medical institution for children, or a state mental health institute that has been approved as a Medicaid vendor.

“Mental health professional” means a person who meets all of the following conditions:

1. Holds at least a master’s degree in a mental health field including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and
2. Holds a current Iowa license when required by the Iowa professional licensure laws (such as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker); and
3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and service needs and in providing mental health services.

“Psychiatric medical institution for children level of care” means that the member has been diagnosed with a serious emotional disturbance and an independent team as identified in 441—subrule 85.22(3) has certified that ambulatory care resources available in the community do not meet the treatment needs of the recipient, that proper treatment of the recipient’s psychiatric condition requires services on an inpatient basis under the direction of a physician, and that the services can reasonably be expected to improve the recipient’s condition or prevent further regression so that the services will no longer be needed.

“Serious emotional disturbance” means a diagnosable mental, behavioral, or emotional disorder that (1) is of sufficient duration to meet diagnostic criteria for the disorder specified by the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association; and (2) has resulted in a functional impairment that substantially interferes with or limits a consumer’s role or functioning in family, school, or community activities. “Serious emotional disturbance” shall not include neurodevelopmental disorders, substance-related disorders, or conditions or problems classified in the current version of the DSM as “other conditions that may be a focus of clinical attention,” unless these conditions co-occur with another diagnosable serious emotional disturbance.

“Service plan” means a written, consumer-centered, outcome-based plan of services developed by the consumer’s interdisciplinary team that addresses all relevant services and supports being provided. The service plan may involve more than one provider.

“Skill development” means that the service provided is habilitative and is intended to impart an ability or capacity to the consumer. Supervision without habilitation is not skill development.

“Targeted case management” means Medicaid case management services accredited under 441—Chapter 24 and provided according to 441—Chapter 90 for consumers eligible for the children’s mental health waiver.

“Waiver year” for the children’s mental health waiver means a 12-month period commencing on July 1 of each year.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2164C, IAB 9/30/15, effective 10/1/15; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.122(249A) Eligibility. To be eligible for children’s mental health waiver services, a consumer must meet all of the following requirements:

83.122(1) Age. The consumer must be under 18 years of age.

83.122(2) Diagnosis. The consumer must be diagnosed with a serious emotional disturbance.

a. Initial certification. For initial application to the HCBS children’s mental health waiver program, psychological documentation that substantiates a mental health diagnosis of serious emotional disturbance as determined by a mental health professional must be current within the 12-month period before the application date.

b. Ongoing certification. A mental health professional must complete an annual evaluation that substantiates a mental health diagnosis of serious emotional disturbance.

83.122(3) *Level of care.* The applicant must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit or a managed care organization shall certify the applicant's level of care annually based on information submitted on Form 470-4694, Case Management Comprehensive Assessment, for children aged 3 and under or on the interRAI - Child and Youth Mental Health (ChYMH) for those aged 4 to 20 and other supporting documentation as relevant. For those aged 12 to 18, the interRAI - Adolescent Supplement shall also be completed in addition to the interRAI - Child and Youth Mental Health (ChYMH). Form 470-4694, the interRAI - Child and Youth Mental Health (ChYMH), and the interRAI - Adolescent Supplement are available on request from the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator or managed care organization.

83.122(4) *Financial eligibility.* The consumer must be eligible for Medicaid as follows:

- a. Be eligible for Medicaid under an SSI, SSI-related, FMAP, or FMAP-related coverage group;
- or
- b. Be eligible under the special income level (300 percent) coverage group; or
- c. Become eligible through application of the institutional deeming rules; or
- d. Would be eligible for Medicaid if in a medical institution. For this purpose, deeming of parental or spousal income or resources ceases in the month after the month of application.

83.122(5) *Choice of program.* The applicant must choose HCBS children's mental health waiver services over institutional care, as indicated by the signature of the applicant's parent or legal guardian on the assessment.

83.122(6) *Need for service.* The consumer must have service needs that can be met under the children's mental health waiver program, as documented in the service plan developed in accordance with rule 441—83.12(249A).

- a. The consumer must be a recipient of case management or integrated health home services or be identified to receive case management or integrated health home services immediately following program enrollment.
 - b. The total cost of children's mental health waiver services needed to meet the member's needs, excluding the cost of environmental modifications, adaptive devices and therapeutic resources, may not exceed \$2,006.34 per month.
 - c. At a minimum, each consumer must receive one billable unit of a children's mental health waiver service per calendar quarter.
 - d. A consumer may not receive children's mental health waiver services and foster family care services under 441—Chapter 202 at the same time.
 - e. A consumer may be enrolled in only one HCBS waiver program at a time.
- [ARC 7741B, IAB 5/6/09, effective 7/1/09; ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 0548C, IAB 1/9/13, effective 1/1/13; ARC 0665C, IAB 4/3/13, effective 6/1/13; ARC 0842C, IAB 7/24/13, effective 7/1/13; ARC 1056C, IAB 10/2/13, effective 11/6/13; ARC 1445C, IAB 4/30/14, effective 7/1/14; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 2848C, IAB 12/7/16, effective 11/15/16; ARC 2936C, IAB 2/1/17, effective 3/8/17; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.123(249A) *Application.* The Medicaid application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed for an application for HCBS children's mental health waiver services.

83.123(1) *Program limit.* The number of persons who may be approved for the HCBS children's mental health waiver shall be subject to the number of consumers to be served as set forth in the federally approved HCBS children's mental health waiver. When the number of applicants exceeds the number of consumers specified in the approved waiver, the consumer's application shall be rejected and the consumer's name shall be placed on a waiting list.

a. The local office shall determine if a payment slot is available by the end of the fifth working day after receipt of:

- (1) A completed Form 470-2297, Health Services Application, from a consumer who is not currently a Medicaid member; or
- (2) A written request signed and dated by a Medicaid member's parent or legal guardian.

b. When a payment slot is available, the local office shall enter the application into ISIS to begin the waiver approval process.

(1) The department shall hold the payment slot for the consumer as long as reasonable efforts are being made to arrange services and the consumer has not been determined to be ineligible for the program.

(2) If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next consumer on the waiting list, if applicable. The consumer must reapply for a new slot.

c. If no payment slot is available, the department shall enter the names of persons on a waiting list according to the following:

(1) The names of applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is received by the department;

(2) The names of Medicaid members shall be added to the waiting list on the date as specified in paragraph 83.123(1) "a."

(3) In the event that more than one application is received at one time, the names of consumers shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

d. Consumers whose names are on the waiting list shall be contacted to reapply as slots become available, based on the order of the waiting list, so that the number of approved consumers on the program is maintained.

(1) Once a payment slot is assigned, the department shall give written notice to the consumer within five working days.

(2) The department shall hold the payment slot for 30 days for the consumer to file a new application.

(3) If an application has not been filed within 30 days, the slot shall revert for use by the next consumer on the waiting list, if applicable. The consumer originally assigned the slot must reapply for a new slot.

83.123(2) *Approval of waiver eligibility.*

a. Time limit. Applications for the HCBS children's mental health waiver program shall be processed within 30 days unless one or more of the following conditions exist:

(1) An application has been filed and is pending for federal Supplemental Security Income (SSI) benefits.

(2) The application is pending because the department has not received information for a reason that is beyond the control of the consumer or the department.

(3) The application is pending because the assessment has not been completed. When a determination is not completed 90 days after the date of application due to the lack of a completed assessment, the application shall be denied.

b. Notice of decisions. The department shall mail or give decisions to the applicant on the dates when eligibility and level of care determinations are completed.

83.123(3) *Effective date of eligibility.* The effective date of a consumer's eligibility for children's mental health waiver services shall be the first date that all of the following conditions exist:

a. All eligibility requirements are met; and

b. Eligibility and level of care determinations have been made.

[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.124(249A) Financial participation. A consumer must contribute to the cost of children's mental health waiver services to the extent of the consumer's total income less 300 percent of the maximum monthly payment for one person under the federal Supplemental Security Income (SSI) program.

441—83.125(249A) Redetermination. The department shall redetermine a consumer's eligibility for the children's mental health waiver at least once every 12 months or when there is significant change in the consumer's situation or condition.

83.125(1) Eligibility review.

a. Every 12 months, the department shall review a consumer's eligibility in accordance with procedures in rule 441—76.7(249A). The review shall verify continuing eligibility factors as specified in rule 441—83.122(249A).

b. The IME medical services unit or a managed care organization shall review the member's need for continued care annually and recertify the member's need for long-term care services, pursuant to rule 441—83.122(249A) and the appeal process at rule 441—83.129(249A), based on the completed information submission tool designated in 83.122(3) and other supporting documentation as relevant.

c. The IME medical services unit or the member's managed care organization shall be responsible for annual redetermination of the level of care.

d. The managed care organization must submit documentation to the IME medical services unit for all reassessments, performed at least annually, which indicate a change in the member's level of care. The IME medical services unit shall make a final determination for any reassessments which indicate a change in the level of care. If the level of care reassessment indicates no change in level of care, the member is approved to continue at the already established level of care.

83.125(2) Continuation of eligibility. A consumer's waiver eligibility shall continue until one of the following conditions occurs.

a. The consumer fails to meet eligibility criteria listed in rule 441—83.122(249A).

b. The consumer is an inpatient of a medical institution for 120 or more consecutive days.

(1) After the consumer has spent 120 consecutive days in a medical institution, the local office shall terminate the consumer's waiver eligibility and review the consumer for eligibility under other Medicaid coverage groups. The local office shall notify the consumer and the consumer's parents or legal guardian through Form 470-0602, Notice of Decision.

(2) If the consumer returns home after 120 consecutive days, the consumer must reapply for children's mental health waiver services, and the IME medical services unit must redetermine the consumer's level of care.

c. The consumer does not reside at the consumer's natural home for a period of 60 consecutive days. After the consumer has resided outside the home for 60 consecutive days, the local office shall terminate the consumer's waiver eligibility and review the consumer for eligibility under other Medicaid coverage groups. The local office shall notify the consumer and the consumer's parents or legal guardian through Form 470-0602, Notice of Decision.

83.125(3) Payment slot. When a consumer loses waiver eligibility, the consumer's assigned payment slot shall revert for use to the next consumer on the waiting list.

[ARC 2361C, IAB 1/6/16, effective 1/1/16; ARC 3184C, IAB 7/5/17, effective 8/9/17; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.126(249A) Allowable services. Services allowable under the children's mental health waiver shall be provided as set forth in rule 441—78.52(249A) and shall include:

1. Environmental modifications, adaptive devices and therapeutic resources;
2. Family and community support services;
3. In-home family therapy; and
4. Respite care.

441—83.127(249A) Service plan. The consumer's case manager or integrated health home care coordinator shall prepare an individualized service plan for each consumer that meets the requirements set for case plans in rule 441—130.7(234).

83.127(1) The service plan shall be developed through an interdisciplinary team process.

83.127(2) The service plan shall be developed annually or when there is significant change in the consumer's situation or condition.

83.127(3) The service plan shall be based on information in the completed information submission tool designated in subrule 83.122(3) and other supporting documentation as relevant.

83.127(4) The service plan shall specify the type and frequency of the waiver services and the providers that will deliver the services.

83.127(5) The service plan shall identify and justify any restriction of the consumer's rights.
[ARC 0306C, IAB 9/5/12, effective 11/1/12; ARC 3184C, IAB 7/5/17, effective 8/9/17]

441—83.128(249A) Adverse service actions.

83.128(1) Denial. An application for children's mental health waiver services shall be denied when the department determines that:

- a. The consumer is not eligible for or in need of waiver services.
- b. Needed services are not available or received from qualified providers.
- c. Service needs exceed the limit on aggregate monthly costs established in 83.122(6) "c" or are not met by the services provided.

83.128(2) Termination. A consumer's participation in the children's mental health waiver program may be terminated when the department determines that:

- a. The provisions of 441—paragraph 130.5(2) "a," "b," "c," "g," or "h" apply.
- b. The costs of the children's mental health waiver services for the consumer exceed the aggregate monthly costs established in 83.122(6) "c."
- c. The consumer receives care in a hospital, nursing facility, psychiatric hospital serving children under the age of 21, or psychiatric medical institution for children for 120 days in any one stay.
- d. The physical or mental condition of the consumer requires more care than can be provided in the consumer's own home, as determined by the consumer's case manager or integrated health home care coordinator.
- e. Service providers are not available.

83.128(3) Reduction. Reduction of services shall apply as specified in 441—paragraphs 130.5(3) "a" and "b."

[ARC 3184C, IAB 7/5/17, effective 8/9/17; ARC 3234C, IAB 8/2/17, effective 9/6/17]

441—83.129(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

[ARC 0306C, IAB 9/5/12, effective 11/1/12]

These rules are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 167, section 13, and chapter 117, section 3.

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CHAPTER 52
DEPENDENT ADULT ABUSE IN FACILITIES AND PROGRAMS

481—52.1(235E) Definitions. For purposes of this chapter, the following definitions apply:

“Assault of a dependent adult” means the commission of any act which is generally intended to cause pain or injury to a dependent adult, or which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive or any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

“Caretaker” means a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court. For the purpose of an allegation of exploitation, if the caretaker-dependent adult relationship started when a staff member was employed in the facility, the staff member may be considered a caretaker after employment is terminated.

“Confidentiality” means the withholding of information from any manner of communication, public or private.

“Court” means the district court.

“Department” means the department of inspections and appeals.

“Dependent adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for the person’s own care or protection is impaired, either temporarily or permanently.

“Dependent adult abuse” means any of the following as a result of the willful misconduct or gross negligence or reckless act or omission of a caretaker, taking into account the totality of the circumstances: physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, neglect, or personal degradation. “Dependent adult abuse” does not include any of the following:

1. Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
2. Circumstances in which the dependent adult’s caretaker, acting in accordance with the dependent adult’s stated or implied consent, declines medical treatment or care.
3. The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult’s next of kin, attorney in fact, or guardian pursuant to the applicable procedures under Iowa Code chapter 125, 144A, 144B, 222, 229, or 633.

“Exploitation” means a caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates, a dependent adult’s funds, assets, medications, or property with the intent to temporarily or permanently deprive a dependent adult of the use, benefit, or possession of the funds, assets, medication, or property for the benefit of someone other than the dependent adult.

“Facility” means a health care facility as defined in Iowa Code section 135C.1 or a hospital as defined in Iowa Code section 135B.1.

“Gross negligence” means an act or omission that signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and, in other words, means an extreme departure from the ordinary standard of care.

“Immediately,” for purposes of mandatory reporters’ reporting of suspected dependent adult abuse, means within 24 hours.

“Inspector” means a surveyor, monitor or investigator with the department or any department designee.

“Intimate relationship” means a significant romantic involvement between two persons that need not include sexual involvement, but does not include a casual social relationship or association in a business

or professional capacity. In determining whether persons are in an intimate relationship, the following nonexclusive list of factors may be considered:

1. The duration of the relationship,
2. The frequency of interaction,
3. Whether the relationship has been terminated, and
4. The nature of the relationship, characterized by either person's expectation of sexual or romantic involvement.

"Misappropriates" means taking unfair advantage of or wrongfully or dishonestly exercising control over property.

"Neglect of a dependent adult" means the deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or physical or mental health.

"Person" means person as defined in Iowa Code section 4.1.

"Personal degradation" means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. "Personal degradation" includes the taking, transmission, or display of an electronic image of a dependent adult by a caretaker, where the caretaker's actions constitute a willful act or statement intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. "Personal degradation" does not include the taking, transmission, or display of an electronic image of a dependent adult for the purpose of reporting dependent adult abuse to law enforcement, the department, or other regulatory agency that oversees caretakers or enforces abuse or neglect provisions, or for the purpose of treatment or diagnosis or as part of an ongoing investigation. "Personal degradation" also does not include the taking, transmission, or display of an electronic image by a caretaker in accordance with the facility's or program's confidentiality policy and release of information or consent policies.

"Physical injury" means a physical injury, or injury which is at a variance with the history given of the injury, which involves a breach of skill or care or learning ordinarily exercised by a caretaker in similar circumstances. "Physical injury" includes damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue which results in the death of the person who has sustained the damage.

"Program" means an elder group home as defined in Iowa Code section 231B.1, an assisted living program certified under Iowa Code section 231C.3, or an adult day services program as defined in Iowa Code section 231D.1.

"Recklessly" means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

"Registry" means the central registry for dependent adult abuse information established in Iowa Code section 235B.5.

"Report" means a verbal or written statement, made to the department, which alleges that dependent adult abuse has occurred.

"Resident" means a resident of a health care facility as defined in Iowa Code chapter 135C, a patient in a hospital as defined in Iowa Code chapter 135B, a tenant of an assisted living program as defined in Iowa Code chapter 231C, a tenant in an elder group home as defined in Iowa Code chapter 231B, or a participant in an adult day services program as defined in Iowa Code chapter 231D.

"Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. "Sexual exploitation" includes but is not limited to:

1. Kissing;
2. Touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals;
3. A sex act as defined in Iowa Code section 702.17;
4. The transmission, display or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment, care, monitoring, assessment or diagnosis or as part of an ongoing investigation.

“Sexual exploitation” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

“*Sexual offense*” means the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.

“*Staff member*” means an individual who provides direct or indirect treatment or services to residents in a facility or program. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the definition of “staff member” are individuals such as part-time volunteers, building contractors, repair workers or others who are in a facility or program for a very limited purpose, are not in the facility or program on a regular basis, or do not provide any treatment or services to the residents of the facility or program.

“*Unreasonable confinement*” means confinement that includes but is not limited to the use of restraints, either physical or chemical, for the convenience of staff. “Unreasonable confinement” does not include the use of confinement and restraints if the methods are employed in conformance with state and federal standards governing confinement and restraint or as authorized by a physician or physician extender.

“*Unreasonable punishment*” means a willful act or statement intended by the caretaker to punish, agitate, confuse, frighten, or cause emotional distress to the dependent adult. Such willful act or statement includes but is not limited to intimidating behavior, threats, harassment, deceptive acts, or false or misleading statements.

“*Willful misconduct*” means an intentional act of unreasonable character committed with disregard for a known or obvious risk that is so great as to make it highly probable that harm will follow.
[ARC 8294B, IAB 11/18/09, effective 1/1/10; ARC 3235C, IAB 8/2/17, effective 9/6/17]

481—52.2(235E) Persons who must report dependent adult abuse and the reporting procedure for those persons.

52.2(1) Persons who must report dependent adult abuse. The following persons shall report suspected dependent adult abuse in accordance with subrule 52.2(2) below.

a. A staff member. Specifically excluded from the definition of “staff member” only for purposes of the requirements set forth in this subrule are individuals who have no contact or de minimis contact with residents in a facility or program.

b. An employee of a facility or program who, in the course of employment, examines, attends, counsels, or treats a dependent adult in a facility or program and reasonably believes the dependent adult has suffered dependent adult abuse.

52.2(2) Reporting suspected dependent adult abuse in facilities or programs.

a. If a staff member or employee is required to make a report pursuant to this rule, the staff member or employee shall immediately notify the person in charge or the person’s designated agent who shall then notify the department within 24 hours of such notification or the next business day.

b. If the person in charge is the alleged dependent adult abuser, the staff member shall directly report the abuse to the department within 24 hours or the next business day.

c. Nothing in this subrule prevents a mandatory reporter or any other person from notifying the department directly of any suspected abuse.

d. The employer or supervisor of a person who is required to or may make a report pursuant to this rule shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

e. When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person should also immediately make an oral report to an appropriate law enforcement agency.

f. A report of suspected dependent adult abuse shall contain as much of the following information as the person making the report is able to furnish:

- (1) The date and time of the incident;
- (2) The name, date of birth and diagnoses of the dependent adult;
- (3) Whether the dependent adult sustained an injury and, if yes, whether photographs of the injury were taken;
- (4) The nature and extent of the dependent adult abuse, including evidence of previous dependent adult abuse allegations;
- (5) A list of the staff members working at the time of the incident, including each staff member's full name, title, date of birth, address and telephone number;
- (6) The alleged perpetrator's full name, title, date of birth, social security number, address and telephone number;
- (7) Other information which the person making the report believes might be helpful in establishing the cause of the abuse or the identity of the person or persons responsible for the abuse or helpful in providing assistance to the dependent adult; and
- (8) The name, address and telephone number of the person making the report.

52.2(3) A report shall be accepted whether or not it contains all of the information requested. When the report is made to any agency other than the department, that agency shall promptly refer the report to the department.

52.2(4) A person required to report abuse who knowingly and willfully fails to do so within 24 hours may be subject to criminal penalties and civil liability as provided for by statute.

52.2(5) Interference with a person required to report.

a. It is unlawful for any person or employer to discharge, suspend, or otherwise discipline a person for any of the following:

- (1) For reporting suspected dependent adult abuse;
- (2) For cooperating with or assisting the department in evaluating or investigating a case of dependent adult abuse; or
- (3) For participating in judicial proceedings relating to dependent adult abuse.

b. A person or employer found in violation of this subrule is guilty of a simple misdemeanor.

52.2(6) Staff members who are employed by a facility or program on January 1, 2010, and who were not previously required to attend dependent adult abuse training shall be required to have attended the training no later than December 31, 2010.

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

481—52.3(235E) Reports and registry of dependent adult abuse.

52.3(1) *Receipt and evaluation of reports.* The department shall receive and evaluate reports of dependent adult abuse in facilities and programs. The department shall inform the department of human services of such evaluations and dispositions for inclusion in the central registry for dependent adult abuse information pursuant to Iowa Code section 235B.5.

52.3(2) *Reports sent to the department or the department of human services.* Any person who believes that a dependent adult has suffered dependent adult abuse may report the suspected dependent adult abuse to the department. The department shall transfer any reports received of dependent adult abuse in the community to the department of human services. The department of human services shall transfer any reports received of dependent adult abuse in facilities or programs to the department.

52.3(3) *Reports of abuse that is minor, isolated, and unlikely to reoccur.*

a. Minor, isolated, and unlikely to reoccur—first instance. A report of dependent adult abuse that meets the definition of “dependent adult abuse” as defined in Iowa Code section 235E.1(5) “a”(1)(a) or (d) which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department of human services for a five-year period, shall not be included in the central registry, and shall not be considered founded dependent adult abuse.

b. Minor, isolated, and unlikely to reoccur—subsequent instance(s). A subsequent report of dependent adult abuse that meets the definition of “dependent adult abuse” as defined in Iowa Code section 235E.1(5) “a”(1)(a) or (d), that occurs within the five-year period, and that is committed by the same caretaker may also be considered minor, isolated, and unlikely to reoccur, depending on the totality of circumstances.

c. Retention of reports. All initial and subsequent reports are collected and maintained by the department of human services until a five-year period has expired, so long as no additional reports have been filed.

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

481—52.4(235E) Financial institution employees and reporting suspected financial exploitation. An employee of a financial institution may report suspected financial exploitation of a dependent adult to the department.

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

481—52.5(235E) Evaluation of report. Upon receipt of a report as defined in rule 481—52.1(235E), the department shall conduct an intake sufficient to determine whether the allegation constitutes dependent adult abuse as defined in rule 481—52.1(235E).

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

481—52.6(235E) Separation of victim and alleged abuser. Upon receiving a claim of dependent adult abuse of a dependent adult in a facility or program, the facility or program shall separate the victim and the alleged abuser immediately and shall maintain that separation until the department’s abuse investigation is completed and the abuse determination is made.

NOTE: Facilities that participate in the federal Medicare or Medicaid program may be subject to additional federal requirements regarding separation.

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

481—52.7(235E) Interviews, examination of evidence, and investigation of dependent adult abuse allegations.

52.7(1) Entering and examining evidence at a facility or program. An inspector of the department may enter any facility or program without a warrant and may examine all records and items pertaining to residents, employees, former employees, and the alleged dependent adult abuser and any other records and items necessary to ensure the integrity of the investigation unless the record or item is protected by some other legal privilege.

52.7(2) Interviews.

a. An inspector of the department may contact or interview any resident, employee, former employee, or any other person who might have knowledge about the alleged dependent adult abuse.

b. An alleged dependent adult abuser may request to have an attorney present at the alleged dependent adult abuser’s expense at any time during the interview, but the request may not unreasonably delay the investigation. An employee organization representative or union representative may observe an investigative interview conducted by the department of an alleged dependent adult abuser if all of the following conditions are met:

(1) The alleged dependent adult abuser is part of a bargaining unit or employee organization that is party to a collective bargaining agreement under Iowa Code chapter 20 or any other applicable state or federal law.

(2) The alleged dependent adult abuser requests the presence of a union representative or employee organization representative.

(3) The representative maintains the confidentiality of all information from the interview subject to the penalties provided in Iowa Code section 235B.12 if such confidentiality is breached.

(4) The purpose of the interview is a civil administrative dependent adult abuse investigation under applicable law.

52.7(3) *Photographs of victim, vicinity and related matters.* An inspector may take or cause to be taken photographs of the dependent adult abuse victim and the vicinity involved. The department shall obtain consent from the dependent adult abuse victim or guardian or other person with a power of attorney over the dependent adult abuse victim prior to taking photographs of the dependent adult abuse victim.

52.7(4) *Evaluating information.* An inspector shall consider the information as reported, other known or discovered information, and any information gathered as a result of the inspector's contact with collateral sources, including prior abuse allegations and disciplinary actions.

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

481—52.8(235E) Notification to subsequent employers. The department shall notify a facility or program that subsequently employs an alleged or founded dependent adult abuser.

[ARC 8294B, IAB 11/18/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 235E.

[Filed ARC 8294B (Notice ARC 7828B, IAB 6/3/09; Amended Notice ARC 7939B, IAB 7/1/09), IAB 11/18/09, effective 1/1/10]

[Filed ARC 3235C (Notice ARC 3110C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

[Prior to 12/23/92, see Disaster Services Division[607]; renamed Emergency Management Division by
1992 Iowa Acts, chapter 1139, section 21]

[Prior to 3/31/04, see Emergency Management Division[605]; renamed Homeland Security and Emergency Management
Division by 2003 Iowa Acts, chapter 179, section 157]

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CHAPTER 10

911 TELEPHONE SYSTEMS

[Prior to 4/18/90, see Public Defense[601]Ch 10]

[Prior to 5/12/93, Disaster Services Division[607]Ch 10]

605—10.1(34A) Program description. The purpose of this program is to provide for the orderly development, installation, and operation of 911 emergency telephone systems and to provide a mechanism for the funding of these systems, either in whole or in part. These systems shall be operated under governmental management and control for the public benefit. These rules shall apply to each joint 911 service board or alternative 28E entity as provided in Iowa Code chapter 34A and to each provider of 911 service.

[ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.2(34A) Definitions. As used in this chapter, unless context otherwise requires:

“*Access line*” means an exchange access line that has the ability to access dial tone and reach a public safety answering point.

“*Automatic location identification (ALI)*” means a system capability that enables an automatic display of information defining a geographical location of the telephone used to place the 911 call.

“*Automatic number identification (ANI)*” means a capability that enables the automatic display of the number of the telephone used to place the 911 call.

“*Call attendant*” means the person who initially answers a 911 call.

“*Call detail recording*” means a means of establishing chronological and operational accountability for each 911 call processed, consisting minimally of the caller’s telephone number, the date and time the 911 telephone equipment established initial connection (trunk seizure), the time the call was answered, the time the call was transferred (if applicable), the time the call was disconnected, the trunk line used, and the identity of the call attendant’s position, also known as an ANI printout.

“*Call relay method*” means the 911 call is answered at the PSAP, where the pertinent information is gathered, and the call attendant relays the caller’s information to the appropriate public or private safety agency for further action.

“*Call transfer method*” means the call attendant determines the appropriate responding agency and transfers the 911 caller to that agency.

“*Central office (CO)*” means a telephone company facility that houses the switching and trunking equipment serving telephones in a defined area.

“*Coin-free access (CFA)*” means coin-free dialing or no-coin dial tone which enables a caller to dial 911 or “0” for operator without depositing money or incurring a charge.

“*Communications service*” means a service capable of accessing, connecting with, or interfacing with a 911 system by dialing, initializing, or otherwise activating the system exclusively through the digits 911 by means of a local telephone device, wireless communications device or any other device capable of interfacing with the 911 system.

“*Competitive local exchange service provider*” means the same as defined in Iowa Code section 476.96.

“*Conference transfer*” means the capability of transferring a 911 call to the action agency and allowing the call attendant to monitor or participate in the call after it has been transferred to the action agency.

“*Direct dispatch method*” means 911 call answering and radio-dispatching functions, for a particular agency, are both performed at the PSAP.

“*Director*,” unless otherwise noted, means the director of the homeland security and emergency management department.

“*Emergency call*” means a telephone request or text message request for service which requires immediate action to prevent loss of life, reduce bodily injury, prevent or reduce loss of property and respond to other emergency situations determined by local policy.

“*Emergency communications service surcharge*” means a charge established by the program manager in accordance with Iowa Code section 34A.7A.

“Emergency services internet protocol network” or *“ESInet”* means a system using broadband packet-switched technology that is capable of supporting the transmission of varying types of data to be shared by all public and private safety agencies that are involved in an emergency.

“Enhanced 911 (E911)” means the general term referring to emergency telephone systems with specific electronically controlled features, such as ALI, ANI, and selective routing.

“Enhanced 911 (E911) operating authority” means the public entity, which operates an E911 telephone system for the public benefit, within a defined enhanced 911 service area.

“Enhanced wireless 911 service, phase I” means an emergency wireless telephone system with specific electronically controlled features such as ANI, specific indication of wireless communications tower site location, selective routing by geographic location of the tower site.

“Enhanced wireless 911 service, phase II” means an emergency wireless telephone system with specific electronically controlled features such as ANI and ALI and selective routing by geographic location of the 911 caller.

“Exchange” means a defined geographic area served by one or more central offices in which the telephone company furnishes services.

“Geographic information system” or *“GIS”* means a system designed to capture, store, manipulate, analyze, manage, and present spatial or geographical data.

“Implementation” means the activity between formal approval of an E911 service plan and a given system design, and commencement of operations.

“Joint 911 service board” means those entities that are created under the provisions of Iowa Code section 34A.3, which include the legal entities created pursuant to Iowa Code chapter 28E referenced in Iowa Code subsection 34A.3(3), and that operate a 911 telephone system for the public benefit within a defined 911 service area.

“Local exchange carrier” means the same as defined in Iowa Code section 476.96.

“911 call” means any telephone call that is made by dialing the digits 911.

“911 communications council” means the council as established under the provisions of Iowa Code section 34A.15.

“911 program manager” means that person appointed by the director of the homeland security and emergency management department, and working with the 911 communications council, to perform the duties specifically set forth in Iowa Code chapter 34A and this chapter.

“911 service area” means the geographic area encompassing at least one entire county, and which may encompass a geographical area outside the one entire county not restricted to county boundaries, serviced or to be serviced under a 911 service plan.

“911 service plan” means a plan, produced by a joint 911 service board, which includes the information required by Iowa Code subsection 34A.2(2) as enacted by 2017 Iowa Acts, Senate File 500, section 3.

“911 system” means a telephone system that automatically connects a caller, dialing the digits 911, to a PSAP.

“Next generation 911 network” means an internet protocol-enabled system that enables the public to transmit digital information to public safety answering points and replaces enhanced 911 and that includes ESInet, GIS, cybersecurity, and other system components.

“Nonrecurring costs” means one-time charges incurred by a joint E911 service board or operating authority including, but not limited to, expenditures for E911 service plan preparation, capital outlay, communications equipment to receive and dispatch emergency calls, installation, and initial license to use subscriber names, addresses and telephone information.

“One-button transfer” means another term for a (fixed) transfer which allows the call attendant to transfer an incoming call by pressing a single button. For example, one button would transfer voice and data to a fire agency, and another button would be used for police, also known as “selective transfer.”

“Originating service provider” means a communications provider that allows its users or subscribers to originate 911 voice or nonvoice messages from the public to public safety answering points, including but not limited to wireline, wireless, and voice over internet protocol services.

“Political subdivision” means a geographic or territorial division of the state that would have the following characteristics: defined geographic area, responsibilities for certain functions of local government, public elections and public officers, and taxing power. Excluded from this definition are departments and divisions of state government and agencies of the federal government.

“Prepaid wireless telecommunications service” means a wireless communications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance, and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

“Provider” means a person, company or other business that provides, or offers to provide, 911 equipment, installation, maintenance, or access services.

“Public or private safety agency” means a unit of state or local government, a special purpose district, or a private firm, which provides or has the authority to provide firefighting, police, ambulance, emergency medical services or hazardous materials response.

“Public safety answering point (PSAP)” means a 24-hour, state, local, or contracted communications facility, which has been designated by the local service board to receive 911 service calls and dispatch emergency response services in accordance with the E911 service plan.

“Public switched telephone network” means a complex of diversified channels and equipment that automatically routes communications between the calling person and called person or data equipment.

“Recurring costs” means repetitive charges incurred by a joint E911 service board or operating authority including, but not limited to, personnel time directly associated with database management and personnel time directly associated with addressing, lease of access lines, lease of equipment, network access fees, communications equipment to receive and dispatch emergency calls, and applicable maintenance costs.

“Selective routing (SR)” means a 911 system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated PSAP.

“Subscriber” means any person, firm, association, corporation, agencies of federal, state and local government, or other legal entity responsible by law for payment for communication service from the telephone utility.

“Tariff” means a document filed by a telephone company with the state telephone utility regulatory commission which lists the communication services offered by the company and gives a schedule for rates and charges.

“Telecommunications device for the deaf (TDD)” means any type of instrument, such as a typewriter keyboard connected to the caller’s telephone and involving special equipment at the PSAP which allows an emergency call to be made without speaking, also known as a TTY.

“Telematics” means a vehicle-based mobile data application which can automatically call for assistance if the vehicle is in an accident.

“Trunk” means a circuit used for connecting a subscriber to the public switched telephone network.

“Voice over internet protocol service” means a service to which all of the following apply:

1. The service provides real-time, two-way voice communications transmitted using internet protocol and a successor protocol.
2. The service is offered to the public, or such classes of users as to be effectively available to the public.
3. The service has the capability to originate traffic to, and terminate traffic from, the public switched telephone network or a successor network.

“Wireless communications service” means commercial mobile radio service. “Wireless communications service” includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. “Wireless communications service” does not include a service whose customers do not have access to 911 or 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

“*Wireless communications service provider*” means a company that offers wireless communications service to users of wireless devices including but not limited to cellular, personal communications services, mobile satellite services, and enhanced specialized mobile radio.

“*Wireless E911 phase 1*” means a 911 call made from a wireless device in which the wireless communications service provider delivers the call-back number and the address of the tower that received the call to the appropriate public safety answering point.

“*Wireless E911 phase 2*” means a 911 call made from a wireless device in which the wireless communications service provider delivers the call-back number and the latitude and longitude coordinates of the wireless device to the appropriate public safety answering point.

“*Wireless NG911 service area*” means the geographic area to be served, or currently served, by a PSAP under a wireless NG911 service plan.

“*Wireline 911 service surcharge*” means a charge assessed on each wireline access line which physically terminates within the 911 service area in accordance with Iowa Code section 34A.7.

[ARC 8314B, IAB 11/18/09, effective 12/23/09; ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 2270C, IAB 11/25/15, effective 12/30/15; ARC 2741C, IAB 10/12/16, effective 9/14/16; ARC 2835C, IAB 12/7/16, effective 1/11/17; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.3(34A) Joint 911 service boards. Each county board of supervisors shall establish a joint 911 service board.

10.3(1) Membership.

a. Each political subdivision of the state, having a public safety agency serving territory within the county 911 service area, and each local emergency management agency as defined in Iowa Code section 29C.2 operating within the 911 service area is entitled to one voting membership. For the purposes of this paragraph, a township that operates a volunteer fire department providing fire protection services to the township, or a city that provides fire protection services through the operation of a volunteer fire department not financed through the operation of city government, shall be considered a political subdivision of the state having a public safety agency serving territory within the county.

b. Each private safety agency, such as privately owned ambulance services, airport security agencies, and private fire companies, serving territory within the county 911 service area, is entitled to a nonvoting membership on the board.

c. Public and private safety agencies headquartered outside but operating within a county 911 service area are entitled to membership according to their status as a public or private safety agency.

d. A political subdivision that does not operate its own public safety agency but contracts for the provision of public safety services is not entitled to membership on the joint 911 service board. However, its contractor is entitled to one voting membership according to the contractor’s status as a public or private safety agency.

e. The joint 911 service board elects a chairperson and vice chairperson.

f. The joint 911 service board shall annually submit a listing of members, to include the political subdivision they represent and, if applicable, the associated 28E agreement, to the 911 program manager. A copy of the list shall be submitted within 30 days of adoption of the operating budget for the ensuing fiscal year and shall be on the prescribed form provided by the 911 program manager.

10.3(2) Alternate 28E entity. The joint 911 service board may organize as an Iowa Code chapter 28E agency as authorized in Iowa Code subsection 34A.3(3), provided that the 28E entity meets the voting and membership requirements of Iowa Code subsection 34A.3(1).

10.3(3) Joint 911 service board bylaws. Each joint 911 service board shall develop bylaws to specify, at a minimum, the following information:

- a.* The name of the joint 911 service board.
- b.* A list of voting and nonvoting members.
- c.* The date for the commencement of operations.
- d.* The mission.
- e.* The powers and duties.
- f.* The manner for financing activities and maintaining a budget.
- g.* The manner for acquiring, holding and disposing of property.

- h.* The manner for electing or appointing officers and terms of office.
- i.* The manner by which members may vote to include, if applicable, the manner by which votes may be weighted.
- j.* The manner for appointing, hiring, disciplining, and terminating employees.
- k.* The rules for conducting meetings.
- l.* The permissible method or methods to be employed in accomplishing the partial or complete termination of the board and the disposing of property upon such complete or partial termination.
- m.* Any other necessary and proper rules or procedures.

Each member shall sign the adopted bylaws.

The joint 911 service board shall record the signed bylaws with the county recorder and shall forward a copy of the signed bylaws to the 911 program manager at the homeland security and emergency management department.

10.3(4) *Executive board.* The joint 911 service board may, through its bylaws, establish an executive board to conduct the business of the joint 911 service board. Members of the executive board must be selected from the eligible voting members of the joint 911 service board. The executive board will have such other duties and responsibilities as assigned by the joint 911 service board.

10.3(5) *Meetings.*

a. The provisions of Iowa Code chapter 21, “Official Meetings Open to the Public,” are applicable to joint 911 service boards.

b. Joint 911 service boards shall conduct meetings in accordance with their established bylaws and applicable state law.

[ARC 7695B, IAB 4/8/09, effective 5/13/09; ARC 8314B, IAB 11/18/09, effective 12/23/09; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.4(34A) 911 service plan.

10.4(1) The joint 911 service board shall be responsible for developing a 911 service plan as required by Iowa Code section 34A.3 and as set forth in these rules. The plan will remain the property of the joint 911 service board. Each joint 911 service board shall coordinate planning with each contiguous joint 911 service board. A copy of the plan and any modifications and addenda shall be submitted to:

- a.* The homeland security and emergency management department.
- b.* All public and private safety agencies serving the 911 service area.
- c.* All providers affected by the 911 service plan.

10.4(2) The 911 service plan shall, at a minimum, encompass the entire county, unless a waiver is granted by the director. Each plan shall include:

- a.* The mailing address of the joint 911 service board.
- b.* A list of voting members on the joint 911 service board.
- c.* A list of nonvoting members on the joint 911 service board.
- d.* The name of the chairperson and of the vice chairperson of the joint 911 service board.
- e.* A geographical description of the 911 service area.
- f.* A list of all public and private safety agencies within the 911 service area.
- g.* The number of public safety answering points within the 911 service area.
- h.* Identification of the agency responsible for management and supervision of the 911 emergency telephone communication system.
- i.* A statement of recurring and nonrecurring costs to be incurred by the joint 911 service board. These costs shall be limited to costs directly attributable to the provision of 911 service.
- j.* The total number of telephone access lines by a telephone company or companies having points of presence within the 911 service area and the number of this total that is exempt from surcharge collection as provided in rule 605—10.9(34A) and Iowa Code subsection 34A.7(3).
- k.* If applicable, a schedule for implementation of the plan throughout the 911 service area. A joint 911 service board may decide not to implement 911 service.
- l.* The total property valuation in the 911 service area.
- m.* Maps of the 911 service area showing:

- (1) The jurisdictional boundaries of all law enforcement agencies serving the area.
 - (2) The jurisdictional boundaries of all firefighting districts and companies serving the area.
 - (3) The jurisdictional boundaries of all ambulance and emergency medical service providers operating in the area.
 - (4) Telephone exchange boundaries and the location of telephone company central offices, including those located outside but serving the service area.
 - (5) The location of PSAP(s) within the service area.
- n.* A block drawing for each telephone central office within the service area showing the method by which the 911 call will be delivered to the PSAP(s).
 - o.* A plan to migrate to an internet protocol-enabled next generation network.

10.4(3) All plan modifications and addenda shall be filed with, reviewed, and approved by the 911 program manager.

10.4(4) The 911 program manager shall base acceptance of the plan upon compliance with the provisions of Iowa Code chapter 34A and the rules herein.

10.4(5) The 911 program manager will notify in writing, within 20 days of review, the chairperson of the joint 911 service board of the approval or disapproval of the plan.

a. If the plan is disapproved, the joint 911 service board will have 90 days from receipt of notice to submit revisions/addenda.

b. Notice for disapproved plans will contain the reasons for disapproval.

c. The 911 program manager will notify the chairperson, in writing within 20 days of review, of the approval or disapproval of the revisions.

[ARC 8314B, IAB 11/18/09, effective 12/23/09; ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.5(34A) Wireline 911 service surcharge.

10.5(1) One source of funding for the 911 emergency communications system shall come from a surcharge of one dollar per month, per access line on each access line subscriber.

10.5(2) The 911 program manager shall notify local exchange carriers and competitive local exchange service providers scheduled to provide exchange access 911 service within a 911 service area that implementation of a 911 service plan has been approved by the joint 911 service board and by the 911 program manager and that collection of the surcharge is to begin within 60 days. The 911 program manager shall also provide notice to all affected public safety answering points. The 60-day notice to the carriers and providers shall also apply when an adjustment in the wireline surcharge rate is made.

10.5(3) The carriers and providers shall collect the surcharge as a part of their monthly billing to their subscribers. The surcharge shall appear as a single line item on a subscriber's monthly billing entitled "911 emergency communications service surcharge."

10.5(4) The carriers and providers may retain 1 percent of the surcharge collected as compensation for the billing and collection of the surcharge. If the compensation is insufficient to fully recover a carrier's or provider's costs for the billing and collection of the surcharge, the deficiency shall be included in the carrier's or provider's costs for rate-making purposes to the extent it is reasonable and just under Iowa Code section 476.6.

10.5(5) The carrier or provider shall remit the collected surcharge to the joint 911 service board on a calendar quarter basis within 20 days of the end of the quarter.

10.5(6) The joint 911 service board may request, not more than once each quarter, the following information from the carrier or provider:

- a.* The identity of the exchange from which the surcharge is collected.
- b.* The number of lines to which the surcharge was applied for the quarter.
- c.* The number of refusals to pay per exchange, if applicable.
- d.* The number of write-offs per exchange, if applicable.
- e.* The number of lines exempt per exchange.
- f.* The amount retained by the carrier or provider from the 1 percent administrative fee.

Access line counts and surcharge remittances are confidential public records as provided in Iowa Code section 34A.8.

10.5(7) Collection for a surcharge shall terminate if 911 service ceases to operate within the respective 911 service area. The 911 program manager for good cause may grant an extension.

a. The director shall provide 100 days' prior written notice to the joint 911 service board or the operating authority and to the carrier(s) or provider(s) collecting the fee of the termination of surcharge collection.

b. Individual subscribers within the 911 service area may petition the joint 911 service board or the operating authority for a refund. Petitions shall be filed within one year of termination. Refunds may be prorated and shall be based on funds available and subscriber access lines billed.

c. At the end of one year from the date of termination, any funds not refunded and remaining in the 911 service fund and all interest accumulated shall be retained by the joint 911 service board. However, if the joint 911 service board ceases to operate any 911 service, the balance in the 911 service fund shall be payable to the homeland security and emergency management department. Moneys received by the department shall be used only to offset the costs for the administration of the 911 program.

[ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.6(34A) Waivers, variance request, and right to appeal.

10.6(1) All requests for variances or waivers shall be submitted to the 911 program manager in writing and shall contain the following information:

a. A description of the variance(s) or waiver(s) being requested.

b. Supporting information setting forth the reasons the variance or waiver is necessary.

c. A copy of the resolution or minutes of the joint 911 service board meeting which authorizes the application for a variance or waiver.

d. The signature of the chairperson of the joint 911 service board.

10.6(2) The 911 program manager may grant a variance or waiver based upon the provisions of Iowa Code chapter 34A or other applicable state law.

10.6(3) Upon receipt of a request for a variance or waiver, the 911 program manager shall evaluate the request and schedule a review within 20 working days of receipt of the request. Review shall be informal, and the petitioner may present materials, documents and testimony in support of the petitioner's request. The 911 program manager shall determine if the request meets the criteria established and shall issue a decision within 20 working days. The 911 program manager shall notify the petitioner, in writing, of the acceptance or rejection of the petition. If the petition is rejected, such notice shall include the reasons for denial.

[ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.7(34A) Wireless NG911 Implementation and Operations Plan. Each joint 911 service board, the department of public safety, the 911 communications council, and wireless communications service providers shall cooperate with the 911 program manager in preparing the Wireless NG911 Implementation and Operations Plan for statewide implementation of wireless NG911 service.

10.7(1) *Plan specifications.* The Wireless NG911 Implementation and Operations Plan shall include, at a minimum, the following information:

1. Maps showing the geographic location within the county of each PSAP that receives wireless 911 telephone calls.

2. A list of all public safety answering points within the state of Iowa.

3. A set of guidelines for determining eligible cost as set forth in Iowa Code section 34A.7A.

4. A schedule for the implementation and maintenance of the next generation 911 systems to provide enhanced wireless 911 phase I and phase II service.

10.7(2) *Adoption by reference.* The "Wireless NG911 Implementation and Operations Plan," effective August 30, 2015, and available from the Homeland Security and Emergency Management

Department, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference effective December 30, 2015.

[ARC 8314B, IAB 11/18/09, effective 12/23/09; ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 2270C, IAB 11/25/15, effective 12/30/15; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.8(34A) Emergency communications service surcharge.

10.8(1) The 911 program manager shall adopt a monthly surcharge of one dollar to be imposed on each originating service number provided in this state. The surcharge shall not be imposed on wireline-based communications or prepaid wireless telecommunications service.

10.8(2) The 911 program manager shall order the imposition of a surcharge uniformly on a statewide basis and simultaneously on all originating service numbers by giving at least 60 days' prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The 60-day notice to wireless carriers shall also apply when the program manager is making an adjustment in the emergency communications service surcharge rate.

10.8(3) The emergency communications surcharge shall be one dollar per month, per customer service number, until changed by rule.

10.8(4) The originating service provider shall list the surcharge as a separate line item on the customer's billing indicating that the surcharge is for 911 emergency telephone service. The originating service provider is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. The emergency communications service surcharge is not subject to sales or use tax.

10.8(5) Surcharge funds shall be remitted on a calendar quarter basis by the close of business on the twentieth day following the end of the quarter with a remittance form as prescribed by the 911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the 911 Program Manager, Homeland Security and Emergency Management Department, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324.

[ARC 8314B, IAB 11/18/09, effective 12/23/09; ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 2270C, IAB 11/25/15, effective 12/30/15; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.9(34A) 911 emergency communications fund.

10.9(1) Emergency communications service surcharge money, collected and remitted by originating service providers, shall be placed in a fund within the state treasury under the control of the director.

10.9(2) Iowa Code section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this subrule. However, moneys in the fund may be combined with other moneys in the state treasury for purposes of investment.

10.9(3) Moneys in the fund shall be expended and distributed in the following manner and order of priority:

a. An amount as appropriated by the general assembly to the department shall be allocated to the director and program manager for implementation, support, and maintenance of the functions of the director and program manager and to employ the auditor of state to perform an annual audit of the 911 emergency communications fund.

b. The program manager shall allocate to each joint 911 service board and to the department of public safety a minimum of \$1,000 per calendar quarter for each public safety answering point (PSAP) within the service area of the department of public safety or joint 911 service board that has submitted an annual written request to the program manager. The written request shall be made with the Request for Wireless 911 Funds form contained in the Wireless NG911 Implementation and Operations Plan. The request is due to the program manager by May 15, or the next business day, of each year.

(1) The amount allocated under paragraph 10.9(3) "b" shall be 60 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint 911 board shall be \$1,000 per PSAP operated by the respective authority.

(2) Additional funds shall be allocated as follows:

1. Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the 911 service area to the total square miles in this state.

2. Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless 911 calls taken at the PSAP in the 911 service area to the total number of wireless 911 calls originating in this state.

(3) The funds allocated in paragraph 10.9(3)“b” shall be used by the PSAPs for costs related to the receipt and disposition of 911 calls.

c. The program manager shall allocate 10 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC’s letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider’s eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider’s eligible expenses as compared to the total eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under paragraph 10.9(3)“c.” This allocation is for the period beginning July 1, 2013, and ending June 30, 2026.

d. The program manager shall reimburse communications service providers on a calendar quarter basis for carriers’ eligible expenses for transport costs between the wireless selective router and the PSAPs related to the delivery of wireless E911 phase 1 services and the integration of an internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan. The program manager may also provide grants to the joint 911 service boards and the department of public safety for the purpose of developing and maintaining GIS data to be used in support of the next generation 911 network. The program manager shall provide a notice of availability of such grants and provide guidance and application forms on the department’s Web site, www.homelandsecurity.iowa.gov.

e. The program manager shall reimburse wireline carriers and third-party 911 automatic location information database providers on a quarterly basis for the costs of maintaining and upgrading the 911 components and functionalities beyond the input to the 911 selective router, including the 911 selective router and the automatic location information database.

f. The department may, in a reserve account established within the 911 emergency communications fund, credit each fiscal year an amount of up to 12½ percent of the annual emergency communications service surcharge collected pursuant to rule 605—10.8(34A) and the prepaid wireless 911 surcharge collected pursuant to rule 605—10.17(34A). However, the moneys contained in such reserve account shall not exceed 12½ percent of the total surcharges collected for each fiscal year. Moneys credited to the reserve account shall only be used by the department for the purpose of repairing or replacing equipment in the event of a catastrophic equipment failure, as determined by the director.

g. If moneys remain in the fund after all obligations are fully paid under paragraphs 10.9(3)“a,” “b,” “c,” “d,” “e,” and “f,” an amount of up to \$7,000,000 shall, for the fiscal year beginning July 1, 2017, and ending June 30, 2018, be expended and distributed in the following priority order:

(1) The director, in consultation with the program manager and the 911 communications council, may provide grants for nonrecurring costs to the department of public safety or joint 911 service board operating a PSAP agreeing to consolidate. For purposes of this subparagraph, “consolidate” means the consolidation of all PSAP systems, functions, 911 service areas, and physical facilities of two or more PSAPs, resulting in responsibility by the consolidated PSAP for all call answering and dispatch functions for the combined 911 service area. Such a grant to a PSAP shall not exceed one-half of the projected cost of consolidation, or \$200,000, whichever is less. The department of public safety or joint 911 service board wishing to apply for such funds shall complete an Intent to Consolidate Application form prior to December 1, 2017. The form can be found on the department’s Web site, www.homelandsecurity.iowa.gov. Such applications shall provide a detailed consolidation plan and demonstrate that the proposed project shall be completed prior to June 30, 2018.

(2) The program manager, in consultation with the 911 communications council, shall allocate an amount, not to exceed \$100,000 per fiscal year, for development of public awareness and educational programs related to the use of 911 by the public; for educational programs for personnel responsible for the maintenance, operation, and upgrading of local 911 systems; and for the expenses of members of the 911 communications council for travel, monthly meetings, and training, provided, however, that the members have not received reimbursement funds for such expenses from another source.

(3) The program manager shall allocate an equal amount of moneys to each PSAP for the following costs:

1. Costs related to the receipt and disposition of 911 calls, including hardware and software for an Internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan.

2. Local costs related to access the statewide interoperable communications system pursuant to Iowa Code section 29C.23.

(4) Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

10.9(4) Payments to local communications service providers and wireless service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Claims or invoices not submitted within 20 days of the end of the calendar quarter are not eligible for reimbursement and may not be included in future claims and invoices. Payments to providers shall be made in accordance with these rules and the State Accounting Policy and Procedures Manual.

10.9(5) Local communications service providers shall be reimbursed for only those items and services that are defined as eligible in the Wireless NG911 Implementation and Operations Plan and when initiation of service has been ordered and authorized by the 911 program manager.

10.9(6) If it is found that an overpayment has been made to an entity, the 911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the homeland security and emergency management department. If resolution of the debt does not occur and the debt is at least \$50, the homeland security and emergency management department will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the homeland security and emergency management department may withhold future payments to the entity.

[**ARC 0602C**, IAB 2/20/13, effective 3/27/13; **ARC 1538C**, IAB 7/9/14, effective 8/13/14; **ARC 2270C**, IAB 11/25/15, effective 12/30/15; **ARC 2741C**, IAB 10/12/16, effective 9/14/16; **ARC 2835C**, IAB 12/7/16, effective 1/11/17; **ARC 3233C**, IAB 8/2/17, effective 9/6/17]

605—10.10(34A) 911 surcharge exemptions. The following agencies, individuals, and organizations are exempt from imposition of the 911 surcharge:

1. Federal agencies and tax-exempt instrumentalities of the federal government.
2. Indian tribes for access lines on the tribe's reservation upon filing a statement with the joint 911 service board, signed by appropriate authority, requesting surcharge exemption.
3. An enrolled member of an Indian tribe for access lines on the reservation, who does not receive 911 service, and who annually files a signed statement with the joint 911 service board that the person is an enrolled member of an Indian tribe living on a reservation and does not receive 911 service. However, once 911 service is provided, the member is no longer exempt.
4. Official station testing lines owned by the provider.
5. Individual wireline subscribers to the extent that they shall not be required to pay on a single periodic billing the surcharge on more than 100 access lines, or their equivalent, in a 911 service area.

All other subscribers not listed above, that have or will have the ability to access 911, are required to pay the surcharge, if imposed by the official order of the 911 program manager.

[**ARC 3233C**, IAB 8/2/17, effective 9/6/17]

605—10.11(34A) 911 service fund.

10.11(1) The department of public safety and each joint 911 service board have the responsibility for the 911 service fund.

a. A 911 service fund shall be established in the office of the county treasurer for each joint 911 service board and with the state treasurer for the department of public safety.

b. Collected surcharge moneys and any interest thereon, as authorized in Iowa Code chapter 34A, shall be deposited into the 911 service fund. 911 surcharge moneys must be kept separate from all other sources of revenue utilized for 911 systems.

c. For joint 911 service boards, withdrawal of moneys from the 911 service fund shall be made on warrants drawn by the county auditor, per Iowa Code section 331.506, supported by claims and vouchers approved by the chairperson or vice chairperson of the joint 911 service board or the appropriate operating authority so designated in writing.

d. For the department of public safety, withdrawal of moneys from the 911 service fund shall be made in accordance with state laws and administrative rules.

10.11(2) The 911 service funds shall be subject to examination by the department at any time during usual business hours. 911 service funds are subject to the audit provisions of Iowa Code chapter 11. A copy of all audits of the 911 service fund shall be furnished to the department within 30 days of receipt. If through the audit or monitoring process the department determines that a joint 911 service board is not adhering to an approved plan or does not have a valid board membership, or if the department determines that a joint 911 service board or the department of public safety is not using funds in the manner prescribed in these rules or Iowa Code chapter 34A, the director may, after notice and hearing, suspend surcharge imposition and order termination of expenditures from the 911 service fund. The joint 911 service board or department of public safety is not eligible to receive or expend surcharge moneys until such time as the 911 program manager determines that the board or department of public safety is in compliance with the approved plan, board membership, and fund usage limitations.

[ARC 8314B, IAB 11/18/09, effective 12/23/09; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.12(34A) Operating budgets. Rescinded ARC 3233C, IAB 8/2/17, effective 9/6/17.

605—10.13(34A) Limitations on use of funds. Surcharge moneys in the 911 service fund may be used to pay recurring and nonrecurring costs including, but not limited to, network equipment, software, database, addressing, initial training, and other start-up, capital, and ongoing expenditures. 911 surcharge moneys shall be used only to pay costs directly attributable to the provision of 911 telephone systems and services and may include costs directly attributable to the receipt and disposition of the 911 call.

[ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.14(34A) Minimum operational and technical standards.

10.14(1) Each 911 system, supplemented with 911 surcharge moneys, shall, at a minimum, employ the following features:

a. ALI (automatic location identification).

b. ANI (automatic number identification).

c. Ability to selectively route.

d. Each PSAP shall provide two emergency seven-digit numbers arranged in rollover configuration for use by telephone company operators for transferring a calling party to the PSAP over the wireline network. Wireless calls must be transferred to PSAPs that are capable of accepting ANI and ALI.

e. ANI and ALI information shall be maintained and updated in such a manner as to allow for 95 percent or greater degree of accuracy.

10.14(2) 911 public safety answering points shall adhere to the following minimum standards:

a. The PSAP shall operate 7 days per week, 24 hours per day, with operators on duty at all times.

b. The primary published emergency number in the 911 service area shall be 911.

c. All PSAPs will maintain interagency communications capabilities for emergency coordination purposes, to include radio as well as land line direct or dial line.

d. Each PSAP shall develop and maintain a PSAP standard operating procedure for receiving and dispatching emergency calls.

e. The date and time of each 911 emergency call shall be documented using an automated call detail recording device or other communications center log. Such logs shall be maintained for a period of not less than one year.

f. If a call transfer method of handling 911 calls is employed, a 99 percent degree of reliability of transferred calls from a PSAP to responding agencies shall be maintained. All transferred calls shall employ, to the closest extent possible, conference transfer capabilities which provide that the call be announced and monitored by the PSAP operator to ensure that the call has been properly transferred.

g. PSAPs not employing the transfer method of handling 911 emergency calls shall use the call relay method. Information shall be exchanged between the PSAP receiving the call and an appropriate emergency response agency or dispatch center having jurisdiction in the area of the emergency. In no case during an emergency 911 call shall the caller be referred to another telephone number and required to hang up and redial. The call relay method shall also prevail in circumstances where emergency calls enter the 911 system (whether by design or by happenstance) from outside the E911 service area.

h. Access control and security of PSAPs and associated dispatch centers shall be designed to prevent disruption of operations and provide a safe and secure environment of communication operations.

i. PSAP supervision shall ensure that all telephone company employees, whose normal activities may involve contact with facilities associated with the 911 service, are familiar with safeguarding of facilities' procedures.

j. Emergency electrical power shall be provided for the PSAP environment that will ensure continuous operations and communications during a power outage. Such power should start automatically in the event of power failure and shall have the ability to be sustained for a minimum of 48 hours.

k. The PSAP shall make every attempt to disallow the intrusion by automatic dialers, alarm systems, or automatic dialing and announcing devices on a 911 trunk. If intrusion by one of these devices should occur, those responsible for PSAP operations shall make every attempt to contact the responsible party to ensure there is no such further occurrence by notifying the party that knowing and intentional interference with emergency telephone calls constitutes a crime under Iowa Code section 727.5. Those responsible for PSAP operations shall report persons who repeatedly use automatic dialers, alarm systems, or automatic announcing devices on 911 trunk lines to the county attorney for investigation of possible violations of section 727.5.

l. Each PSAP shall be equipped with an appropriate telecommunications device for the deaf (TDD) in accordance with 28 CFR Part 35.162, July 26, 1991.

10.14(3) Originating service providers shall adhere to the following minimum requirements:

a. The PSAP and the 911 program manager shall be notified of all service interruptions in accordance with 47 CFR Part 4.

b. The originating service provider shall respond, within a reasonable length of time, to all appropriate requests for information from the director, the department of public safety, a joint 911 service board or operating authority and shall expressly comply with the provisions of Iowa Code section 34A.8.

c. Access to the wireless 911 selective router and next generation 911 network shall be approved by the 911 program manager. Originating service providers must provide the company name, address and point of contact with their request. If the originating service provider utilizes a third-party vendor, the vendor must provide this information listing the vendor's customer's requested information.

10.14(4) Voluntary standards. Current technical and operational standards applying to 911 systems and services can be found in the "American Society for Testing and Materials Standard Guide for Planning and Developing 911 Enhanced Telephone Systems" and in publications issued by the National Emergency Number Association. Master street address guides are encouraged to be developed and

maintained by using National Emergency Number Association technical standards 02-010 and 02-011. Standards contained in these documents shall be considered as guidance, and adherence thereto shall be voluntary. Notwithstanding the minimum standards published in these rules, it is intended that 911 originating service providers and joint 911 service boards and operating authorities employ the best and most affordable technologies and methods available in providing 911 services to the public.

[ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.15(34A) Administrative hearings and appeals.

10.15(1) 911 program manager decisions regarding the acceptance or refusal of a 911 service plan, in whole or in part, the implementation of 911 and the imposition of the 911 surcharge within a specific 911 service area may be contested by an affected party.

10.15(2) Request for hearing shall be made in writing to the homeland security and emergency management department director within 30 days of the 911 program manager's mailing or serving of a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

10.15(3) The director shall schedule a hearing within 10 working days of receipt of the request for hearing. The director shall preside over the hearing, at which time the appellant may present any evidence, documentation, or other information regarding the matter in dispute.

10.15(4) The director shall issue a ruling regarding the matter within 20 working days of the hearing.

10.15(5) Any party adversely affected by the director's ruling may file a written request for a rehearing within 20 days of issuance of the ruling. A rehearing will be conducted only when additional evidence is available, the evidence is material to the case, and good cause existed for the failure to present the evidence at the initial hearing. The director will schedule a hearing within 20 days after the receipt of the written request. The director shall issue a ruling regarding the matter within 20 working days of the hearing.

10.15(6) Any party adversely affected by the director's ruling may file a written appeal to the director of the homeland security and emergency management department. The appeal request shall contain information identifying the appealing party, the ruling being appealed, specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief. The director shall issue a ruling regarding the matter within 90 days of the hearing. The director's ruling constitutes final agency action for purposes of judicial review.

[ARC 7695B, IAB 4/8/09, effective 5/13/09; ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.16(34A) Confidentiality. All financial or operations information provided by an originating service provider to the 911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said originating service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the director if the aggregated information does not reveal any information attributable to an individual originating service provider.

[ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 1538C, IAB 7/9/14, effective 8/13/14; ARC 3233C, IAB 8/2/17, effective 9/6/17]

605—10.17(34A) Prepaid wireless 911 surcharge. Administration of the prepaid wireless 911 surcharge is under the control of the Iowa department of revenue. To administer this function, the department of revenue has adopted rules that can be found in 701—paragraph 224.6(2) "b" and rule 701—224.8(34A).

[ARC 0602C, IAB 2/20/13, effective 3/27/13; ARC 3233C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapter 34A as amended by 2017 Iowa Acts, Senate File 500.

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[Filed 3/14/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]
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[Filed ARC 0602C (Notice ARC 0512C, IAB 12/12/12), IAB 2/20/13, effective 3/27/13]
[Filed ARC 1538C (Notice ARC 1463C, IAB 5/14/14), IAB 7/9/14, effective 8/13/14]
[Filed ARC 2270C (Notice ARC 2154C, IAB 9/30/15), IAB 11/25/15, effective 12/30/15]
[Filed Emergency ARC 2741C, IAB 10/12/16, effective 9/14/16]
[Filed ARC 2835C (Notice ARC 2740C, IAB 10/12/16), IAB 12/7/16, effective 1/11/17]
[Filed ARC 3233C (Notice ARC 3090C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

¹ Effective date of 8/2/89 delayed 70 days by the Administrative Rules Review Committee at its July 11, 1989, meeting.

PUBLIC HEALTH DEPARTMENT[641]

Rules of divisions under this department “umbrella” include Professional Licensure[645], Dental Board[650], Medical Board[653],
Nursing Board[655] and Pharmacy Board[657]

CHAPTER 1

REPORTABLE DISEASES, POISONINGS AND CONDITIONS, AND QUARANTINE AND ISOLATION

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CHAPTER 42
PERMIT TO OPERATE IONIZING RADIATION PRODUCING MACHINES
OR ADMINISTER RADIOACTIVE MATERIALS

641—42.1(136C) Purpose. The purpose of this chapter is to specify the permit requirements of individuals who operate or use ionizing radiation producing machines or administer radioactive materials on or to human patients or human research subjects for diagnostic or therapeutic purposes. This chapter establishes minimum formal education standards and examination, continuing education, and disciplinary procedures.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.2(136C) Definitions.

“*ARRT*” means the American Registry of Radiologic Technologists.

“*Authorized user*” means an Iowa-licensed physician identified on a specific radioactive materials license or a license of broad scope as defined in 641—subrule 41.2(2).

“*Bone densitometry*” means the art and science of applying ionizing radiation to the human body using a dual energy X-ray absorptiometry unit for the sole purpose of measuring bone density.

“*Category*” defines specific duties allowed in the limited radiologic technologist permit classification.

“*Classification*” means a specific class of permit that allows the permit holder to perform the duties specified for that permit class.

“*Computed tomography*” or “*CT*” means a technique for generating a series of X-ray images taken from different angles and processed with computer software.

1. “*Diagnostic computed tomography*” means the use of computed tomography to create cross-sectional images of the human body to be used for diagnosis.

2. “*Attenuation correction*” means the use of X-rays from a CT scan to construct an attenuation map of density differences throughout the body that can then be used to correct for the absorption of the photons emitted from Fluorodeoxyglucose (¹⁸F) decay during a PET/CT scan.

“*Continuing education activity*” means a learning activity that is recognized as continuing education by the ARRT or NMTCB.

“*Department*” means the Iowa department of public health.

“*Expiration date*” means 11:59 p.m. on the stated date.

“*Formal education*” means a course of classroom and clinical instruction which meets the training standards set by the department.

“*Ionizing radiation producing machine*” or “*radiation machine*” means an assemblage of components for the controlled production of X-rays. An ionizing radiation producing machine includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

“*NMTCB*” means Nuclear Medicine Technology Certification Board.

“*Nuclear medicine diagnostic computed tomography endorsement*” means a qualification that allows a nuclear medicine technologist to perform diagnostic computed tomography of the human body as ordered by an individual authorized by Iowa law to order radiography.

“*Nuclear medicine procedure*” means any procedure utilizing radiopharmaceuticals for diagnosis or treatment of disease in human beings and any duties performed by the technologist during sealed source procedures, and includes, but is not limited to:

1. Administration of any radiopharmaceutical to human beings for diagnostic purposes.
2. Administration of radioactive material to human beings for therapeutic purposes.
3. Use of radioactive material for diagnostic purposes involving transmission or excitation.
4. Quality control and quality assurance.

“*Nuclear medicine technologist*” means an individual who performs nuclear medicine procedures while under the supervision of an authorized user. The classifications are as follows:

1. “General nuclear medicine technologist” performs any nuclear medicine procedures and may perform computed tomography for attenuation correction during PET/CT or SPECT/CT only.

2. “Limited nuclear medicine technologist” performs nuclear medicine procedures only as approved by the department at the time the initial permit was issued.

“*Permit*” means the document issued to an individual by the department when the individual has met the requirements of this chapter. This document authorizes the individual to perform the duties allowed for the classification of permit issued.

“*PET/CT*” means an imaging modality that uses positron emission tomography and computed tomography in one device to combine the structural anatomic information with functional data collected during the examination.

“*Radiation therapist*” means an individual who performs radiation therapy under the supervision of a radiation oncologist licensed in Iowa.

“*Radiation therapy*” means the science and art of performing simulation radiography or applying ionizing radiation emitted from X-ray machines, particle accelerators, or radioactive materials in the form of sealed sources to human beings for therapeutic purposes.

“*Radiography*” means a technique for generating and recording an X-ray pattern for the purpose of providing the user with an image(s) during or after termination of the exposure.

“*Radiologic technologist*” means an individual, excluding X-ray equipment operators, who performs radiography of the human body as ordered by an individual authorized by Iowa law to order radiography. The classifications are as follows:

1. “General radiologic technologist” performs radiography and computed tomography of any part of the human body.

2. “Limited radiologic technologist” performs radiography for the chest, spine, extremities, shoulder or pediatrics, excluding computed tomography and fluoroscopy.

3. “Limited in-hospital radiologic technologist” performs radiography of any part of the human body as approved by the department at the time the initial permit was issued.

“*Radiologist assistant*” means an advanced-level radiologic technologist who has completed the necessary requirements in order to perform procedures as outlined in ARRT guidance while under supervision of a radiologist.

“*SPECT/CT*” means an imaging modality that uses single-photon emission computed tomography and computed tomography in one device to combine the structural anatomic information with functional data collected during the examination.

“*Student*” means an individual enrolled in and participating in formal education.

“*Therapeutic*” means a medical treatment using radiation for therapy purposes.

“*X-ray equipment operator*” means an individual performing radiography of the human body using dedicated equipment as ordered by an individual authorized by Iowa law to order radiography. These individuals do not qualify for a permit in any other classification. The classifications are as follows:

1. “Podiatric X-ray equipment operator” performs radiography of only the foot and ankle using dedicated podiatric equipment. Studies using computed tomography, fluoroscopy, or nondedicated equipment are prohibited.

2. “Bone densitometry equipment operator” performs bone densitometry using only dual energy X-ray absorptiometry equipment. Studies using computed tomography, fluoroscopy, or nondedicated equipment are prohibited.

[ARC 0577C, IAB 2/6/13, effective 3/13/13; ARC 3239C, IAB 8/2/17, effective 9/6/17]

641—42.3(136C) Exemptions.

42.3(1) The following are exempt from obtaining a permit as required by this chapter:

- a. A licensed physician.
- b. A licensed physician’s assistant.
- c. A licensed chiropractor.
- d. A licensed dentist.
- e. A licensed dental hygienist.

- f.* A licensed podiatrist.
- g.* An individual certified by the dental board in dental radiography.
- h.* A student as a part of the student's formal education.

42.3(2) The department may, upon application or upon its own initiative, grant such exemptions from the requirements of this chapter as it determines are authorized by law and will not result in undue hazard to public health and safety. Application for exemptions should be made in accordance with 641—Chapter 178.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

PERMIT APPLICATION AND RENEWAL

641—42.4(136C) Permit application and renewal. An individual shall not operate ionizing radiation producing machines or administer radioactive materials for diagnostic or therapeutic purposes unless the individual possesses a current Iowa permit in the individual's classification of practice.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.5(136C) Permit to practice as a general radiologic technologist.

42.5(1) An individual applying for an initial permit shall:

- a.* Be at least 18 years of age.
- b.* Submit the appropriate completed application.
- c.* Submit a nonrefundable \$60 application fee.
- d.* Submit proof of a passing score on the ARRT general radiography examination.

42.5(2) An individual renewing a current permit shall:

- a.* Renew annually by submitting a renewal application and a nonrefundable \$50 renewal fee.
- b.* Report 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.5(3) An individual reinstating an expired permit shall submit the following:

a. Application to reinstate and nonrefundable \$60 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.5(1).

b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 24.0 hours of continuing education obtained within the previous 24 months must be submitted.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.6(136C) Permit to practice as a general nuclear medicine technologist.

42.6(1) An individual applying for an initial permit shall:

- a.* Be at least 18 years of age.
- b.* Submit the appropriate completed application.
- c.* Submit a nonrefundable \$60 application fee.
- d.* Submit proof of a passing score on ARRT's nuclear medicine examination or the NMTCB nuclear medicine examination.

42.6(2) An individual renewing a current permit shall:

- a.* Renew annually by submitting a renewal application and a nonrefundable \$50 renewal fee.
- b.* Report 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.6(3) An individual reinstating an expired permit shall submit the following:

a. Application to reinstate and nonrefundable \$60 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.6(1).

b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 24.0 hours of continuing education obtained within the previous 24 months must be submitted.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

42.6(4) An individual applying for a nuclear medicine diagnostic computed tomography endorsement shall:

a. Maintain an active permit to practice as a general nuclear medicine technologist. Endorsements may not be held without an active permit.

b. Submit proof of a passing score on the ARRT or NMTCB computed tomography examination.
[ARC 0577C, IAB 2/6/13, effective 3/13/13; ARC 3239C, IAB 8/2/17, effective 9/6/17]

641—42.7(136C) Permit to practice as a radiation therapist.

42.7(1) An individual applying for an initial permit shall:

a. Be at least 18 years of age.

b. Submit the appropriate completed application.

c. Submit a nonrefundable \$60 application fee.

d. Submit proof of a passing score on the ARRT's radiation therapy examination.

42.7(2) An individual renewing a current permit shall:

a. Renew annually by submitting a renewal application and a nonrefundable \$50 renewal fee.

b. Report 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.7(3) An individual reinstating an expired permit shall submit the following:

a. Application to reinstate and nonrefundable \$60 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.7(1).

b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 24.0 hours of continuing education obtained within the previous 24 months must be submitted.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.8(136C) Permit to practice as a radiologist assistant.

42.8(1) An individual applying for an initial permit shall:

a. Submit the appropriate completed application.

b. Submit a nonrefundable \$60 application fee.

c. Submit proof of completion of formal education for a radiologist assistant.

d. Submit proof of one year of experience as a general radiologic technologist.

e. Submit proof of passing score on the ARRT radiologist assistant examination or another examination that is recognized by the department.

42.8(2) An individual renewing a current permit shall:

a. Renew annually by submitting a renewal application and a nonrefundable \$50 renewal fee.

b. Report 50.0 hours of continuing education obtained within the biennium indicated on the individual's permit. Radiologist assistant permit holders must obtain at least one-half of the required continuing education in subject areas specific to radiography. The remainder may be earned as physician credit hours.

42.8(3) An individual reinstating an expired permit shall submit the following:

a. Application to reinstate and nonrefundable \$60 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.8(1).

b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 50.0 hours of continuing education obtained within the previous 24 months must be submitted.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.9(136C) Permit to practice as a limited radiologic technologist with categories of chest, spine, extremities, shoulder, pediatric. An individual with a limited radiologic technologist permit shall perform radiography only within the scope of the category(ies) in which the permit is issued.

42.9(1) The scope of each category is defined as follows:

a. “Chest” allows the permit holder to perform radiography of the lung fields including the cardiac shadow, as taught in the limited radiography formal education standards. Chest radiograph techniques shall not be manipulated for the evaluation of the shoulder, clavicle, scapula, ribs, thoracic spine and sternum. Limited radiologic technologists who have completed the appropriate formal education after January 1, 2009, may perform lateral decubitus chest views.

b. “Extremities” allows the permit holder to perform radiography for body parts from:

(1) The distal phalanges of the foot to the head of the femur, including its articulation with the pelvic girdle. True hip radiographs are prohibited.

(2) The distal phalanges of the hand to the head of the humerus. These projections may include the acromioclavicular or glenoid-humeral areas. The radiograph shall not include any of the views in the shoulder category unless the individual holds a limited radiologic technologist permit that includes the shoulder category.

c. “Spine” allows the permit holder to perform radiography of the spine in the approved areas only. Approved areas and limitations are described as:

(1) Cervical vertebrae.

(2) Thoracic (dorsal) vertebrae.

(3) Lumbar vertebrae to include the articulations with the sacrum and coccyx and the sacral articulation with the pelvic girdle. True pelvis radiographs or other projections performed with the image receptor positioned perpendicular to the long axis of the torso are prohibited under this category.

(4) All projections shall be performed as taught in the limited radiologic technologist formal education standards.

d. “Shoulder” allows the permit holder to perform radiography of the shoulder in the approved projections only. Approved projections and limitations are described as:

(1) AP internal and external rotation.

(2) AP neutral.

(3) Transthoracic lateral views.

(4) Scapular “Y” lateral.

(5) The image may not include the proximal end of the clavicle on any AP projection. All other shoulder views are prohibited. The permit holder must hold a limited radiologic technologist permit with a category of either chest or extremity in order to be granted the shoulder category.

e. “Pediatric” allows the permit holder to perform radiography of either chest or extremities or both as defined in paragraphs 42.9(1)“*a*” and “*b*” above for patients aged 36 months and under. The permit holder must hold a limited radiologic technologist permit with the minimum categories of chest or extremities or both in order to qualify for pediatric radiography. This designation allows permit holders to perform pediatric radiography within the permit classifications listed on their permit only. All other projections on pediatric patients by limited radiologic technologists are prohibited.

42.9(2) An individual applying for an initial permit shall:

a. Be at least 18 years of age.

b. Submit the appropriate completed application.

c. Submit a nonrefundable \$60 application fee.

d. Submit proof of completion of formal education in all limited diagnostic radiography categories for which the individual is applying. In order to apply for the shoulder category, the individual must also apply for the chest or extremity category. In order to apply for the pediatric category, the individual must also apply for the chest or extremity category.

e. Submit proof of completion of testing as applicable for each permit category for which the individual is applying on the limited radiologic technologist permit. No examination is required for the categories of shoulder or pediatric.

(1) The following are passing scores:

1. A score of at least 70 percent on the ARRT limited scope of practice in radiography examination core section and at least 70 percent on each category; or

2. A score of at least 70 percent on the American Chiropractic Registry of Radiologic Technologists Limited Radiography examination; or

3. A score of at least 70 percent on a department-approved examination.

(2) Three failed attempts on the examination in 42.9(2)“e”(1)“1” or “3” will require the individual to repeat the formal education or complete a department-approved review program.

(3) Each individual making application to take an examination as a limited radiologic technologist in 42.9(2)“e”(1)“1” or “3” must submit an application and nonrefundable fee of \$135 to the department each time the individual takes the examination.

f. Submit proof of completion of formal education and examination in the category to be added and a nonrefundable \$25 amendment fee to add chest, extremity or spine category to an existing limited radiologic technologist permit. A score of at least 70 percent on each category is required.

g. Submit proof of completion of formal education and a nonrefundable \$25 amendment fee to add shoulder or pediatric category to an existing limited radiologic technologist permit. No examination is required.

42.9(3) An individual renewing a current permit shall:

a. Renew annually by submitting a renewal application and a nonrefundable \$50 renewal fee.

b. Report 12.0 hours of continuing education obtained within the biennium indicated on the individual’s permit.

42.9(4) An individual reinstating an expired permit shall submit the following:

a. Application to reinstate and nonrefundable \$60 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of rule 641—42.9(136C).

b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 12.0 hours of continuing education obtained within the previous 24 months must be submitted.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

[ARC 0577C, IAB 2/6/13, effective 3/13/13; ARC 1931C, IAB 4/1/15, effective 5/6/15]

641—42.10(136C) Permit to practice as an X-ray equipment operator in either podiatric radiography or bone densitometry. After January 1, 2015, all individuals performing only bone densitometry must hold a bone densitometry permit.

42.10(1) An individual applying for an initial permit shall:

a. Be at least 18 years of age.

b. Submit the completed application.

c. Submit a nonrefundable \$25 application fee.

d. Submit proof of completion of a formal education that meets the department minimum training standards.

e. Submit proof of at least a 70 percent score on a department-approved examination.

(1) All podiatric X-ray equipment operators must pass the examination with a 70 percent score. After January 1, 2015, all bone densitometry equipment operators must submit proof of at least a 70 percent score on a department-approved examination.

(2) Three failed attempts on the examination in 42.10(1) “e”(1) will require the individual to repeat the formal education or complete a department-approved review program.

42.10(2) An individual renewing a current permit shall:

- a. Renew annually by submitting a renewal application and a nonrefundable \$25 renewal fee.
- b. Report 4.0 hours of continuing education obtained within the biennium indicated on the individual’s permit.

42.10(3) An individual reinstating an expired permit shall submit the following:

- a. Application to reinstate and nonrefundable \$25 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.10(1).

- b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 4.0 hours of continuing education obtained within the previous 24 months must be submitted.

- c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.11 Reserved.

641—42.12(136C) Closed classification or category permits.

42.12(1) The following classifications or categories are closed to new applicants. Permits in the following classifications or categories that are expired for more than six months are not eligible to be reinstated, and individuals shall maintain current permits as outlined below:

- a. Limited in-hospital radiologic technologist shall:

- (1) Perform diagnostic radiography procedures, excluding CT and fluoroscopy, in a hospital setting only for specific body parts for which the individual is qualified.

- (2) Renew annually by submitting a renewal application and a nonrefundable \$50 renewal fee.

- (3) Report 24.0 hours of continuing education obtained within the biennium indicated on the individual’s permit.

- b. Limited nuclear medicine technologist shall:

- (1) Perform nuclear medicine procedures for which the individual is qualified and has been authorized by the department.

- (2) Renew annually by submitting a renewal application and a nonrefundable \$50 renewal fee.

- (3) Report 12.0 hours of continuing education obtained within the biennium indicated on the individual’s permit.

- c. Limited radiologic technologist paranasal sinus shall:

- (1) Perform diagnostic radiography procedures, excluding CT and fluoroscopy, specific to paranasal sinus.

- (2) Renew annually by submitting a renewal application and a nonrefundable \$50 renewal fee.

- (3) Report 6.0 hours of continuing education obtained within the biennium indicated on the individual’s permit.

42.12(2) An individual renewing a permit expired less than six months shall submit the following:

- a. Application to reinstate and nonrefundable \$60 application fee.

- b. Any continuing education hours due at time of renewal.

- c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.13(136C) Combining permits for an individual qualifying for permits in more than one classification.

42.13(1) An individual applying for an initial permit in more than one classification at the same time shall combine classifications on one permit by:

- a. Indicating each classification on the appropriate completed application;

b. Submitting the required documentation for each classification as outlined in each classification section; and

c. Submitting a nonrefundable \$100 application fee.

42.13(2) Permit holders shall add a classification to an existing permit by:

a. Completing the appropriate application;

b. Submitting the required documentation as outlined in the section specific to the classification to be added; and

c. Submitting a nonrefundable \$25 fee.

42.13(3) An individual renewing a combined classification permit must submit the appropriately completed renewal application and submit a nonrefundable \$75 renewal fee.

42.13(4) An individual shall submit a total of 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit. If the permit includes the radiologist assistant classification, then the individual must submit a total of 50.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.14 to 42.17 Reserved.

PERMIT HOLDER SUBMISSION OF CONTINUING EDUCATION

641—42.18(136C) Submission of proof of completion of continuing education by permit holder to meet continuing education requirements to renew or reinstate a permit.

42.18(1) A permit holder who has a current ARRT or NMTCB registration that has been renewed within 60 days prior to the submission of the permit renewal application required by these rules shall be credited the number of hours recognized by the ARRT or NMTCB registration, or

42.18(2) A permit holder must submit proof of completion of continuing education activities recognized by ARRT or NMTCB.

a. Acceptable proof of completion must be documentation signed and dated by the continuing education provider that includes the participant's name, title of the activity, approval number for the activity, dates of attendance, number of contact hours for the activity, name of the approving organization, and signature of the sponsor or instructor or authorized representative of the sponsor or instructor.

b. Continuing education activities that are lecture presentations may not be repeated for credit in the same biennium.

c. All continuing education activities that are not lecture presentations may not be repeated for credit in the same or any subsequent biennium.

42.18(3) Podiatric X-ray equipment operator permit holders may submit activities as described in 42.18(2) or may submit activities sponsored by the American Podiatric Medical Association or the Iowa Podiatric Medical Society.

a. Acceptable proof of completion must be documentation signed and dated by the continuing education provider that includes the participant's name, title of the activity, approval number for the activity, dates of attendance, number of contact hours for the activity, the name of the approving organization, and signature of the sponsor or instructor or authorized representative of the sponsor or instructor.

b. Continuing education activities that are lecture presentations may not be repeated for credit in the same biennium.

c. All continuing education activities that are not lecture presentations may not be repeated for credit in the same or any subsequent biennium.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.19 and 42.20 Reserved.

ADMINISTRATIVE ITEMS AND GROUNDS FOR DISCIPLINARY ACTION

641—42.21(136C) Administrative items.

42.21(1) A nonrefundable \$25 fee shall be assessed for each check returned for any reason. All fees for returned checks plus original fees must be paid by certified bank check or money order.

42.21(2) A permit is valid from the date of issuance until the expiration date, unless otherwise revoked or suspended.

42.21(3) The department may at any time require further documentation to ensure compliance with these rules.

42.21(4) The permit holder shall make the permit available at the individual's place of employment. If the permit holder works at more than one facility, a duplicate of the permit shall be kept at each facility.

42.21(5) The permit holder must maintain proof of continuing education for at least three years.

42.21(6) Continuing education obtained to satisfy disciplinary or enforcement action or as part of a corrective action plan may not be reported to meet continuing education requirements.

42.21(7) All permit holders are subject to a department audit at any time.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.22(136C) Rules of conduct, self-reporting requirements, and enforcement actions for all permit holders.

42.22(1) Rules of conduct. These are mandatory standards of minimally acceptable professional conduct intended to promote the protection, safety, and comfort of patients. Any individual who fails to meet or allows any other individual to fail to meet the following standards may be subject to enforcement actions as outlined in subrule 42.22(3). The following shall be grounds for disciplinary action:

a. Failing to perform with reasonable skill and safety all procedures accepted under this chapter's educational guidelines and allowed under the individual's permit.

b. Operating as a permitted individual without meeting the applicable requirements of this chapter. This includes performing procedures not allowed under the individual's current permit.

c. Failing to report immediately to the department any individual who may be operating as a permit holder and who does not meet the requirements of this chapter.

d. Engaging in any practice that results in unnecessary danger to a patient's life, health, or safety. This includes delegating or accepting the delegation of any function when the delegation or acceptance could cause unnecessary danger.

e. Engaging in any action that the department determines may jeopardize the health and safety of the public, other staff or the permit holder. These actions shall include but not be limited to:

(1) A misdemeanor or felony which may impair or limit the individual's ability to perform the duties authorized by the individual's permit.

(2) Any disciplinary action brought against the individual in connection with a certificate or license issued from a certifying or licensing entity.

(3) Being found guilty of incompetence or negligence during the individual's performance as a permit holder.

f. Failing to conform to applicable state and federal statutes and rules. This includes any action that might place a facility in noncompliance with Iowa statutes and rules.

g. Practicing when there is an actual or potential inability to perform with reasonable skill and safety due to illness, use of alcohol, drugs, chemicals, or any other material, or as the result of any mental or physical condition.

h. Engaging in any unethical conduct or conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient.

i. Revealing privileged communication from or relating to former or current patients except as permitted by law.

j. Improperly managing patient records, including failing to maintain adequate records, failing to furnish records, or making, causing, or allowing anyone to make a false, deceptive, or misleading entry into a patient record.

- k.* Providing false or misleading information that is directly related to the care of a former or current patient.
- l.* Interpreting or rendering a diagnosis for a physician based on a diagnostic image or prescribing medications or therapies.
- m.* Failing to immediately report to a supervisor information concerning an error made in connection with imaging, treating, or caring for a patient. This includes any departure from the normal standard of care and behavior that is negligent.
- n.* Employing fraud or deceit to obtain, attempt to obtain or renew a permit under this chapter or in connection with a certification or license issued from a certifying or licensing entity. This includes altering documents, failing to provide complete and accurate responses or information, or indicating falsely in writing that a permit is valid when that is not the case.
- o.* Failure to provide truthful, accurate, unaltered, or nondeceptive information related to continuing education activities to the department or a record keeper.
- p.* Assisting others to provide false, inaccurate, altered, or deceptive information related to continuing education to this department or a record keeper. This includes sharing answers, providing or using false certificates of participation, or verifying continuing education hours that have not been earned.
- q.* Failure to pay all fees or costs required to meet the requirements of this chapter. Penalties for working without a current permit will be considered on a case-by-case basis.
- r.* Failure to respond to an audit request or failure to provide proper documentation.
- s.* Submitting false information to a facility that might place the facility in noncompliance with any federal or state statutes or laws.
- t.* Engaging in any conduct that subverts or attempts to subvert a department investigation.
- u.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation by the department.
- v.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- w.* Sexual harassment of a patient, student or supervisee. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal and physical conduct of a sexual nature.
- x.* Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, including but not limited to a crime involving dishonesty, fraud, theft, embezzlement, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- y.* Having a permit, license or certification related to the classification of the permit issued to the individual suspended or revoked or having other disciplinary action taken by a licensing or certifying authority of this state or another state, territory or country. A copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

z. Failure to respond within 30 days of receipt of communication from the department.

42.22(2) Self-reporting. Each permit holder shall:

- a.* Submit a report to the department within five days of the final disposition of all criminal proceedings, convictions, or military court-martials involving alcohol or illegal drug use while operating as a permit holder, sex-related infractions, or patient-related infractions in any state, territory, or country.
- b.* Submit a written report to the department within five days of the initial charge and within five days of the final disposition of any disciplinary action brought against the individual in connection with a certificate or license issued from a certifying or licensing entity, or any disciplinary action brought against the individual by an employer or patient.

42.22(3) Enforcement actions. Enforcement actions may include, but are not limited to, denial, probation, suspension or revocation of a permit, directed corrective action, and civil penalty.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.23(136C) Procedures for demand for information, notice of proposed action, and orders for penalties, suspensions, revocations, and civil penalties for all individuals under this chapter. These actions may be imposed on any permit holder who violates any rule in this chapter.

42.23(1) Demand for information.

a. The department may issue a demand for information for the purpose of determining whether any further action shall be taken. The demand shall state the alleged violations and allow the individual 20 days from the date of the letter to file a written answer with the department.

b. The individual must file a written answer to the department. The answer shall specifically admit or deny each allegation or charge made in the demand for information and provide fact and law on which the answer relies, set forth reasons why the demand should not have been issued, and if the requested information is not provided, the reasons why it is not provided.

c. Upon review of the answer, the department may institute the next level of proceeding or consider the matter closed. If no answer is filed, the department shall institute the notice of proposed action.

42.23(2) Procedures for enforcement actions.

a. Notice of proposed action.

(1) In response to an alleged violation of any provision of the Iowa Code, these rules, or any order issued by the department, the department may issue a written notice of proposed action. The notice of proposed action shall concisely state the alleged violation(s), the action the department is proposing, the time period in which a written response must be received, and the process for requesting a hearing.

(2) A written response must state any facts, explanations, or arguments denying the violations or must demonstrate any extenuating circumstances, error in the notice, or other reason why the proposed action should not be imposed. Responses may also request remission or mitigation of any penalty.

(3) If a request for a hearing is received within the allotted time period, the proposed action shall be suspended pending the outcome of the hearing. Prior to or at the hearing, the department may rescind the notice of proposed action upon satisfaction that the reason for the proposed action has been resolved.

(4) If no answer is filed, the department shall institute the order.

b. Order. An order may be issued upon response to the notice of proposed action or if no answer to the notice has been filed. The order may institute a proceeding to impose a penalty or suspend, revoke, or place on probation the individual's permit, or issue a civil penalty. An order shall concisely state the violation(s), the action the department has imposed, the effective date of the order, the time period for written response to be received by the department, and the process for requesting a hearing. If there has been consent in writing to the notice of proposed action, no written response to the order is necessary.

(1) If a request for a hearing is received within the allotted time period, the proposed action of the order shall be suspended pending the outcome of the hearing. Prior to or at the hearing, the department may rescind the order upon satisfaction that the reason for the proposed action has been resolved.

(2) If no answer is filed, the department shall institute the order. A consent to the order shall constitute a waiver to a hearing, findings of fact and conclusions of law, and of all right to seek department and judicial review or to contest the validity of the order in any form as to those matters which have been consented to or agreed to or on which a hearing has not been requested. An order that has been consented to shall have the same force and effect as an order made after hearing by a presiding officer or the department and shall be effective as provided in the order. Failure to comply with an order either consented to or validated by a hearing officer shall result in further enforcement action.

c. Civil penalty. Before instituting any proceeding to impose a civil penalty, the department shall serve written notice of violation upon the individual charged. This notice shall be included in the notice of proposed action or order issued. The notice of proposed action or order shall specify the amount of each proposed penalty for each alleged violation. The notice or order shall state that the amount charged may be paid as specified or protested in its entirety or in part. Upon final action of a civil penalty, payment must be made within the specified time stated in the order or the department may refer the matter to the attorney general for collection.

d. Settlement and compromise. At any time after the issuance of a notice or order designating the time and place of hearing in response to an order, the department and the regulated individual may enter into a stipulation for a settlement or compromise of the notice or order. The stipulation of compromise

shall be subject to approval by the designated presiding officer or, if none has been designated, by the chief administrative law judge. The presiding officer or chief administrative law judge may order such adjudication of the issued notice or order as deemed to be required in the public interest to dispose of the proceeding. If approved, the terms of the settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.24 and 42.25 Reserved.

DEPARTMENT APPROVAL OF CONTINUING EDUCATION ACTIVITIES

641—42.26(136C) Department approval of continuing education activities.

42.26(1) All continuing education activities must meet the definition of continuing education activities as defined in 641—42.2(136C).

42.26(2) On March 13, 2013, the department will no longer review or approve continuing education activities.

42.26(3) All continuing education activities with department approval are valid until the expiration date issued for that activity and will not be renewed.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.27 to 42.29 Reserved.

FORMAL EDUCATION

641—42.30(136C) Requirements for formal education. Formal education must meet the following minimum requirements:

42.30(1) General radiologic technology formal education must be recognized by the ARRT to allow students to qualify for the general radiography examination.

42.30(2) Nuclear medicine technology formal education must be recognized by the ARRT or NMTCB to allow students to qualify for the nuclear medicine technology examination.

42.30(3) Radiation therapy formal education must be recognized by the ARRT to allow students to qualify for the radiation therapy examination.

42.30(4) Radiologist assistant formal education must provide training to allow students to qualify for a department-approved radiologist assistant examination.

42.30(5) Limited radiologic technologist formal education must meet the minimum standards specified in 641—42.31(136C).

42.30(6) X-ray equipment operator formal education must meet the minimum standards as outlined in 641—42.32(136C) or 641—42.33(136C).

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.31(136C) Standards for formal education for limited radiologic technologists.

42.31(1) The formal education may be a single offering that meets all standards of all categories, or it may be offered individually specific to the category the provider wishes to offer.

42.31(2) The following are the minimum standards:

a. A principal instructor shall:

(1) Be an Iowa-licensed chiropractor teaching spine and extremities categories only; or

(2) Be an Iowa-permitted general radiologic technologist and have at least two years of current experience in radiography; or

(3) Hold a current ARRT registration and have at least two years of current experience in radiography if the clinical site is located outside of Iowa.

b. A clinical instructor shall:

(1) Be an Iowa-licensed chiropractor teaching spine and extremities categories only; or

(2) Be an Iowa-permitted general radiologic technologist and have at least two years of current experience in radiography; or

(3) Be an Iowa-permitted limited radiologic technologist in the category of instruction and have at least two years of current experience in radiography; or

(4) Hold a current ARRT registration and have at least two years of current experience in radiography if the clinical site is located outside of Iowa.

c. Clinical instructors shall be supervised by the principal instructor.

d. A principal instructor may also act as clinical instructor, if applicable.

e. Classroom and clinical standards are listed below:

Category	Classroom Hours	Clinical Practice Projections	Clinical Competency Projections
Core: completed by all trainees	60		
Chest	20	30 PA or LAT	5 PA, 5 LAT
Upper extremity	20	30 (any projections)	10 (only 2 of any projection allowed)
Lower extremity	20	30 (any projections)	10 (only 2 of any projection allowed)
Shoulder	20	20 (any projections)	6 (only 2 of any projection allowed)
Spine	20	30 (any projections)	10 (only 2 of any projection allowed)
Pediatric: add on to chest	8 of initial pediatrics	20 (any projections)	2 PA, 2 LAT
Pediatric: add on to upper extremity	8 of initial pediatrics	20 (any projections)	10 (only 2 of any projection allowed)
Pediatric: add on to lower extremity	8 of initial pediatrics	20 (any projections)	10 (only 2 of any projection allowed)

(1) All competency testing for limited radiography shall be directly supervised by the principal or clinical instructor.

(2) Clinical instructors shall directly supervise all students before the student's competency for a specific projection is documented and indirectly supervise after the student's competency for a specific projection is documented.

(3) Current permit holders completing formal education to add a category do not need to repeat the core curriculum.

42.31(3) Department approval is required before implementing any formal education or making any changes to a formal education offering.

42.31(4) Administrative items for all formal education:

a. The department reserves the right to audit or evaluate any aspect of the formal education or student progress.

b. The department may at any time require further documentation.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.32(136C) Standards for formal education for X-ray equipment operators in podiatric radiography.

42.32(1) The following are the minimum standards:

a. A principal instructor shall:

(1) Be an Iowa-licensed podiatrist; or

(2) Be an Iowa-permitted general radiologic technologist and have at least two years of current experience in radiography; or

(3) Hold a current ARRT registration and have at least two years of current experience in radiography if the clinical site is located outside of Iowa.

b. A clinical instructor shall:

(1) Be an Iowa-licensed podiatrist; or

- (2) Be an Iowa-permitted limited radiologic technologist in the category of extremities and have at least two years of current experience in radiography; or
- (3) Be an Iowa-permitted X-ray equipment operator in podiatry and have at least two years of current experience in radiography; or
- (4) Be an Iowa-permitted general radiologic technologist and have at last two years of current experience in radiography; or
- (5) Hold a current ARRT registration and have at least two years of current experience in radiography if the clinical site is located outside of Iowa.
 - c. Clinical instructors shall be supervised by the principal instructor.
 - d. A principal instructor may also act as clinical instructor, if applicable.
 - e. The following are classroom and clinical standards:
 - (1) A minimum of 8.0 hours of classroom instruction to include radiation safety, equipment operation, patient care, and anatomy.
 - (2) Clinical instruction to include positioning and a minimum of 20 projections excluding the competency projections.
 - (3) Clinical competency projections shall include 10 projections with only 2 of any single projection allowed to count toward the competency projections.
 - (4) All competency testing shall be directly supervised by the principal or clinical instructor.
 - (5) Clinical instructors shall directly supervise all students before the student's competency for the specific projection is documented and indirectly supervise after the student's competency for the specific projection is documented.

42.32(2) Department approval is required before implementing any formal education or making any changes to a formal education offering.

42.32(3) Administrative items for all formal education:

- a. The department reserves the right to audit or evaluate any aspect of the formal education or student progress.
- b. The department may at any time require further documentation.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

641—42.33(136C) Standards for formal education for X-ray equipment operators in bone densitometry.

42.33(1) The following are the minimum standards:

- a. A principal instructor shall have at least two years of current experience in radiography and bone densitometry and shall:
 - (1) Be an Iowa-permitted general radiologic technologist; or
 - (2) Hold a current ARRT registration if the clinical site is located outside of Iowa.
- b. A clinical instructor shall have at least two years of current experience in radiography and bone densitometry and shall:
 - (1) Be an Iowa-permitted limited radiologic technologist; or
 - (2) Be an Iowa-permitted X-ray equipment operator in bone densitometry; or
 - (3) Be an Iowa-permitted general radiologic technologist; or
 - (4) Hold a current ARRT registration if the clinical site is located outside of Iowa.
- c. Clinical instructors shall be supervised by the principal instructor.
- d. A principal instructor shall also act as clinical instructor, if applicable.
- e. The following are classroom and clinical standards:
 - (1) A minimum of 8.0 hours of classroom instruction to include radiation safety, equipment operation, quality control, patient care, and anatomy.
 - (2) Clinical instruction to include positioning and a minimum of 10 projections excluding the competency projections.
 - (3) Clinical competency projections shall include 5 projections.
 - (4) All competency testing shall be directly supervised by the principal or clinical instructor.

(5) Clinical instructors shall directly supervise all students before the student's competency for the specific projection is documented and indirectly supervise after the student's competency for the specific projection is documented.

42.33(2) Department approval is required before implementing any formal education or making any changes to a formal education offering.

42.33(3) Administrative items for all formal education:

a. The department reserves the right to audit or evaluate any aspect of the formal education or student progress.

b. The department may at any time require further documentation.

[ARC 0577C, IAB 2/6/13, effective 3/13/13]

These rules are intended to implement Iowa Code sections 136C.3, 136C.4, 136C.5, 136C.10, and 136C.14.

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[Filed ARC 3239C (Notice ARC 3074C, IAB 5/24/17), IAB 8/2/17, effective 9/6/17]

[◇] Two or more ARCs

¹ Effective date of Ch 42 delayed 70 days by the administrative rules review committee. [Published IAC 6/23/82]
Effective date of Ch 42 delayed by the Administrative Rules Review Committee forty-five days after convening of the next General Assembly pursuant to §17A.8(9). [IAB 9/29/82]

² Subrule 42.1(4) "b"(4) is rescinded two years subsequent to the effective date of rule 42.1(136C).

CHAPTER 134
TRAUMA CARE FACILITY CATEGORIZATION
AND VERIFICATION

641—134.1(147A) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Categorization*” means a preliminary determination by the department that a hospital or emergency care facility is capable of providing trauma care at Level I, II, III or IV care capabilities.

“*Certificate of verification*” means a document awarded by the department that identifies a hospital or emergency care facility’s level and term of verification as a trauma care facility.

“*Criteria deficiency*” or “*deficiency*” means a failure to meet criteria requirements as outlined in paragraph 134.2(3)“a.”

“*Department*” means the Iowa department of public health.

“*Director*” means the director of the Iowa department of public health.

“*Emergency care facility*” means a physician’s office, clinic, or other health care center which provides emergency medical care in conjunction with other primary care services.

“*Emergency medical care provider*” means emergency medical care provider as defined in 641—131.1(147A).

“*Final report*” means the verification report issued by the department following a verification review conducted by trauma survey team members and department staff.

“*Governing body*” means a group of individuals responsible for the governance of a hospital, including but not limited to a board of directors or board of trustees.

“*Hospital*” means any hospital licensed under Iowa Code chapter 135B.

“*On-site verification survey*” means an on-site survey conducted by the department or survey team members to assess a hospital or emergency care facility’s ability to meet the level of categorization requested.

“*Persistently occurring deficiencies*” means deficiencies identified in two sequential verification reviews.

“*Trauma*” means a single or multisystem life-threatening or limb-threatening injury, or an injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

“*Trauma care facility*” means a hospital or emergency care facility which provides trauma care and has been verified by the department as having Level I, Level II, Level III or Level IV care capabilities and has been issued a certificate of verification pursuant to Iowa Code section 147A.23(2)“c.”

“*Trauma care system*” means an organized approach to providing personnel, facilities, and equipment for effective and coordinated trauma care.

“*Trauma survey team*” means a group of health care providers contracted by the department to assist in verifying trauma care facilities’ compliance with trauma criteria adopted in 134.2(3).

“*Type I criteria*” or “*Type I criteria deficiency*” indicates criteria requirements that may significantly impact a trauma care facility’s ability to provide optimal care for trauma patients.

“*Type II criteria*” or “*Type II criteria deficiency*” indicates criteria that are required but have a less critical impact on the trauma care facility’s ability to provide optimal care for trauma patients than Type I criteria.

“*Verification*” means a process by which the department certifies a trauma care facility’s capacity to provide trauma care in accordance with criteria established for Level I, Level II, Level III or Level IV trauma care facilities and these rules.

[ARC 1079C, IAB 10/2/13, effective 1/6/14; ARC 3240C, IAB 8/2/17, effective 9/6/17]

641—134.2(147A) Trauma care facility categorization and verification. Categorization and verification of trauma care facilities shall be made by the department based upon the trauma care facilities’ resources available for providing trauma care services.

134.2(1) Categorization.

a. Categorization as a trauma care facility shall be determined by the department from self-reported information provided to the department by a hospital or emergency care facility through a self-assessment categorization application provided by the department.

b. Categorization applications shall be submitted by all hospitals. New hospitals shall submit a categorization application no later than 90 days after licensing by the department of inspections and appeals, health facilities division. Categorization applications may be submitted by emergency care facilities. New emergency care facilities may submit a categorization application no later than 90 days after opening or reopening.

c. Categorization applications may be obtained from the department upon written request to: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

134.2(2) Categorization levels for trauma care facilities shall be identified as:

- a.* Level I.
- b.* Level II.
- c.* Level III.
- d.* Level IV.

134.2(3) Adoption by reference.

a. Criteria specific to Level I trauma care facilities identified in the “Resources for Optimal Care of the Injured Patient 2014” (6th edition) published by the American College of Surgeons Committee on Trauma (ACS-COT) is incorporated and adopted by reference for Level I hospital and emergency care facility categorization criteria. Criteria specific to Level II trauma care facilities identified in the “Resources for Optimal Care of the Injured Patient 2014” (6th edition) published by the American College of Surgeons Committee on Trauma is incorporated and adopted by reference for Level II hospital and emergency care facility categorization criteria. Criteria specific to Level III trauma care facilities identified in the “Resources for Optimal Care of the Injured Patient 2014” (6th edition) published by the American College of Surgeons Committee on Trauma is incorporated and adopted by reference for Level III hospital and emergency care facility categorization criteria. Criteria specific to Level IV trauma care facilities identified in the “Resources for Optimal Care of the Injured Patient 2014” (6th edition) published by the American College of Surgeons Committee on Trauma is incorporated and adopted by reference for Level IV hospital and emergency care categorization criteria. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. “Resources for Optimal Care of the Injured Patient 2014” (6th edition) published by the American College of Surgeons Committee on Trauma is available through the Iowa Department of Public Health, Bureau of Emergency and Trauma Services (BETS), Lucas State Office Building, Des Moines, Iowa 50319-0075, or the BETS Web site (<http://idph.iowa.gov/BETS/Trauma>).

c. Trauma care facilities shall transition to the criteria outlined in paragraph 134.2(3) “*a.*”

(1) Level IV trauma care facilities shall transition to the criteria outlined in paragraph 134.2(3) “*a.*” on or before October 1, 2017.

(2) Level III trauma care facilities shall maintain, at a minimum, the criteria requirements effective in 2013 until a transition to the criteria in paragraph 134.2(3) “*a.*” at the next scheduled verification visit. Transition to paragraph 134.2(3) “*a.*” criteria shall be completed on or before December 31, 2020.

(3) Level II trauma care facilities shall maintain, at a minimum, the criteria requirements effective in 2013 until American College of Surgeons Committee on Trauma verification on or before October 31, 2021.

d. The 2013 criteria for all levels of trauma care facilities are available through the Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the BETS Web site (<http://idph.iowa.gov/BETS/Trauma>).

134.2(4) Categorization shall not be construed to imply any guarantee on the part of the department as to the level of trauma care services available at a trauma care facility.

134.2(5) A trauma care facility may apply to the department for a change in level of categorization through submission of a self-assessment categorization application. Hospitals, emergency care facilities,

or trauma care facilities applying for initial verification or a change in level of categorization shall be verified based on the criteria outlined in paragraph 134.2(3)“a.”

134.2(6) Verification. Verification of a trauma care facility shall be determined by the department upon successful completion of the categorization application and completion of a verification survey. All categorized hospitals and emergency care facilities shall be verified.

a. Level I and Level II trauma care facilities shall be verified by the American College of Surgeons Committee on Trauma on or before October 31, 2021.

b. Trauma care facilities verified by the American College of Surgeons Committee on Trauma shall be accepted by the department as equivalent for categorization and verification as a trauma care facility in Iowa provided that all policy, reporting, and administrative rules have been met. The department may issue a certification of verification provided that the trauma care facility has been verified by the American College of Surgeons Committee on Trauma. The facility shall provide the department documentation including, but not limited to, a current copy of the ACS-COT verification.

c. A Level I or Level II trauma care facility which fails to attain American College of Surgeons Committee on Trauma verification shall submit an application to the department to be verified as a Level III or Level IV trauma care facility to ensure compliance with Iowa Code section 147A.23(2)“a.”

d. Level III and Level IV trauma care facilities shall be verified by the department in consultation with the trauma survey team.

134.2(7) The department shall conduct a verification survey for categorized hospitals or emergency care facilities.

a. A verification survey shall assess the ability of the hospital or emergency care facility to meet criteria for the level of categorization pursuant to 134.2(3).

b. Verification criteria are weighted by criteria types, Type I and Type II, as indicated in the “Resources for Optimal Care of the Injured Patient 2014” (6th edition) published by the American College of Surgeons Committee on Trauma and adopted in 134.2(3)“a.”

c. Type II criteria deficiencies identified during the verification process may result in disciplinary action. Criteria deficiencies shall be resolved in accordance with the trauma care facility’s final report. Failure to rectify deficiencies in accordance with the trauma care facility’s final report shall result in disciplinary action.

d. Type I criteria deficiencies or persistently occurring Type II criteria deficiencies identified during the verification process shall result in disciplinary action. The department shall notify the trauma care facility’s governing body of Type I or persistently occurring Type II criteria deficiencies. The trauma care facility shall implement a plan of correction within 45 days of issuance of the trauma facility’s final report. Criteria deficiencies shall be resolved in accordance with the trauma care facility’s final report and the implemented plan of correction. Failure to rectify deficiencies shall result in disciplinary action.

e. The department may conduct electronic review or on-site verification that criteria deficiencies have been resolved as outlined in final reports or disciplinary actions.

f. The department shall approve trauma care facility verification when the department is satisfied that the proposed facility will provide services and be operated in compliance with Iowa Code section 147A.23 and these administrative rules.

g. The department shall notify the applicant, in writing, as to the approval or denial of verification as a trauma care facility within 90 days after the completion of a verification survey.

h. Verification shall not be construed to imply any guarantee on the part of the department as to the level of trauma care services available at a hospital or emergency care facility.

i. Trauma care facility verification is valid for a period of three years from the effective date unless otherwise specified on the certificate of verification or unless sooner suspended or revoked.

j. Trauma care facilities shall be fully operational at their verified level upon the effective date specified on the certificate of verification. Trauma care facilities shall meet all requirements of Iowa Code section 147A.23 and these administrative rules.

k. As part of the verification and renewal process, the department or its designated trauma survey team may conduct periodic on-site reviews of the services and facilities of trauma care facilities including chart review at those facilities.

l. Trauma care facilities that are unable to maintain their categorization or verification, or both, shall notify the department within 48 hours.

m. The director, pursuant to 641—Chapter 178, may grant a variance from the requirements of rules adopted under this chapter for any trauma care facility.

n. Proceedings, records, and reports developed pursuant to this chapter constitute peer review records under Iowa Code section 147.135, and are not subject to discovery by subpoena or admissible as evidence. All information and documents received from a hospital, emergency care facility, or trauma care facility under Iowa Code chapter 147A shall be confidential pursuant to Iowa Code section 272C.6(4).

134.2(8) Prohibited acts. A hospital or emergency care facility that imparts or conveys, or causes to be imparted or conveyed, that it is a trauma care facility, or that uses any other term to indicate or imply that the hospital or emergency care facility is a trauma care facility without having obtained a certificate of verification by the department is subject to civil penalty not to exceed \$100 per day for each offense. The director may apply to the district court for a writ of injunction to restrain the use of the term “trauma care facility.”

134.2(9) Nothing in Iowa Code section 147A.23 or these administrative rules shall be construed to restrict a hospital or emergency care facility from providing any services for which it is duly authorized. [ARC 9445B, IAB 4/6/11, effective 5/11/11; ARC 1079C, IAB 10/2/13, effective 1/6/14; ARC 3240C, IAB 8/2/17, effective 9/6/17]

641—134.3(147A) Complaints and investigations and appeals—denial, citation and warning, probation, suspension, and revocation of verification as a trauma care facility.

134.3(1) The department may deny verification as a trauma care facility or may give a citation and warning, place on probation, suspend, or revoke existing verification if the department finds reason to believe that the facility has not been or will not be operated in compliance with Iowa Code section 147A.23 and these administrative rules or that there is insufficient assurance of adequate protection for the public. The denial, citation and warning, period of probation, suspension, or revocation shall be effected and may be appealed in accordance with the requirements of Iowa Code section 17A.12.

134.3(2) All complaints regarding the operation of a trauma care facility, or those purporting to be or operating as the same, shall be reported to the department. The address is: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

134.3(3) An EMS provider who has knowledge of a hospital, emergency care facility or trauma care facility that has violated Iowa Code section 147A.23, or these administrative rules, shall immediately report such information to the department. The address is: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

134.3(4) Complaints and the investigative process shall be treated as confidential to the extent they are protected by Iowa Code sections 22.7 and 147A.24 and Iowa Code chapter 272C.

134.3(5) Complaint investigations may result in the department’s issuance of a notice of denial, citation and warning, probation, suspension or revocation.

134.3(6) Notice of denial, citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, citation and warning, probation, suspension, or revocation shall be served by certified mail, return receipt requested, or by personal service.

134.3(7) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department’s notice to take action. The address is: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or

at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

134.3(8) Upon receipt of a request for hearing, the request shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

134.3(9) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

134.3(10) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

134.3(11) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

134.3(12) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings on them.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

134.3(13) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

134.3(14) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

134.3(15) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

134.3(16) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

134.3(17) Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, news media or employer.

[ARC 3240C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code section 147A.23.

[Filed 11/14/96, Notice 10/9/96—published 12/4/96, effective 1/8/97]

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[Filed 1/13/05, Notice 11/24/04—published 2/2/05, effective 3/9/05]

[Filed ARC 9445B (Notice ARC 9344B, IAB 1/26/11), IAB 4/6/11, effective 5/11/11]

[Filed ARC 1079C (Notice ARC 0772C, IAB 5/29/13), IAB 10/2/13, effective 1/6/14]

[Filed ARC 3240C (Notice ARC 3075C, IAB 5/24/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 137
TRAUMA EDUCATION AND TRAINING

641—137.1(147A) Definitions. For the purpose of these rules, the following definitions shall apply:

“Advanced registered nurse practitioner” or *“ARNP”* means a nurse pursuant to 655—7.1(152) with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role. The ARNP is prepared for an advanced role by virtue of additional knowledge and skills gained through a formal advanced practice education program of nursing in a specialty area approved by the board. In the advanced role, the nurse practices nursing assessment, intervention, and management within the boundaries of the nurse-client relationship. Advanced nursing practice occurs in a variety of settings within an interdisciplinary health care team, which provide for consultation, collaborative management, or referral. The ARNP may perform selected medically delegated functions when a collaborative practice agreement exists.

“Department” means the Iowa department of public health.

“Formal education” means education in standardized educational settings with a curriculum.

“Licensed practical nurse” or *“LPN”* means an individual licensed pursuant to Iowa Code chapter 152.

“Physician” means an individual licensed under Iowa Code chapter 148, 150 or 150A.

“Physician assistant” or *“PA”* means an individual licensed pursuant to Iowa Code chapter 148C.

“Practitioner” means a person who practices medicine or one of the associated health care professions.

“Registered nurse” or *“RN”* means an individual licensed pursuant to Iowa Code chapter 152.

“Trauma” means a single or multisystem life-threatening or limb-threatening injury, or an injury requiring immediate medical or surgical intervention or treatment to prevent death or disability.

“Trauma care facility” means a hospital or emergency care facility which provides trauma care and has been verified by the department as having Level I, Level II, Level III or Level IV care capabilities and has been issued a certificate of verification pursuant to Iowa Code section 147A.23(2)*“c.”*

“Trauma nursing course objectives” means the trauma nursing course objectives recommended to the department by the trauma system advisory council and adopted by reference in these rules.

“Trauma patient” means a victim of an external cause of injury that results in major or minor tissue damage or destruction caused by intentional or unintentional exposure to thermal, mechanical, electrical or chemical energy, or by the absence of heat or oxygen.

“Trauma system advisory council” or *“TSAC”* means the council established by the department pursuant to Iowa Code section 147A.24.

“Trauma team” means a team of multidisciplinary health care providers established and defined by a trauma care facility that provides trauma care commensurate with the level of trauma care facility verification.

“Verification” means a process by which the department certifies a trauma care facility’s capacity to provide trauma care in accordance with criteria established for Level I, Level II, Level III or Level IV trauma care facilities and these rules.

[ARC 1081C, IAB 10/2/13, effective 11/6/13; ARC 3241C, IAB 8/2/17, effective 9/6/17]

641—137.2(147A) Initial trauma education requirements. Trauma education is required of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

137.2(1) General requirements for initial trauma education.

a. Completion of initial trauma education shall be done within three years of the trauma care facility’s initial verification or within one year of the practitioner’s joining the trauma care facility’s trauma team.

b. Trauma nursing course objectives (2007) are incorporated and adopted by reference for all trauma care facilities. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

c. Trauma nursing course objectives are available from the Department of Public Health, Bureau of Emergency and Trauma Services (BETS), Lucas State Office Building, Des Moines, Iowa 50319-0075, or the BETS Web site (<http://idph.iowa.gov/BETS/Trauma>).

137.2(2) Specific requirements for initial trauma education for each provider category are as follows:

a. Physicians, PAs and ARNPs shall comply with education criteria specific to the level for which the trauma care facility is verified according to the “Resources for Optimal Care of the Injured Patient 2014” (6th edition) published by the American College of Surgeons Committee on Trauma.

b. RNs and LPNs: successful completion of trauma nursing course objectives (2007) recommended by TSAC.

[ARC 1081C, IAB 10/2/13, effective 11/6/13; ARC 3241C, IAB 8/2/17, effective 9/6/17]

641—137.3(147A) Continuing trauma education requirements. Continuing trauma education is required every four years of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

137.3(1) Specific requirements for continuing trauma education for each provider category are as follows:

a. Physicians, PAs and ARNPs shall comply with education criteria specific to the level for which the trauma care facility is verified according to the “Resources for Optimal Care of the Injured Patient 2014” (6th edition) published by the American College of Surgeons Committee on Trauma.

b. RN and LPN: 16 hours of continuing trauma education is required, with a minimum of 4 hours as formal education.

c. RN and LPN: Sustainment of training using trauma nursing course objectives (2007) recommended by TSAC. Continuing education hours earned sustaining trauma nurse course objectives may be applied to continuing education requirements identified in paragraph 137.3(1)“*b.*”

137.3(2) to 137.3(4) Rescinded IAB 8/2/17, effective 9/6/17.

[ARC 1081C, IAB 10/2/13, effective 11/6/13; ARC 3241C, IAB 8/2/17, effective 9/6/17]

641—137.4(147A) Offenses and penalties. Offenses and penalties will be addressed pursuant to 641—Chapter 134, Trauma Care Facility Categorization and Verification.

[ARC 3241C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapter 147A.

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[Filed ARC 3241C (Notice ARC 3076C, IAB 5/24/17), IAB 8/2/17, effective 9/6/17]

PHARMACY BOARD[657]

[Prior to 2/10/88, see Pharmacy Examiners, Board of [620], renamed Pharmacy Examiners Board[657]
under the “umbrella” of Public Health Department by 1986 Iowa Acts, ch 1245; renamed by 2007 Iowa Acts, Senate File 74]

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UNIVERSAL PRACTICE STANDARDS
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 6]

657—8.1(155A) Purpose and scope. The requirements of these rules apply to all Iowa-licensed pharmacists and to all pharmacies providing the services addressed in this chapter to patients in Iowa and are in addition to rules of the board relating to specific types of pharmacy licenses issued by the board.

657—8.2(155A) Pharmaceutical care. Pharmaceutical care is a comprehensive, patient-centered, outcomes-oriented pharmacy practice in which the pharmacist accepts responsibility for assisting the prescriber and the patient in optimizing the patient's drug therapy plan and works to promote health, to prevent disease, and to optimize drug therapy. Pharmaceutical care does not include the prescribing of drugs without the consent of the prescribing practitioner.

8.2(1) Drug therapy problems. In providing pharmaceutical care, the pharmacist shall strive to identify, resolve, and prevent drug therapy problems.

8.2(2) Drug therapy plan. In providing pharmaceutical care, the pharmacist shall access and evaluate patient-specific information, identify drug therapy problems, and utilize that information in a documented plan of therapy that assists the patient or the patient's caregiver in achieving optimal drug therapy. In concert with the patient, the patient's prescribing practitioner, and the patient's other health care providers, the pharmacist shall assess, monitor, and suggest modifications of the plan as appropriate.

8.2(3) Eligibility. Any Iowa-licensed pharmacist may practice pharmaceutical care.

657—8.3(155A) Responsible parties.

8.3(1) Pharmacist in charge. One professionally competent, legally qualified pharmacist in charge in each pharmacy shall work cooperatively with the pharmacy, by and through its owner or license holder, and with all staff pharmacists to ensure the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy. A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge.

8.3(2) Pharmacy. Each pharmacy, by and through its owner or license holder, shall work cooperatively with the pharmacist in charge and with all staff pharmacists to ensure the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy. The pharmacy, by and through its owner or license holder, shall be responsible for employing a professionally competent, legally qualified pharmacist in charge.

8.3(3) Pharmacy and pharmacist in charge. The pharmacist in charge and the pharmacy, by and through its owner or license holder, shall share responsibility for, at a minimum, the following:

a. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy.

b. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy.

c. Ensuring that there is adequate space within the prescription department or a locked room not accessible to the public for the storage of prescription drugs, including controlled substances, devices, and pharmacy records, and to support the operations of the pharmacy.

8.3(4) Pharmacist in charge and staff pharmacists. The pharmacist in charge and staff pharmacists shall share responsibility for, at a minimum, the following:

a. Ensuring that a pharmacist performs prospective drug use review as specified in rule 657—8.21(155A).

b. Ensuring that a pharmacist provides patient counseling as specified in rule 657—6.14(155A).

- c. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel.
- d. Delivering drugs to the patient or the patient's agent.
- e. Ensuring that patient medication records are maintained as specified in rule 657—6.13(155A).
- f. Training and supervising pharmacist-interns, pharmacy technicians, pharmacy support persons, and other pharmacy employees.
- g. Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy.
- h. Distributing and disposing of drugs from the pharmacy.
- i. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.
- j. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.

8.3(5) *Pharmacy, pharmacist in charge, and staff pharmacists.* The pharmacy, by and through its owner or license holder, the pharmacist in charge, and all staff pharmacists shall share responsibility for, at a minimum, the following:

- a. Establishing and periodically reviewing (by the pharmacy and the pharmacist in charge), implementing (by the pharmacist in charge), and complying (by the pharmacist in charge and staff pharmacists) with policies and procedures for all operations of the pharmacy. The policies and procedures shall identify the frequency of review.
- b. Establishing and maintaining effective controls against the theft or diversion of prescription drugs, including controlled substances, and records for such drugs.
- c. Establishing (by the pharmacy and the pharmacist in charge), implementing (by the pharmacist in charge), and utilizing (by the pharmacist in charge and staff pharmacists) an ongoing, systematic program of continuous quality improvement for achieving performance enhancement and ensuring the quality of pharmaceutical services.

8.3(6) *Practice functions.* The pharmacist is responsible for all functions performed in the practice of pharmacy. The pharmacist maintains responsibility for any and all delegated functions including functions delegated to pharmacist-interns, pharmacy technicians, and pharmacy support persons.

8.3(7) *Pharmacist-documented verification.* The pharmacist shall provide, document, and retain a record of the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 1576C, IAB 8/20/14, effective 9/24/14; ARC 1961C, IAB 4/15/15, effective 5/20/15]

657—8.4(155A) Pharmacist identification and staff logs.

8.4(1) *Display of pharmacist license.* During any period the pharmacist is working in a pharmacy, each pharmacist shall display, in a position visible to the public, an original license to practice pharmacy. A current license renewal certificate, which may be a photocopy of an original renewal certificate, shall be displayed with the original license.

8.4(2) *Identification codes.* A permanent log of the initials or identification codes identifying by name each dispensing pharmacist, pharmacist-intern, pharmacy technician, and pharmacy support person shall be maintained for a minimum of two years and shall be available for inspection and copying by the board or its representative. The initials or identification code shall be unique to the individual to ensure that each pharmacist, pharmacist-intern, pharmacy technician, and pharmacy support person can be identified.

8.4(3) *Temporary or intermittent pharmacy staff.* The pharmacy shall maintain a log of all pharmacists, pharmacist-interns, pharmacy technicians, and pharmacy support persons who have worked at that pharmacy and who are not regularly staffed at that pharmacy. Such log shall include the dates and shifts worked by each pharmacist, pharmacist-intern, pharmacy technician, and pharmacy

support person and shall be available for inspection and copying by the board or its representative for a minimum of two years following the date of the entry.

8.4(4) Identification badge. A pharmacist shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacist and includes at least the pharmacist's first name.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9409B, IAB 3/9/11, effective 4/13/11]

657—8.5(155A) Environment and equipment requirements. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy pursuant to rule 657—8.3(155A). Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available.

8.5(1) Refrigeration. The pharmacy shall maintain one or more refrigeration units. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration, and a thermometer shall be maintained in the refrigerator to verify the temperature.

8.5(2) Sink. The pharmacy shall have a sink with hot and cold running water located within the pharmacy department and available to all pharmacy personnel; the sink shall be maintained in a sanitary condition.

8.5(3) Secure barrier. A pharmacy department shall be closed and secured in the absence of the pharmacist except as provided in rule 657—6.7(124,155A) or 657—7.6(124,155A). To ensure that secure closure, the pharmacy department shall be surrounded by a physical barrier capable of being securely locked to prevent entry when the department is closed. A secure barrier may be constructed of other than a solid material with a continuous surface if the openings in the material are not large enough to permit removal of items from the pharmacy department by any means. Any material used in the construction of the barrier shall be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The plans and specifications of the barrier shall be submitted to the board for approval at least 30 days prior to the start of construction. The pharmacy may be subject to inspection as provided in subrule 8.5(4).

8.5(4) Remodel or relocation—inspection. A pharmacy planning to remodel or relocate a licensed pharmacy department on or within the premises currently occupied by the pharmacy department, or a pharmacy intending to remodel or install a sterile compounding facility or equipment, shall provide written notification to the board at least 30 days prior to commencement of the remodel, pharmacy relocation, or sterile compounding installation. The board may require on-site inspection of the facility, equipment, or pharmacy department prior to or during the pharmacy's remodel, relocation, or opening. The board may also require on-site inspection of a temporary pharmacy location intended to be utilized during the remodel, construction, or relocation of the pharmacy department.

8.5(5) Orderly and clean. The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner. Animals shall not be allowed within a licensed pharmacy unless that pharmacy is exclusively providing services for the treatment of animals or unless the animal is a service dog or assistive animal as defined in Iowa Code subsection 216C.11(1).

8.5(6) Light, ventilation, temperature, and humidity. The pharmacy shall be properly lighted and ventilated. The temperature and humidity of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

8.5(7) Other equipment. The pharmacist in charge and the pharmacy, by and through its owner or license holder, shall share the responsibility for ensuring the availability of any other equipment necessary for the particular practice of pharmacy and to meet the needs of the patients served by the pharmacy.

8.5(8) Bulk counting machines. Unless bar-code scanning is required and utilized to verify the identity of each stock container of drugs utilized to restock a counting machine cell or bin, a pharmacist shall verify the accuracy of the drugs to be restocked prior to filling the counting machine cell or bin. A record identifying the individual who verified the drugs to be restocked, the individual who restocked the counting machine cell or bin, and the date shall be maintained. Established policies and procedures

shall include a method to calibrate and verify the accuracy of the counting device. The pharmacy shall, at least quarterly, verify the accuracy of the device and maintain a dated record identifying the individual who performed the quarterly verification.

8.5(9) *Authorized collection program.* A pharmacy that is registered with the United States Department of Justice, Drug Enforcement Administration, to administer an authorized collection program shall provide adequate space, equipment, and supplies for such collection program pursuant to 657—Chapter 10 and federal regulations for authorized collection programs, which can be found at http://deadiversion.usdoj.gov/drug_disposal/.

[ARC 8671B, IAB 4/7/10, effective 5/12/10; ARC 0503C, IAB 12/12/12, effective 1/16/13; ARC 1961C, IAB 4/15/15, effective 5/20/15; ARC 2408C, IAB 2/17/16, effective 3/23/16]

657—8.6(155A) Health of personnel. Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of the drug dispensing, preparation, compounding, or storage areas. Any person shown, either by medical examination or pharmacist determination, to have an apparent illness or open lesions that may adversely affect the quality or safety of a drug product or another individual shall be excluded from direct contact with components, bulk drug substances, drug product containers, closures, in-process materials, drug products, and patients until the condition is corrected or determined by competent medical personnel not to jeopardize the quality or safety of drug products or patients. All personnel who normally assist the pharmacist shall be instructed to report to the pharmacist any health conditions that may have an adverse effect on drug products or may pose a health or safety risk to others.

657—8.7(155A) Procurement, storage, and recall of drugs and devices.

8.7(1) *Source.* Procurement of prescription drugs and devices shall be from a drug wholesaler licensed by the board to distribute to Iowa pharmacies or, on a limited basis, from another licensed pharmacy or licensed practitioner located in the United States.

8.7(2) *Sufficient stock.* A pharmacy shall maintain sufficient stock of drugs and devices to fulfill the foreseeable needs of the patients served by the pharmacy.

8.7(3) *Manner of storage.* Drugs and devices shall be stored in a manner to protect their identity and integrity.

8.7(4) *Storage temperatures.* All drugs and devices shall be stored at the proper temperature, as defined by the following terms:

a. “*Controlled room temperature*” means temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

b. “*Cool*” means temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit). Drugs and devices may be stored in a refrigerator unless otherwise specified on the labeling;

c. “*Refrigerate*” means temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and

d. “*Freeze*” means temperature maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

8.7(5) *Product recall.* There shall be a system for removing from use, including unit dose, any drugs and devices subjected to a product recall.

657—8.8(124,155A) Out-of-date drugs or devices. Any drug or device bearing an expiration date shall not be dispensed for use beyond the expiration date of the drug or device. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are properly disposed of.

657—8.9(124,155A) Records. Every inventory or other record required to be maintained by a pharmacy pursuant to board rules or Iowa Code chapters 124 and 155A shall be maintained and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record unless a longer retention period is specified for the particular record or inventory. Original hard-copy prescription and other pharmacy records more than 12 months old may

be maintained in a secure storage area outside the licensed pharmacy department unless such remote storage is prohibited under federal law. A remote storage area shall be located within the same physical structure containing the licensed pharmacy department. The following records shall be maintained for at least two years.

8.9(1) *Drug supplier invoices.* All pharmacies shall maintain supplier invoices of prescription drugs and controlled substances upon which the actual date of receipt of the controlled substances by the pharmacist or other responsible individual is clearly recorded.

8.9(2) *Drug supplier credits.* All pharmacies shall maintain supplier credit memos for controlled substances and prescription drugs.

[ARC 8539B, IAB 2/24/10, effective 4/1/10]

657—8.10 Reserved.

657—8.11(147,155A) Unethical conduct or practice. The provisions of this rule apply to licensed pharmacies, licensed pharmacists, registered pharmacy technicians, registered pharmacy support persons, and registered pharmacist-interns.

8.11(1) *Misrepresentative deeds.* A pharmacist, technician, support person, or pharmacist-intern shall not make any statement intended to deceive, misrepresent or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

8.11(2) *Undue influence.*

a. A pharmacist shall not accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from a prescriber of prescription drugs or any other person or corporation in which one or more such prescribers have a proprietary or beneficial interest sufficient to permit them to directly or indirectly exercise supervision or control over the pharmacist in the pharmacist's professional responsibilities and duties or over the pharmacy wherein the pharmacist practices.

b. A prescriber may employ a pharmacist to provide nondispensing, drug information, or other cognitive services.

8.11(3) *Lease agreements.* A pharmacist shall not lease space for a pharmacy under any of the following conditions:

a. From a prescriber of prescription drugs or a group, corporation, association, or organization of such prescribers on a percentage of income basis;

b. From a group, corporation, association, or organization in which prescribers have majority control or have directly or indirectly a majority beneficial or proprietary interest on a percentage of income basis; or

c. If the rent is not reasonable according to commonly accepted standards of the community in which the pharmacy will be located.

8.11(4) *Nonconformance with law.* A pharmacist, technician, support person, or pharmacist-intern shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

8.11(5) *Freedom of choice/solicitation/kickbacks/fee-splitting and imprinted prescription blanks or forms.* A pharmacist or pharmacy shall not enter into any agreement which negates a patient's freedom of choice of pharmacy services. A purchasing pharmacist or pharmacy shall not engage in any activity or include in any agreement with a selling pharmacist or pharmacy any provision that would prevent or prohibit the prior notifications required in subrule 8.35(7). A pharmacist or pharmacy shall not participate in prohibited agreements with any person in exchange for recommending, promoting, accepting, or promising to accept the professional pharmaceutical services of any pharmacist or pharmacy. "Person" includes an individual, corporation, partnership, association, firm, or other entity. "Prohibited agreements" includes an agreement or arrangement that provides premiums, "kickbacks," fee-splitting, or special charges as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy. "Kickbacks" includes, but is not limited to, the

provision of medication carts, facsimile machines, any other equipment, or preprinted forms or supplies for the exclusive use of a facility or practitioner at no charge or billed below reasonable market rate. A pharmacist shall not provide, cause to be provided, or offer to provide to any person authorized to prescribe prescription blanks or forms bearing the pharmacist's or pharmacy's name, address, or other means of identification, except that a hospital may make available to hospital staff prescribers, emergency department prescribers, and prescribers granted hospital privileges for the prescribers' use during practice at or in the hospital generic prescription blanks or forms bearing the name, address, or telephone number of the hospital pharmacy.

8.11(6) *Discrimination.* It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, gender, gender identity, sexual orientation, marital status, age, national origin, physical or mental disability, or disease state when providing pharmaceutical services.

8.11(7) *Claims of professional superiority.* A pharmacist shall not make a claim, assertion, or inference of professional superiority in the practice of pharmacy which cannot be substantiated, or claim an unusual, unsubstantiated capacity to supply a drug or professional service to the community.

8.11(8) *Unprofessional conduct or behavior.* A pharmacist shall not exhibit unprofessional behavior in connection with the practice of pharmacy or refuse to provide reasonable information or answer reasonable questions for the benefit of the patient. Unprofessional behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

[ARC 9526B, IAB 6/1/11, effective 7/6/11]

657—8.12(126,147) Advertising. Prescription drug price and nonprice information may be provided to the public by a pharmacy so long as the information is not false or misleading and is not in violation of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1. All charges for services to the consumer must be stated.
2. The effective dates for the prices listed shall be stated.
3. No reference shall be made to controlled substances listed in Schedules II through V of the latest revision of the Iowa uniform controlled substances Act and the rules of the Iowa board of pharmacy.

657—8.13(135C,155A) Personnel histories. Pursuant to the requirements of Iowa Code section 135C.33, the provisions of this rule shall apply to any pharmacy employing any person to provide patient care services in a patient's home. For the purposes of this rule, "employed by the pharmacy" shall include any individual who is paid to provide treatment or services to any patient in the patient's home, whether the individual is paid by the pharmacy or by any other entity such as a corporation, a temporary staffing agency, or an independent contractor. Specifically excluded from the requirements of this rule are individuals such as delivery persons or couriers who do not enter the patient's home for the purpose of instructing the patient or the patient's caregiver in the use or maintenance of the equipment, device, or drug being delivered, or who do not enter the patient's home for the purpose of setting up or servicing the equipment, device, or drug used to treat the patient in the patient's home.

8.13(1) *Applicant acknowledgment.* The pharmacy shall ask the following question of each person seeking employment in a position that will provide in-home services: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" The applicant shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The applicant shall indicate, by signed acknowledgment, that the applicant has been informed that such record checks will be conducted.

8.13(2) *Criminal history check.* Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall submit to the department of public safety a form specified by the department of public safety and receive the results of a criminal history check.

8.13(3) *Abuse history checks.* Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall submit to the department of human services a form specified

by the department of human services and receive the results of a dependent adult abuse record check. The pharmacy may submit to the department of human services a form specified by the department of human services to request a child abuse history check.

a. A person who has a criminal record, founded dependent adult abuse report, or founded child abuse report shall not be employed by a pharmacy to provide in-home services unless the department of human services has evaluated the crime or founded abuse report, has concluded that the crime or founded abuse does not merit prohibition from such employment, and has notified the pharmacy that the person may be employed to provide in-home services.

b. The pharmacy shall keep copies of all record checks and evaluations for a minimum of two years following receipt of the record or for a minimum of two years after the individual is no longer employed by the pharmacy, whichever is greater.

657—8.14(155A) Training and utilization of pharmacy technicians or pharmacy support persons. Pursuant to rule 657—8.3(155A), all Iowa-licensed pharmacies utilizing pharmacy technicians or pharmacy support persons shall have written policies and procedures for the training and utilization of pharmacy technicians and pharmacy support persons appropriate to the practice of pharmacy at that licensed location. Pharmacy technician and pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician and pharmacy support person training shall be available for inspection by the board or an agent of the board.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 1961C, IAB 4/15/15, effective 5/20/15]

657—8.15(155A) Delivery of prescription drugs and devices. Prescription drug orders, prescription devices, and completed prescription drug containers may be delivered, in compliance with all laws, rules, and regulations relating to the practice of pharmacy, to patients at any place of business licensed as a pharmacy.

8.15(1) *Alternative methods.* A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient's caregiver as follows:

- a.* At the office or home of the prescriber.
- b.* At the residence of the patient or caregiver.
- c.* At the hospital or medical care facility in which a patient is confined.
- d.* At an outpatient medical care facility where the patient receives treatment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the outpatient medical care facility;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization;

(3) A prescription authorized by a prescriber not treating the patient at the outpatient medical care facility may be transmitted to the pharmacy by the authorized agent via facsimile provided that the means of transmission does not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the prescription and provided that the original written prescription is delivered to the pharmacy prior to delivery of the filled prescription to the patient; and

(4) The outpatient medical care facility shall store the patient's filled prescriptions in a secure area pending delivery to the patient.

e. At the patient's or caregiver's place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, the prescriber, or an authorized agent identified in the written authorization; and

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

8.15(2) *Policies and procedures required.* Pursuant to rule 657—8.3(155A), every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall have policies and

procedures to ensure accountability, safe delivery, and compliance with temperature requirements as defined by subrule 8.7(4).

[ARC 7636B, IAB 3/11/09, effective 4/15/09; ARC 1961C, IAB 4/15/15, effective 5/20/15]

657—8.16(124,155A) Confidential information.

8.16(1) Definition. “Confidential information” means information accessed or maintained by the pharmacy in the patient’s records which contains personally identifiable information that could be used to identify the patient. This includes but is not limited to patient name, address, telephone number, and social security number; prescriber name and address; and prescription and drug or device information such as therapeutic effect, diagnosis, allergies, disease state, pharmaceutical services rendered, medical information, and drug interactions, regardless of whether such information is communicated to or from the patient, is in the form of paper, is preserved on microfilm, or is stored on electronic media.

8.16(2) Release of confidential information. Confidential information in the patient record may be released only as follows:

- a. Pursuant to the express written authorization of the patient or the order or direction of a court.
- b. To the patient or the patient’s authorized representative.
- c. To the prescriber or other licensed practitioner then caring for the patient.
- d. To another licensed pharmacist when the best interests of the patient require such release.
- e. To the board or its representative or to such other persons or governmental agencies duly authorized by law to receive such information.

A pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any persons requesting confidential patient information pursuant to this rule are entitled to receive that information.

8.16(3) Exceptions. Nothing in this rule shall prohibit pharmacists from releasing confidential patient information as follows:

- a. Transferring a prescription to another pharmacy upon the request of the patient or the patient’s authorized representative.
- b. Providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is clearly marked as a copy and not to be filled.
- c. Providing drug therapy information to physicians or other authorized prescribers for their patients.
- d. Disclosing information necessary for the processing of claims for payment of health care operations or services.
- e. Transferring, subject to the provisions of subrule 8.35(7), prescription and patient records of a pharmacy that discontinues operation as a pharmacy to another licensed pharmacy that is held to the same standards of confidentiality and that agrees to act as custodian of the transferred records.

8.16(4) System security and safeguards. To maintain the integrity and confidentiality of patient records and prescription drug orders, any system or computer utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders.

8.16(5) Record disposal. Disposal of any materials containing or including patient-specific or confidential information shall be conducted in a manner to preserve patient confidentiality.

[ARC 9526B, IAB 6/1/11, effective 7/6/11]

657—8.17 and 8.18 Reserved.

657—8.19(124,126,155A) Manner of issuance of a prescription drug or medication order. A prescription drug order or medication order may be transmitted from a prescriber or a prescriber’s agent to a pharmacy in written form, orally including telephone voice communication, by facsimile transmission as provided in rule 657—21.9(124,155A), or by electronic transmission in accordance with applicable federal and state laws, rules, and regulations. Any prescription drug order or medication order provided to a patient in written or printed form shall include the original, handwritten signature of the prescriber except as provided in rule 657—21.7(124,155A).

8.19(1) Requirements for a prescription. A valid prescription drug order shall be based on a valid patient-prescriber relationship except as provided in subrule 8.19(7) for epinephrine auto-injectors and in subrule 8.19(8) for opioid antagonists.

a. Written, electronic, or facsimile prescription. In addition to the electronic prescription application and pharmacy prescription application requirements of this rule, a written, electronic, or facsimile prescription shall include:

- (1) The date issued.
- (2) The name and address of the patient except as provided in subrule 8.19(7) for epinephrine auto-injectors.
- (3) The name, strength, and quantity of the drug or device prescribed.
- (4) The name and address of the prescriber and, if the prescription is for a controlled substance, the prescriber's DEA registration number.
- (5) The written or electronic signature of the prescriber.

b. Written prescription. In addition to the requirements of paragraph 8.19(1)“a,” a written prescription shall be manually signed, with ink or indelible pencil, by the prescriber. The requirement for manual signature shall not apply when an electronically prepared and signed prescription for a noncontrolled substance is printed on security paper as provided in 657—paragraph 21.7(3)“b.”

c. Facsimile prescription. In addition to the requirements of paragraph 8.19(1)“a,” a prescription transmitted via facsimile shall include:

- (1) The identification number of the facsimile machine used to transmit the prescription to the pharmacy.
- (2) The time and date of transmission of the prescription.
- (3) The name, address, telephone number, and facsimile number of the pharmacy to which the prescription is being transmitted.
- (4) If the prescription is for a controlled substance and in compliance with DEA regulations, the manual signature of the prescriber.

d. Electronic prescription. In addition to the requirements of paragraph 8.19(1)“a,” an electronically prepared prescription for a controlled or noncontrolled prescription drug or device that is electronically transmitted to a pharmacy shall include the prescriber's electronic signature.

- (1) An electronically prepared prescription for a controlled substance that is printed out or faxed by the prescriber or the prescriber's agent shall be manually signed by the prescriber.
- (2) The prescriber shall ensure that the electronic prescription application used to prepare and transmit the electronic prescription complies with applicable state and federal laws, rules, and regulations regarding electronic prescriptions.
- (3) The prescriber or the prescriber's agent shall provide verbal verification of an electronic prescription upon the request of the pharmacy.

8.19(2) Verification. The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription drug order or medication order consistent with federal and state laws, rules, and regulations. In exercising professional judgment, the prescribing practitioner and the pharmacist shall take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries.

8.19(3) Transmitting agent. The prescribing practitioner may authorize an agent to transmit to the pharmacy a prescription drug order or medication order orally, by facsimile transmission, or by electronic transmission provided that the first and last names and title of the transmitting agent are included in the order.

a. New order. A new written or electronically prepared and transmitted prescription drug or medication order shall be manually or electronically signed by the prescriber. If transmitted by the prescriber's agent, the first and last names and title of the transmitting agent shall be included in the order. If the prescription is for a controlled substance and is written or printed from an electronic prescription application, the prescription shall be manually signed by the prescriber prior to delivery of the prescription to the patient or prior to facsimile transmission of the prescription to the pharmacy. An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the

prescription has been printed prior to the electronic transmission. An electronically prepared and electronically transmitted prescription that is printed following the electronic transmission shall be clearly labeled as a copy, not valid for dispensing.

b. Refill order or renewal order. An authorization to refill a prescription drug or medication order, or to renew or continue an existing drug therapy, may be transmitted to a pharmacist through oral communication, in writing, by facsimile transmission, or by electronic transmission initiated by or directed by the prescriber.

(1) If the transmission is completed by the prescriber's agent and the first and last names and title of the transmitting agent are included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the order differs in any manner from the original order, such as a change of the drug strength, dosage form, or directions for use, the prescriber shall sign the order as provided by paragraph 8.19(3) "a."

8.19(4) Receiving agent. Regardless of the means of transmission to a pharmacy, only a pharmacist, a pharmacist-intern, or a certified pharmacy technician shall be authorized to receive a new prescription drug or medication order from a practitioner or the practitioner's agent. In addition to a pharmacist, a pharmacist-intern, and a certified pharmacy technician, a technician trainee or an uncertified pharmacy technician may receive a refill or renewal order from a practitioner or the practitioner's agent if the technician's supervising pharmacist has authorized that function.

8.19(5) Legitimate purpose. The pharmacist shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation and without a valid preexisting patient-practitioner relationship except as provided in subrule 8.19(7) for epinephrine auto-injectors.

8.19(6) Refills. A refill is one or more dispensings of a prescription drug or device that result in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription drug order.

a. Noncontrolled prescription drug or device. A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued.

b. Controlled substance. A prescription for a Schedule III, IV, or V controlled substance may authorize no more than 5 refills within 6 months following the date on which the prescription is issued.

8.19(7) Epinephrine auto-injector prescription issued to school or facility. A physician, an advanced registered nurse practitioner, or a physician assistant may issue a prescription for one or more epinephrine auto-injectors in the name of a facility as defined in Iowa Code subsection 135.185(1), a school district, or an accredited nonpublic school. The prescription shall comply with all requirements of subrule 8.19(1) as applicable to the form of the prescription except that the prescription shall be issued in the name and address of the facility, the school district, or the accredited nonpublic school in lieu of the name and address of a patient. Provisions requiring a preexisting patient-prescriber relationship shall not apply to a prescription issued pursuant to this subrule.

a. The pharmacy's patient profile and record of dispensing of a prescription issued pursuant to this subrule shall be maintained in the name of the facility, school district, or accredited nonpublic school to which the prescription was issued and the drug was dispensed.

b. The label affixed to an epinephrine auto-injector dispensed pursuant to this subrule shall identify the name of the facility, school district, or accredited nonpublic school to which the prescription is dispensed.

8.19(8) Opioid antagonist prescription issued to law enforcement, fire department, or service program. A physician, an advanced registered nurse practitioner, or a physician assistant may issue a prescription for one or more opioid antagonists in the name of a law enforcement agency, fire department, or service program pursuant to Iowa Code section 147A.18 and rule 657—8.31(135,147A).

The prescription shall comply with all requirements of subrule 8.19(1) as applicable to the form of the prescription except that the prescription shall be issued in the name and address of the law enforcement agency, fire department, or service program in lieu of the name and address of a patient. Provisions requiring a preexisting patient-prescriber relationship shall not apply to a prescription issued pursuant to this subrule.

a. The pharmacy's patient profile and record of dispensing of an opioid antagonist pursuant to this subrule shall be maintained in the name of the law enforcement agency, fire department, or service program to which the prescription was issued and the drug was dispensed.

b. The label affixed to an opioid antagonist dispensed pursuant to this subrule shall identify the name of the law enforcement agency, fire department, or service program to which the prescription is dispensed and shall be affixed such that the expiration date of the drug is not rendered illegible.

[ARC 8171B, IAB 9/23/09, effective 10/28/09; ARC 9912B, IAB 12/14/11, effective 1/18/12; ARC 2414C, IAB 2/17/16, effective 3/23/16; ARC 2827C, IAB 11/23/16, effective 11/3/16]

657—8.20(155A) Valid prescriber/patient relationship. Prescription drug orders and medication orders shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, the order loses its validity and the pharmacist, on becoming aware of the situation, shall cancel the order and any remaining refills. The pharmacist shall, however, exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the prescribed drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new order can be issued.

657—8.21(155A) Prospective drug use review. For purposes of promoting therapeutic appropriateness and ensuring rational drug therapy, a pharmacist shall review the patient record, information obtained from the patient, and each prescription drug or medication order to identify:

1. Overutilization or underutilization;
2. Therapeutic duplication;
3. Drug-disease contraindications;
4. Drug-drug interactions;
5. Incorrect drug dosage or duration of drug treatment;
6. Drug-allergy interactions;
7. Clinical abuse/misuse;
8. Drug-prescriber contraindications.

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem and shall, if necessary, include consultation with the prescriber. The review and assessment of patient records shall not be delegated to staff assistants but may be delegated to registered pharmacist-interns under the direct supervision of the pharmacist.

657—8.22 to 8.25 Reserved.

657—8.26(155A) Continuous quality improvement program. Pursuant to rule 657—8.3(155A), each pharmacy licensed to provide pharmaceutical services to patients in Iowa shall implement or participate in a continuous quality improvement program (CQI program). The CQI program is intended to be an ongoing, systematic program of standards and procedures to detect, identify, evaluate, and prevent medication errors, thereby improving medication therapy and the quality of patient care. A pharmacy that participates as an active member of a hospital or corporate CQI program that meets the objectives of this rule shall not be required to implement a new program pursuant to this rule.

8.26(1) Reportable program events. For purposes of this rule, a reportable program event or program event means a preventable medication error resulting in the incorrect dispensing of a prescribed drug received by or administered to the patient and includes but is not necessarily limited to:

- a.* An incorrect drug;
- b.* An incorrect drug strength;

- c. An incorrect dosage form;
- d. A drug received by the wrong patient;
- e. Inadequate or incorrect packaging, labeling, or directions; or
- f. Any incident related to a prescription dispensed to a patient that results in or has the potential to result in serious harm to the patient.

8.26(2) Responsibility. The pharmacist in charge may delegate program administration and monitoring, but the pharmacist in charge maintains ultimate responsibility for the validity and consistency of program activities.

8.26(3) Policies and procedures. Pursuant to rule 657—8.3(155A), each pharmacy shall have written policies and procedures for the operation and management of the pharmacy's CQI program. A copy of the pharmacy's CQI program description and policies and procedures shall be maintained and readily available to all pharmacy personnel. The policies and procedures shall address, at a minimum, a planned process to:

- a. Train all pharmacy personnel in relevant phases of the CQI program;
- b. Identify and document reportable program events;
- c. Minimize the impact of reportable program events on patients;
- d. Analyze data collected to assess the causes and any contributing factors relating to reportable program events;
- e. Use the findings to formulate an appropriate response and to develop pharmacy systems and workflow processes designed to prevent and reduce reportable program events; and
- f. Periodically, but at least annually, meet with appropriate pharmacy personnel to review findings and inform personnel of changes that have been made to pharmacy policies, procedures, systems, or processes as a result of CQI program findings.

8.26(4) Event discovery and notification. As provided by the procedures of the CQI program, the pharmacist in charge or appropriate designee shall be informed of and review all reported and documented program events. All pharmacy personnel shall be trained to immediately inform the pharmacist on duty of any discovered or suspected program event. When the pharmacist on duty determines that a reportable program event has occurred, the pharmacist shall ensure that all reasonably necessary steps are taken to remedy any problems or potential problems for the patient and that those steps are documented. Necessary steps include, but are not limited to, the following:

- a. Notifying the patient or the patient's caregiver and the prescriber or other members of the patient's health care team as warranted;
- b. Identifying and communicating directions or processes for correcting the error; and
- c. Communicating instructions for minimizing any negative impact on the patient.

8.26(5) CQI program records. All CQI program records shall be maintained on site at the pharmacy or shall be accessible at the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the record. When a reportable program event occurs or is suspected to have occurred, the program event shall be documented in a written or electronic storage record created solely for that purpose. Records of program events shall be maintained in an orderly manner and shall be filed chronologically by date of discovery.

a. The program event shall initially be documented as soon as practicable but no more than three days following discovery of the event by the staff member who discovers the event or is informed of the event.

b. Program event documentation shall include a description of the event that provides sufficient information to permit categorization and analysis of the event and shall include:

- (1) The date and time the program event was discovered and the name of the staff person who discovered the event; and
- (2) The names of the individuals recording and reviewing or analyzing the program event information.

8.26(6) Program event analysis and response. The pharmacist in charge or designee shall review each reportable program event and determine if follow-up is necessary. When appropriate, information and data collected and documented shall be analyzed, individually and collectively, to assess the cause

and any factors contributing to the program event. The analysis may include, but is not limited to, the following:

a. A consideration of the effects on the quality of the pharmacy system related to workflow processes, technology utilization and support, personnel training, and both professional and technical staffing levels;

b. Any recommendations for remedial changes to pharmacy policies, procedures, systems, or processes; and

c. The development of a set of indicators that a pharmacy will utilize to measure its program standards over a designated period of time.

[ARC 1961C, IAB 4/15/15, effective 5/20/15; ARC 2413C, IAB 2/17/16, effective 3/23/16]

657—8.27 to 8.29 Reserved.

657—8.30(126,155A) Sterile products. Rescinded IAB 6/6/07, effective 7/11/07.

657—8.31(135,147A) Opioid antagonist dispensing by pharmacists by standing order. An authorized pharmacist may dispense an opioid antagonist pursuant to a standing order established by the department, which standing order can be found via the board's Web site, or pursuant to a standing order authorized by an individual licensed health care professional in compliance with the requirements of this rule. An authorized pharmacist may only delegate the dispensing of an opioid antagonist to an authorized pharmacist-intern under the direct supervision of an authorized pharmacist. Nothing in this rule prohibits a prescriber or facility from establishing and implementing standing orders or protocols under the authority granted to the prescriber or facility.

8.31(1) Definitions. For the purposes of this rule, the following definitions shall apply:

"Authorized pharmacist" means an Iowa-licensed pharmacist who has completed the training requirements of this rule. "Authorized pharmacist" also includes an Iowa-registered pharmacist-intern who has completed the training requirements of this rule and is working under the direct supervision of an authorized Iowa-licensed pharmacist.

"Department" means the Iowa department of public health.

"First responder" means an emergency medical care provider, a registered nurse staffing an authorized service program under Iowa Code section 147A.12, a physician assistant staffing an authorized service program under Iowa Code section 147A.13, a fire fighter, or a peace officer as defined in Iowa Code section 801.4 who is trained and authorized to administer an opioid antagonist.

"Licensed health care professional" means a person licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery, an advanced registered nurse practitioner licensed under Iowa Code chapter 152 or 152E and registered with the board of nursing, or a physician assistant licensed to practice under the supervision of a physician as authorized in Iowa Code chapters 147 and 148C.

"Opioid antagonist" means the same as defined in Iowa Code section 147A.1 as amended by 2016 Iowa Acts, Senate File 2218.

"Opioid-related overdose" means the same as defined in Iowa Code section 147A.1 as amended by 2016 Iowa Acts, Senate File 2218.

"Person in a position to assist" means a family member, friend, caregiver, health care provider, employee of a substance abuse treatment facility, or other person who may be in a position to render aid to a person at risk of experiencing an opioid-related overdose.

"Recipient" means an individual at risk of an opioid-related overdose or a person in a position to assist an individual at risk of an opioid-related overdose.

"Standing order" means a preauthorized medication order with specific instructions from the licensed health care professional to dispense a medication under clearly defined circumstances.

8.31(2) Authorized pharmacist training. An authorized pharmacist shall document successful completion of an ACPE-approved continuing education program of at least one-hour duration related to opioid antagonist utilization prior to dispensing opioid antagonists pursuant to a standing order.

8.31(3) *Additional supply.* Notwithstanding a standing order to the contrary, an authorized pharmacist shall only dispense an opioid antagonist after completing an eligibility assessment and providing training and education to the recipient.

8.31(4) *Assessment.* An authorized pharmacist shall assess an individual for eligibility to receive an opioid antagonist pursuant to a standing order. In addition to the criteria identified in a standing order, an authorized pharmacist shall also take into consideration the following criteria to determine the eligibility of the recipient to receive and possess an opioid antagonist:

a. The person at risk of an opioid-related overdose for which the opioid antagonist is intended to be administered has no known sensitivity or allergy to naloxone, unless the person at risk is not known to the recipient, including but not limited to a first responder or member of law enforcement.

b. The recipient is oriented to person, place, and time and able to understand and learn the essential components of opioid-related overdose, appropriate response, and opioid antagonist administration.

8.31(5) *Recipient training and education.* Upon assessment and determination that an individual is eligible to receive and possess an opioid antagonist pursuant to a standing order, an authorized pharmacist shall, prior to dispensing an opioid antagonist pursuant to a standing order, provide training and education to the recipient that includes, but is not limited to, the information identified in this subrule. An authorized pharmacist shall require the recipient to attest that, if the product will be accessible to any other individual for administration, the recipient will make available to such individual all received training and education materials. An authorized pharmacist may provide to the recipient written materials that include, but may not be limited to, the information identified in this subrule, but it shall not be in lieu of direct pharmacist consultation with the recipient.

a. The signs and symptoms of opioid-related overdose as described in the standing order.

b. The importance of calling 911 as soon as possible and the potential need for rescue breathing.

c. The appropriate use and directions for administration of the opioid antagonist to be dispensed pursuant to the standing order.

d. Adverse reactions of the opioid antagonist as well as reactions resulting from opioid withdrawal following administration.

e. The proper storage conditions, including temperature excursions, of the opioid antagonist being dispensed.

f. The expiration date of the opioid antagonist being dispensed and the appropriate disposal of the opioid antagonist upon expiration.

g. The prohibition of the recipient from further distributing the opioid antagonist to another individual, unless that individual has received appropriate training and education.

h. Information about substance abuse or behavioral health treatment programs.

8.31(6) *Labeling.* Upon the determination that a recipient is eligible to receive and possess an opioid antagonist, an authorized pharmacist shall label the product pursuant to rule 657—6.10(126,155A) and subrule 8.19(8). An authorized pharmacist shall ensure that the labeling does not render the expiration date of the product illegible. The medication shall be dispensed in the name of the eligible recipient.

8.31(7) *Reporting.* A copy of the assessment form shall be submitted to the department as provided on the assessment form within seven days of the dispensing of the opioid antagonist or within seven days of a denial of eligibility.

8.31(8) *Records.* An authorized pharmacist shall create and maintain an original record of each individual assessment on forms provided by the board, regardless of the eligibility determination following assessment, and dispensing of opioid antagonists pursuant to a standing order. These records shall be available for inspection and copying by the board or its authorized agent for at least two years. [ARC 2827C, IAB 11/23/16, effective 11/3/16]

657—8.32(124,155A) *Individuals qualified to administer.* The board designates the following as qualified individuals to whom a practitioner may delegate the administration of prescription drugs. Any person specifically authorized under pertinent sections of the Iowa Code to administer prescription drugs shall construe nothing in this rule to limit that authority.

1. Persons who have successfully completed a medication administration course.

2. Licensed pharmacists.

657—8.33(155A) Vaccine administration by pharmacists. An authorized pharmacist may administer vaccines pursuant to protocols established by the CDC in compliance with the requirements of this rule. An authorized pharmacist may only delegate the administration of a vaccine to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

8.33(1) Definitions. For the purposes of this rule, the following definitions shall apply:

“ACIP” means the CDC Advisory Committee on Immunization Practices.

“ACPE” means the Accreditation Council for Pharmacy Education.

“Authorized pharmacist” means an Iowa-licensed pharmacist who has met the requirements identified in subrule 8.33(2).

“Authorized pharmacist-intern” means an Iowa-registered pharmacist-intern who has met the requirements for an authorized pharmacist identified in paragraphs 8.33(2) “a” and “c.”

“CDC” means the United States Centers for Disease Control and Prevention.

“Immunization” shall have the same meaning as, and shall be interchangeable with, the term “vaccine.”

“Protocol” means a standing order for a vaccine to be administered by an authorized pharmacist.

“Vaccine” means a specially prepared antigen administered to a person for the purpose of providing immunity.

8.33(2) Authorized pharmacist training and continuing education. An authorized pharmacist shall document successful completion of the requirements in paragraph 8.33(2) “a” and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 8.33(2) “b.”

a. Initial qualification. An authorized pharmacist shall have successfully completed an organized course of study in a college or school of pharmacy or an ACPE-accredited continuing education program on vaccine administration that:

(1) Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers.

(2) Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current CDC guidelines, and provides instruction and experiential training in the following content areas:

1. Standards for immunization practices;
2. Basic immunology and vaccine protection;
3. Vaccine-preventable diseases;
4. Recommended immunization schedules;
5. Vaccine storage and management;
6. Informed consent;
7. Physiology and techniques for vaccine administration;
8. Pre- and post-vaccine assessment, counseling, and identification of contraindications to the vaccine;
9. Immunization record management; and
10. Management of adverse events, including identification, appropriate response, documentation, and reporting.

b. Continuing education. During any pharmacist license renewal period, an authorized pharmacist who engages in the administration of vaccines shall complete and document at least one hour of continuing education related to vaccines.

c. Certification maintained. During any period within which the pharmacist may engage in the administration of vaccines, the pharmacist shall maintain current certification in the American Heart Association or the Red Cross basic cardiac life support protocol for health care providers.

8.33(3) Protocol requirements. A pharmacist may administer vaccines pursuant to CDC protocols. A protocol shall be unique to a pharmacy. The prescriber who signs a protocol shall identify within the protocol, by name or category, those pharmacists or other qualified health professionals that the

prescriber is authorizing to administer vaccines pursuant to the protocol. Links to CDC protocols shall be provided on the board's Web site at www.iowa.gov/ibpe. A protocol:

- a. Shall be signed by a licensed Iowa prescriber practicing in Iowa.
- b. Shall expire no later than one year from the effective date of the signed protocol.
- c. Shall be effective for patients who wish to receive a vaccine administered by an authorized pharmacist, who meet the CDC recommended criteria, and who have no contraindications as published by the CDC.
- d. Shall require the authorized pharmacist to notify the prescriber who signed the protocol within 24 hours of a serious complication and shall submit a Vaccine Advisory Event Reporting System (VAERS) report.
- e. Shall specifically indicate whether the authorizing prescriber agrees that the administration of vaccines may be delegated by the authorized pharmacist to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

8.33(4) *Influenza and other emergency vaccines.* An authorized pharmacist shall only administer via protocol, to patients six years of age and older, influenza vaccines and other emergency vaccines in response to a public health emergency.

8.33(5) *Other adult vaccines.* An authorized pharmacist shall only administer via protocol, to patients 18 years of age and older, the following vaccines:

- a. A vaccine on the ACIP-approved adult vaccination schedule.
- b. A vaccine recommended by the CDC for international travel.

8.33(6) *Vaccines administered via prescription.* An authorized pharmacist may administer any vaccine pursuant to a prescription or medication order for an individual patient. In case of serious complications, the authorized pharmacist shall notify the prescriber who authorized the prescription within 24 hours and shall submit a VAERS report.

8.33(7) *Verification and reporting.* The requirements of this subrule do not apply to influenza and other emergency vaccines administered via protocol pursuant to subrule 8.33(4). An authorized pharmacist shall:

- a. Prior to administering a vaccine identified in subrule 8.33(5) or subrule 8.33(6), consult the statewide immunization registry or health information network.
- b. Within 30 days following administration of a vaccine identified in subrule 8.33(5) or subrule 8.33(6), report the vaccine administration to the statewide immunization registry or health information network and to the patient's primary health care provider, if known.

[ARC 1030C, IAB 9/18/13, effective 9/1/13; ARC 1786C, IAB 12/10/14, effective 1/14/15]

657—8.34(155A) Collaborative drug therapy management. An authorized pharmacist may only perform collaborative drug therapy management pursuant to protocol with a physician pursuant to the requirements of this rule. The physician retains the ultimate responsibility for the care of the patient. The pharmacist is responsible for all aspects of drug therapy management performed by the pharmacist.

8.34(1) *Definitions.*

"Authorized pharmacist" means an Iowa-licensed pharmacist whose license is in good standing and who meets the drug therapy management criteria defined in this rule.

"Board" means the board of pharmacy.

"Collaborative drug therapy management" means participation by an authorized pharmacist and a physician in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

"Collaborative practice" means that a physician may delegate aspects of drug therapy management for the physician's patients to an authorized pharmacist through a community practice protocol. "Collaborative practice" also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and hospital clinic patients through a hospital practice protocol.

"Community practice protocol" means a written, executed agreement entered into voluntarily between an authorized pharmacist and a physician establishing drug therapy management for one or

more of the pharmacist's and physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 8.34(2).

"Community setting" means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

"Drug therapy management criteria" means one or more of the following:

1. Graduation from a recognized school or college of pharmacy with a doctor of pharmacy (Pharm.D.) degree;
2. Certification by the Board of Pharmaceutical Specialties (BPS);
3. Certification by the Commission for Certification in Geriatric Pharmacy (CCGP);
4. Successful completion of a National Institute for Standards in Pharmacist Credentialing (NISPC) disease state management examination and credentialing by the NISPC;
5. Successful completion of a pharmacy residency program accredited by the American Society of Health-System Pharmacists (ASHP); or
6. Approval by the board of pharmacy.

"Hospital clinic" means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

"Hospital pharmacist" means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital's P&T committee.

"Hospital practice protocol" means a written plan, policy, procedure, or agreement that authorizes drug therapy management between hospital pharmacists and physicians within a hospital and the hospital's clinics as developed and determined by the hospital's P&T committee. Such a protocol may apply to all pharmacists and physicians at a hospital or the hospital's clinics or only to those pharmacists and physicians who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 8.34(3).

"IBM" means the Iowa board of medicine.

"P&T committee" means a committee of the hospital composed of physicians, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist's activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician's practice.

"Therapeutic interchange" means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

8.34(2) Community practice protocol.

a. An authorized pharmacist shall engage in collaborative drug therapy management with a physician only under a written protocol that has been identified by topic and has been submitted to the board or a committee authorized by the board. A protocol executed after July 1, 2008, will no longer be required to be submitted to the board; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBM.

b. The community practice protocol shall include:

(1) The name, signature, date, and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal authorized pharmacist shall be designated in the protocol.

(2) The name, signature, date, and contact information for each physician who may prescribe drugs and is responsible for supervising a patient's drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the patient's physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the patient's physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for securing the patient's written consent. If the patient's consent is not secured by the physician, the authorized pharmacist shall secure such and notify the patient's physician within 24 hours.

(6) Circumstances that shall cause the authorized pharmacist to initiate communication with the physician including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests, and physical findings upon which the authorized pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy management protocol to be reviewed, updated, and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the authorized pharmacist is to provide to the physician and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame within which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing, and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the authorized pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or an authorized pharmacist.

(17) A description of the mechanism for the pharmacist and the physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least one authorized pharmacist and at least one physician.

d. The collaborative drug therapy protocol must be filed with the board, kept on file in the pharmacy, and be made available upon request of the board or the IBM. After July 1, 2008, protocols shall no longer be filed with the board but shall be maintained in the pharmacy and made available to the board and the IBM upon request.

e. A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the board. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the board of changes in a protocol but the written notification shall be maintained in the pharmacy and made available upon request of the board or the IBM.

f. The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient shall be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

8.34(3) Hospital practice protocol.

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by the hospital's pharmacists.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of pharmacists and physicians who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the P&T committee authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

657—8.35(155A) Pharmacy license. A pharmacy license issued by the board is required for all sites where prescription drugs are offered for sale or dispensed under the supervision of a pharmacist. A pharmacy license issued by the board is also required for all sites where drug information or other cognitive pharmacy services, including but not limited to drug use review and patient counseling, are provided by a pharmacist. The board may issue any of the following types of pharmacy licenses: a general pharmacy license, a hospital pharmacy license, a special or limited use pharmacy license, or

a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy practice except when specific exemptions have been granted. Applicants for general or hospital pharmacy practice shall comply with board rules regarding general or hospital pharmacy practice except when specific exemptions have been granted. Any pharmacy located within Iowa that dispenses controlled substances must also register pursuant to 657—Chapter 10.

8.35(1) Exemptions. Applicants who are granted exemptions shall be issued a “general pharmacy license with exemption,” a “hospital pharmacy license with exemption,” a “nonresident pharmacy license with exemption,” or a “limited use pharmacy license with exemption” and shall comply with the provisions set forth by that exemption. A written petition for exemption from certain licensure requirements shall be submitted pursuant to the procedures and requirements of 657—Chapter 34 and will be determined on a case-by-case basis.

8.35(2) Limited use pharmacy license. Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, telepharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.

8.35(3) Application form. Application for licensure and license renewal shall be on forms provided by the board. The application for a pharmacy license shall require an indication of the pharmacy ownership classification. If the owner is a sole proprietorship (100 percent ownership), the name and address of the owner shall be indicated. If the owner is a partnership or limited partnership, the names and addresses of all partners shall be listed or attached. If the owner is a corporation, the names and addresses of the officers and directors of the corporation shall be listed or attached. Any other pharmacy ownership classification shall be further identified and explained on the application. The application form shall require the name, signature, and license number of the pharmacist in charge. The names and license numbers of all pharmacists engaged in practice in the pharmacy, the names and registration numbers of all pharmacy technicians and pharmacy support persons working in the pharmacy, and the average number of hours worked by each pharmacist, pharmacy technician, and pharmacy support person shall be listed or attached. Additional information may be required of specific types of pharmacy license applicants. The application shall be signed by the pharmacy owner or the owner’s, partnership’s, or corporation’s authorized representative.

8.35(4) License expiration and renewal. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$135.

a. Late payment penalty. Failure to renew the pharmacy license before January 1 following expiration shall require payment of the renewal fee and a penalty fee of \$135. Failure to renew the license before February 1 following expiration shall require payment of the renewal fee and a penalty fee of \$225. Failure to renew the license before March 1 following expiration shall require payment of the renewal fee and a penalty fee of \$315. Failure to renew the license before April 1 following expiration shall require payment of the renewal fee and a penalty fee of \$405 and may require an appearance before the board. In no event shall the combined renewal fee and penalty fee for late renewal of a pharmacy license exceed \$540.

b. Delinquent license. If a license is not renewed before its expiration date, the license is delinquent and the licensee may not operate or provide pharmacy services to patients in the state of Iowa until the licensee renews the delinquent license. A pharmacy that continues to operate in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.1(4).

8.35(5) Inspection of new pharmacy location. If the new pharmacy location within Iowa was not a licensed pharmacy immediately prior to the proposed opening of the new pharmacy, the pharmacy location shall require an on-site inspection by a pharmacy board inspector prior to the issuance of the pharmacy license. The purpose of the inspection is to determine compliance with requirements pertaining to space, library, equipment, security, temperature control, and drug storage safeguards. Inspection may be scheduled anytime following submission of necessary license and registration applications and prior

to opening for business as a pharmacy. Prescription drugs, including controlled substances, may not be delivered to a new pharmacy location prior to satisfactory completion of the opening inspection.

8.35(6) Pharmacy license changes. When a pharmacy changes its name, location, ownership, or pharmacist in charge, a new pharmacy license application with a license fee as provided in subrule 8.35(4) shall be submitted to the board office. Upon receipt of the fee and properly completed application, the board will issue a new pharmacy license certificate. The old license certificate shall be returned to the board office within ten days of the change of name, location, ownership, or pharmacist in charge.

a. Location. A change of pharmacy location in Iowa shall require an on-site inspection of the new location as provided in subrule 8.35(5) if the new location was not a licensed pharmacy immediately prior to the relocation.

b. Ownership. A change of ownership of a currently licensed Iowa pharmacy, or a change of pharmacy location to another existing Iowa pharmacy location, shall not require on-site inspection pursuant to subrule 8.35(5). A new pharmacy license is required as provided in this subrule. A change of ownership effectively consists of a closing pharmacy, which is subject to the requirements for a closing pharmacy, and of a new pharmacy, which is subject to the requirements of a new pharmacy, with the possible exception of the on-site inspection as provided by this paragraph. In those cases in which the pharmacy is owned by a corporation, the sale or transfer of all stock of the corporation does not constitute a change of ownership provided the corporation that owns the pharmacy continues to exist and continues to own the pharmacy following the stock sale or transfer.

c. Pharmacist in charge. A change of pharmacist in charge shall require completion and submission of the application and fee for a new pharmacy license.

(1) If a permanent pharmacist in charge has not been identified by the time of the vacancy, a temporary pharmacist in charge shall be identified. Written notification identifying the temporary pharmacist in charge shall be submitted to the board by the pharmacy owner or the pharmacy owner's authorized representative and by the temporary pharmacist in charge within 10 days following the vacancy.

(2) Within 90 days following the vacancy, a permanent pharmacist in charge shall be identified, and an application for pharmacy license, including the license fee as provided in subrule 8.35(4), shall be submitted to the board office.

8.35(7) Closing pharmacy. A closing pharmacy shall ensure that all patient and prescription records are transferred to another pharmacy that is held to the same standards of confidentiality as the closing pharmacy and that agrees to act as custodian of the records for the appropriate retention period for each record type as required by federal or state laws, rules, or regulations. A pharmacy shall not execute a sale or closing of a pharmacy unless there exists an adequate period of time prior to the pharmacy closing for delivery of the notifications to the pharmacist in charge, the board, the Drug Enforcement Administration (DEA), and pharmacy patients as required by this subrule. However, the provisions of this subrule regarding prior notifications to the board, the DEA, and patients shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster.

a. Pharmacist in charge notification. At least 40 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the closing pharmacy, if that individual is not an owner of the closing pharmacy, shall be notified of the proposed sale. The owner of the closing pharmacy may direct the pharmacist in charge to maintain information regarding the pending closure of the pharmacy confidential until public notifications are required 30 days prior to the pharmacy closing. The pharmacist in charge of the closing pharmacy shall provide input and direction to the pharmacy owner regarding the responsibilities of the closing pharmacy, including the notifications, deadlines, and time lines established by this subrule. The pharmacist in charge of the closing pharmacy shall prepare patient notifications pursuant to paragraph 8.35(7)“d.” At least 30 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the purchasing or receiving pharmacy, if that individual is not an owner of the pharmacy, shall be notified of the pending transaction.

b. Board and DEA notifications. At least 30 days prior to the closing of a pharmacy, including a closing by sale of a pharmacy, a written notice shall be sent to the board and to the Drug Enforcement

Administration (DEA) notifying those agencies of the intent to discontinue business or to sell the pharmacy and including the anticipated date of closing. These prior notifications shall include the name, address, DEA registration number, Iowa pharmacy license number, and Iowa controlled substances Act (CSA) registration number of the closing pharmacy and of the pharmacy to which prescription drugs will be transferred. Notifications shall also include the name, address, DEA registration number, Iowa pharmacy license number, and CSA registration number of the location at which prescription files, patient profiles, and controlled substance receipt and disbursement records will be maintained.

c. Terms of sale or purchase. If the closing is due to the sale of the pharmacy, a copy of the sale or purchase agreement, not including information regarding the monetary terms of the transaction, shall be submitted to the board upon the request of the board. The agreement shall include a written assurance from the closing pharmacy to the purchasing pharmacy that the closing pharmacy has given or will be giving notice to its patients as required by this subrule.

d. Patient notification. At least 30 days prior to closing, a closing pharmacy shall make a reasonable effort to notify all patients who had a prescription filled by the closing pharmacy within the last 18 months that the pharmacy intends to close, including the anticipated closing date.

(1) Written notification shall identify the pharmacy that will be receiving the patient's prescriptions and records. The notification shall advise patients that if they have any questions regarding their prescriptions and records that they may contact the closing pharmacy. If the closing pharmacy receives no contact from the patient within the 30-day notification period prior to the pharmacy closing, all patient information will be transferred to the receiving pharmacy. The notification shall also advise patients that after the date of closing patients may contact the pharmacy to which the prescriptions and records have been transferred.

(2) Written notification shall be delivered to each patient at the patient's last address on file with the closing pharmacy by direct mail or personal delivery and also by public notice. Public notice refers to the display, in a location and manner clearly visible to patients, of signs in pharmacy pickup locations including drive-through prescription pickup lanes, on pharmacy or retail store entry and exit doors, or at pharmacy prescription counters. In addition, notice may be posted on the pharmacy's Web site, displayed on a marquee or electronic sign, communicated via automated message on the pharmacy's telephone system, or published in one or more local newspapers or area shopper publications.

e. Patient communication by receiving pharmacy. A pharmacy receiving the patient records of another pharmacy shall not contact the patients of the closing pharmacy until after the transfer of those patient records from the closing pharmacy to the receiving pharmacy and after the closure of the closing pharmacy.

f. Prescription drug inventory. A complete inventory of all prescription drugs being transferred shall be taken as of the close of business. The inventory shall serve as the ending inventory for the closing pharmacy as well as a record of additional or starting inventory for the pharmacy to which the drugs are transferred. A copy of the inventory shall be included in the records of each licensee.

(1) DEA Form 222 is required for transfer of Schedule II controlled substances.

(2) The inventory of controlled substances shall be completed pursuant to the requirements in 657—10.35(124,155A).

(3) The inventory of all noncontrolled prescription drugs may be estimated.

(4) The inventory shall include the name, strength, dosage form, and quantity of all prescription drugs transferred.

(5) Controlled substances requiring destruction or other disposal shall be transferred in the same manner as all other drugs. The new owner is responsible for the disposal of these substances as provided in rule 657—10.18(124).

g. Surrender of certificates and forms. The pharmacy license certificate and CSA registration certificate of the closing or selling pharmacy shall be returned to the board office within ten days of closing or sale. The DEA registration certificate and all unused DEA Forms 222 shall be returned to the DEA within ten days of closing. All authorizations to utilize the DEA's online controlled substances ordering system (CSOS) and all digital certificates issued for the purpose of ordering controlled substances for the closing pharmacy shall be canceled or revoked within ten days of closing.

h. Signs at closed pharmacy location. A location that no longer houses a licensed pharmacy shall not display any sign, placard, or other notification, visible to the public, which identifies the location as a pharmacy. A sign or other public notification that cannot feasibly be removed shall be covered so as to conceal the identification as a pharmacy. Nothing in this paragraph shall prohibit the display of a public notice to patients, as required in paragraph 8.35(7) “d,” for a reasonable period not to exceed six months following the pharmacy closing.

8.35(8) Failure to complete licensure. An application for a pharmacy license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process within six months of receipt by the board of the required applications. The licensure process shall be complete upon the pharmacy’s opening for business at the licensed location following an inspection rated as satisfactory by an agent of the board if such an inspection is required pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9526B, IAB 6/1/11, effective 7/6/11 (See Delay note at end of chapter); ARC 9693B, IAB 9/7/11, effective 8/11/11; ARC 0504C, IAB 12/12/12, effective 1/16/13; ARC 1962C, IAB 4/15/15, effective 5/20/15; ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—8.36 to 8.39 Reserved.

657—8.40(155A,84GA,ch63) Pharmacy pilot or demonstration research projects. The purpose of this rule is to specify the procedures to be followed in applying for approval of a pilot or demonstration research project for innovative applications in the practice of pharmacy as authorized by 2011 Iowa Acts, chapter 63, section 36, as amended by 2012 Iowa Acts, House File 2464, section 31. In reviewing projects, the board will consider only projects that expand pharmaceutical care services that contribute to positive patient outcomes. The board will not consider any project intended only to provide a competitive advantage to a single applicant or group of applicants.

8.40(1) Definitions. For the purposes of this rule, the following definitions shall apply:

“Act” means Iowa Code chapter 155A, the Iowa pharmacy practice Act.

“Board” means the Iowa board of pharmacy.

“Practice of pharmacy” means the practice of pharmacy as defined in Iowa Code section 155A.3(34).

“Project” means a pilot or demonstration research project as described in this rule.

8.40(2) Scope of project. A project may not expand the definition of the practice of pharmacy. A project may include therapeutic substitution or substitution of medical devices used in patient care if such substitution is included under a collaborative drug therapy management protocol established pursuant to rule 657—8.34(155A).

8.40(3) Board approval of a project. Board approval of a project may include the grant of an exception to or a waiver of rules adopted under the Act or under any law relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care in the practice of pharmacy. Project approval, including exception to or waiver of board rules, shall initially be for a specified period of time not exceeding 18 months from commencement of the project. The board may approve the extension or renewal of a project following consideration of a petition that clearly identifies the project, that includes a report similar to the final project report described in paragraph 8.40(6) “a,” that describes and explains any proposed changes to the originally approved and implemented project, and that justifies the need for extending or renewing the term of the project.

8.40(4) Applying for approval of a project. A person who wishes the board to consider approval of a project shall submit to the board a petition for approval that contains at least the following information:

a. Responsible pharmacist. Name, address, telephone number, and pharmacist license number of each pharmacist responsible for overseeing the project.

b. Location of project. Name, address, and telephone number of each specific location and, if a location is a pharmacy, the pharmacy license number where the proposed project will be conducted.

c. Project summary. A detailed summary of the proposed project that includes at least the following information:

- (1) The goals, hypothesis, and objectives of the proposed project.
- (2) A full explanation of the project and how it will be conducted.
- (3) The time frame for the project including the proposed start date and length of study. The time frame may not exceed 18 months from the proposed start date of the project.
- (4) Background information or literature review to support the proposed project.
- (5) The rule or rules to be waived in order to complete the project and a request to waive the rule or rules.
- (6) Procedures to be used during the project to ensure that the public health and safety are not compromised as a result of the waiver.

8.40(5) *Review and approval or denial of a proposed project.*

a. Staff review. Upon receipt of a petition for approval of a project, board staff shall initially review the petition for completeness and appropriateness. If the petition is incomplete or inappropriate for board consideration, board staff shall return the petition to the requestor with a letter explaining the reason the petition is being returned. A petition that has been returned pursuant to this paragraph may be amended or supplemented as necessary and submitted for reconsideration.

b. Board review. Upon review by the board of a petition for approval of a project, the board shall either approve or deny the petition. If the board approves the petition, the approval:

- (1) Shall be specific for the project requested;
- (2) Shall approve the project for a specific time period; and
- (3) May include conditions or qualifications applicable to the project.

c. Inspection. The project site and project documentation shall be available for inspection and review by the board or its representative at any time during the project review and the approval or denial processes and, if a project is approved, throughout the approved term of the project.

d. Documentation maintained. Project documentation shall be maintained and available for inspection, review, and copying by the board or its representative for at least two years following completion or termination of the project.

8.40(6) *Presentation of reports.* The pharmacist responsible for overseeing a project shall be responsible for submitting to the board any reports required as a condition of a project, including the final project report.

a. Final project report. The final project report shall include a written summary of the results of the project and the conclusions drawn from those results. The final project report shall be submitted to the board within three months after completion or termination of the project.

b. Board review. The board shall receive and review any report regarding the progress of a project and the final project report at a regularly scheduled meeting of the board. The report shall be an item on the open session agenda for the meeting.

[ARC 0393C, IAB 10/17/12, effective 11/21/12; ARC 1032C, IAB 9/18/13, effective 10/23/13]

These rules are intended to implement Iowa Code sections 124.101, 124.301, 124.306, 124.308, 126.10, 126.11, 126.16, 135C.33, 147.7, 147.55, 147.72, 147.74, 147.76, 155A.2 through 155A.4, 155A.6, 155A.10, 155A.12 through 155A.15, 155A.19, 155A.20, 155A.27 through 155A.29, 155A.32, and 155A.33 and 2013 Iowa Acts, Senate File 353.

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CHAPTER 13
TELEPHARMACY PRACTICE

657—13.1(155A) Purpose and scope. The purpose of this chapter is to provide standards for the provision of telepharmacy services to patients. These rules provide for pharmaceutical care services at a telepharmacy site utilizing audiovisual technologies that link the telepharmacy site with a managing pharmacy and one or more verifying pharmacists. The telepharmacy site and the managing pharmacy shall be located within Iowa and shall maintain appropriate licensure by the board.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.2(155A) Definitions. For purposes of this chapter, the following definitions shall apply:

“*Board*” means the board of pharmacy.

“*CSA*” or “*CSA registration*” means a registration issued pursuant to Iowa Code section 124.303 and 657—Chapter 10.

“*DEA*” means the Drug Enforcement Administration of the U.S. Department of Justice.

“*Managing pharmacy*” means a licensed pharmacy located in Iowa that oversees the activities of one or more telepharmacy sites.

“*Telepharmacy*” means the practice of pharmacy where pharmaceutical care services are provided using audiovisual technologies linking a telepharmacy site with the managing pharmacy.

“*Telepharmacy site*” means a licensed pharmacy that is operated by a managing pharmacy and staffed by one or more telepharmacy technicians where pharmaceutical care services, including the storage and dispensing of prescription drugs, drug utilization review, and patient counseling, are provided by a licensed pharmacist through the use of technology.

“*Verifying pharmacist*” means a remote Iowa-licensed pharmacist or pharmacists who perform any step in the prescription verification and dispensing process including but not limited to: verification of data entry; product selection, packaging, and labeling; drug utilization review; and patient counseling.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.3(124,155A) Written agreement. The managing pharmacy and the telepharmacy site shall execute and maintain a current written agreement between the pharmacies. If there is no current written agreement between the pharmacies, the telepharmacy site shall immediately notify the board and shall discontinue operations as a telepharmacy site until a current written agreement between the managing pharmacy and the telepharmacy site is executed.

13.3(1) Contents of agreement. The written agreement between the managing pharmacy and a telepharmacy site shall include, but may not be limited to, the following:

a. Staffing, to include telepharmacy technician staffing, verifying pharmacist staffing and availability, and on-site pharmacist staffing as needed.

b. Hours of operation of the telepharmacy site and hours of availability of pharmacists at the managing pharmacy.

c. Emergency contact information for the managing pharmacy and the telepharmacy site.

d. A complete description of the audiovisual technology to be utilized to link the managing pharmacy and the telepharmacy site.

e. A provision that, in the event that the telepharmacy technician is not available at the telepharmacy site, that a verifying pharmacist is not available, or that the audiovisual communication connection between the telepharmacy site and the managing pharmacy is not available, the telepharmacy site shall close pending the availability of the technician, the verifying pharmacist, and the communication link or pending the arrival at the telepharmacy site of a pharmacist to provide on-site pharmacy services.

f. Activities and services to be provided by the managing pharmacy at the telepharmacy site.

g. Identification of contact persons to receive, on behalf of the managing pharmacy and the telepharmacy site, notifications and official communications regarding the written agreement. Identification of contact persons shall include delivery addresses and preferred methods of delivery of

the written communications required by this rule and any other communications affecting the written agreement between the managing pharmacy and the telepharmacy.

h. Pharmacy locations, other than the managing pharmacy, where verifying pharmacists may be based or located.

13.3(2) Termination of agreement. A managing pharmacy shall provide written notice to the board and to the telepharmacy site 90 days in advance of the managing pharmacy's intent to terminate the agreement between the telepharmacy site and the managing pharmacy. A telepharmacy site shall provide written notice to the board and to the managing pharmacy 90 days in advance of the telepharmacy site's intent to terminate the agreement between the managing pharmacy and the telepharmacy site.

a. New agreement. A new written agreement between a managing pharmacy and the telepharmacy site, including the filing of a new pharmacy license application identifying the new pharmacist in charge, shall be executed within the 90-day advance notification period.

b. No new agreement. If the telepharmacy site is unable to contract with a new managing pharmacy, the telepharmacy site shall, 30 days prior to the expiration of the 90-day advance notification period, implement the prior notification requirements for closing a telepharmacy site as provided in subrule 13.3(3). The telepharmacy site shall cease operations and close at the end of that 30-day closing notification period unless a new written agreement is executed.

13.3(3) Closing of telepharmacy site. A telepharmacy site that intends to close the telepharmacy site shall provide written notification to the managing pharmacy and the board as provided in subrule 13.3(2). In addition, the telepharmacy site shall provide written notification to the DEA and to patients and shall comply with all requirements for closing a pharmacy as provided in 657—subrule 8.35(7).

13.3(4) Closing of managing pharmacy. A managing pharmacy that intends to close the managing pharmacy shall provide written notification to the telepharmacy site and the board as provided in subrule 13.3(2). In addition, the managing pharmacy shall provide written notification to the DEA and to patients and shall comply with all requirements for closing a pharmacy as provided in 657—subrule 8.35(7). A telepharmacy site that has been managed by the closing pharmacy shall comply with the provisions of subrules 13.3(2) and 13.3(3), as applicable.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.4(155A) Responsible parties. The responsibilities identified and assigned pursuant to rule 657—8.3(155A) shall be assigned, as appropriate, to the managing pharmacy and the telepharmacy site, by and through their respective owners or license holders, to the pharmacist in charge and to staff pharmacists, including verifying pharmacists. A telepharmacy technician shall share responsibility with the pharmacist in charge, the telepharmacy site, and the verifying pharmacist, as assigned in rule 657—8.3(155A), for all functions assigned to and performed by the telepharmacy technician.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.5 to 13.7 Reserved.

657—13.8(124,155A) General requirements for telepharmacy site. The telepharmacy site shall maintain a pharmacy license issued by the board. If the telepharmacy site plans to dispense controlled substances, the telepharmacy site shall also maintain a CSA registration and a DEA registration.

13.8(1) Located in Iowa. A telepharmacy site shall be located within the state of Iowa.

13.8(2) Pharmacist in charge. The pharmacist in charge of the telepharmacy site shall be the pharmacist in charge of the managing pharmacy.

13.8(3) Security. A telepharmacy site shall employ methods to prevent unauthorized access to prescription drugs, devices, and pharmacy and patient records. Such methods may include an alarm system and shall include other security systems and methods as provided by these rules. Alarm systems and entry system locks should be disarmed when the telepharmacy site is staffed and open for business. Minimum security methods shall include:

a. Electronic keypad or other electronic entry system into the telepharmacy site or the pharmacy department that requires and records the unique identification of the individual accessing the pharmacy,

including the date and time of access. Complete access records shall be maintained for a minimum of two years beyond the date of access.

- b. Secure storage such as a safe.
- c. Controlled access to computer records.
- d. A continuous system of video surveillance and recording of the pharmacy department that includes maintenance of recordings for a minimum of 60 days following the date of the recording.

13.8(4) Telepharmacy site signage. In addition to the patient counseling sign required pursuant to subrule 13.8(5), one or more signs, prominently posted in every prescription pick-up area and clearly visible to the public, shall inform the public that the location is a telepharmacy site supervised by a pharmacist at a remote location. Signage shall include the name, location, and telephone number of the managing pharmacy. The telepharmacy site shall also prominently post the days and times that the telepharmacy is open for business.

13.8(5) Patient counseling. Patient counseling as required by rule 657—6.14(155A) shall be provided utilizing the audiovisual technology employed between the telepharmacy site and the managing pharmacy. Every telepharmacy site shall post in every prescription pickup area, in a manner clearly visible to patients, a notice that Iowa law requires the pharmacist to discuss with the patient any new prescriptions dispensed to the patient. The board shall provide a telepharmacy site with the required signage.

13.8(6) Label requirements. In addition to the label requirements identified in 657—subrule 6.10(1), the label affixed to or on the dispensing container of any prescription drug or device dispensed by a telepharmacy site pursuant to a prescription drug order shall include, on the primary label or affixed by use of an auxiliary label, the following:

- a. The name, telephone number, and address of the telepharmacy site;
- b. The name and telephone number of the managing pharmacy.

13.8(7) Prohibited activities. In the physical absence of a pharmacist, the following activities are prohibited:

- a. Practice of pharmacist-interns or pharmacy support persons at the telepharmacy site.
- b. Advising patients regarding over-the-counter products unless that advice is communicated directly by a pharmacist to the patient.
- c. Dispensing or delivering prescription medications packaged by a technician into patient med paks unless an on-site pharmacist has verified the drugs in the patient med paks.
- d. Tech-check-tech practice.
- e. Compounding, unless an on-site pharmacist has verified the accuracy and completeness of the compounded drug product.
- f. All judgmental activities identified in rule 657—3.23(155A) that a pharmacy technician is prohibited from performing in the practice of pharmacy.

13.8(8) Continuous quality improvement. A telepharmacy site shall implement and participate in a continuous quality improvement program pursuant to rule 657—8.26(155A).

13.8(9) Technology failure. If the audiovisual technology between the telepharmacy site and the managing pharmacy or the verifying pharmacist is not operational, no prescriptions shall be dispensed from the telepharmacy site to a patient unless a pharmacist is physically present at the telepharmacy site.

13.8(10) Perpetual controlled substances inventory. A telepharmacy site that dispenses controlled substances shall maintain a perpetual inventory record of those controlled substances.

- a. The perpetual inventory record requirement shall apply to all controlled substances maintained and dispensed by the telepharmacy site and shall not be limited only to Schedule II controlled substances.
- b. The perpetual inventory record format and other requirements provided in rule 657—10.33(124,155A) shall apply to the telepharmacy site's perpetual inventory record of controlled substances, with the following exceptions:

(1) The perpetual inventory record shall contain records for all controlled substances, not just Schedule II controlled substances, and

(2) Audit of the perpetual inventory record shall be completed and the physical and perpetual inventories shall be reconciled pursuant to the requirements of 657—subrule 10.33(4) each month as part of the inspection of the telepharmacy site.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.9(155A) General requirements for managing pharmacy.

13.9(1) *Distance to telepharmacy site.* The managing pharmacy shall be located in Iowa and within a 200-mile radius of a telepharmacy site to ensure that the telepharmacy site is sufficiently supported by the managing pharmacy and that necessary personnel or supplies may be delivered to the telepharmacy site within a reasonable period of time of an identified need.

13.9(2) *Emergency preparedness plan.* A managing pharmacy shall develop and include in both the managing pharmacy's and the telepharmacy site's policies and procedures a plan for continuation of pharmaceutical services provided by the telepharmacy site in case of an emergency interruption of the telepharmacy site's services. The plan shall address the timely arrival at the telepharmacy site of necessary personnel or the delivery to the telepharmacy site of necessary supplies within a reasonable period of time following the identification of an emergency need. The plan may provide for alternate methods of continuation of the services of the telepharmacy site including, but not limited to, personal delivery of patient prescription medications from an alternate pharmacy location or on-site pharmacist staffing at the telepharmacy site.

13.9(3) *Pharmacist in charge.* The pharmacist in charge of the managing pharmacy shall be the pharmacist in charge of the telepharmacy site.

13.9(4) *Adequate audiovisual connection.* The pharmacist in charge shall ensure adequate audiovisual connection with the telepharmacy site during all periods when the telepharmacy site is open for business including ensuring confidentiality of communications in compliance with state and federal confidentiality laws.

13.9(5) *Monthly inspection.* The pharmacist in charge or delegate pharmacist shall be responsible for performing a monthly inspection of the telepharmacy site. Inspection reports shall be signed by the individual pharmacist who performed the inspection. Inspection records and reports shall be maintained at the telepharmacy site for two years following the date of the inspection. A copy of the inspection report shall be provided to and maintained at the managing pharmacy. The monthly inspection shall include, but may not be limited to, the following:

- a. Audit and reconciliation of controlled substances perpetual and physical inventories.
- b. Audit of electronic entry system and records.
- c. Verification that the video recording system is functioning properly and that the recordings are maintained and available for at least 60 days past the date of the recording.
- d. Compilation of a record of the number of prescriptions filled, the number of on-site pharmacist hours, and the number of hours the pharmacy site was open for business during the preceding month.
- e. Review of written policies and procedures and verification of compliance with those policies and procedures.
- f. Ensuring compliance with and review of records in the continuous quality improvement program, following up with responsible personnel to address issues identified by incident reports to prevent future incidents.
- g. Review of records of the receipt and disbursement of prescription drugs, including controlled substances, to ensure compliance with record-keeping requirements.
- h. Inspection of drug supplies and storage areas to ensure removal and quarantine of outdated drugs.
- i. Inspection of stock drug supplies and storage areas to ensure drugs are maintained in a manner to prevent diversion and maintain the integrity of the drugs, verifying that the temperatures of storage areas are appropriate for the stored drugs and equipment.
- j. Inspection of pharmacy and storage areas and shelves to ensure areas and shelves are clean and free of pests and other contaminants.

13.9(6) *On-site pharmacist staffing.* In an effort to promote public health, the telepharmacy site shall be staffed by a pharmacist for at least 16 hours per month. While on site, the pharmacist shall make available to the community general health care services, which may include, but not necessarily be limited to, immunizations, medication therapy management, or health screenings, as deemed necessary and appropriate by the pharmacist in charge and as provided by policies and procedures.

a. If a pharmacist will be available at the telepharmacy site to provide in-person patient services, a consistent schedule of the pharmacist's availability shall be established and published.

b. Signage identifying the days and times when a pharmacist is on site and available to patients shall be conspicuously posted at the telepharmacy site and may be published by other means, as deemed appropriate.

c. Notice that the pharmacist will not be present at the telepharmacy site during any routinely scheduled and posted on-site availability shall be provided to the public in advance of the absence except as provided in the emergency preparedness plan.

d. If the average number of prescriptions dispensed per day by the telepharmacy site exceeds 150 prescriptions, the telepharmacy site shall provide on-site pharmacist staffing 100 percent of the time the pharmacy is open for business and shall, within ten business days, apply to the board for licensure as a general pharmacy. The average number of prescriptions dispensed per day shall be determined by averaging the number of prescriptions dispensed per day over the previous 90-day period.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.10(155A) General requirements for verifying pharmacist. A verifying pharmacist shall maintain a current and active license to practice pharmacy in Iowa.

13.10(1) *Location of verifying pharmacist.* The verifying pharmacist who is performing patient counseling shall be physically located within the managing pharmacy or another pharmacy licensed to operate a pharmacy in Iowa.

13.10(2) *Adequate audiovisual connection.* The verifying pharmacist shall ensure adequate audiovisual connection with the telepharmacy site during all periods when the pharmacist is responsible for verifying telepharmacy site activities and practices, including ensuring confidentiality of communications in compliance with state and federal confidentiality laws.

13.10(3) *Verifying pharmacist training.* A verifying pharmacist shall be adequately trained on the use of the technology to ensure accurate verification and patient counseling and shall review and understand the policies and procedures of the managing pharmacy and the telepharmacy site.

13.10(4) *Patient refusal of counseling.* If a patient or patient's caregiver refuses patient counseling, the refusal shall be directly communicated by the patient or patient's caregiver to the pharmacist through audiovisual communication. A technician may not accept and communicate a refusal of patient counseling from the patient or patient's caregiver to the pharmacist.

13.10(5) *Reference library.* A verifying pharmacist shall have access to all required references applicable to the telepharmacy services provided at the telepharmacy site.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.11(155A) General requirements for telepharmacy technician. A telepharmacy technician shall maintain current national certification and registration in good standing with the board as a certified pharmacy technician.

13.11(1) *Practice experience.* Before practicing in a telepharmacy site, a telepharmacy technician shall have completed a minimum of 2,000 hours of practice experience as a certified pharmacy technician, at least 1,000 hours of which shall be practicing in an Iowa-licensed pharmacy and 160 hours of which shall be practicing in a managing pharmacy.

13.11(2) *Training.* In addition to training required of all pharmacy technicians, a telepharmacy technician shall complete the following minimum training requirements before practicing in a telepharmacy site. Records of telepharmacy technician training shall be documented and maintained by the telepharmacy site.

a. Review and understanding of the policies and procedures of the managing pharmacy.

b. Review and understanding of the policies and procedures of the telepharmacy site.

- c. Review and understanding of these rules for telepharmacy practice.
- d. Review and understanding of pharmacy technician rules, 657—Chapter 3.
- e. Understanding of the operation of the audiovisual technologies to be utilized at both pharmacies.
- f. Training at the telepharmacy site under the direct supervision of an on-site verifying pharmacist. Training shall include operation and use of the audiovisual technology and other means of communication between the telepharmacy site and the managing pharmacy and all daily operations from unlocking and opening the telepharmacy site to closing and locking the telepharmacy site at the end of the business day. If the telepharmacy site is protected by one or more alarm systems, training shall include how to disarm and engage the alarm system or systems.

13.11(3) Continuing education. Beginning with the first full two-year continuing education period for renewal of the technician's national pharmacy technician certification after beginning practice as a telepharmacy technician, and for each subsequent renewal of national certification for as long as the technician continues to practice as a telepharmacy technician, the technician shall complete two hours of continuing education in each of the following activities. These continuing education requirements shall not be in addition to the total continuing education credits required to maintain national certification.

- a. Patient safety/medication errors.
- b. Pharmacy law.

13.11(4) Identification. The telepharmacy technician shall, at all times when the technician is practicing at the telepharmacy site and the telepharmacy site is open for business, wear a name badge or tag identifying the technician. The badge or tag shall include, at a minimum, the technician's first name and title. The name badge or tag shall be so designed and worn that the technician's name and title are clearly visible to the public at all times.

13.11(5) Adequate audiovisual connection. The telepharmacy technician shall ensure adequate audiovisual connection with the managing pharmacy during all periods when the telepharmacy site is open for business, including ensuring confidentiality of communications in compliance with state and federal confidentiality laws.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.12 to 13.15 Reserved.

657—13.16(124,155A) Telepharmacy site—initial application.

13.16(1) License application. A telepharmacy site shall complete and submit to the board a limited use/telepharmacy license application and fee as provided in rule 657—8.35(155A). In addition to the application and fee, the telepharmacy site shall include the additional information identified in this rule.

13.16(2) CSA registration application. If controlled substances will be dispensed from the telepharmacy site, the telepharmacy site shall complete and submit, with the limited use/telepharmacy license application and fee, the CSA registration application and fee as provided in rule 657—10.1(124).

13.16(3) Identification of managing pharmacy. The telepharmacy site application shall include identification of the managing pharmacy, including pharmacy name, license number, address, telephone number, pharmacist in charge, and a statement from the managing pharmacy or pharmacist in charge indicating that the managing pharmacy has executed a written agreement to provide the required services and oversight to the telepharmacy site.

13.16(4) Distance to nearest general pharmacy. The telepharmacy site application shall identify the nearest licensed pharmacy that dispenses prescription drugs to outpatients and shall provide evidence identifying the total driving distance between the proposed telepharmacy site and the nearest currently licensed general pharmacy.

a. If the distance between the proposed telepharmacy site and the nearest currently licensed general pharmacy is less than ten miles, the telepharmacy site shall submit a request for waiver of the distance requirement. The process and requirements for a request for waiver are identified in subrule 13.16(8).

b. The distance requirement shall not apply under any of the following circumstances:

(1) The telepharmacy site was approved by the board and operating as a telepharmacy site prior to July 1, 2016.

(2) The proposed telepharmacy site is located within a hospital campus, and services will be limited to inpatient dispensing.

(3) The proposed telepharmacy site is located on property owned, operated, or leased by the state.

13.16(5) *Written agreement.* The telepharmacy site application shall include the written agreement between the telepharmacy site and the managing pharmacy as described in subrule 13.3(1).

13.16(6) *Key personnel.* The telepharmacy site application shall identify key personnel including the pharmacist in charge of the managing pharmacy and the telepharmacy site and the telepharmacy technician or technicians at the telepharmacy site. Identification shall include the names, the license or registration numbers, and the titles of the key personnel. Telepharmacy technician identification shall also include a copy of the telepharmacy technician's current national certification or other verification of the telepharmacy technician's current national certification.

13.16(7) *Audiovisual technology.* A description of the audiovisual technology system to be used to link the managing pharmacy and the telepharmacy site, including built-in safeguards relating to verification of the accuracy of the dispensing processes. Safeguards shall include but may not be limited to:

a. Requiring a verifying pharmacist to review and compare the electronic image of any new prescription with the data entry record of the prescription prior to authorizing the telepharmacy site's system to print a prescription label and prior to the telepharmacy technician's filling of the prescription at the telepharmacy site.

b. Requiring the technician to use barcode technology at the telepharmacy site to verify the accuracy of the drug to be dispensed.

c. Requiring remote visual confirmation by a verifying pharmacist of the drug stock bottle and the drug to be dispensed prior to the dispensing of the prescription at the telepharmacy site.

d. Ensuring that the telepharmacy site's system prevents a prescription from being sold and delivered to a patient before the verifying pharmacist has performed a final verification of the accuracy of the prescription and released the prescription for sale and delivery at the telepharmacy site.

13.16(8) *Request for distance waiver.* The board shall consider a request for waiver of the distance requirement between the proposed telepharmacy site and the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients if the petitioner can demonstrate to the board that the proposed telepharmacy site is located in an area where there is limited access to pharmacy services and that there exist compelling circumstances that justify waiving the distance requirement.

a. The request for waiver shall be prepared and shall include the elements of a request for waiver or variance identified in 657—Chapter 34.

b. In addition to the requirements of 657—Chapter 34, the request for waiver shall include evidence and specific information regarding each of the following, if applicable. If an item identified below does not apply to the proposed telepharmacy site, the request for waiver shall specifically state that the item does not apply.

(1) That the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients is open for business for limited hours or fewer hours than the proposed telepharmacy site.

(2) That the proposed telepharmacy site intends to provide services not available from the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients.

(3) That access to the nearest currently licensed general pharmacy that dispenses prescription drugs to outpatients is limited. A description of how the proposed telepharmacy site will improve patient access to pharmacy services shall be included.

(4) That limited access to pharmacy services is affecting patient safety.

(5) That there are transportation barriers to services from the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients.

(6) That the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients is closing.

(7) That the proposed telepharmacy site is located in an area of the state where there is limited access to pharmacy services.

c. The board shall consider a request for waiver of the distance requirement during any open session of a meeting of the board. One or more representatives of the parties to the waiver request, including representatives of the proposed telepharmacy site, the managing pharmacy, and the nearest currently licensed general pharmacy, shall be invited and encouraged to attend the meeting at which the waiver request is scheduled for consideration to be available to respond to any questions.

d. The board's decision to grant or deny the request for waiver of the distance requirement shall be a proposed decision and shall be reviewed by the director of the department of public health.

(1) The director shall have the power to approve, modify, or veto the board's proposed decision regarding the waiver request.

(2) The director's decision on a waiver request shall be considered final agency action.

(3) The director's decision (final agency action) shall be subject to judicial review under Iowa Code chapter 17A.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.17(124,155A) Changes to telepharmacy site or managing pharmacy. Except as specifically provided by these rules, a change to a telepharmacy site shall require compliance with the licensure and notification requirements of the specific type of change identified in 657—subrules 8.35(6) and 8.35(7). A change affecting the CSA registration shall comply with the appropriate requirements of rule 657—10.11(124).

13.17(1) *Change of pharmacist in charge.* A change of pharmacist in charge shall require submission of a pharmacy license application for the managing pharmacy and the telepharmacy site as provided by 657—subrule 8.35(6).

13.17(2) *Closing or selling of pharmacy.* A telepharmacy site or managing pharmacy that intends to close or sell the pharmacy practice shall comply with all requirements for closing or selling a pharmacy found at 657—subrules 8.35(6) and 8.35(7) regarding ownership change and closing a pharmacy, including all advance notification requirements. A purchaser of a telepharmacy site shall complete and submit applications and supporting information as provided in rule 657—13.16(124,155A). A closing pharmacy shall also comply with the requirements of subrule 13.3(3) or 13.3(4), as appropriate.

13.17(3) *Location change.* A telepharmacy site that intends to move to and to provide telepharmacy services from a new location that is outside the community wherein the telepharmacy site has been located shall comply with the requirements of subrule 13.17(2) for closing a pharmacy and shall submit applications and supporting information as provided in rule 657—13.16(124,155A). A managing pharmacy that intends to move to a new location shall comply with the requirements of 657—subrules 8.35(5), 8.35(6), and 8.35(7), as appropriate.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.18(155A) Opening of traditional pharmacy. If a pharmacy licensed as a general, hospital, or limited use pharmacy opens for business within ten miles of an existing and operating telepharmacy site, the telepharmacy site may continue to operate as a telepharmacy site and shall not be required to close due to the proximity of the new pharmacy.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.19 and 13.20 Reserved.

657—13.21(124,155A) Policies and procedures. In addition to policies and procedures required for the specific services provided and identified in other chapters of board rules, both the managing pharmacy and the telepharmacy site shall develop, implement, and adhere to written policies and procedures for the operation and management of the specific pharmacy's operations.

13.21(1) *Minimum requirements.* Policies and procedures shall define the frequency of review, and written documentation of review by the pharmacist in charge shall be maintained. Policies and procedures shall address, at a minimum, the following:

a. Procedures ensuring that a record is made and retained identifying the pharmacist who verified the accuracy of the prescription including the accuracy of the data entry, the selection of the correct drug, the accuracy of the label affixed to the prescription container, and the appropriateness of the prescription container.

b. Procedures ensuring that a record is made and retained identifying the pharmacist who performed the drug utilization review as provided by rule 657—8.21(155A).

c. Procedures ensuring that a record is made and retained identifying the pharmacist who provided counseling to the patient or the patient's caregiver pursuant to rule 657—6.14(155A).

d. Procedures ensuring that a record is made and retained identifying the technician who filled the prescription.

e. Procedures ensuring adequate security to prevent unauthorized access to prescription drugs and devices and to confidential records.

f. Procedures regarding procurement of drugs and devices, including who is authorized to order or receive drugs and devices, from whom drugs and devices may be ordered and received, and the required method for documentation of the receipt of drugs and devices.

g. Procedures ensuring appropriate and safe storage of drugs at the telepharmacy site, including appropriate temperature controls.

h. Procedures identifying the elements of a monthly inspection of the telepharmacy site by the pharmacist in charge or designated pharmacist, including requirements for documentation and retention of the results of each inspection.

i. Procedures for the temporary quarantine of out-of-date and adulterated drugs from dispensing stock and the subsequent documented disposal of those drugs.

j. Procedures and documentation required in the case of return to the telepharmacy of a drug or device.

k. Procedures for drug and device recalls.

13.21(2) *Availability.* Policies and procedures shall be available for inspection and copying by the board or the board's representative at the location to which the policies and procedures apply.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.22(155A) Reports to the board. The board may periodically request information regarding the services provided by a telepharmacy site.

13.22(1) *Timeliness.* A telepharmacy site shall complete and submit the requested information in a timely manner as requested by the board. The board shall allow a reasonable amount of time for a telepharmacy site to complete and submit the requested information.

13.22(2) *Information to include.* Information requested may include, but may not necessarily be limited to, the following:

a. The number of prescriptions dispensed from the telepharmacy site over a specified period of time.

b. The number of hours a pharmacist was physically present at the telepharmacy site over a specified period of time.

c. The number of hours the telepharmacy site was open for business over a specified period of time.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

657—13.23(124,155A) Records. Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or rules of the board shall be kept by the telepharmacy site and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record except as specifically identified by law or rule. Controlled substances records shall be maintained in a readily retrievable manner in accordance with federal requirements and 657—Chapter 10.

13.23(1) *Dispensing record.* As provided in rule 657—13.21(124,155A), a written or electronic record identifying the pharmacist who verified the prescription, the pharmacist who provided counseling

to the patient or the patient's caregiver, and the pharmacy technician who filled the prescription shall be maintained for every prescription fill dispensed by the telepharmacy site.

13.23(2) *On-site pharmacist staffing.* A written or electronic record of the number of prescriptions filled, the number of on-site pharmacist hours, and the number of hours the telepharmacy site was open for business each month shall be maintained by the telepharmacy site.

13.23(3) *Pharmacy access.* Records identifying, by unique identification of the individual accessing the pharmacy department, including the date and time of access, shall be maintained for two years beyond the date of access.

13.23(4) *Monthly inspection.* Reports of the monthly inspection of the telepharmacy site shall be maintained at the telepharmacy site for two years following the date of the inspection. A copy of the inspection report shall be provided to and maintained at the managing pharmacy for two years following the date of the inspection.

[ARC 3236C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code sections 124.301, 147.107, 155A.3, 155A.6A, 155A.13, 155A.14, 155A.19, 155A.28, 155A.31, 155A.33, and 155A.41.

[Filed ARC 3236C (Notice ARC 3037C, IAB 4/26/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 19
NONRESIDENT PHARMACY PRACTICE

657—19.1(155A) Definitions.

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

“*FDA*” means the United States Food and Drug Administration.

“*Home state*” means the state in which a pharmacy is located.

“*Nonresident pharmacy*” means a pharmacy, including an Internet-based pharmacy, located outside the state of Iowa that delivers, dispenses, or distributes, by any method, prescription drugs, devices, or pharmacy services to an ultimate user physically located in this state.

“*Nonresident pharmacy license*” means a pharmacy license issued to a nonresident pharmacy.

“*Pharmacy services*” includes, but is not limited to, nonproduct services provided by an Iowa-licensed pharmacist or a pharmacist practicing at an Iowa-licensed nonresident pharmacy, such as patient counseling and drug information, pharmaceutical care, and assessment of health risks.

“*Registered pharmacist in charge*” means the pharmacist in charge at the nonresident pharmacy who is registered with the board and is legally responsible for the operation of the nonresident pharmacy with respect to the provision of prescription drugs, devices, or pharmacy services to patients located in Iowa. [ARC 3237C, IAB 8/2/17, effective 9/6/17]

657—19.2(155A) Nonresident pharmacy license. A nonresident pharmacy shall apply for and obtain, pursuant to provisions of rule 657—8.35(155A), a nonresident pharmacy license from the board prior to providing prescription drugs, devices, or pharmacy services to an ultimate user in this state. All requirements of rule 657—8.35(155A) regarding licensure are applicable to nonresident pharmacies unless otherwise provided in this rule. Any pharmacy that dispenses controlled substances to Iowa residents shall also register pursuant to 657—Chapter 10.

19.2(1) Inspection requirements. In lieu of the inspection requirement identified in 657—subrule 8.35(5), a nonresident pharmacy submitting any application for licensure, except when related to a change in location, shall submit with its application and fee an inspection report that satisfies the following requirements:

- a. Less than two years have passed since the date of the inspection and the inspection report is the most recent inspection report available that satisfies the requirements of these rules.
- b. The inspection occurred while the pharmacy was in operation. An inspection prior to the initial opening of the pharmacy shall not satisfy this requirement.
- c. The inspection report addresses all aspects of the pharmacy’s business that will be utilized in Iowa.
- d. The inspection was performed by or on behalf of the home state licensing authority, if available.

19.2(2) Qualified inspector. If the home state licensing authority has not conducted an inspection satisfying the inspection requirements, the nonresident pharmacy shall submit an inspection report issued by one of the following:

- a. The verified pharmacy program offered by the National Association of Boards of Pharmacy®.
- b. Another qualified entity if the entity is preapproved by the board.
- c. An authorized agent of the board. The board may recover from a nonresident pharmacy, prior to the issuance of a nonresident pharmacy license, the costs associated with conducting an inspection.

19.2(3) Corrective action. The nonresident pharmacy shall submit evidence of corrective action taken to satisfy any deficiency identified in the inspection report and of compliance with all legal directives of the home state licensing authority.

19.2(4) Nonresident pharmacy license changes. A nonresident pharmacy shall submit a completed application and fee pursuant to 657—subrule 8.35(6) except as provided in this rule.

- a. *Name.* A change of the pharmacy name which is provided to patients shall require submission of a pharmacy license application and fee within ten days after issuance by the home state regulatory authority of a license bearing the new name.

b. Location. A change of pharmacy location shall require submission of a pharmacy license application, with the exception of the inspection requirements pursuant to subrule 19.2(1), and fee within ten days after issuance by the home state regulatory authority of a license bearing the new address.

c. Pharmacist in charge. A change in the pharmacist in charge shall require submission of a pharmacy license application and fee within ten days of the identification of a permanent pharmacist in charge pursuant to 657—subrule 8.35(6). If a temporary pharmacist in charge is identified, written notification shall be provided to the board pursuant to 657—paragraph 8.35(6)“c.” The temporary pharmacist in charge shall not be required to be registered pursuant to rule 657—19.3(155A).

19.2(5) Closing pharmacy or discontinuation of services. If a nonresident pharmacy is closing, the pharmacy shall comply with the requirements in 657—subrule 8.35(7). If a nonresident pharmacy is discontinuing provision of pharmacy services to Iowa, but not closing, the pharmacy shall comply with the requirements in the introductory paragraph of 657—subrule 8.35(7) as it relates to transferring patient records to another Iowa-licensed pharmacy and 657—paragraphs 8.35(7)“b” and “d.” The notice requirements of this rule shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster. The nonresident pharmacy shall return to the board the nonresident pharmacy license certificate and, if registered, the Iowa controlled substances Act registration certificate within ten days following the closure or discontinuation of service.

[ARC 3237C, IAB 8/2/17, effective 9/6/17]

657—19.3(155A) Registered pharmacist in charge. The permanent pharmacist in charge of the nonresident pharmacy shall be designated as such on the nonresident pharmacy license application. Beginning January 1, 2018, the pharmacist in charge shall be registered with the board. The pharmacist in charge shall submit a completed application and a registration fee of \$75. The registration shall expire on December 31 following the date of issuance of the registration. An initial registration issued between November 1 and December 31 shall not require renewal until the following calendar year.

19.3(1) Registered pharmacist in charge application. The pharmacist in charge of an Iowa-licensed nonresident pharmacy who is not currently actively licensed to practice pharmacy in Iowa shall be registered with the board. The pharmacist in charge shall submit to the board an application that includes the following information:

- a.* The pharmacist’s name and contact information.
- b.* The pharmacist’s license or registration number in the state in which the nonresident pharmacy is located.
- c.* The pharmacist’s current place of employment.
- d.* Verification that the pharmacist’s license in the state in which the nonresident pharmacy is located is current and in good standing.
- e.* Documentation that the applicant has successfully completed the most current educational training module approved by the board regarding the board’s rules as they relate to nonresident pharmacy practice.
- f.* Criminal and disciplinary history information.

19.3(2) Registration changes and voluntary cancellation. A registered pharmacist in charge of a nonresident pharmacy shall notify the board in writing within ten days of any change of information included on the registration application, including the pharmacist’s name, contact information, home state license or registration information or status, and place of employment. If a registered pharmacist in charge ceases to be the pharmacist in charge of an Iowa-licensed nonresident pharmacy, the pharmacist may voluntarily request that the registration be canceled and the pharmacist shall not be subject to the inactive registration and reactivation procedure as identified in paragraph 19.3(3)“b.”

19.3(3) Registration renewal. The registration of a pharmacist in charge at a nonresident pharmacy shall be renewed or canceled prior to January 1 of each year. The pharmacist in charge shall submit a completed application and fee as required in this rule.

a. Delinquent registration grace period. If the registration of a pharmacist in charge has not been renewed or canceled prior to expiration, but the pharmacist is in the process of renewing the registration, the registration becomes delinquent on January 1. A pharmacist in charge who submits a completed registration renewal application, application fee, and late penalty fee of \$75 postmarked or delivered to the board office by January 31 shall not be subject to disciplinary action for continuing to serve as pharmacist in charge without a current registration in the month of January.

b. Delinquent license reactivation beyond grace period. If the registration of a pharmacist in charge has not been renewed prior to the expiration of the one-month grace period identified in paragraph 19.3(3)“a,” the nonresident pharmacy may not continue to provide services to Iowa patients. A nonresident pharmacy that continues to provide services to Iowa patients without a currently registered pharmacist in charge may be subject to disciplinary sanctions. A pharmacist in charge without a current registration may apply for reactivation by submitting a registration application for reactivation and a \$300 reactivation fee. As part of the reactivation application, the nonresident pharmacy shall disclose the services, if any, that were provided to Iowa patients while the registration of the pharmacist in charge was delinquent.

[ARC 3237C, IAB 8/2/17, effective 9/6/17]

657—19.4(124,155A) Applicability of board rules. A nonresident pharmacy shall comply with all requirements of this chapter, 657—Chapter 8, and any other board rules relating to the services that are provided by the pharmacy to patients in Iowa.

19.4(1) Type of pharmacy practice. A nonresident pharmacy, based on the principal type of pharmacy practice, shall comply with board rules as follows:

a. A “general pharmacy” as described in rule 657—6.1(155A) shall comply with all requirements of 657—Chapter 6.

b. A “hospital pharmacy” as described in rule 657—7.1(155A), excepting licensure pursuant to Iowa Code chapter 135B, shall comply with all requirements of 657—Chapter 7.

c. A “limited use pharmacy” as described in 657—subrule 8.35(2) shall comply with all requirements of the limited use pharmacy practice.

d. An “outsourcing facility” as described in rule 657—41.2(155A) shall comply with all requirements of 657—Chapters 41 and 20.

19.4(2) Controlled substances. A nonresident pharmacy providing prescription drugs identified as controlled substances under Iowa Code chapter 124 shall register with the board and comply with all requirements of 657—Chapter 10.

19.4(3) Compounding. A nonresident pharmacy engaged in the compounding of drug products as defined in rule 657—20.2(124,126,155A) shall comply with all requirements of 657—Chapter 20.

19.4(4) Long-term care services. A nonresident pharmacy providing services to Iowa patients in a long-term care facility as defined in 657—Chapter 23 shall comply with all requirements of 657—Chapters 22 and 23.

19.4(5) Electronic data. A nonresident pharmacy utilizing any electronic data processing or transmission devices or services shall comply with all requirements of 657—Chapter 21.

[ARC 3237C, IAB 8/2/17, effective 9/6/17]

657—19.5 and 19.6 Reserved.

657—19.7(155A) Confidential data. Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure patient confidentiality and to protect patient identity and patient-specific information from inappropriate or nonessential access, use, or distribution pursuant to the requirements of rule 657—8.16(124,155A).

[ARC 3237C, IAB 8/2/17, effective 9/6/17]

657—19.8(124,155A) Storage and shipment of drugs and devices. Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure compliance with rules 657—8.7(155A) and 657—8.15(155A). Policies and procedures shall provide for the shipment of

controlled substances via a secure and traceable method, and all records of such shipment and delivery to Iowa patients shall be maintained for a minimum of two years from the date of delivery.

[ARC 3237C, IAB 8/2/17, effective 9/6/17]

657—19.9(155A) Patient record system, prospective drug use review, and patient counseling.

19.9(1) Patient record system. A patient record system shall be maintained pursuant to rule 657—6.13(155A) for Iowa patients for whom prescription drug orders are dispensed.

19.9(2) Prospective drug use review. A pharmacist shall, pursuant to the requirements of rule 657—8.21(155A), review the patient record and each prescription drug order before dispensing.

19.9(3) Patient counseling. Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure that Iowa patients receive appropriate counseling pursuant to the requirements of rule 657—6.14(155A).

[ARC 3237C, IAB 8/2/17, effective 9/6/17]

657—19.10(155A) Reporting discipline and criminal convictions. A nonresident pharmacy or registered pharmacist in charge shall provide notice to the board of any discipline imposed by any licensing authority on any license or registration held by the pharmacy or pharmacist in charge 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 nonresident pharmacy or pharmacist in charge shall provide written notice to the board of any criminal conviction of the pharmacy, of any pharmacy owner, or of the pharmacist in charge that is related to prescription drugs or related to the operation of the pharmacy no later than 30 days after the conviction. The term “criminal conviction” includes instances when the judgment of conviction or sentence is deferred.

[ARC 3237C, IAB 8/2/17, effective 9/6/17]

657—19.11(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a nonresident pharmacy license or pharmacist in charge registration for any of the following:

1. Any violation of the Federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act. A warning letter issued by the FDA shall be conclusive evidence of a violation.
2. Any conviction of a crime related to prescription drugs or the practice of pharmacy committed by the nonresident pharmacy, pharmacist in charge, or individual owner, or if the pharmacy is an association, joint stock company, partnership, or corporation, by any managing officer.
3. Refusal of access to the pharmacy or pharmacy records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Employing or continuing to employ a pharmacist in charge without a current and active registration pursuant to rule 657—19.3(155A).
5. Any violation of Iowa Code chapter 124, 124A, 124B, 126, 155A, or 205 or any rule of the board.

[ARC 3237C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code sections 124.301, 124.306, 155A.13, 155A.13A, 155A.13C, 155A.19, and 155A.35.

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[Filed ARC 3237C (Notice ARC 3039C, IAB 4/26/17), IAB 8/2/17, effective 9/6/17]

CHAPTER 20
COMPOUNDING PRACTICES

657—20.1(124,126,155A) Purpose and scope. The requirements of this chapter apply to compounded preparations that are dispensed, distributed, or administered to an ultimate user in the state of Iowa, regardless of the location of the pharmacy or outsourcing facility where the preparation was compounded. This chapter applies to compounded preparations intended for humans and animals. In addition to the requirements in this chapter, all pharmacies and outsourcing facilities engaged in compounding shall comply with all applicable federal laws and regulations governing compounding and all applicable state laws, rules and regulations governing the practice of pharmacy. In the event the requirements in this chapter directly conflict with any federal law or regulation, the federal law or regulation shall supersede the requirements in this chapter. The requirements of 657—Chapter 16 apply to the compounding of radiopharmaceuticals. The requirements of 657—Chapter 41 apply to outsourcing facilities.

[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.2(124,126,155A) Definitions. For purposes of this chapter, the following definitions apply:

“*Anticipatory compounding*” means the compounding of preparations in advance of the pharmacy’s receipt of patient-specific prescriptions.

“*Batch preparation compounding*” means anticipatory compounding, compounding preparations intended for multiple disbursements, or compounding preparations in a multiple-dose container for administration to more than one patient.

“*Beyond-use date*” means the date after which a compounded preparation should not be used, determined from the date that the preparation is compounded.

“*Bulk drug substance*” means any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug. The term does not include intermediates used in the synthesis of such substances.

“*Compounding*” means the combining, mixing, diluting, pooling, flavoring, or otherwise altering of a drug or bulk drug substance to create a drug. Compounding includes the preparation of drugs or devices in which all bulk drug substances and components are nonprescription products. Compounding does not include the use of a flavoring agent to flavor a drug pursuant to rule 657—20.13(124,126,155A), nor does it include mixing or reconstituting a drug according to the product’s manufacturer label.

“*FDA*” means the Food and Drug Administration of the U.S. Department of Health and Human Services.

“*Flavoring agent*” means a therapeutically inert, nonallergenic substance consisting of inactive ingredients that is added to a drug to improve the drug’s taste and palatability.

“*Office use*” means that a compounded product has been prepared and distributed to a practitioner for administration to a patient by the practitioner in the course of the practitioner’s professional practice. A compounded product distributed to a practitioner for “office use” shall not require a patient-specific prescription and may not be further distributed to another practitioner or dispensed to a patient for self-administration.

“*Outsourcing facility*” or “*facility*” means any compounding facility that is registered as an outsourcing facility, as defined in 21 U.S.C. Section 353b, that distributes sterile compounded human drug products without a patient-specific prescription to an authorized agent or practitioner in this state.

“*USP*” means United States Pharmacopeia.

[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 2559C, IAB 6/8/16, effective 7/13/16; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.3(124,126,155A) Nonsterile compounding. Iowa-licensed pharmacies that compound nonsterile preparations for ultimate users in the state of Iowa shall follow the current revision of USP Chapter 795 standards. Additional USP chapters incorporated by reference into USP Chapter 795 shall also be followed.

[ARC 2194C, IAB 10/14/15, effective 11/18/15]

657—20.4(124,126,155A) Sterile compounding. Iowa-licensed pharmacies that compound sterile preparations for ultimate users in the state of Iowa shall follow the current revision of USP Chapter 797 standards. Additional USP chapters incorporated by reference into USP Chapter 797 shall also be followed.

[ARC 2194C, IAB 10/14/15, effective 11/18/15]

657—20.5(126,155A) Delayed compliance. A pharmacy that cannot meet the requirements for full compliance with these rules, including applicable USP chapters, and that has not obtained from the board a waiver of the specific requirement or requirements shall not engage in compounding until the pharmacy is in full compliance with all requirements or the board has approved a waiver of the specific requirement or requirements.

[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.6(126,155A) Compounding standards for outsourcing facilities. An FDA-registered outsourcing facility shall be properly licensed in Iowa pursuant to 657—Chapter 41 and shall follow the FDA's current good manufacturing practices (cGMPs) for outsourcing facilities when compounding preparations for use in Iowa.

[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.7 and 20.8 Reserved.

657—20.9(124,155A) Prescriber/patient/pharmacist relationship. All compounded preparations shall be dispensed pursuant to a patient-specific prescription unless the compounded preparation is distributed pursuant to rule 657—20.15(124,126,155A) or 657—20.16(124,126,155A). A prescription for a compounded preparation shall be authorized by the prescriber for a specific patient. Prescriptions for all compounded preparations shall be maintained on file at the dispensing pharmacy.

[ARC 2194C, IAB 10/14/15, effective 11/18/15]

657—20.10(126,155A) Anticipatory compounding.

20.10(1) Outsourcing facilities. Outsourcing facilities are authorized to engage in anticipatory compounding. Outsourcing facilities are not required to obtain patient-specific prescriptions in order to distribute compounded preparations.

20.10(2) Pharmacies. Pharmacies may engage in anticipatory compounding only if the anticipatory compounding is based on a history of receiving valid prescriptions generated solely within an established prescriber/patient/pharmacist relationship, so long as each compounded preparation is dispensed pursuant to a patient-specific prescription.

[ARC 2194C, IAB 10/14/15, effective 11/18/15]

657—20.11(126,155A) Prohibition on resale of compounded preparations. The sale of compounded preparations to other pharmacies, prescribers, or entities, except as explicitly authorized by this chapter, is considered manufacturing.

[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.12(126,155A) Compounding copies of an approved drug. A pharmacy or outsourcing facility may only compound preparations that are essentially copies of approved drugs if the compounded preparation is changed to produce for an individual patient a clinically significant difference to meet a medical need as determined and authorized by the prescriber. A pharmacy or outsourcing facility may compound a preparation that is essentially a copy of an approved drug if the approved drug is identified as currently in shortage on the FDA drug shortages database published on the FDA Web site, <http://www.accessdata.fda.gov/scripts/drugshortages/default.cfm>.

20.12(1) Essentially a copy. The board may consider the existence of the following factors as an indication that a compounded preparation is essentially a copy of an approved drug:

a. The compounded preparation has the same active pharmaceutical ingredient(s) as the commercially available drug product;

b. The active pharmaceutical ingredient(s) has the same, similar, or an easily substitutable dosage strength; and

c. The commercially available drug product can be used by the same route of administration as prescribed for the compounded preparation.

20.12(2) Clinically significant difference. The prescription for a compounded preparation that is essentially a copy of an approved drug shall clearly indicate the relevant change and the significant clinical difference produced for the patient. A prescription that identifies only a patient name and compounded preparation formulation is insufficient documentation for a pharmacy or outsourcing facility to rely upon to conclude that the prescriber made a determination regarding a clinically significant difference.

[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.13(124,126,155A) Use of flavoring agents. A flavoring agent may be added to a drug at the discretion of the pharmacist or upon the request of the prescriber, the patient, or the patient's agent. The pharmacist may add flavoring agents not to exceed 5 percent of the total volume of the drug to which the flavoring agents are added. The pharmacist shall label the flavored drug with a beyond-use date no greater than 14 days past the date the flavoring agent is added if the drug is required to be stored in a refrigerator. A different beyond-use date or alternate storage conditions may be indicated if such variation is supported by peer-reviewed medical literature. The pharmacist shall electronically or manually document that a flavoring agent was added to a drug, and such documentation shall be made available for inspection and copying upon the request of the board or an agent of the board.

[ARC 2194C, IAB 10/14/15, effective 11/18/15]

657—20.14 Reserved.

657—20.15(124,126,155A) Compounding for office use.

20.15(1) Human compounded preparations. Only an FDA-registered outsourcing facility properly licensed in Iowa pursuant to 657—Chapter 41 may distribute to a practitioner for office use human compounded preparations without a patient-specific prescription.

20.15(2) Veterinary compounded preparations. Veterinary compounded preparations may be sold to a practitioner for office use if the preparations are compounded by an Iowa-licensed pharmacy or outsourcing facility and sold directly to the practitioner by the pharmacy or outsourcing facility.

20.15(3) Office use. Compounded preparations distributed for office use pursuant to subrule 20.15(1) or 20.15(2) and in accordance with the labeling requirements of subrule 20.15(4) do not require a patient-specific prescription but do require that the compounded preparation be administered to a patient in the course of the practitioner's professional practice. Compounded preparations distributed for office use pursuant to this rule shall not be further distributed to other practitioners or dispensed to a patient for self-administration.

20.15(4) Labeling. Compounded preparations for office use, in addition to the labeling requirements specified in rule 657—20.19(124,126,155A), shall include on the prescription label the practitioner's name in place of the patient's name. The label shall state "For Office Use Only—Not for Resale." If the sterility or integrity of the compounded preparation cannot be maintained after the initial opening of the container, the label shall state "Single-Dose Only."

[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 2559C, IAB 6/8/16, effective 7/13/16; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.16(124,126,155A) Compounding for hospital use. Compounded preparations distributed or dispensed to a hospital or hospital pharmacy pursuant to this rule shall be administered to an individual patient in the hospital.

20.16(1) By an FDA-registered outsourcing facility. Only an FDA-registered outsourcing facility properly licensed in Iowa pursuant to 657—Chapter 41 may distribute human compounded preparations to a hospital or hospital pharmacy in the absence of a patient-specific prescription. The compounded preparation shall be labeled in compliance with subrule 20.19(3).

20.16(2) *By a pharmacy that is not an FDA-registered outsourcing facility.* Human compounded preparations that are not compounded at an FDA-registered outsourcing facility may be dispensed to a hospital or hospital pharmacy by an Iowa-licensed pharmacy pursuant to a prescriber's authorization for administration to a specific patient. The compounded preparation shall be labeled in compliance with subrule 20.19(2).
[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.17 and 20.18 Reserved.

657—20.19(124,126,155A) Labeling. The label, or attached auxiliary labeling if necessary, affixed to the container of any compounded preparation dispensed or distributed into or within Iowa shall contain at least the information identified in one of the following subrules, as applicable.

20.19(1) General pharmacy or outpatient dispensing. The label shall meet the labeling requirements of 657—subrule 6.10(1) and shall include the following additional information:

- a. The name and concentration of each active ingredient.
- b. The date that the preparation was compounded.
- c. The beyond-use date of the compounded preparation.
- d. Special storage and handling instructions, if applicable.
- e. The statement “COMPOUNDED PREPARATION” or a reasonable comparable alternative statement that prominently identifies the drug as a compounded preparation.
- f. If the compounded preparation is sterile, the word “STERILE.”
- g. If the compounded preparation was prepared from batch preparation compounding, the batch identification or control number.

20.19(2) Hospital pharmacy or inpatient administration. The label shall meet the labeling requirements of 657—subrule 22.1(3) and shall include the following additional information:

- a. The name and concentration of each active ingredient.
- b. The date that the preparation was compounded.
- c. The beyond-use date of the compounded preparation.
- d. If the compounded preparation was prepared from batch preparation compounding, the batch identification or control number.
- e. Special storage and handling instructions, if applicable.

20.19(3) Outsourcing facility distribution or dispensing. The label, or auxiliary labeling if necessary, shall include the following information:

- a. The statement “THIS IS A COMPOUNDED DRUG” or a reasonable comparable alternative statement that prominently identifies the drug as a compounded preparation.
- b. The name, address, and telephone number of the outsourcing facility that compounded the preparation.
- c. The established name of the preparation.
- d. The dosage form and strength.
- e. The quantity of the preparation.
- f. The date that the preparation was compounded.
- g. The beyond-use date of the compounded preparation.
- h. Storage and handling instructions.
- i. The lot or batch identification or control number.
- j. The national drug code number, if available.
- k. The statement “Not for resale” and, if the preparation is dispensed or distributed other than pursuant to a patient-specific prescription, the statement “OFFICE USE ONLY.”
- l. The following additional information, which can be included on the labeling of a container (such as a plastic bag containing individual product syringes) from which individual units of the drug are removed for dispensing or for administration if there is not space on the label for such information:
 - (1) Directions for use including, as appropriate, dosage and administration;

(2) A list of the active and inactive ingredients, identified by established name and quantity or proportion of each ingredient;

(3) FDA contact information (www.fda.gov/medwatch and 1-800-FDA-1088 or successor Web site or telephone number) to facilitate adverse event reporting.

m. If the preparation is compounded pursuant to a prescription for a specific patient, the label shall also include the label requirements in 657—subrule 6.10(1).

n. If the preparation is compounded for office use, the label shall also include the label requirements in subrule 20.15(4).

[ARC 2194C, IAB 10/14/15, effective 11/18/15; ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—20.20(126,155A) Labeling for batch preparation compounding. Compounded preparations resulting from batch preparation compounding shall be labeled with the following information until such time as the preparations are labeled pursuant to rule 657—20.19(124,126,155A) for distribution to hospitals or practitioners or for dispensing or administration to patients:

1. The date that the preparation was compounded.
2. Compounded preparation name or formula.
3. Dosage form.
4. Strength.
5. Quantity per container.
6. Unique internal batch identification or control number.
7. Beyond-use date.
8. Special storage and handling instructions, if applicable.

[ARC 2194C, IAB 10/14/15, effective 11/18/15]

657—20.21 and 20.22 Reserved.

657—20.23(124,126,155A) Records. All records required by this chapter shall be retained as original records of the pharmacy or outsourcing facility and shall be readily available for inspection and photocopying by agents of the board or other authorized authorities for at least two years following the date of the record. Records shall allow for the identification of all ingredients used in compounding, all personnel involved in compounding, and all personnel involved in reviewing compounded preparations. The pharmacy or outsourcing facility shall maintain records documenting the disbursements from each batch of a compounded preparation.

[ARC 2194C, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.13, 155A.13C, 155A.28, 155A.33, and 155A.35.

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CHAPTER 41
OUTSOURCING FACILITIES

657—41.1(155A) Purpose and scope. The purpose of this chapter is to establish the minimum standard of practice for outsourcing facilities that intend to provide compounding services in or into Iowa. The requirements of these rules, in addition to any other board rules applicable to the facility's operation, apply to all Iowa-licensed outsourcing facilities that provide compounded medications in or into Iowa whether pursuant to a patient-specific prescription or not.

[ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—41.2(155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

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

“*FDA*” means the United States Food and Drug Administration.

“*Home state*” means the state in which an outsourcing facility is located.

“*Outsourcing facility*” or “*facility*” means any compounding facility that is registered as an outsourcing facility, as defined in 21 U.S.C. Section 353b, that distributes sterile compounded human drug products without a patient-specific prescription to an authorized agent or practitioner in this state.

[ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—41.3(155A) Outsourcing facility license. Beginning January 1, 2018, an outsourcing facility shall apply for and obtain an outsourcing facility license from the board prior to providing non-patient-specific compounded human drug products in this state. The applicant shall submit a completed application along with an application fee of \$400. An outsourcing facility that intends to distribute controlled substances in or into Iowa shall also, prior to distributing such substances in or into Iowa, apply for and obtain an Iowa controlled substances Act registration pursuant to 657—Chapter 10.

41.3(1) Application requirements. The application shall require demographic information about the facility; ownership information; the name, signature and home state license number for the supervising pharmacist; an attestation that the supervising pharmacist has read and understands the laws and rules relating to sterile compounding in Iowa; information about the entity's registered agent; criminal and disciplinary history information; and a description of the scope of services to be provided in Iowa. As part of the application process, the applicant shall also:

a. Submit evidence of possession of a valid registration with the FDA as an outsourcing facility.

b. If one or more inspections have been conducted by the FDA in the five-year period immediately preceding the application, submit a copy of any correspondence from the FDA as a result of the inspection, including but not limited to any form 483s, warning letters, or formal responses, and all correspondence from the applicant to the FDA related to such inspections, including but not limited to formal responses and corrective action plans. In addition, the applicant shall submit evidence of correction of all deficiencies discovered in such inspections and evidence of compliance with all directives from the FDA.

c. Submit evidence that the supervising pharmacist, as described in 21 U.S.C. Section 353b(a), holds a valid pharmacist license in the state in which the facility is located and that such license is in good standing.

d. Submit information to facilitate a national criminal history record check.

41.3(2) Provision of patient-specific prescriptions. If an outsourcing facility intends to dispense prescription drugs pursuant to patient-specific prescriptions to individual patients in Iowa, the outsourcing facility shall also obtain and maintain a valid Iowa pharmacy license. If the pharmacy is located in Iowa, the pharmacy shall obtain and maintain a valid Iowa pharmacy license pursuant to 657—Chapter 8; if the pharmacy is located outside Iowa, the pharmacy shall, prior to dispensing prescriptions to patients located in Iowa, obtain and maintain a valid Iowa nonresident pharmacy license pursuant to 657—Chapter 19.

41.3(3) License renewal. The outsourcing facility license shall be renewed by January 1 of each year. The facility shall submit the license application and fee as provided in this rule. An outsourcing facility may renew its license beginning November 1 prior to license expiration. An initial outsourcing facility

license issued between November 1 and December 31 shall not require renewal until the following calendar year. The fee for license renewal shall be \$400.

a. Delinquent license grace period. If an outsourcing facility license has not been renewed or canceled prior to expiration, but the facility is in the process of renewing the license, the license becomes delinquent on January 1. An outsourcing facility that submits a completed license renewal application, application fee, and late penalty fee of \$400 postmarked or delivered to the board office by January 31 shall not be subject to disciplinary action for continuing to provide services to Iowa customers in the month of January.

b. Delinquent license reactivation beyond grace period. If an outsourcing facility license has not been renewed prior to the expiration of the one-month grace period identified in paragraph 41.3(3)“a,” the facility may not continue to provide services to Iowa customers. An outsourcing facility that continues to provide services to Iowa customers without a current license may be subject to disciplinary sanctions. An outsourcing facility without a current license may apply for reactivation by submitting an application for license reactivation and a \$1,600 reactivation fee. As part of the reactivation application, the facility shall disclose the services, if any, that were provided to Iowa customers while the license was delinquent.

41.3(4) License changes. If an outsourcing facility has a change of name, ownership, location or supervising pharmacist, the facility shall submit to the board an outsourcing facility license application and applicable fee within ten days of the FDA’s issuance of an updated registration. Following processing of the completed license application and fee, the board shall issue a new license certificate that reflects the change or changes.

41.3(5) License cancellation. If an outsourcing facility ceases to be registered as an outsourcing facility with the FDA, the facility shall immediately cease distribution of non-patient-specific compounded drug products in or into this state and shall return its Iowa outsourcing facility license to the board within ten days of such occurrence. Upon receipt, the board shall administratively cancel the outsourcing facility license. If an outsourcing facility intends to discontinue business in this state, the facility shall notify the board in writing of its intent at least 30 days in advance of the discontinuation of services and request that the license be administratively canceled. To the extent possible to avoid unnecessary delays in obtaining product for patients, an outsourcing facility that intends to discontinue services in Iowa should provide advance notice to its customers of the date that the outsourcing facility intends to cease distributing products in this state. The notice requirements of this rule shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster.

[ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—41.4(155A) Applicability of board rules. An outsourcing facility shall comply with all requirements of this chapter, 657—Chapter 20, and any other board rules relating to the services that are provided to Iowa customers.

41.4(1) Controlled substances. An outsourcing facility providing prescription drugs identified as controlled substances under Iowa Code chapter 124 to Iowa customers or patients shall comply with all requirements of 657—Chapter 10.

41.4(2) Electronic data. An outsourcing facility utilizing any electronic data processing or transmission devices or services shall comply with all requirements of 657—Chapter 21.

41.4(3) Patient-specific prescriptions. An outsourcing facility that also provides patient-specific compounded medications pursuant to a prescription shall comply with all requirements of 657—Chapters 8, 19, and 20.

[ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—41.5(155A) Reporting discipline and criminal convictions. An outsourcing facility 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 facility. Written notice shall be received 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. An

outsourcing facility shall provide written notice to the board of any criminal conviction of the facility or of any owner that is related to the operation of the facility no later than 30 days after the conviction. The term “criminal conviction” includes instances when the judgment of conviction or sentence is deferred.
[ARC 3238C, IAB 8/2/17, effective 9/6/17]

657—41.6(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on an outsourcing facility license for any of the following:

1. Any violation of the Federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act. A warning letter issued by the FDA shall be conclusive evidence of a violation.
2. Any conviction of a crime related to prescription drugs or the practice of pharmacy committed by the outsourcing facility, supervising pharmacist, or individual owner, or if the outsourcing facility is an association, joint stock company, partnership, or corporation, by any managing officer.
3. Refusing access to the outsourcing facility or facility records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain licensure pursuant to 657—Chapter 8 or 657—Chapter 19 when dispensing compounded drugs pursuant to patient-specific prescriptions into the state.
5. Any violation of Iowa Code chapter 155A, 124, 124A, 124B, 126, or 205 or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

[ARC 3238C, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code sections 124.301 and 155A.13C.

[Filed ARC 3238C (Notice ARC 3038C, IAB 4/26/17), IAB 8/2/17, effective 9/6/17]

CHAPTERS 42 to 99
Reserved

CHAPTER 3
PERSONNEL ADMINISTRATION
[Prior to 4/20/88, Regents, Board of[720]]

ORGANIZATION AND ADMINISTRATION

681—3.1(8A) Creation and purpose. The purpose of these rules is to give effect to the provisions of Iowa Code Supplement chapter 8A to establish an efficient, effective and uniform system of personnel administration for board of regents institutions and staff, to provide equal employment opportunity for all and career opportunities comparable to those in business and industry.

681—3.2(8A) Covered employees. All employees of the board of regents, except those exempted by Iowa Code section 8A.412(5), will be covered under the rules of this system.
[ARC 9812B, IAB 10/19/11, effective 11/23/11]

681—3.3(8A) Administration. Under authority of the board of regents and the supervision of its executive director, a merit system director will be appointed who will be responsible for the development, operation and evaluation of the system in compliance with the objectives and intent of Iowa Code Supplement chapter 8A and regent merit rules. At each board of regents institution the head thereof will designate an administrator to serve as resident director of the system. The resident director will be responsible through the chief executive at the institution for conducting a program of personnel administration in accordance with these rules. The merit system director shall review the operation of the merit system at each of the institutions and will be responsible for the direction of the merit system and have the authority to ensure the uniform administration of the merit system under provision of these rules.

3.3(1) Records and reports. The resident directors will maintain an individual file on each employee that will include a record of all personnel transactions affecting that individual. The resident directors will also maintain records on operations conducted under these rules and will periodically as requested, and at least annually, report a summary of such operations to the merit system director, and in addition will prepare other reports as may be required by the merit system director to indicate compliance with applicable regents and state requirements and federal standards. The resident director will establish, in cooperation with employing departments, a program that will provide for the regular evaluation, at least annually, of the qualifications and performance of all employees.

3.3(2) Nondiscrimination. All programs and transactions administered under these rules will be conducted on the basis of merit and fitness without discrimination or favor because of political or religious opinions or affiliations or national origin, race, sex, creed, color, disability or age except as prescribed or permitted under state and federal law.

3.3(3) Political activity. No employees covered under this system will engage in any partisan political activity that is prohibited by law; employees will have the right to freely express their views as citizens and to cast their vote; coercion of employees for political purposes and the use of employees' positions for political purposes will be prohibited.

Those employees who are by law subject to the provisions of the federal Hatch Act will be informed of such provisions by the resident director at their institution and will be required to adhere thereto.

3.3(4) Revisions and additions. In accordance with the provisions of Iowa Code Supplement chapter 8A, these rules may be revised at any time. In addition, supplementary rules subject to Iowa Code chapter 17A, not inconsistent with these rules may be made applicable to any department, program or service, whenever such additional merit system provisions are required as a condition of eligibility for federal funds.

3.3(5) Suspension of merit increases. During any period of time when merit increases provided under these rules are temporarily suspended by legislative action, the rules providing for such increases shall be suspended for the duration of that legislative mandate. The merit system director shall provide for the administration of such suspension and shall ensure the maintenance of necessary information at each board of regents institution as would be necessary for reinstatement of such increases following

the temporary suspension. Reinstatement of such increases shall be authorized by the board upon the recommendation of the merit system director and may include a delay in increases to promote equity among employees. Any such delay, however, cannot exceed one year and must be applied uniformly throughout the system to all employees with like seniority in the system, or in classification of position, or other specified categorization.

This rule is intended to implement Iowa Code section 262.9.

[Filed 7/12/71; amended 7/17/72, 8/17/73]

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681—3.4 to 3.13 Reserved.

DEFINITIONS

681—3.14(8A) Definitions.

“*Active service*” is a period of paid employment performing the duties of the position.

“*Advanced starting rate*” is a rate on the pay grade which is greater than the minimum rate of the pay grade for a specific class as provided for in the approved pay plan.

“*Base pay*” means the employee’s rate of pay exclusive of extra pay such as lead worker pay, pay for shift differential, pay for special assignment, on-call pay, call back pay, or any other incentive premium pay.

“*Certification*” means the referral of qualified applicants from an eligibility register to a department for the purpose of making a selection in accordance with these rules.

“*Class*” means one or more positions, which are sufficiently similar in duties and responsibilities, that each position in the group can be given the same job title and require the same minimum qualifications as to education and experience, and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions.

“*Classification appeal*” is the act of contesting the classification or reclassification of a position as determined by the merit system director after a review of the duties and responsibilities of the position.

“*Classification review*” is the process initiated by a permanent employee or department head requesting review of the classification of the employee’s position.

“*Classify*” means to make the original assignment of a position to an appropriate class on the basis of the duties and responsibilities assigned and to be performed.

“*Days*” means working days unless designated otherwise.

“*Demotion*” means a change of an employee from a position in a given classification to a position in a classification having a lower pay grade. Demotion may be voluntary, involuntary, or result from a reclassification of a position.

“*Eligibility lists*” are lists of the names of qualified applicants for a particular class.

“*Eligibility register*” consists of the names of the applicants from the appropriate eligibility list who are certified for a specific vacancy.

“*Examination*” is the screening of applicants.

“*Grievance*” is a dispute or complaint concerning the interpretation or application of merit system or institutional rules governing terms of employment and working conditions.

“*Lateral transfer*” means a change from a position in one class to a different position in the same class or another class in the same pay grade.

“*Maximum rate*” is the final value of the pay grade to which a classification is assigned. A “red-circled” rate is above the maximum.

“*Minimum rate*” is the minimum value of the pay grade to which a classification is assigned. It is less than an “advanced starting rate.”

“*Pay grade*” or “*grade*” is the numerical designation on the pay schedule to which individual classes are assigned.

“*Permanent employee*” is an employee who has completed the initial probationary period and thereby acquired permanent status in accordance with the rules of the system.

“*Position*” means a group of specific duties, tasks and responsibilities assigned to be performed by one employee. A position may be 12-month or less, full-time or part-time, temporary or permanent, occupied or vacant.

“*Probationary period*” is a six-month period to determine an employee’s fitness for the position. A probationary period is required for an original appointment, reinstatement, reemployment to a class not previously held, promotion, voluntary demotion out of series or lateral transfer out of class.

“*Promotion*” means a change in status of a permanent classified employee from a position in a classification to another position in a classification having a higher pay grade.

“*Reclassify*” means to make a change in the classification of a position by raising it to a higher, reducing it to a lower, or moving it to another class of the same level on the basis of significant changes in the kind or difficulty of the tasks, duties, and responsibilities in such position, or because of an amendment to the classification plan, and officially assigning to that position the class title for such appropriate class.

“*Reduction in force*” is a layoff resulting from a shortage of funds or work, a material change in duties or organization or abolishment of one or more positions.

“*Reemployment*” is the reappointment of an employee from a reemployment register. An employee may be placed on a reemployment register as a result of (1) layoff or voluntary demotion in lieu of layoff, or (2) medically related disability leave and exhaustion of vacation and medically related disability leave credits, or (3) failure to pass a subsequent probationary period on a promotion, lateral transfer out of class, or demotion out of series.

“*Reinstatement*” is the reappointment of a permanent employee who has resigned in good standing.

“*Resident director*” is the person appointed by the head of each regents institution to administer the merit system rules at that institution.

“*Step*” is the value established through the collective bargaining process or by the merit system director for the purposes of applying the rules on compensation and the setting of advanced starting rates.

“*Suspension*” is an enforced leave of absence with or without pay for purposes of conducting an investigation or as a disciplinary measure.

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681—3.15 to 3.24 Reserved.

CLASSIFICATION

681—3.25(8A) Preparation and maintenance of the classification plan. The merit system director, in consultation with the resident directors and subject to the approval of the board of regents, shall develop and maintain a classification plan so that all positions that are substantially similar and comparable in regard to the kind and difficulty of work and the level of responsibility are included in the same class, so that the same minimum qualifications are required for all positions in the same class (except as provided in 3.69(2)), so that the same pay schedule may be equitably applied (except for geographical differences) to all positions in the class. For each class the plan will include a class title, a definition of the job, examples of the kind of work performed, statements of knowledges, skills and abilities, and the minimum qualifications for the class.

681—3.26(8A) Administration of the classification plan. The merit system director will direct the uniform administration of the classification plan. Resident directors may recommend classifications and reclassifications. Employing departments and employees may appeal classification and reclassification in accordance with 681—3.127(8A) of these rules.

The merit system director, in consultation with the resident directors and subject to the approval of the board of regents, may establish new classes and change or abolish existing classes which affect the merit system pay plan in order to meet the needs of the institutions and to properly reflect changes in work and the organization thereof. When the changes do not affect the pay plan of the merit system, the merit system director may, in consultation with the resident directors, change existing classes and report such changes annually to the board of regents. When the classification of a position is changed, the incumbent will be entitled to continue service in the position provided the incumbent meets the minimum qualifications or provided the duties have not changed appreciably. If the incumbent is not eligible to continue, the incumbent may be transferred, promoted, demoted or laid off in accordance with the rules. Changes in classification will not be used to avoid other provisions of these rules relating to layoffs, promotions, demotions and dismissal.

A review of individual classifications, class series, or group of classes may be initiated by the merit system director on a systemwide basis. The administrative review shall preempt the classification appeal procedure provided in 681—3.127(8A) of these rules. Changes in the classification of positions resulting from a systemwide review shall be effective at the beginning of the next fiscal year unless the merit system director establishes an earlier date for implementation.

This rule is intended to implement Iowa Code Supplement sections 8A.412(5) and 8A.413.

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681—3.27 to 3.36 Reserved.

COMPENSATION PLAN

681—3.37(8A) Preparation, content and adoption of the pay plan. The board of regents will adopt a pay plan for all the classes established in the classification plan. The pay plan will consist of a schedule or schedules of numbered grades with minimums and maximums for each grade. Each class will be assigned to a pay grade. The plan will be developed to reflect the relative difficulty and responsibility of the work involved in the various classes, what is paid for similar work by other employers in the pertinent labor market, and the availability of funds with due regard to the results of a collective bargaining agreement negotiated under the provisions of Iowa Code chapter 20. The plan will be uniformly applicable to all regents institutions except for variances approved on the basis of geographical differences.

681—3.38(8A) Review and revision of the pay plan. At least once each year, the complete pay plan will be reviewed for revision by the board of regents in the same manner and following the same procedure stated in 681—3.37(8A). At any time, new classes may be established and other revisions may be made in the plan to reflect proper relationships and to facilitate recruitment and retention. Such changes will be effective after approval by the board of regents and other authority as required by law.

681—3.39(8A) Administration of the pay plan. Within the provisions of these rules, the pay plan will be uniformly administered by the resident directors under the direction of the merit system director for all classes in the system. Except as otherwise provided in these rules and in the pay plan, all employees will be paid between the minimum and maximum of the pay grade to which the employee's class is assigned and such pay will constitute the total cash remuneration the employee receives for the employee's work in that position. Perquisites such as subsistence and maintenance allowances will be considered a part of pay and the value of such will be deducted from an employee's rate of pay. Any employee who is approved for participation in a phased retirement program as provided for by state law and regent policy shall have the salary provided under these rules adjusted as specified by such law and regent policy.

3.39(1) Entrance salaries. The entrance salary for an employee in any position under this system will be the minimum salary of the pay grade to which that class is assigned or in accordance with the approved pay plan, except as provided for the following:

a. Appointment based on a scarcity of qualified applicants. At the request of an institution and on the basis of economic or employment conditions which make it difficult or impossible to recruit at the minimum rate of the pay grade to which a class of position is assigned, a resident director, subject to approval by the merit system director, may authorize for a designated period of time recruitment for that class at a rate higher than the minimum. Where such a higher entrance rate is authorized all employees in the same class and in the same geographical area, who are earning less than the higher entrance rate, will be increased to that higher rate.

b. Appointment based on exceptional qualifications. Employees whose qualifications substantially exceed the minimum required for the class or who possess outstanding experience relative to the demands of the position may, at the request of an employing department, be appointed at a rate higher than the minimum, provided that the pay of all other employees with similar qualifications working under the same conditions at the same institution are raised to that higher rate. Such appointments must be approved by the resident director and reported to the merit system director. Such appointments which necessitate the adjustment of the salaries of employees other than the appointee will, in addition, be reported to the merit system director.

Increases authorized and granted to other employees as the result of appointments based on the scarcity of qualified applicants, 3.39(1) "a," or appointments based on exceptional qualifications, 3.39(1) "b," will establish new merit review dates for affected employees.

c. Appointments based on prior service at the institution. Employees who were employed by an appointing institution in a nonmerit system position and who performed duties of the same character and responsibility as the merit class to which they are being appointed may be paid at a rate higher than the minimum reflecting prior service in a comparable position. Such appointments must be approved by the resident director and reported to the merit system director.

3.39(2) Merit increases. Permanent and probationary employees will be eligible for a merit increase following one year of satisfactory performance in their assigned classification with the exception that permanent and probationary employees paid at the minimum of a pay grade will be eligible for a merit increase upon completion of 6 months of satisfactory service in their assigned classifications and every 12 months thereafter. No merit increase will be granted above the maximum of the pay grade. The period of satisfactory performance will be measured from the last merit review date if such a date has been established. Merit increases in pay will not be made retroactively, but may be denied or deferred by the employing department on the basis of work performance. Employees whose merit increases are denied or deferred will, prior to the scheduled effective date of increase, be informed of such action by a written statement from their employing department which specifies the reason for the denial or deferral. Denials or deferrals of a merit increase for six months or less for reason of unsatisfactory work performance will not result in the establishment of a revised merit review date.

Deferrals resulting from leaves of absence without pay or layoff exceeding 30 calendar days will cause a change of the merit review date equal to the time away from work.

3.39(3) Pay on promotion. An employee who is promoted will be moved to the minimum rate of the new grade, or to a higher rate on the new grade which provides an adjustment, to the employee's present base pay, that is the salary equivalent of no less than one step higher but, at the discretion of the institution, no greater than 5 percent without approval of the merit system director. In no event will the adjustment result in pay above the maximum of the new grade.

If the promotion involves movement to a new grade that is three or more grades higher than the employee's present grade, the resident director may approve, on written request from the employing department, an increase, to the employee's present base pay, that is equivalent to the value of no less than two steps higher but, at the discretion of the institution, no greater than 10 percent without the approval of the merit system director.

For the purpose of calculating the promotional increase, any extra pay such as shift differential pay, pay for special assignment, on-call pay, pay for overtime, or pay for call back shall be excluded as part of the employee's present base pay. The merit review date will be computed from the effective date of promotion and in accordance with 3.39(2). Pay on promotion in accordance with the provisions of 3.39(1) "b" may be authorized by a resident director and will be reported to the merit system director.

3.39(4) Pay on demotion. Upon recommendation by the department head, and with the prior approval of the resident director, the pay of an employee who is demoted will be set at any rate within the new pay grade that does not exceed the rate at which the employee was paid in the position from which the employee was demoted. Merit review date will not change.

If the salary of an employee who is demoted as the result of the reclassification of the employee's position exceeds the maximum salary of the pay range to which the new classification is assigned, at the discretion of the employing department and with the approval of the resident director, the salary may be "red-circled" for a period not to exceed one year. An extension not to exceed one additional year may be approved by the merit system director.

If an employee accepts voluntary demotion in lieu of layoff, the salary shall be retained providing funding is available. In no event will the salary exceed the maximum of the new pay grade.

3.39(5) Pay on reinstatement, reemployment or return from leave.

a. An employee who is reinstated will be paid at a rate no greater than what the employee was last paid and between the minimum and maximum of the pay grade. An employee who is returned to a merit system position from a professional position, will be paid in accordance with subrule 3.39(4), pay on demotion. The date of reinstatement will be the merit review date.

b. An employee who is reemployed to the previously occupied class will be paid at a rate no greater than what the employee was last paid and between the minimum and maximum of the pay grade. When a merit increase has been granted to an employee in a position taken through voluntary demotion in lieu of layoff and the merit increase results in a higher rate of pay than last paid to the employee prior to the voluntary demotion in lieu of layoff, the employee may be reemployed to the previously occupied class with the higher rate of pay. Reemployment to the previously occupied class from a position taken as a voluntary demotion in lieu of layoff will not be considered a promotion. The merit review date will

not change as a result of the voluntary demotion in lieu of layoff, nor as a result of reemployment to the previously occupied class from a position taken as a voluntary demotion in lieu of layoff.

c. An employee who is reappointed to the previously occupied position or a position in the same class on conclusion of a leave without pay will be paid in accordance with the provisions concerning pay on reemployment as provided above.

3.39(6) Pay for special assignment. Provided an employee is granted special assignment in accordance with 3.102(2) of these rules the employee will be paid for the duration of such assignment consistent with:

- a. 3.39(3) Pay on promotion if assigned to a class having a higher pay grade;
- b. 3.39(7) Pay on transfer if assigned to a class having the same pay grade;
- c. The present base pay if assigned to a class having a lower pay grade.

3.39(7) Pay on lateral transfer.

a. Employees who are transferred from one position to another position in the same class shall receive no adjustment in base pay;

b. Employees who are transferred from one position to another position in a different class but in the same pay grade shall receive no adjustment in base pay except as set forth in "c" and "d" below;

c. Employees who are transferred from one class with a lower or no advanced starting rate to a class with a higher advanced starting rate shall receive:

(1) An adjustment to the higher advanced starting rate if the base pay prior to lateral transfer is less than the higher advanced starting rate. When the base pay adjustment is the salary equivalent of the value of a step or greater, an adjustment in merit review date will result and be computed from the effective date of lateral transfer and in accordance with 3.39(2); or

(2) There will be no adjustment in base pay if the employee's base pay prior to lateral transfer is not less than the higher advanced starting rate.

d. Employees who are transferred from one position in a class with a higher advanced starting rate to a position in a class in the same pay grade but with a lower or no advanced starting rate shall be paid in accordance with subrule 3.39(4), pay on demotion.

e. In no case may an employee be paid below the minimum or above the maximum for a classification.

3.39(8) Pay upon change in pay grade of class. If the class is revised and reassigned to a higher pay grade, subrule 3.39(3), pay on promotion, will apply.

If the class is revised and reassigned to a lower pay grade, subrule 3.39(4), pay on demotion, will apply.

3.39(9) Pay for part-time employment. Pay for part-time employment will be proportionately equivalent to the rate for full-time employment.

3.39(10) Pay for exceptional performance. An employee may be given pay for exceptional performance, not to exceed 5 percent of an employee's current annual salary, at the written request of the employee's department head with appropriate administrative approval and the prior approval of the resident director. The request will describe the nature of the exceptional job performance for which additional pay is requested, indicate the amount proposed, and specify the source of funds. The award may be based on sustained superior performance or an exceptional achievement or contribution during the period since the employee's last performance review. To qualify for an exceptional performance award, an employee must have a cumulative performance evaluation exceeding standards and have no individual rating below satisfactory. Payment will be made as a lump sum award and will not change the employee's established salary rate. No employee will be eligible for more than one award a year.

3.39(11) Pay for call back. Employees who are called back to work after completing their regular work schedule will be paid for a minimum period of three hours, regardless of the time worked. Employees who are called back and work in excess of three hours will be paid the actual time worked.

3.39(12) Pay for lead worker status. On request of an employing department and with approval of the resident director, an employee who is assigned and performs limited supervisory duties (such as distributing work assignments, maintaining a balanced workload within a group, and keeping attendance and work records) in addition to regular duties may be designated as lead worker in the classification

assigned, and paid during the period of such designation the employee's base salary plus the equivalent of no less than one step but, at the discretion of the institution, no greater than 5 percent without the approval of the merit system director.

3.39(13) *Pay for trainees and apprentices.* The schedule of wages for trainees and apprentices will consist of a step in the pay matrix for every year of training required. Each employee whose performance is satisfactory as determined by the employing department will progress one-half step every six months from the first step of the schedule to the entrance rate established for the journey class at the completion of time established for training or apprenticeship.

3.39(14) *Pay for returning veterans.* Veterans who return from military leave will have their pay set at the rate they would have attained had they continued in service at the regent institution from which they took military leave.

3.39(15) Reserved.

3.39(16) *Payment of a shift differential.* All employees will be paid a shift differential for any shift of which four or more hours occur between 6 p.m. and midnight and a shift differential for any shift of which four or more hours occur between midnight and 6 a.m. The amount of the shift differential paid shall be determined by the merit system director.

3.39(17) *Pay for time on-call.* At the request of the employer, employees who are off duty and free to engage in their own pursuits shall be considered on-call, provided (a) that they leave word with the employer where to be reached if needed, and (b) that they are able to report ready for work within a specified time after being contacted by the employer. The rate for on-call pay shall be determined by the merit system director.

3.39(18) *Pay on reclassification of position.* If a position is reclassified, the incumbent's pay will be fixed in accordance with the rules governing pay on demotion, reemployment, transfer, or promotion, whichever is applicable.

This rule is intended to implement Iowa Code Supplement section 8A.413.

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681—3.40 to 3.49 Reserved.

APPLICATION AND EXAMINATION

681—3.50(8A) Applications. Applications for employment will contain no question so formed as to elicit any information prohibited by state or federal statutes, and the truth of statements made on the application will be certified by the signature of the applicant. Public announcement of vacancies will be made for ten calendar days in classifications for which applications are not accepted on a continuous basis. Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies established by the institution. Applications will be kept on file at the institution for a period of time to be designated by the resident director.

681—3.51(8A) Examinations. Examinations will be practical in nature, constructed to reveal the capacity to successfully perform the job for which the applicant is competing, and will be rated objectively.

681—3.52(8A) Character of examinations. Examinations may be written or oral and may include physical or performance tests, or any combination of these. Examinations may screen for such factors as education, experience, aptitude, knowledge, character, physical fitness, or other qualifications or attributes which enter into the determination of the relative fitness of applicants. The examination process must be approved by each institution's resident director.

Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies established by the institution.

Veterans preference shall be applied as provided by law.

681—3.53 and 3.54 Reserved.

681—3.55(8A) Rejection or disqualification of applicants. The resident director may reject any applicant or, after examination, may refuse to certify any candidate if it is found that the person:

1. Does not meet the minimum required qualifications for the class;
2. Cannot perform the essential functions of the position with or without a reasonable accommodation;
3. Habitually uses narcotics or uses intoxicating beverages to excess;
4. Has made a false statement of material fact in the application;
5. Has information concerning the examination to which the person is not entitled;
6. Has been convicted of a crime which makes the person unsuitable for employment in a particular class or position;
7. Has been dismissed from private or public service for a cause that would be detrimental to the regents institution employing the applicant.

A disqualified applicant will promptly be notified in writing of such action at the last-known address. A disqualified applicant may request review of the reason for disqualification. Such request will be in writing and upon receipt, the resident director will give full consideration to the request and notify the applicant of the resident director's decision in writing.

681—3.56 Reserved.

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681—3.57 to 3.66 Reserved.

CERTIFICATION AND SELECTION

681—3.67(8A) Eligibility lists. Three kinds of eligibility lists will be established: reemployment, employment, and promotional.

Reemployment lists will consist of the names of permanent employees who have been laid off or demoted in lieu of layoff or who are able and qualified to return to work following a medically related disability leave, in accordance with 3.104(4) “j” and 681—3.143(8A) or in accordance with 3.90(4). These lists will be maintained in order by retention points calculated in accordance with the rules for reduction in force, beginning with the person with the highest number of points. Reemployment rights apply only to classes for which the employee is eligible in accordance with these rules.

Employment lists will include the names of all applicants who meet the qualifications for a classification. Employment lists will be maintained for specific classifications designated for continuous acceptance of applications in accordance with rule 681—3.50(8A). Promotional lists will consist of the names of all permanent employees who are qualified and have requested consideration for promotion unless an employing department requests that the promotional list be limited to permanent employees of that department.

3.67(1) Removal of names from eligibility lists. In addition to the causes for rejection or disqualification set forth under 681—3.55(8A), the resident director may permanently or temporarily remove names from eligibility lists for the following reasons:

- a. Upon receipt of notification from applicants that they no longer desire consideration for a position in the class.
- b. Appointment through certification from such eligibility list to fill a permanent position.
- c. Failure to respond within five working days to the written inquiry of the resident director relative to availability for appointment.
- d. Declination of appointment without good cause or under conditions which the applicants previously indicated they would accept.
- e. Failure to appear for a scheduled employment interview or to report for duty within a reasonable time specified by the employing department.
- f. Failure to maintain a record of their current address with the resident director as evidenced by the return of a properly addressed unclaimed letter or other evidence.
- g. Willful violation of any of the provisions of these rules.
- h. Rescinded IAB 6/12/02, effective 7/17/02.

3.67(2) Duration of eligibility lists. Eligibility lists may be continuous or closed after a vacancy is filled. Names may be added to or deleted from eligibility lists in accordance with these rules. The names of applicants who have not been appointed or otherwise removed from lists will be removed at the termination of the period of time designated by the resident director.

3.67(3) Precedence of eligibility lists. Reemployment lists will supersede employment and promotional lists.

681—3.68(8A) Personnel requisitions. Requests to fill vacancies in permanent positions will be initiated by the requesting department and forwarded to the resident director. The request will include the class of the position to be filled, the number of vacancies and the date of need.

681—3.69(8A) Certification from eligibility lists. The resident director will certify the names of eligible candidates in the following manner:

From a reemployment list the resident director will certify for appointment in the following order:

1. If the vacancy occurs in a college or operating division in which employees on the reemployment list for that class were last employed, the resident director will certify the one employee with the greatest number of retention points on the list who was laid off, demoted or took a medically related disability leave from that college or division; or

2. If the vacancy occurs in a college or operating division other than the one in which any employee on the reemployment list for that class was last employed, the resident director will certify the reemployment list.

When the reemployment list for a class has been exhausted, employing departments may request either the employment list or promotional list or both, and the resident director will certify the registers.

3.69(1) Eligibility registers. An eligibility register will consist of the names of the certified applicants for a specific vacancy.

3.69(2) Special qualifications. An employing department may request in writing that the resident director certify applicants who have special qualifications in addition to the minimum qualifications prescribed in the class specifications. If, in the judgment of the resident director, such a request is validly related to job performance, the resident director may certify only the names of applicants who have such special qualifications.

This rule is intended to implement Iowa Code Supplement section 8A.413.

681—3.70(8A) Selection of employees. Final selection will be made by the employing department. Nothing in these rules will require the hiring of any applicant. When a properly certified applicant is selected by a department, the department will so notify the resident director.

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681—3.71 to 3.80 Reserved.

APPOINTMENTS AND PROBATION

681—3.81(8A) Appointments. All appointments under this system will be made in accordance with all the provisions of these rules including those concerning certification and selection unless otherwise specified and no appointment shall be made without the prior approval of the resident director.

681—3.82(8A) Temporary appointments. Temporary appointments may be made and approved by the resident director to provide for services needed on a periodic basis. Appointments may be made without reference to the provision of these rules regarding minimum qualifications, certification, and selection. Employees appointed on this basis will not work more than 780 hours in any fiscal year.

This rule is intended to implement Iowa Code Supplement section 8A.413(9).

681—3.83 Reserved.

681—3.84(8A) Trainee, apprentice, or career development appointment. When a position within a class cannot be filled because of the lack of qualified eligibles, or applicants meeting the minimum qualifications for the class, or the institution specifically designates a position for trainee, apprentice, or career development purposes, the institution may appoint a person who meets the minimum qualifications established in programs approved by the merit system director for this type of appointment.

681—3.85(8A) Project appointment. When it is known that a particular job, project, grant or contract will require the services of an employee for a limited duration, a project appointment may be made. Such an appointment will not be made for more than one year. While an extension beyond one year may be approved by the merit system director on the basis of a limited need that could not otherwise be efficiently and effectively filled, successive project appointments will not be allowed.

Such appointments will not confer to the individual any right of position, transfer, demotion, or promotion, but incumbents shall be eligible for vacation and sick leave, except that a project appointment made for less than 780 hours will be considered a temporary appointment under rule 681—3.82(8A) without conferring rights or eligibility for vacation or sick leave.

This rule is intended to implement Iowa Code Supplement section 8A.413(9).

681—3.86 Reserved.

681—3.87(8A) Permanent appointments. An applicant who is certified from an eligibility register and appointed with the approval of the resident director to a permanent position, and who successfully completes a probationary period in accordance with these rules, will have permanent status.

681—3.88 Reserved.

681—3.89(8A) Reinstatement. A permanent employee who has resigned in good standing may be reappointed to a position in the same class or pay grade from which the employee resigned or a lower class for which qualified.

681—3.90(8A) Probationary period.

3.90(1) Purpose. The probationary period will be an important part of the examination and selection process, and will be used by the employing department to closely observe and evaluate employee's work, to train and aid the employees in adjustment to their position, and to reject and dismiss any employee whose performance fails to meet standards.

3.90(2) Duration of probation. An employee on original appointment or who is reinstated or reemployed to a class not previously held will be on probation until the person completes six months of active service in the position to which appointed. If a probationary employee is not dismissed during this time, the person will, at the conclusion of the probationary period, have permanent status in that

class. A period of temporary employment immediately preceding a permanent appointment to the same class may, at the request of the employing department, be counted as probationary service.

Permanent employees who are promoted from one class to another, or who transfer out of class, or who demote will serve a period of probation of six months in the position to which appointed. If the employee is not dismissed during this time, the employee will, at the conclusion of the probationary period, have permanent status in the class.

3.90(3) *Layoffs during probation.* Employees who are laid off during their probationary period will, upon written request to the resident director, be placed on the appropriate eligibility list.

3.90(4) *Dismissal during probation.* Employees on original appointment or who have been reinstated or reemployed and dismissed during their probationary period may be returned to the eligibility list from which they were appointed if, in the judgment of the resident director, they may be able to perform satisfactorily in another position. Employees who are promoted from one class to another or who transfer out of class or who demote out of class series and are dismissed during their probationary period may be placed on the reemployment list for a previously held classification if, in the judgment of the resident director, they may be able to perform satisfactorily in another position.

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681—3.91 to 3.100 Reserved.

PROMOTIONS, DEMOTIONS, TRANSFERS AND TERMINATIONS

681—3.101(8A) Promotions. Vacancies will be filled by promotion of qualified permanent employees in accordance with these rules whenever practicable and feasible.

This rule is intended to implement Iowa Code Supplement sections 8A.402 and 8A.413.

681—3.102(8A) Transfers.

3.102(1) *Reassignments.* Employees with the approval of the resident director may be reassigned at any time from one position to another in the same class within an institution, except that probationary employees who were certified to fill their position on the basis of special qualifications as provided in 3.69(2) will not be reassigned unless the new position requires the same special qualifications which justified the original certification.

3.102(2) *Special assignment.* When the services of employees are temporarily needed in a position in the same or a different class within the institution other than the position to which the employees are assigned, they may be given special assignment, with the prior approval of the resident director and involved departments, to perform the duties of such position for a period not to exceed six months without change in title or status. In unusual circumstances, an extension of a special assignment for no more than one additional six-month period may be approved by the merit system director on written request from the resident director. Employees will be paid for special assignment in accordance with 3.39(6).

3.102(3) *Intra- and inter-institutional transfers.* With permanent employees' approval they may be transferred from one position to another in the same class or to a position in another class in the same

pay grade, from one department to another department in the same or different institution under this system, provided both departments involved approve the transfer, and the resident director certifies that the employees meet the minimum qualifications for the class.

Transfers to higher or lower classes will be governed by the provisions of these rules concerning promotion or demotion, respectively.

681—3.103(8A) Demotion (voluntary). If, for any reason, an employee wishes to be demoted to a position in a lower class, the resident director may, upon written request from the employee and with the approval of involved departments, effect such a demotion provided the employee is certified by the resident director as meeting the qualifications required for the lower class. Voluntary demotion will not be subject to appeal.

681—3.104(8A) Terminations.

3.104(1) Resignations. To resign in good standing employees must notify the employing department of their intention to resign in writing at least ten days prior to the effective date of resignation, except in cases where the employing department agrees to a shorter period of notice. An employee who fails to give proper notice may, at the request of the employing department, be barred from future certification to that department or from reinstatement as provided for in these rules. Employees who resign will have no rights of appeal under these rules.

3.104(2) Termination on expiration of appointment. On expiration of an appointment of limited duration the employing department will report such action in writing to the resident director.

3.104(3) Retirement. Employees who retire will be considered to have terminated in good standing and without prejudice and will have no rights of appeal under these rules.

3.104(4) Reduction in force.

a. Nothing herein shall be construed as a guarantee of hours of work per day or per work period. An institution may lay off an employee when it deems necessary because of shortage of funds or work, a material change in duties or organization or abolishment of one or more positions.

b. Reduction in force will be accomplished in a systematic manner in accordance with these rules; however, the layoff provisions established in this subrule shall not apply to:

(1) Temporary layoffs of less than 20 workdays or 160 hours of work per calendar year;

(2) Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the resident director;

(3) The promotion or reclassification of an employee to a class in the same or a higher pay grade;

(4) The reclassification of an employee's position to a class in a lower pay grade that results from the correction of a classification error, the implementation of a class or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized;

(5) A change in the classification of an employee's position or the appointment of an employee to a vacant position in a class in a lower pay grade resulting from a disciplinary or voluntary demotion; and

(6) The transfer or reassignment of an employee to another position in the same class or to a class in the same pay grade.

c. The individual whose position is eliminated or reduced in hours will be reassigned to a vacant position in the same classification provided the individual can perform the essential functions of the position and possesses any required special qualifications. If there is no vacant position to which the individual can be reassigned, the individual(s) may request and accept layoff with reemployment rights as provided in 3.104(4) "o." If an individual(s) directly affected does not request layoff with reemployment rights, the reduction in force procedures in this subrule shall be implemented.

d. Reduction in force will be made by class.

e. Reduction in force may be made by organizational unit within an institution or institutionwide, as designated by the institution, provided such designation is reported to the merit system director before the effective date of the reduction.

f. The order of reduction in force will be by type of appointment as follows: temporary, trainee, initial probationary, permanent.

g. Each permanent employee affected by a reduction in force will be notified in writing of the layoff and the reasons for it at least 20 working days prior to the effective date of the layoff unless budgetary limitations require a lesser period of notice.

h. There will be competition among all employees in the class affected by the layoff based on a retention points system that will consist of points for length of service and performance evaluation of all employees in the class within the organizational unit or units affected. Retention points will be calculated as follows:

(1) Length of service credit will be allowed at the rate of one point for each month of service. Any period of 15 calendar days of service in a month will be considered a full month. For the purpose of computing length of service credits, the institution will include all periods of regular merit employment during periods of continuous regular appointments with the institution between the date of the original appointment and the date of the layoff or as provided otherwise by law. Periods of leave without pay exceeding 30 days will not be counted.

(2) Performance evaluation credit will be allowed at the rate of one point for each month of satisfactory service. No credit will be allowed for service rated less than satisfactory. If there is no record of performance evaluation for a specific time period, it shall be presumed that the employee's performance is satisfactory.

(3) Reduction in force retention points will be the total of length of service and performance evaluation.

i. Employees will be placed on the layoff list beginning with the employee with the greatest number of retention points at top. Layoffs will be made from the list in reverse order unless the employee with the least retention points has special skills and abilities required to perform in the position currently occupied. Employees with greater retention points who must vacate their positions must possess the special skills and abilities required for that position and meet any job-related selective certification required for that position. Copies of the computation of retention points will be made available to affected employees. One copy will be retained by the resident director and one copy will be forwarded to the merit system director at least ten days prior to the effective date of the layoff.

j. When two or more employees have the same total of retention points, the order of termination will be determined by giving preference for retention to the employee with the longest time in the class.

k. The reduction in force plan approved by the merit system director will be made available by the resident director so that all employees will have access to it.

l. An affected employee may appeal a reduction in force by filing, within five days after notification as provided in 3.104(4)“g,” a written grievance with the resident director (at Step 3 of the grievance procedure provided in 681—3.129(8A) or at a comparable step of a procedure approved under 3.129(1)). If not satisfied with the decision rendered at that step, the employee may pursue an appeal in accordance with the grievance procedure.

m. A supervisory employee, defined as a public employee who is not a member of a collective bargaining unit and who has authority, in the interest of a public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, to direct such public employees, or to adjust the grievances of such public employees, or to effectively recommend such action, may not replace or bump a junior employee not being laid off. For purposes of this subrule, “junior employee” means an employee with less seniority or fewer retention points than a supervisory employee.

n. A permanent employee in a nonsupervisory class in which layoffs are to be effected may, in lieu of layoff, elect voluntary demotion to a position in the next lower nonsupervisory class in the same series utilized at the institution or, in the absence of a lower nonsupervisory class in the same series, to a nonsupervisory class which the employee has formerly occupied while in the continuous employment of the institution. The employee must possess any special qualifications required and have the ability to perform the essential functions of the position. Such demotion or the occupying of a formerly held nonsupervisory class will not be permitted if the result thereof would be to cause the layoff of a permanent

employee with a greater total of retention points. To exercise the right of voluntary demotion or to occupy a formerly held nonsupervisory classification in lieu of layoff, the employee must notify the resident director in writing of such election not later than five calendar days after receiving notice of layoff. Any permanent employee displaced under these provisions will have the right of election as provided herein.

o. Employees who are laid off or who accept voluntary demotion in a series or assignment to a previously held class in lieu of layoff will, at their request, have their names placed on the reemployment eligibility list for the class from which they were laid off, a lower class(es) in the same series from which they were laid off, and a class(es) formerly occupied in accordance with 681—3.67(8A) to 681—3.70(8A) for a period of up to two years from the date of layoff. If reemployment occurs within two years of separation due to reduction in force, prior service credit shall be restored. Acceptance of reemployment in a lower class in the same series from which the employee was laid off or in a previously held class will not affect the employee's standing on the reemployment list for the class from which the employee was laid off. After two years on the reemployment eligibility list, the employee's name shall be removed.

3.104(5) *Abandonment of position.* Employees who are absent from duty for three consecutive work days without proper notification and authorization thereof shall be deemed to have resigned their positions.

This rule is intended to implement Iowa Code Supplement section 8A.413(14).
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681—3.105 to 3.114 Reserved.

DISCIPLINARY ACTIONS

681—3.115(8A) Causes for disciplinary action. All employees may be subject to disciplinary action for any of the reasons specified in Iowa Code Supplement section 8A.413(16).

681—3.116(8A) Disciplinary actions. Disciplinary action will be reasonable, timely and related in severity to the seriousness of the offense; however, this will not preclude reasonable penalties of varying severity for an accumulation of offenses.

3.116(1) *Suspension.* A department head may, for cause in accordance with 681—3.115(8A), suspend any employee for such length of time as the department head considers appropriate but not to exceed 10 days at any one time or 20 days in any 12-month period. The department head will inform

the affected employee of the suspension and the reasons therefor in writing within 24 hours of the time the action is taken. A copy of the suspension will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or to a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, employees may pursue their appeal in accordance with the grievance procedure.

3.116(2) *Reduction of pay within grade.* A department head may, for cause in accordance with 681—3.115(8A), reduce the pay of an employee to a lower rate of pay within the pay grade assigned to the class. The department head will notify the affected employee of the reduction, the reasons therefor and the duration thereof, in writing within 24 hours of the time the action is taken. A copy of the reduction notice will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, employees may pursue their appeal in accordance with the grievance procedure.

3.116(3) *Demotion.* A department head may, for cause in accordance with 681—3.115(8A), demote an employee to a vacant position in a lower class provided the employee meets the qualifications for that lower class. The department head will notify the affected employee of the demotion and the reasons therefor in writing within 24 hours of the time the action is taken. A copy of the notice of demotion will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, the employees may pursue their appeal in accordance with the grievance procedure.

3.116(4) *Discharge.* A department head may, for cause in accordance with 681—3.115(8A), discharge any employee. The department head will notify the affected employee of the discharge and the reasons therefor in writing within 24 hours of the time the action is taken. A copy of the notice of discharge will be sent by the department to the resident director and will be maintained in the employee's personnel file. Employees may appeal the action directly to Step 2 of the grievance procedure specified in 681—3.129(8A) or a comparable step in a grievance procedure approved in accordance with 3.129(1). If not satisfied with the decision rendered at that step, employees may pursue their appeal in accordance with the grievance procedure.

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681—3.117 to 3.126 Reserved.

GRIEVANCES AND APPEALS

681—3.127(8A) *Reviews of position classification.* Permanent employees and department heads may request a position classification review and such requests shall be in written form. The employee's request will be forwarded to the resident director with a recommendation from the department head within 10 working days of the date of the request. The resident director shall review the employee's and department head's request and with a recommendation forward the request to the merit system director within 20 working days. The merit system director shall review and respond within 20 working days to the resident director who will inform the employee and department head. If the employee or department head is not satisfied with the merit system director's decision, that person may appeal the decision in

writing within 15 working days of the merit system director's decision to a qualified classification appeal committee appointed in accordance with the procedures approved by the board of regents.

The classification appeal committee will conduct such investigation as it deems necessary to determine the proper allocation of the position, and will notify the involved parties of its decision within 45 calendar days after the committee receives the appeal. Any further requests for review of the same position must be presented to the resident director in compliance with this rule and will be considered a new classification review. A new classification review will not be allowed for one year following the final decision on a request for review unless there have been substantial changes in the duties and responsibilities of the position. An appeal will be considered on the basis of duties and responsibilities assigned at the time of the original classification review, and in no case will the assignment of additional duties and responsibilities following the resident director's investigation of the original request for review be considered during the process of appeal as outlined above.

This rule is intended to implement Iowa Code Supplement section 8A.413.

681—3.128(8A) Appeals on application, examination and certification procedures. Applicants may appeal an action which they allege to be in violation of these rules concerning applications, examinations or certifications. The aggrieved applicant will first discuss the matter with the resident director and, if not satisfied with the explanation and decision given, may within 20 days after the occurrence of the alleged violation file a written appeal with the resident director at Step 3 of the grievance procedure provided in 681—3.129(8A), or at a comparable step of a procedure approved under 3.129(1). If the applicant is not satisfied with the decision rendered at that step the applicant may pursue the appeal in accordance with the grievance procedure. If the grievance concerns the form or content of the application or an examination as approved by the merit system director, the director will act jointly with the resident director and at subsequent steps in response to an appeal.

Appeals by applicants alleging improper discrimination on the basis of political or religious opinions or affiliations, or national origin, race, sex, disability or age in selection, will be filed at Step 3 in the grievance procedure provided in 681—3.129(8A) or at a comparable step of a procedure approved under 3.129(1).

This rule is intended to implement Iowa Code Supplement sections 8A.402, 8A.413, and 8A.416.

681—3.129(8A) Grievances. Disputes or complaints by permanent employees regarding the interpretation or application of institutional rules governing terms of employment or working conditions (other than general wage levels) or the provisions of these merit system rules (other than disputes whose resolution is provided for in 681—3.127(8A) and 681—3.128(8A)) will be resolved in accordance with the following procedure, except at institutions where a varied procedure has been approved by the merit system director in accordance with 3.129(1). Employees in an initial probationary period will be allowed access to the grievance procedure with the right to appeal in writing at steps within the institution. The institutional representative may permit an oral presentation at any step if the institutional representative deems one necessary. At each step of the grievance procedure, the employee may be represented by one or two coworkers of the employee's choosing. The name of such representatives will be noted on the written grievance and on each subsequent appeal. Presentations, reviews, investigations, and hearings held under this procedure may be conducted during working hours, and employees who participate in such meetings will not suffer loss of pay as a result thereof.

If an employee does not appeal a decision rendered at any step of this procedure within the time prescribed by these rules, the decision will become final. If an institutional representative does not reply to an employee's grievance or appeal within the prescribed time, the employee may proceed to the next step. With the consent of both parties, any of the time limits prescribed in these rules may be extended.

Step 1. A dissatisfied employee will first discuss the employee's problem with the employee's immediate supervisor. It is presumed that the majority of disputes, complaints, or misunderstandings will be resolved at this point. If the employee is still dissatisfied after such discussion, the employee may within ten days after the occurrence of the matter leading to the grievance or within ten days after such time that the employee has, or could reasonably be expected to have, knowledge of such

occurrence, file a written grievance with the employee's department head or designee. A written grievance will contain a brief description of the complaint or dispute and the pertinent circumstances and dates of occurrence. It will specify the institutional or merit system rule which has allegedly been violated and will state the corrective action desired by the employee. The grievance will be signed and dated by the employee. The department head or designee will investigate the grievance and will give the employee or a coworker of the employee's choosing the right to present the employee's case orally. The department head or designee will notify the employee of the decision in writing within ten days after receiving the grievance.

Step 2. If the employee is not satisfied with the decision of the department head or designee, the employee may within five days after receiving that decision, appeal it to the dean of the college or the head of the major operating division or designee(s) in which the employee is employed. The dean or the division head and the resident director or designee(s) will jointly represent the institution at this step of the appeal procedure. The appeal will be in writing and will include all of the information included in the initial grievance and subsequent appeals, all the decisions related thereto, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee.

The dean of the college or head of the division and the resident director or designee(s) will investigate the grievance and will give the employee or a coworker of the employee's choosing the right to present the employee's case orally. The institutional representatives may affirm, reverse, or modify the decision of the department head and will notify the employee of their decision in writing within ten days after receiving the appeal.

Step 3. If the employee is not satisfied with the decision rendered at Step 2 of the grievance procedure, the employee may within five days after receiving that decision appeal it to the chief administrator of the institution. The appeal will be in writing and will include all of the information included in the initial grievance and subsequent appeals, all decisions related thereto, and any other pertinent information the employee may wish to submit. The appeal will be signed and dated by the employee.

The chief administrator or the chief administrator's designee will investigate the grievance and will give the employee or a coworker of the employee's choosing the right to present the employee's case orally. The chief administrator may affirm, reverse, or modify the decision rendered at Step 2 and will notify the employee of the administrator's decision in writing within ten days after receiving the appeal.

Step 4. Employees not satisfied with the decision rendered under Step 3 may within five days after receiving that decision request a hearing before an arbitrator. Such a request will be in writing, will include all of the information included in the initial grievance and subsequent appeals, all of the decisions related thereto, and any other pertinent information the employee may wish to submit.

The appeal will be signed and dated by the employee and will be directed to the merit system director who will arrange for a hearing before an arbitrator as prescribed under 3.129(2). The arbitrator will be expected to render a decision within 30 calendar days following the conclusion of the hearing.

The merit system director shall have the right to rule whether a case is grievable and arbitrable under the merit system. The merit system director shall have the right to refuse to refer to arbitration any grievance not found to be in full compliance with these rules involving the grievance procedure. The board of regents shall retain jurisdiction to review decisions of the merit director as to whether a matter is grievable or arbitrable upon appeal by an employee.

3.129(1) Institutional grievance procedure. An institution may develop a grievance procedure for all or a segment of its employees that varies from the procedure prescribed in 681—3.129(8A), provided that such a procedure begins with discussion between the employee and the employee's immediate supervisor and provides for a final hearing in accordance with Step 4 of the grievance procedure prescribed herein. Such an institutional procedure will incorporate all the rights provided employees in this chapter, will be made known to the employees to whom it applies, and must be approved by the merit system director. In the absence of an approved institutional procedure, 681—3.129(8A) will apply.

3.129(2) Appeals. The board of regents will approve the use of a single arbitrator in hearing an appeal. The selection of the arbitrator shall be made from a panel of arbitrators as referred from the Federal Mediation and Conciliation Service or the Iowa public employment relations board with a preference for those Iowans so certified.

The arbitrator will hear a dispute appealed to the last step of the grievance procedure and render a decision thereon subject only to review by the courts.

The arbitrator will establish procedures for the conduct of the hearing in a fair and informal manner that will afford each party reasonable and ample opportunity for case presentation and to rebut the presentation of the other. The arbitrator will be expected to render a decision to the involved parties and to the board of regents within the prescribed time.

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681—3.130 to 3.139 Reserved.

VACATIONS AND LEAVES OF ABSENCE

681—3.140(8A) Attendance. Employing departments will establish work schedules and other regulations regarding attendance that they deem necessary in accordance with these rules and the policy and rules of their institution, and such schedules and rules will be made known to affected employees.

681—3.141(8A) Vacations. Permanent and probationary employees will accrue and take vacations as provided by law. Employees will be entitled to take only that vacation time which they have accrued and while employee preferences will be given major consideration, employing departments will have final authority to schedule vacations.

Permanent and probationary part-time employees will accrue vacation in an amount equivalent to their fractional employment. An employee who is transferred, promoted or demoted from one position to another position under this system will not lose any accumulated vacation time as a result thereof.

681—3.142(8A) Holidays. Permanent and probationary employees will be granted holidays approved by the board of regents.

681—3.143(8A) Sick leave. Permanent and probationary employees will accrue sick leave as provided by law and will be entitled to such leave on presentation of satisfactory evidence. Permanent part-time employees will accrue sick leave in an amount equivalent to their fractional employment, and no employees will be granted sick leave in excess of their accumulation.

An employee who is transferred, promoted or demoted from one position to another position under this system will not lose any accumulated sick leave as a result thereof.

A permanent employee who has recovered after exhausting all accumulated sick leave and vacation time and has a medical release to return to work will, at the employee's request, be placed on the reemployment list for the class the employee previously occupied and on reemployment lists for lower level classes for which the employee is qualified in accordance with 681—3.67(8A) to 681—3.70(8A) for a period of up to two years from the date the employee was released to return to work. Such employee acceptance of reemployment in a lower class will not affect the employee's standing on the reemployment list for the class that the employee formerly occupied. If reemployment occurs within

two years of an employee's release to return to work following a medically related disability, prior service credit shall be restored. After two years on the reemployment eligibility list, the employee's name shall be removed.

[ARC 9812B, IAB 10/19/11, effective 11/23/11]

681—3.144(8A) Military leave. Permanent and probationary employees will be granted military leave as provided by law, with pay not to exceed 30 calendar days in a calendar year.

681—3.145(8A) Family leave. Eligible employees will be granted family leave in accordance with federal law and board of regents and institutional policies and procedures.

681—3.146(8A) Court and jury service. When, in obedience to the subpoena or direction by proper authority, employees appear as witnesses or serve as members of juries in any public or private litigation, they will be entitled to their regular compensation provided they surrender to their employing institution any pay they receive, other than reimbursement for travel or personal expenses, for such service.

681—3.147(8A) Voting leave. If an employee's working hours do not allow a three-hour period outside of working hours during which the polls are open, any person entitled to vote in a public election is entitled to time off from work with pay on any public election day for a period not to exceed three hours in length. Application for time off for voting should be made to the employee's supervisor prior to election day. The time to be taken off may be designated by the supervisor.

681—3.148(8A) Family care and funeral leave. An employing department will, when satisfied by evidence presented, grant an employee time off with pay:

1. Not to exceed three days for each occurrence in the case of death in the employee's immediate family;
2. Not to exceed one day for each occurrence for service as a pallbearer at the funeral of a person not a member of the employee's immediate family; and
3. Not to exceed 40 hours a year for the care of or necessary attention of ill or injured members of the employee's immediate family. Employees may carry over up to 40 hours of unused family care leave to the next year, for a maximum utilization of 80 hours in the next year.

All such time off will be charged to the employee's sick leave and will not be granted in excess of the employee's accrued leave. For the purpose of this rule, "immediate family" is defined as the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse, and other persons who are members of the employee's household.

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681—3.149(8A) Leave of absence without pay. In the best interests of the institution and its employees and with approval of the resident director, a department head may grant an employee's requests for a leave of absence without pay for up to one year. With the same approval, such a leave may be extended for no more than one additional year.

On conclusion of a leave of absence without pay, employees, if qualified, will be returned to the position from which they were granted leave or to another position in the same class. If such a position no longer exists, the layoff provisions of these rules will take effect.

681—3.150(8A) Election leave. Employees who become candidates for public office will be granted election leaves as provided by law.

681—3.151(8A) Disaster service volunteer leave. Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to

a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

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¹ Effective date of 9/20/95 for amendments to 681—3.14(19A), definition of “Probationary period”; 3.39(12); 3.102(1), delayed 70 days by the Administrative Rules Review Committee at its meeting held September 13, 1995. Delay lifted by this Committee November 13, 1995, effective November 14, 1995.

CHAPTER 111
REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

[Prior to 6/3/87, see Transportation Department[820]—(06,F) Ch 8]

761—111.1(316) Acquisition and relocation assistance manual. The September 2017 edition of Section II of the manual entitled “Uniform Manual, Real Property Acquisition and Relocation Assistance” is adopted by reference.

111.1(1) Contents. Section II establishes uniform rules and procedures that comply with Iowa law and the Federal Uniform Relocation Act for the acquisition of real property and for the provision of relocation assistance to persons who are displaced from real property as a result of programs and projects.

Relocation assistance is not compensation for real property acquired nor is it compensation for damages to remaining property. Rather, relocation assistance is assistance and compensation provided to a displaced person for making the move and relocating.

111.1(2) Applicability.

a. In general, Section II applies to any program or project that involves the acquisition of real property or that causes a person to be a displaced person if the program or project:

- (1) Is undertaken with federal financial assistance, or
- (2) Is a road or street program or project undertaken with state financial assistance from the primary road fund, including primary road funds allocated for state park and institutional roads, or
- (3) Is a public road or highway eligible for federal aid.

b. In general, Section II applies to any of the following entities that acquire real property or displace a person for a program or project described in paragraph “a”:

- (1) The state of Iowa.
- (2) A political subdivision of the state.
- (3) A department, agency or instrumentality of one or more states or political subdivisions.
- (4) A utility or railroad subject to Iowa Code section 327C.2 or chapter 476, 478, 479, 479A or 479B authorized by law to acquire property by eminent domain.
- (5) Any other person who has the authority to acquire property by eminent domain under state law.
- (6) Any other person who acquires real property or displaces a person for a program or project described in paragraph “a.”

c. Any exceptions to paragraphs “a” and “b” are set out in Section II.

d. In accordance with Iowa Code subsection 316.9(3), an entity that provides relocation assistance benefits for any program or project is required to provide an appeal process, regardless of the source of funding for the program or project. The appeal process provided shall not diminish the rights of the appellant or the scope of the appeal as described in Section II.

111.1(3) Availability of manual. Copies of the manual or portions thereof are available from the Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or on the department’s Web site at www.iowadot.gov.

111.1(4) Future programs or projects. Failure to comply with Section II when acquiring real property or displacing persons for a program or project may preclude the receipt of future federal financial assistance for the program or project area.

This rule is intended to implement Iowa Code chapter 316 and sections 6B.42, 6B.45, 6B.54, 6B.55 and 310.22.

[ARC 3245C, IAB 8/2/17, effective 9/6/17]

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WORKFORCE DEVELOPMENT DEPARTMENT[871]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345]
under the “umbrella” of Department of Employment Services by 1986 Iowa Acts, chapter 1245]
[Prior to 3/12/97, see Job Service Division[345],
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CHAPTER 21
UNEMPLOYMENT INSURANCE SERVICES DIVISION

871—21.1(96) Unemployment insurance services division. The primary responsibility of the unemployment insurance services division is to administer the provisions of the Iowa employment security law and related federal programs in accordance with pertinent laws, regulations, and policies. Attorneys who report to the administrator of the unemployment insurance services division perform the legal services for the division pursuant to Iowa Code section 96.17, which empowers the division to employ attorneys to represent it and give advice on all matters coming before it in conjunction with the administration of Iowa Code chapter 96. The division administers the payment of job insurance benefits to eligible individuals, determines which employers are subject to the state and federal laws enacted in this area, supervises the collection of taxes from these employers, and oversees a program to control the quality of benefit payment and revenue collection. These functions are performed by the following bureaus:

21.1(1) Benefits bureau. The benefits bureau determines the eligibility of individuals claiming unemployment insurance. In addition, the bureau also processes unemployment compensation for federal employees (UCFE), unemployment insurance for ex-service members (UCX), claims for trade readjustment assistance (TRA), voluntary shared work (VSW), and disaster unemployment assistance (DUA). It is also responsible for payments of other special federal unemployment insurance benefits as agreed to by the United States Department of Labor and the state of Iowa.

a. The bureau is responsible for screening all employer protests and investigates all labor dispute protests and issues appropriate decisions. This bureau determines individuals' eligibility on disputed claims for unemployment insurance benefits based on Iowa employment security law and Iowa administrative rules and issues a determination. The bureau reviews decisions that determine which employers will receive charges on claims for unemployment insurance benefits and investigates claims for missing wages. The bureau performs fact-finding interviews with claimants and employers to resolve issues discovered by recording the responses the claimant provides to questions asked in the weekly continued claim certification process. The bureau issues supplemental benefit payments due to misreported earnings or eligibility disqualifications. It also responds to communications involving technical matters related to unemployment insurance and corrects necessary records and the database due to subsequent appeal decisions which reverse or modify the prior decision issued on a claim.

b. The bureau oversees special claims for processing, which include claims for UCFE, UCX, TRA, VSW, DUA, and any other federal unemployment insurance programs. The bureau also administers training extension benefits (TEB), alternate base period (ABP), business closing claims, and department-approved training (DAT). The bureau computes and authorizes payments due, maintains needed records, and makes adjustments or redeterminations as applicable. This bureau is also responsible for processing initial interstate claims, assisting claimants in calling in their continued claims for payment, notifying employers of claim filings, processing overpayments and underpayments, adjudicating issues, processing interstate appeals, and processing combined wage claims. The bureau is responsible for all overpayment billing activity that results in an overpayment setup or refund, overpayment decision letter, or overpayment billing notice. The bureau is responsible for overpayment recovery programs, including withholding of Iowa and federal income tax refunds, Iowa lottery prizes, Iowa vendor payments, and the interstate reciprocal overpayment recovery arrangement. The bureau is responsible for the issuance of duplicate benefit payments for lost, stolen, outdated, or returned payments. The bureau authorizes and issues direct deposit transactions, debit cards and special warrants. The bureau verifies financial institution corrections of direct deposit routing and account numbers and updates the database records.

c. The bureau assigns document control information to each paper document, which provides automated electronic workflow routing, document retention criteria, document locating information, and computer updates. The bureau prepares documents and computer records for release to the public under subpoena or waiver provisions and collects record-processing fees.

d. The bureau is responsible for the voluntary income tax withholding program in which state and federal taxes are withheld from unemployment insurance benefits. The bureau is responsible for reporting tax withholdings and taxable unemployment insurance benefits to the Internal Revenue Service, Iowa department of revenue, and claimants.

21.1(2) Tax bureau. The tax bureau is responsible for the maintenance and control of all records of unemployment insurance tax paid by liable employers in the state of Iowa. Taxes collected are deposited in a fund to be subsequently used for benefit payments. The bureau also provides services to other states that request assistance with unemployment insurance enforcement of Iowa-based employers that conduct business in those states.

a. The bureau maintains financial records on employers; assigns rates each year to employers; makes all necessary adjustments to ensure proper charging to employers of benefits chargeable to them; maintains records of employer overpayments and refunds; and maintains the necessary contacts with employers' accountants, attorneys, and the general public to ensure the proper and timely submission of all the required reports to the unemployment insurance services division. The bureau ensures that all unemployment insurance-related documents received are scanned into a document repository.

b. The bureau is responsible for collecting and depositing all money received for contribution reports, delinquent contribution reports, benefit reimbursements, and interest and penalties with the state treasurer's office. Staff initiates routine legal actions such as the filing of liens, garnishments, and bankruptcies. Employers and claimants are contacted by mail, telephone, or e-mail or personally to initiate the collection process.

c. It is the bureau's responsibility to contact Iowa and out-of-state employers that do business in Iowa to establish taxpayers' liability under the law; explain the law's provisions; secure information and make determinations pertaining to new accounts, successorships and terminating tax liability; give information and assistance to ensure compliance in the preparation of tax reports; conduct investigations on federal unemployment tax Act (FUTA) discrepancy problems, contractor registration issues, business closings, and claimant requests for omitted wage credits; determine employer/employee and independent contractor relationship issues; assist in fraud investigations; conduct payroll and financial audits; and provide expert-witness testimony at employer liability hearings.

d. The bureau also assigns all field audit work. Information is entered into the automated system which generates materials to be utilized by the field audit staff in conducting an employer inquiry and audit.

21.1(3) Integrity bureau. The integrity bureau consists of three distinct work units: the investigations and recovery unit, the quality control unit, and the benefits collections unit.

a. The investigations and recovery unit is responsible for aggressive action to prevent, detect, investigate and penalize fraudulent actions on the part of employing units and individuals claiming unemployment insurance benefits. The bureau verifies whether aliens are entitled to unemployment insurance and investigates and disqualifies those who are not eligible. The bureau conducts the fictitious-employer detection program to discover employers set up for the purpose of fraudulent activities. The bureau prosecutes violations of the Iowa employment security law, including fraudulent receipt of unemployment insurance benefits, in conjunction with each county attorney in Iowa. The bureau investigates and determines whether an unemployment insurance warrant has been forged and whether it should be reissued.

b. The benefits collections unit is responsible for the collection of benefit overpayments, including penalties for fraudulent claims. The bureau is responsible for depositing all money received for benefit overpayments with the state treasurer's office. Staff initiates routine legal actions such as the filing of liens, garnishments, and bankruptcies. Claimants are contacted by mail, telephone, or e-mail or personally to initiate the collection process. The bureau analyzes the effectiveness of revenue collection processes for the unemployment insurance program.

c. The quality control unit reports to the integrity bureau chief as the unit works to support the development and execution of corrective action plans for the improvement of the unemployment insurance program. The unit is responsible for the collection and analysis of data pertaining to both the accuracy of unemployment insurance benefit payments and unemployment insurance benefit denial

determinations. In addition, the unit is responsible for validation of the unemployment insurance data reports, identification and analysis of risk factors which could threaten the unemployment insurance program, and maintenance of the data-processing capabilities to store and transmit various agency-required reports to the federal government.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

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CHAPTER 22
EMPLOYER RECORDS AND REPORTS

[Prior to 9/24/86, Employment Security [370] Ch 2]

[Prior to 3/12/97, Job Service Division [345] Ch 2]

871—22.1(96) Records to be kept by the employer.

22.1(1) Each employing unit having employment performed for it shall maintain records to show the information hereinafter indicated. Such records shall be kept in such form and manner that it will be possible from an inspection thereof to obtain the facts necessary to determine what remuneration was made by the employing unit and what remuneration is reportable to the department. Such records shall be open to inspection and be subject to be copied by the department and its authorized representatives at any reasonable time. Such records shall be kept for a period of five years after the calendar year in which the remuneration to which they relate was paid or, if not paid, was due.

22.1(2) Such records shall show with respect to each employee, unless the department has ruled that the particular service does not constitute employment:

- a.* Name of worker.
- b.* Social security account number.
- c.* Date on which employee was hired, rehired, or returned to work after a temporary layoff, and the date separated from work and the reason therefor.
- d.* Scheduled hours except for workers without a fixed schedule of hours, such as those working outside of the employer's establishment in such a manner that the employer has no definite knowledge of their working hours.
- e.* Total wages paid for employment in each period and the date of payment. For all pay periods ending in each quarter show separately: money wages, the cash value of other remuneration such as any special payment for services such as wages in lieu of notice, bonuses, gifts, prizes, and the nature of payments such as accounts paid to employees as allowance or reimbursement for traveling and other business expenses, and the amounts of such expenditures actually incurred and accounted for by the employees.
- f.* The state or states in which the services are performed; and if any of such services are performed outside of this state and are not incidental to the service within the state, the base of operations (or if there is no base of operations then the place from which such services are directed or controlled) and the residence (by state), and the name of the county in Iowa in which services were performed.
- g.* When the pay period covers services performed both in covered employment and in excluded work, show the hours and wages for covered employment under the Iowa employment security law, hereinafter referred to as the "Act," and also show hours and wages for excluded work.
- h.* The physical work site at which each employee worked during each pay period which includes the twelfth of each month. If an employee worked at more than one work site, the work site at which the majority of the work was performed should be the one of record.

22.1(3) Such payroll records may be preserved by the employer in an electronic format, provided the employer is willing to provide access to such records as may be required by the department.

22.1(4) Maintenance of records by out-of-state employing units. Any employing unit having its principal place of business outside of Iowa shall maintain payroll records in this state with respect to wages paid to employees who perform some service in this state; provided, however, that an out-of-state employing unit may, with the approval of the department, maintain such payroll records outside the state upon its understanding that it will, when requested so to do, furnish the department with a true and correct copy of such payroll records. Failure to maintain said records in Iowa as required may result in estimated reports and payroll listings being made by the department. See 871—subrule 23.59(2).

This rule is intended to implement Iowa Code section 96.11(6) "a."
[ARC 3116C, IAB 6/7/17, effective 7/12/17]

871—22.2(96) Reports. Each employing unit shall make such reports at such times as the department may require and shall comply with the instructions issued by the department pertaining to the preparation and return of such report.

This rule is intended to implement Iowa Code section 96.11(1).
[ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—22.3(96) Filing of Employer's Contribution and Payroll Report, 65-5300 and Employer's Payroll Continuation Sheet, 60-0103.

22.3(1) Each employer shall, by the due date, electronically submit contribution and payroll for each quarter listing wages paid with respect to all the employer's business maintained within this state computed in accordance with the Iowa Code and these rules.

22.3(2) Rescinded IAB 8/2/17, effective 9/6/17.

22.3(3) A copy of each such report shall be preserved by each such employer for a period of at least five years from the end of the calendar year in which the report was due.

22.3(4) Employer to file report even when no payroll. Every qualified or subject employer is required to send in an Employer's Contribution and Payroll Report, Form 65-5300, each quarter. Even though an employer finds that for some particular quarter no contributions are due, or they have no employees during the period covered, a report must be filed with the department.

22.3(5) Combined reports, leased employees, and concurrently employed individuals.

a. Consolidated or combined reports of parent and subsidiary corporations or other employing units, whether or not the employing units are related, shall not be allowed.

b. Employees of parent and subsidiary corporations or other employing units, whether or not they are related, shall be reported on the quarterly reports of the employing unit for which the services are performed regardless of which employing unit actually issues the employees' paychecks.

c. Leased employees:

(1) Except as described in subparagraphs (2), (3), (4), and (5) below, individuals leased from an employee leasing company, by the client of the employee leasing company, shall be considered to be employed by the client and shall be reported on the quarterly reports of the client, at the contribution rate of the client, unless and until it is shown to the satisfaction of the department that the individuals are and will continue to be under the exclusive direction and control of the employee leasing company, both under a written contract and in fact.

In order for a contract to be considered evidence that individuals are the employees of the employee leasing company it shall:

1. Specify the service to be performed by the individuals, on behalf of the employee leasing company, for the client.

2. Specify the fee the client must pay for this service. The fee must be large enough to cover the actual cost of the individuals' wages and fringe benefits plus provide a reasonable profit on the service performed for the client.

3. Specify that the employee leasing company has the exclusive right to determine the number of individuals needed to provide the service for the client and to direct and control the individuals in the performance of the service.

4. Specify that the employee leasing company has the exclusive right to hire, fire, discipline, and reassign any of the individuals to another position or to another client without the consent of the client.

(2) If an individual is leased to fill a temporary need from a company whose business is primarily to provide workers to fill temporary needs, the individual shall be considered to be the employee of the leasing company as long as a written contract is in place.

(3) If an individual is a truck driver leased from a company that leases truck tractors with drivers to trucking companies, the individual shall be considered to be the employee of the leasing company unless and until it is shown to the satisfaction of the department that the trucking company has the exclusive right to hire, fire, discipline, reassign, and direct and control the services performed by the individual, both under a written contract and in fact.

(4) If an individual leased from an employee leasing company is a corporate officer of the client, the individual shall always be considered the employee of the client and not the employee of the leasing company.

(5) If an individual leased from an employee leasing company holds an exempt relationship, as defined in Iowa Code section 96.19(18)“g”(5), with the client, the individual shall not be considered to be an employee of either the client or the leasing company unless an election to cover the individual has been filed and approved in accordance with Iowa Code section 96.8(3)“b.”

d. Concurrently employed individuals.

(1) Except as described in subparagraph (2) below, individuals who perform services concurrently for more than one employing unit, whether or not the employing units are related, shall be considered as working for each of the employing units and shall be reported on the quarterly reports of each of the employing units. Each of the employing units shall be required to pay contributions on the wages attributable to that employing unit up to the taxable wage base limit for each calendar year.

(2) An individual who concurrently performs services as a corporate officer for two or more related corporations and who is paid through a common paymaster that is one of the related corporations may be treated as working for only the common paymaster at the discretion of the related corporations.

22.3(6) Each Form 65-5300, Employer’s Contribution & Payroll Report, shall include:

a. The social security number, name (last name first), and total wages paid to each employee during the calendar quarter. All corrections to previous reports must be submitted on Form 68-0061, Employer’s Wage Adjustment Report. All employees’ wages will be reported by the reporting unit under which the work was performed. See rules 871—23.3(96) through 871—23.6(96).

b. The sum of the total and taxable wages paid to all employees during the calendar quarter. If reported electronically, the sum of the total and taxable wages will be computed for the employer. The electronic system will compute the taxable wages for each employee. If the employer is claiming taxable wages reported to another state, the amount claimed and the state that the wages were reported to will be listed.

c. The amount of contribution due for the calendar quarter. If the report is filed electronically, the system will compute and enter the contribution due.

d. The amount of interest due, if any, for the calendar quarter. If the report is filed electronically, the system will compute and enter the interest due.

e. The amount of penalty due, if any, for the calendar quarter. If the report is filed electronically, the system will compute and enter any penalty due.

f. The total amount of contribution, interest and penalty due for the calendar quarter. If the report is filed electronically, the system will compute and enter the total amount due.

g. Rescinded IAB 5/5/10, effective 6/9/10.

h. The amount of net remittance due for the calendar quarter; however, if the amount of net remittance due is less than \$1, the employer need not submit payment. If the report is filed electronically, the system will compute and enter the net remittance due.

i. The total number of employees listed on the report. If the report is filed electronically, the system will compute and enter the total number of employees on the report.

j. The amount of extraordinary pay which was paid to the employees during the calendar quarter for each reporting unit.

k. The total number of employees paid wages during the pay periods which include the twelfth day of each month of the calendar quarter for each reporting unit.

l. The number of the county in which the reporting unit is located if only one business activity is conducted at only one worksite during the calendar quarter; however, if the same business activity is conducted at more than one worksite or if different business activities are conducted at one or more worksites, the employer shall also be required to complete and return the Form 65-5519, Multiple Worksite Report, which shall include for each worksite the total number of employees paid wages during the pay periods which include the twelfth day of each month of the calendar quarter and the total wages paid during the calendar quarter. The system will compute and enter taxable wages if the report is filed electronically.

(1) The total number of employees paid wages during the pay periods which include the twelfth day of each month of the calendar quarter for all worksites as reported on the Form 65-5519, Multiple Worksite Report, should equal the total number of employees reported for that month on the Form 65-5300, Employer's Contribution & Payroll Report.

(2) The total wages paid to all employees at all worksites as reported on the Form 65-5519, Multiple Worksite Report, should equal the total wages reported on the Form 65-5300, Employer's Contribution & Payroll Report.

(3) It could be possible for wages to be reported for a worksite without corresponding employment being reported in any of the months during the quarter because wages paid are reportable for the full 13-week period in the calendar quarter, while employment is reportable on the Form 65-5300, Employer's Contribution & Payroll Report, when such employment occurs during the pay periods which include the twelfth day of any month in the calendar quarter.

m. The reason (seasonal change, labor dispute, layoff, recall, worksite opening, or worksite closing) for the increase or decrease in total employment during the calendar quarter.

n. Rescinded IAB 3/5/03, effective 4/9/03.

o. The signature, written or electronic, of the owner, responsible officer, or authorized agent of the employer certifying that the information given is true and correct to the best of the signer's knowledge and belief, the date the report was submitted and the telephone number.

p. Such other schedules or reports as may be required, duly completed in all substantial respects on such forms and in accordance with such instructions as the department may provide or approve.

This rule is intended to implement Iowa Code sections 96.7, 96.11(6), 96.11(11) and 96.19(17).
[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—22.4(96) Reporting of earnings data by secure file transfer.

22.4(1) The employer may submit an electronic file in lieu of Form 65-5300, Employer's Contribution & Payroll Report. Authorization for this reporting method will be given if the employer meets the specification requirements to be compatible with the department's computer capabilities. Such specifications will be furnished upon request.

22.4(2) The electronic file submitted will contain all of the employer information, wage information, and labor market information required when filing using the Form 65-5300, Employer's Contribution & Payroll Report. If this method of filing is selected, all wages must be filed using this method. The report will not be considered filed until all worksite reporting units have filed. All corrections to previous reports submitted to the department must be listed and submitted on Form 68-0061, Employer's Wage Adjustment Report.

22.4(3) The director shall annually designate the number of wage lines per report that will require the report be filed electronically.

This rule is intended to implement Iowa Code section 96.11(6) "a."
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—22.5(96) Filing of quarterly report forms by newly subject or covered employers. Any employing unit which becomes an employer subject to this chapter within any calendar quarter other than by a voluntary election of the employing unit shall file reports for each calendar quarter on Form 65-5300, Employer's Contribution and Payroll Report. Reports shall include all wages paid during the current quarter as well as separate quarterly reports for wages paid in prior quarters of the same calendar year. The first quarterly reports of that employer shall be due on the last day of the calendar month following the close of the calendar quarter in which the employing unit becomes subject to the Code and shall be considered delinquent if not submitted and paid by that date. Any employer filing a voluntary election for coverage must begin filing reports in the quarter the employer's election is effective.

This rule is intended to implement Iowa Code sections 96.7(1), 96.14(1), 96.14(2) and 96.8(3).

871—22.6(96) Employer changing status, address or name required to file report. Any employer who terminates business for any reason whatsoever, or transfers or sells all or a substantial part of the assets of the organization, trade or business to another, or changes the trade name of such business or

address thereof shall, within ten days after such termination, transfer, or change of name or address, give notice to the department of that fact. The employer shall set forth in such notice the former name and address of the business, the new name, telephone number and address, the name of any new owner, and the employer's own name, telephone number and present address. Such notification shall be submitted electronically.

This rule is intended to implement Iowa Code sections 96.11 and 96.8(4).
[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—22.7(96) Exempt employing units and exempt employment.

22.7(1) Any employing unit having workers performing services for it which it considers exempt from this Act shall file a Form 68-0192, Questionnaire for Determining Status of Workers, along with supporting exhibits and documents (i.e., contract, statements from employer and claimant) so that a decision can be made as to whether or not such service is in fact exempt from the provisions of this Act.

22.7(2) Any employing unit which has established its status as an organization exempt under this Act or that certain employment performed for it is not subject to contributions shall immediately notify the department of any changes in the character of its organization, the purposes and manner of its operation or the changed manner in which employment theretofore determined to be exempt by the department is performed.

22.7(3) Whenever an employing unit claims that any employment is not employment under this Act, the burden shall be on the employer to prove the exemption claimed.

This rule is intended to implement Iowa Code section 96.19(18) "f."

871—22.8(96) Subject employers.

22.8(1) Requesting determination of status. Whenever an employing unit is in doubt as to whether or not an individual is an employee, or is engaged in employment subject to the Act, the employing unit shall submit a statement of all relevant facts to the department for a determination as to the status under the Act of such individual or employment on Form 68-0192, Questionnaire for Determining Status of Workers, information for use in obtaining a ruling from the department as to whether or not a worker is an employee for the purposes of the Act.

22.8(2) Notification of status. The department shall maintain a separate account for each employer and shall notify the employer by mailing a Form 65-5308, Notice of Employer Status and Liability, to the last-known address. This notice will advise the employer of:

- a. The effective subjectivity date.
- b. The date of the determination (last day of quarter in which subjectivity occurred). See rule 871—22.5(96).
- c. The assigned industry code.
- d. The section of the law under which the employer was found liable.
- e. The federal identification number (if available).
- f. The workforce development unemployment insurance account number.
- g. The contribution rate for that year and preceding four years, if applicable.
- h. Whether the account was established new, reestablished or placed on an inactive status.

22.8(3) For the specific procedure and requirements for perfecting an appeal of an employer liability determination see rules 871—23.52(96) to 871—23.56(96).

This rule is intended to implement Iowa Code section 96.7(4).

871—22.9(96) Employing units required to file report to determine liability.

22.9(1) Each employing unit engaged in doing business in the state of Iowa January 1, 1936, or after, shall file a report to determine liability with the department on a form supplied by the department, Form 60-0126, Report to Determine Liability, setting forth the names and addresses of the owners of the business, or if a corporation, association, or joint stock company or limited liability company, the names and addresses of its officers or members. Each employing unit must show its principal place of business, the nature of its business, the number of individuals whom it customarily hires to perform

services for it, the place or places where such services are performed, the time when such business was begun, the number of weeks in the year for which it is customary to operate such business and such other information as may be required by such form.

22.9(2) Each employing unit which shall hereafter begin business in the state of Iowa in any manner whatsoever whether by succession to a business already being operated, by starting a new business, or otherwise, shall, within 30 days after beginning such business, inform the department of that fact, request the forms referred to in 22.9(1) and make and file the report required of all employing units by said rule.

This rule is intended to implement Iowa Code section 96.11(1).

871—22.10(96) Report of a Partnership on Change in Partners.

22.10(1) *Change in partnership.* In any case in which a partnership consisting of two or more partners adds to or deletes a partner or partners and is not required by the Internal Revenue Service to obtain a new federal identification number after such addition or deletion of partner or partners, the partnership shall notify the department of such change by filing a Form 68-0234, Report of a Partnership on Change in Partners, within ten days from the date the change occurred. The department will subsequently correct the partnership account to reflect this change.

22.10(2) *Reporting requirement.* If, after the change in partners, the partnership is required to obtain a new federal identification number by the Internal Revenue Service, or if there has been a change of ownership as described in Iowa Code section 96.19(18) “b” or a change of ownership as described in rule 871—23.28(96), then the old partnership shall notify the department by filing Form 60-0111, Employer’s Notice of Change, within ten days from the date the change occurred. The new partnership shall notify the department by filing Form 60-0126, Report to Determine Liability, within ten days from the date the change occurred.

This rule is intended to implement Iowa Code section 96.11(6).

871—22.11(96) Employer account.

22.11(1) The department shall maintain one account for each employer (or single legal entity). An employer who has more than one establishment or business shall be considered to be one employing unit entitled to one account and a single experience rate. If an establishment or business owned by an employer is a separate legal entity in its own right (i.e., a subsidiary corporation), it will be considered to be a separate employer and must have an experience rate based on its own experience. When an already covered employer acquires another establishment or business, the employer will have a separate account number with a separate experience rate for the acquired business only if that business retains its character as a separate legal entity. If the acquired business is merged with that of the employer so that they become a single legal entity under the law, the successor is not entitled to separate rates for each establishment or business.

22.11(2) Each employer shall report all wages paid and pay all contributions into the unemployment account maintained by the department. The title of the employer’s account shall be the name of the individual, partnership, corporation, association or other organization constituting the employing unit, and may contain the trade name used by the employing unit. Where the employing unit is a fiduciary agent or legal representative, the title of the account shall be the name of the fiduciary or legal representative and the official title.

22.11(3) Each employer’s account shall be assigned a number and, unless the system of numbering accounts is changed, the number identifying an employer’s account shall not be changed.

22.11(4) Establishment defined. As used in this rule, “establishment” means an economic unit, generally at a single physical location, where business is conducted, or where services or industrial operations are performed, or from which employees are dispatched.

This rule is intended to implement Iowa Code sections 96.7(2) “a”(1) and 96.19(17).

[ARC 871IB, IAB 5/5/10, effective 6/9/10]

871—22.12(96) Reporting units. Any employer having two or more separate establishments will file those establishments as separate reporting units. Additionally at the employer’s discretion, the employer

may establish reporting units to report according to function within the business. When filing a Form 65-5300, Employer's Contribution & Payroll Report, by paper, all reporting units will be listed on a separate page and will all be submitted together. When filing a Form 65-5300, Employer's Contribution & Payroll Report, by electronic means, the individual reporting units may be filed separately by the reporting units when authorized but the complete account report is not submitted until all reporting units are completed. Maintaining current status for the reporting units will be the employer's responsibility. If any reporting units are deleted or added, the department shall be notified within ten working days from the date of change.

This rule is intended to implement Iowa Code sections 96.7(2) "a" and 96.19(6).
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—22.13(96) Procedure to be followed by an employer wishing to have an active reporting unit coded for notice of claim for unemployment benefit mailing.

22.13(1) Any employing unit reporting under an assigned account and having one or more reporting units in the state of Iowa may request in writing or electronically the assignment of a reporting unit number which will be assigned for the specific purpose of mailing Form 65-5317, Notice of Claim Filing, to the reporting unit so that responsible personnel at that location can make a timely protest on Form 65-5317 if the employment separation was for a disqualifiable reason. Those accounts so wishing may request in writing that all unemployment insurance material other than Form 65-5317, Notice of Claim Filing, be sent to the home office or regional accounting office. All such requests must be from a responsible financial or operating officer of the firm and shall indicate:

- a. Full trade name and address of each location to be coded.
- b. The full employer name and address of the home office or financial office where all unemployment insurance material other than Form 65-5317 is to be sent.

22.13(2) It will be permissible to accept this information over the telephone by qualified personnel of the field audit section providing the employer makes known all of the above requested information and the person receiving this information notes the date it was received, the time it was received, who telephoned the information to the department, and the name and telephone number of a responsible party that can be contacted if further verification is needed with respect to the location coding procedure. Field audit section personnel receiving this classified information by telephone will accordingly note this and make it a matter of permanent record.

This rule is intended to implement Iowa Code section 96.6(2).
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—22.14(96) Notification by employer of employee's rights. Each employer shall post and maintain in places readily accessible to individuals in its employ printed notices or posters, Form 60-0160, informing employees of their potential rights to benefits under the employment security law and providing general instructions as to what the employees shall do and where the employees shall go to obtain these benefits. Copies of these printed notices or posters may be obtained from the department, upon request, without cost to the employer.

This rule is intended to implement Iowa Code section 96.11(2).

871—22.15(96) 940 certification.

22.15(1) Upon request, the department shall furnish to the Internal Revenue Service a certification of an employer's account for a particular year. Certification requests may be on an individual basis or may be part of a bulk yearly certification. Such certification will include the employer's state account number, yearly taxable payroll, contribution rate, contributions paid prior to January 31 of the next succeeding year, and the date and amount of contributions after January 31 of the next succeeding year.

22.15(2) In addition to the information certified in subrule 22.15(1), yearly certification shall include:
a. Employers who filed a federal unemployment tax return (Form 940) that did not file with the department.

b. Employers who filed returns with the department but not with the Internal Revenue Service except governmental employers and employers that department records indicate to be 501(c)(3) nonprofit organizations.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.11(6) “c”(2).

871—22.16(96) Electronic transmittal of contribution payments.

22.16(1) An employing unit or person acting on behalf of one or more employing units must transmit payment of contributions to the department electronically.

22.16(2) Once an employing unit transmits payment of contributions to the department electronically, the employing unit must submit all subsequent payments of contributions to the department electronically.

This rule is intended to implement Iowa Code sections 96.7(1) and 96.14(2).
[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—22.17(96) Procedures of field auditors.

22.17(1) Field auditors are to provide a cost-effective method of promoting employers’ understanding of employer rights and responsibilities under Iowa unemployment insurance laws.

22.17(2) The department, through duly appointed field auditors, may examine an employer’s records at any time, subject to the limitations of 871—22.1(96), to determine compliance with Iowa Code chapter 96.

22.17(3) The department has enforcement authority. An employer, when requested to produce records by an auditor, must make the records available within and at a reasonable time to the auditor. If an employer does not comply with the auditor’s request to produce records, a subpoena duces tecum may be served on the employer to appear before the auditor with the records in accordance with Iowa Code section 96.11, subsections 8 and 9.

22.17(4) The department, through duly appointed field auditors, may perform a systematic audit of an employer’s records as authorized by Iowa Code section 96.11, subsection 7, and as mandated by the United States Department of Labor. In addition to the provisions of subrules 22.17(1) to 22.17(3), the following provisions apply to systematic audits:

a. The employer is to be given reasonable notice of the intent to audit, and a preaudit interview is to be conducted with the employer or a designated representative.

b. The records required, if maintained, may include individual pay records, Internal Revenue Service Forms W-2 and 1099, cash disbursement journal, check register, chart of accounts, general ledger, balance sheet, profit and loss statement, federal and state tax returns and other records to the extent they relate to possible hidden or misclassified wages.

c. To verify the existence of the business, the auditor may require a visit to the business premises or to see other evidence of legitimate business activity.

d. To verify the correct business entity is listed on department files, the auditor may examine various employer business licenses, legal documents or other tax returns.

e. To verify the reporting of all workers reportable to the department under Iowa Code chapter 96, questionable entries will be investigated and documented. Under rule 871—22.7(96) if the employer disagrees with the audit decision on coverage of a worker, the auditor may require the employer to complete Form 68-0192, Job Service Questionnaire For Determining Status of Workers. In any disputed case, the auditor is to be granted access to records as necessary to determine the remuneration paid for any given calendar quarter.

f. To verify proper employer posting to department reports, a detailed audit of check stubs, weekly time cards, or other maintained source documents will be made and documented for at least one worker for at least one quarter. The detailed audit may be more comprehensive at the discretion of the auditor or if discrepancies are found.

g. Employer records will be compared and reconciled to amounts reported to the department on contribution and payroll reports and audit findings documented.

h. Discrepancies will be resolved or explained, and report adjustments prepared as necessary.

i. The audit will cover four calendar quarters; however, if material errors are found, the audit may be expanded to cover prior or subsequent years subject to limitations of subrule 22.1(1). The auditor will review and correct similar errors in a minimum of a year prior to and after the audited year.

j. Additional amounts due will be calculated and collected, including applicable interest and penalties, or an explanation will be given. The employer may be required to submit a payment plan.

k. When the audit is completed, the audit will be discussed with the employer or a representative designated by the employer. The employer will be furnished copies of any wage adjustments, supplemental reports or delinquent reports prepared by the auditor. An audit report with all worksheets, adjustments and reports will be retained by Iowa workforce development.

22.17(5) There are several other reasons department representatives may make employer contacts and demands under authority of this rule. Any of these activities may be expanded into a systematic compliance audit as described in subrule 22.17(4) upon approval of the duly authorized representative of the department.

a. An auditor may request to examine business records to determine the date employment began and the date the employing unit became subject to Iowa Code chapter 96.

(1) To determine if an employing unit is to be a covered employer and if an individual, or class of individuals, are employees whose remuneration would be subject to contributions, the auditor will examine employment contracts and related documents.

(2) If it is determined that the employing unit is to be a covered employer, the auditor will examine legal documents such as leases, purchase contracts, partnership agreements, articles of incorporation, limited liability operating agreements and stock records to determine ownership of the business, to establish responsibility for filing reports and paying contributions, and to assist in the determination of the unemployment insurance tax rate.

(3) If liability is determined, the payroll/remuneration records may be examined to establish the correct amount of covered wages and the period to which they belong. Reports will be completed and the correct amount of contribution, penalty and interest due will be computed and collection action will be initiated.

b. When an unemployment insurance claim is filed, an auditor may request to examine the records of an employer to establish the claimant's rights to benefits under Iowa Code chapter 96. Form 68-0192, Job Insurance Questionnaire For Determining Status of Workers, and supporting documents may be required in contested cases. If the department determines that the claimant is an employee, the records will be examined to determine the correct amount of wages paid to the claimant and the period to which the wages apply.

c. When an employer fails or refuses to file a report, the auditor may examine the records to determine the correct amount of wages that should be reported, prepare the report, compute and collect contributions, penalty, and interest due. Should records not be made available, the auditor may estimate the wages paid and amounts due pursuant to 871—subrule 23.59(2).

d. When an employer is delinquent in paying contributions due, the auditor may examine records including cash accounts, accounts receivable, real and personal property accounts, accounts payable, notes payable, installment contracts and mortgages payable to determine the employer's equity in the assets on which a lien may be filed and judgment obtained.

22.17(6) When a temporary writ of injunction has been filed by the department, pursuant to Iowa Code section 96.16, against an employer because of the employer's failure or refusal to file a required report or to pay assessed contributions, penalty, and interest, a field auditor shall have the right to inspect the enjoined business premises during reasonable hours and interview any interested parties having knowledge of or being involved with the enjoined employer to ensure that such enjoined employer and all of the employer's agents, servants, employees, and assigns are observing the conditions of the temporary writ of injunction.

This rule is intended to implement Iowa Code sections 96.7(1), 96.7(3), 96.8(1), 96.11(1), 96.11(6) "a," 96.11(7), 96.14, 96.16 and 96.20(3).

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—22.18(96) Agents and other practitioners or firms representing employers in unemployment insurance matters.

22.18(1) An agent, tax practitioner, accounting firm, attorney or any other firm or individual that represents or intervenes on behalf of an employer in any unemployment insurance matter shall have on file with the department:

- a. A power of attorney, or
- b. A letter of authorization from the employer, or
- c. An electronic designation of authority from the employer.

22.18(2) The foregoing documents shall contain the following information:

- a. Employer's full legal name, address and account number.
- b. Employer doing business as (DBA) or trade name if any.
- c. Legal name, address, telephone number and federal employer identification number (FEIN) of the agent or firm representing the employer.
- d. Employer's E-mail address.
- e. Address of the designated agent.
- f. Roles that the agent or firm is authorized to perform for the employer.
- g. Signature of the employer.

22.18(3) Rescinded IAB 3/5/03, effective 4/9/03.

This rule is intended to implement Iowa Code section 96.11(7).

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

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CHAPTER 23
EMPLOYER'S CONTRIBUTION AND CHARGES

[Prior to 9/24/86, Employment Security[370]]
[Prior to 3/12/97, Job Service Division [345] Ch 3]

871—23.1(96) Definitions.

23.1(1) Accounts.

a. Benefit payment account. An account maintained in the unemployment compensation fund in which are recorded (1) amounts transferred from the unemployment trust fund in the United States treasury, and receipts from other sources, and (2) amounts of benefits paid.

b. Employer rating account. An account of an employer which is maintained by the department for the purpose of reporting wages and recording contributions or reimbursements for that employer.

c. Clearing account. An account maintained in the unemployment compensation fund in which are recorded all amounts payable under Iowa Code chapter 96, including those to be transferred to (1) the unemployment trust fund, (2) the special employment security contingency fund, (3) the administrative contribution surcharge fund, and (4) the temporary emergency surcharge fund. Employer refunds are issued from this account.

d. Balancing account. An account set up to receive benefit charges that by law are not chargeable to any employer. The purpose of the balancing account is to enable the department to properly account for all benefits paid out.

23.1(2) Average annual taxable payroll. The average of the total amount of taxable wages paid by an employer for insured work during the five periods (three or two periods for governmental contributory employers) of four consecutive calendar quarters immediately preceding the computation date.

23.1(3) Calendar quarter. The period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31 of each year.

23.1(4) Computation date. The date as of which employers' experience with respect to unemployment or unemployment risk is measured for the purpose of determining contribution rates.

23.1(5) Employer's contribution and payroll report. An employer's quarterly report of the wages paid to individual workers, the total and taxable wages paid and the amount of contributions due to a state unemployment insurance fund.

23.1(6) Contributions. Payments required by a state employment security law to be made to the state unemployment fund by reason of insured work but does not include reimbursement payments of nonprofit organizations or governmental entities in lieu of contributions.

23.1(7) Contributor rate. The percent constituting the rate at which the employer's payroll is taxed.

23.1(8) Employer. An employer subject to the employment security law of Iowa who is liable for contributions and subject to the experience rating provisions of the law or is liable for reimbursement payments in lieu of contributions. (See Iowa Code section 96.19(16).)

23.1(9) Experience. An employer's record with respect to contributions paid, benefits charged, and taxable wages reported.

23.1(10) Experience rating. A method for determining the contribution rates of individual employers on the basis of the factors specified in the state employment security law for measuring employers' experience with respect to unemployment or unemployment risk.

23.1(11) Reserved.

23.1(12) Rescinded IAB 5/14/03, effective 6/18/03.

23.1(13) Reserved.

23.1(14) Federal unemployment tax. The tax imposed by the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

23.1(15) Federal Unemployment Tax Act. Subchapter C of Chapter 23 of the Internal Revenue Code which relates to the federal unemployment tax.

23.1(16) Federal unemployment tax return. A report by an employer to the Internal Revenue Service of the amount of federal unemployment tax due and payable with respect to wage payments to workers during the calendar year.

23.1(17) Rescinded IAB 5/14/03, effective 6/18/03.

23.1(18) Funds.

a. Administrative contribution surcharge fund. A special fund in the state treasury, established by state law, as a repository for an employer surcharge levied to meet the operational cost of certain state workforce development offices. Referred to in subrule 23.40(2).

b. Administrative funds. Funds made available from federal, state, local and other sources to meet the cost of state workforce development administration.

c. Contingency fund. An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state workforce development divisions arising from increases in workload or other specified causes.

d. Employment security administration fund. A special fund in the state treasury, established by state law, in which are deposited moneys granted by the United States Department of Labor, manpower administration and moneys from other sources, for the purpose of paying the cost of administering the state workforce development program.

e. Special employment security contingency fund. A special fund in the state treasury, established by state law, for moneys received from employers in payment of interest and penalties on delinquent contributions and reports.

f. Temporary emergency surcharge fund. A special fund in the state treasury, established by state law, for use in the event an employer surcharge is levied to pay interest on a federal government loan to the unemployment compensation fund. Referred to in subrule 23.40(3).

g. Title V funds. Funds appropriated by Congress to pay unemployment benefits under Title V of the United States Code to federal civilian and military employees.

h. Unemployment compensation fund. A special fund established under an employment security law for the receipt and management of contributions and the payment of unemployment insurance benefits. Included in this fund are moneys in the benefit payment account, clearing account, and unemployment trust fund account.

i. Unemployment trust fund. A fund established in the treasury of the United States which contains all moneys deposited with the treasury by the state employment security agencies to the credit of their unemployment fund accounts and by the railroad retirement board to the credit of the railroad unemployment insurance account.

23.1(19) Indian tribe. Indian tribe has the same meaning given to the term by Section 4(e) of the federal Indian Self-Determination and Education Assistance Act, and shall include any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

23.1(20) Reserved.

23.1(21) Rescinded IAB 5/14/03, effective 6/18/03.

23.1(22) and **23.1(23)** Reserved.

23.1(24) Liability determination. A determination as to whether an employing unit is a subject employer and whether services performed for it constitute employment as defined under the employment security law.

23.1(25) Liability report. A report required of all employing units in a state, which gives the information on which the state employment security agency bases its determination as to whether the employing unit is liable under the state employment security law.

23.1(26) Subject employer. An employing unit which is subject to the contribution provisions of a state employment security law.

23.1(27) Tax. (See “Contributions.”)

23.1(28) Unemployment compensation fund. The unemployment compensation fund established by this chapter to which all contributions or payments in lieu of contributions are required to be deposited and from which all benefits provided under Iowa Code chapter 96 shall be paid. (See “Funds.”)

23.1(29) Rescinded IAB 5/14/03, effective 6/18/03.

23.1(30) Quarterly Wage report. A report by an employer of the wages of individual workers.

23.1(31) Quarterly Wage listing. A report listing workers and their wages by social security number. This rule is intended to implement Iowa Code sections 96.7(2) “c”(3), 96.7(7) “b,” 96.11(1) and 96.19(1).

871—23.2(96) Definition of wages for employment during a calendar quarter.

23.2(1) Unless the context otherwise requires, terms used in rules, forms, and other official pronouncements issued by the department shall have the following meaning:

23.2(2) Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid. The Employer’s Contribution and Payroll Report, Form 65-5300, shall be used as prima facie evidence of when the wages were paid. If the wages are not listed on the 65-5300, they shall be considered as paid:

- a. On the date appearing on the check.
- b. On the date appearing on the notice of direct deposit.
- c. On the date the employee received the cash payment.
- d. On the date the employee received any other type of payment in lieu of cash.

23.2(3) Wages payable means wages earned and unpaid. (See section 96.19(41).)

23.2(4) Wages is the name by which the remuneration for employment is designated and the basis on which the remuneration is paid is immaterial. It may be paid in cash or in a medium other than cash, on the basis of piece work or percentage of profits, commission, or it may be paid on an hourly, daily, weekly, monthly or annual basis. Remuneration paid in goods or services shall be computed on the basis of the fair value of the goods or services at the time of payment.

23.2(5) When the cash value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates specially determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

23.2(6) Cash value of room and board.

a. If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in Iowa Code section 96.19(18), the reasonable cash value of same shall be deemed wages subject to contribution.

b. Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in paragraphs “d” and “e” of this subrule.

c. In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in paragraph “d” of this subrule.

Full board and room per week	\$272.00
Meals (without lodging) per week	92.00
Meals (without lodging) per day	18.40
Lodging (without meals) per week	180.00
Lodging (without meals) per day	36.00
Individual meals:	
Breakfast	4.00
Lunch	4.80
Dinner	9.60
A meal not identifiable as either breakfast, lunch or dinner	4.00

d. The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or

group of instances, if it is determined that the values fixed in or arrived at in accordance with paragraph “c” of this subrule, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

e. If the department determines that the reasonable cash value is other than prescribed in a contract of hire or in paragraph “c” of this subrule, the employer’s payroll and contribution reports to the department shall thereafter show the value of such remuneration as determined by the department.

f. Notwithstanding the provisions of this paragraph, the cash value of meals which are provided by and for the convenience of the employer on the business premises of the employer shall not be deemed as insured wages under chapter 96 of the Iowa Employment Security Law. Lodging furnished by the employer, for the convenience and on the business premises of the employer, shall not be considered wages if the employee is required to accept the lodging as a condition of employment.

This rule is intended to implement Iowa Code section 96.19(41).

871—23.3(96) Wages.

23.3(1) “Wages” means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

23.3(2) The term “wages” shall not include:

a. *Subsistence payments.* The amount of payment made by an employer to its employee, which is in addition to the employee’s regular wages and is paid for the sole purpose of compensating the employee for expenses inherent in the performance of services by the employee away from the regular base of operation of the employer and employee, commonly referred to as subsistence pay.

b. *Travel and other ordinary and necessary expenses.* Amounts paid specifically for travel or other ordinary and necessary expenses incurred or reasonably expected to be incurred in the employer’s business are not wages. Travel and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts if both wages and expense allowances are combined in a single payment.

c. *Employer’s payments to persons performing military services.* Cash payments, or the cash value of other remuneration, made voluntarily and without contractual obligation to, or in behalf of, an individual for periods during which such individual is in active service or training as a member of the national guard, or the military or naval forces of the United States, including the organized reserves.

d. *Sick pay.*

(1) “Wages” shall not include any amounts paid as sick pay if the payments are made by or on behalf of an employer under a plan or system. The plan or system must provide sick pay for the employees of the employer or a class or classes of the employer’s employees. The plan may include dependents.

(2) In the absence of a plan or system any amounts paid by or on behalf of an employer on account of sickness shall not be included after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

e. *Supplemental unemployment benefit plan (SUB).* The term “wages” shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ, under a plan or system established by such employing unit, with approval of the department. Such plan or system must make provision for payment to a trust fund or similar account on behalf of individuals performing services for it. The account must be used to pay supplemental unemployment benefits to such employing unit’s employees over and above any sum to which such employees might be entitled under the provisions of the state employment security law. Such payments to employees are not remuneration for the purposes of reducing or preventing payment of unemployment benefits. Such plan shall contain the following features:

(1) The employer pays into a separately established trust fund or similar account an amount per hour (or amount equivalent) worked by the employees covered by the agreement until the maximum amount called for has been reached. The plan specifically provides for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument.

(2) These payments made by the employer into the trust fund or similar account are not subject to recovery by the employer before the satisfaction of all liabilities to employees covered by the plan.

(3) The trust fund or similar account is to be used to pay supplemental unemployment benefits to employees over and above any sum to which they might be entitled under the provisions of a state employment security law.

(4) That the agreement shall provide that such employee is not entitled to receive any payment from the trust fund or similar account unless the employee is also concurrently eligible for benefits under a state employment security law.

(5) The plan requires that benefits are to be determined according to objective standards. Thus a plan may provide similarly situated employees with benefits which differ in kind and amount, but may not permit such benefits to be determined solely at the discretion of the administrator of the fund.

(6) That the employee has no vested right in any of the moneys paid into the trust fund or similar account except as the employee may qualify for benefits under the terms of the agreement.

(7) That any payment made to or on behalf of an employee be from and to a trust fund or similar account described in Section 401(a) of the United States Internal Revenue Code title 26 of 1970 which is exempt from tax under Section 501(a) of said Code.

(8) The employer shall seek approval of its plan by petitioning that its plan be designated as a supplemental unemployment benefit (SUB) plan in the manner provided for petitioning for a declaratory ruling. The employer should include a written copy of its plan in the petition for declaratory ruling. The department will respond in the manner provided for declaratory rulings.

f. Officers of corporation. The term “employment” shall not include wages paid to an officer of corporation if such officer is a majority stockholder:

(1) Unless such services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) If such services are required to be covered under this chapter of the Code as a condition to receiving a full tax credit against the tax imposed by the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3301-3309).

g. Remuneration paid by state or political subdivision. The term “employment” shall not include wages paid by this state or any of its political subdivisions or by an Indian tribe to:

(1) An elected official,

(2) A member of a legislative body,

(3) A member of the judiciary of a state or political subdivision,

(4) A member of the state national guard or air national guard,

(5) An employee serving on a temporary duty basis for fire, storm, snow, earthquake, flood, or similar emergency, or

(6) A person serving in a nontenured policymaking capacity or advisory capacity pursuant to state law which ordinarily does not require duties of more than eight hours per week.

See rule 871—23.71(96) for further definition of exemptions (1) through (6).

h. Sole proprietorship or partnership drawing accounts. The term “wages” shall not include any of the following:

(1) Any amount of personal compensation withdrawn by a bona fide sole proprietor from the business or profession.

(2) Any amount of personal compensation withdrawn by a bona fide partner or partners from their partnership entity.

(3) Remuneration for services which are paid by a limited partnership to a limited partner is reportable. If a limited partner performs the duties of a general partner, remuneration is considered to be exempt.

i. Payments into 401K and other deferred compensation plans. Payments made by an employer to a deferred compensation plan, established to provide for an employee’s retirement, are not wages subject to contributions unless the payments were deducted from the employee’s pay through a salary reduction agreement. In circumstances where both the employer and the employee contribute to the plan,

the employer's share is not wages unless the employee would receive a cash payment if the employee chose not to participate in the plan.

j. Remuneration paid to members of limited liability companies based on membership interest. The term "wages" shall not include remuneration paid to a member of a limited liability company based on a membership interest in the company provided that the remuneration based on membership interest is allocated among members, or classes of members, in proportion to their respective investments in the company. The term "wages" shall not include any remuneration for services performed in lieu of a contribution of cash or property to acquire a membership interest in the limited liability company. See Iowa Code sections 96.19(18a)(9) and 96.19(41e). If the amount of remuneration attributable to membership interest or the purchase of a membership interest and the amount attributable to services performed cannot be determined, the entire amount of remuneration shall be considered to be based on the services performed.

k. Inmates of correctional institutions. The term "employment" shall not include wages paid for services performed by an inmate of a correctional institution. Persons in work release programs are considered inmates and their wages are not reportable. Remuneration paid to residents of halfway houses is reportable.

23.3(3) The term "wages" shall include:

a. Small business corporation remuneration. Remuneration paid to officers of "subchapter S" corporations for services performed in Iowa shall be deemed to be wages. Any corporate dividends must be approved and recorded in the corporate minutes prior to payment of such dividends. Remuneration to shareholders shall not be deemed to be dividends if such remuneration is paid regularly, either weekly or monthly, and is not in proportion to such shareholder's amount of stock, or in proportion to such shareholder's investment in the corporation. Corporate dividends are not considered wages. Ordinary income distributions as reported on IRS Form K-1 will not be considered to be wages provided that distributions are made proportionate to stock ownership or shareholder's investment, and provided that corporate officers performing services for the corporation have received appropriate remuneration for services performed as defined by the Internal Revenue Service and the remuneration is reported as wages. See subrule 23.3(2) "f" for possible exclusion of wages paid to corporate officers who are majority stockholders.

b. Wages of employees hired with equipment. Where an employee is hired with equipment, except where it is ordinary in custom and usage in the trade or business for employees to furnish such equipment at their own expense, the fair value of the remuneration for the employee's services, if specified in the contract of hire, shall be considered wages. If the contract of hire does not specify the employee's wages, or the value of the wages agreed upon under the contract of hire is not a fair value, the department shall determine the employee's wages, taking into consideration the prevailing wages for similar work under comparable conditions, and the wages thus determined shall apply as wages and be so reported by the employer.

c. Union members. Members of a union, subject to the direction and control of the union and acting on behalf of the union, are considered employees of the union with respect to the services performed. Payments made to them by the union as reimbursement for time lost from their regular employment are considered wages.

d. Cafeteria plans. A cafeteria plan is a set of benefit options offered by the employer to employees or to a class of employees. A particular benefit in a cafeteria plan will be considered to be "wages" subject to contributions (tax) for Iowa unemployment insurance purposes if the employee has the option of receiving a cash payment in lieu of the benefit. If the employee does not have the option of receiving a cash payment, the benefit will still be considered "wages" subject to contributions unless the benefit is specifically excluded from the definition of "wages" in Iowa Code subsection 96.19(41).

e. Personal use of company vehicle. The cash value of personal use of a company automobile or other vehicle is "wages" subject to contributions (tax) for Iowa unemployment insurance purposes and shall be reported to the department as wages paid in the quarter in which the personal use occurred.

This rule is intended to implement Iowa Code sections 96.5(5) "a," 96.19(6) "a"(1) and (6), and 96.19(41).

871—23.4(96) Wages—back pay. A payment in the form of or in lieu of back pay to an individual (exclusive of legal fees and other litigation expenses) shall be reported by the employer as total and taxable wages paid to the individual in the quarter in which the employer actually made the payment in the form of or in lieu of back pay. A payment for back pay shall be taxable and recoverable if it meets the definition of wages contained in rule 23.3(96). Punitive or liquidated damages for other than lost wages, and job search expenses, are not taxable, recoverable or deductible as a back pay award.

23.4(1) Where the back pay wages, award or a judgment is paid as remuneration for employment by an employer into an account for an individual, the wages, award or judgment shall be considered as wages paid in the quarter in which the employer actually pays the wages, award or judgment to an account for the individual.

23.4(2) If an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period, and if the benefits are recovered by the department under an agreement between the employer and the individual allowing the employer to deduct and remit to the unemployment compensation fund the amount of benefits received by the individual from the payment in the form of or in lieu of back pay, the employer shall be required to report this amount to the department as total and taxable wages paid to the individual in the calendar quarter in which the amount is actually paid.

This rule is intended to implement Iowa Code sections 96.7(3) and 96.8(5).

871—23.5(96) Gratuities and tips.

23.5(1) The following criteria shall be applicable in determining whether tips are wages under the contributions provision of the Act: Tips received by an individual from a person or persons other than the individual's employer, and not accounted for to the employer, are not wages unless required by subrule 23.5(2). If the employee makes an accounting to the employer listing the tips received, these tips must be reported to the department as total and taxable wages. Where the customer writes the amount of the tip on a bill and the employer pays the employee the amount so shown and charges it to the customer's account, such amounts are wages. Where the employer adds a certain percent to the customer's bill for disbursement to the employees, the sums so disbursed are wages.

23.5(2) Tips are considered reportable and taxable as wages when taken into account by the employer in determining the employee's compensation under the federal wage and hour law, or when paid by the customer as a service charge set by the employer, or when pooled and distributed to the employees by the employer. The employer shall keep sufficient detailed records so that it can be ascertained, if necessary, by audit or other authorized inspection which compensation is reportable as taxable tips and which compensation is reportable as compensation other than tips. For reporting purposes to the department, the tips and other reportable and taxable compensation may be submitted in aggregate on Form 65-5300, Employer's Contribution and Payroll Report.

23.5(3) An accounting as used in this rule means the reporting of tips as gratuities by an employee to the employer for the purpose of deducting social security taxes or withholding taxes with the employer reporting the same on Form 941, Employer's Quarterly Federal Tax Return.

871—23.6(96) Taxable wages.

23.6(1) Definition.

The term "*taxable wages*" means the higher of the federal taxable wage base for the Federal Unemployment Tax Act (FUTA) or 66 2/3 percent of the statewide average weekly wage paid to employees in insured employment, multiplied by 52 and rounded to the next highest multiple of \$100 based upon the computation made during the previous calendar year to determine the maximum weekly benefit amounts for unemployment insurance benefits.

23.6(2) Applicability and successorship.

a. If an individual has more than one employer, each employer must pay contributions (tax) on the employee's wages up to the taxable wage base.

b. The employer shall not deduct any part of the contributions (tax) due on taxable wages from an employee's pay.

c. Taxable wages paid in another state by the same employer during the same calendar year prior to an employee being transferred to Iowa may be used in computing the employee's reportable taxable wages in Iowa.

d. A successor employer may use the taxable wages paid and reported by the predecessor employer to determine the successor employer's taxable wages if the successor employer received a transfer of experience from the predecessor employer.

e. A successor employer which received a transfer of experience may, at the successor employer's option, use the taxable wages reported by the predecessor to compute the taxable wages for the balance of the calendar year or may compute the taxable wages as if the employees acquired from the predecessor were new employees.

This rule is intended to implement Iowa Code section 96.19(37).

871—23.7(96) New employer contribution rates.

23.7(1) A contributory employer means all employers other than employers which have elected, or are required by law, to reimburse the department for benefits paid in lieu of paying contributions. An employer which has earned a "zero" rate is still considered to be a contributory employer.

23.7(2) A nonconstruction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than 1 percent until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters immediately preceding the computation date.

23.7(3) A construction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters.

23.7(4) Once an employer has qualified for an experience rating, the rate will be computed in accordance with the formula given in Iowa Code section 96.7. Rates will vary from 0 percent to 9 percent depending on how each employer's experience compares to the experience of all other employers.

23.7(5) For the purposes of this rule, an administrative contribution surcharge and a temporary emergency surcharge may be added to an employer's contribution rate.

23.7(6) For the purposes of this rule, the first quarter in which an employer's account will be considered chargeable with benefits will be the third quarter of the employer's liability unless the employer paid and reported no wages during the first two quarters of liability. In that case, the employer will not be considered chargeable with benefits until the first quarter in which the employer pays and reports wages. Once an employer's account has been chargeable with benefits it will be considered chargeable for rate computation purposes until it is terminated.

23.7(7) For the purposes of this rule, any single employer which has two or more establishments or businesses engaged in different industrial classification activities, with one or more establishments or businesses engaged in construction activity, as defined in rule 23.82(96), shall be assigned the contribution rate applicable to construction if 50 percent or more of the combined business activity is derived from the establishments or businesses engaged in construction activities.

This rule is intended to implement Iowa Code section 96.7.

871—23.8(96) Due date of quarterly reports and contributions.

23.8(1) *Due date.*

a. Contributions shall become due and be payable quarterly on the last day of the month following the calendar quarter for which the contributions have accrued. If the department finds that the collection of any contributions from an employer will be jeopardized by delay, the department may declare the contributions due and payable as of the date of the finding.

b. If any due date prescribed in this rule falls on a Saturday or Sunday, or a legal holiday, the due date shall be the next following business day. Quarterly reports, contributions, and payments in lieu

of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the department.

23.8(2) Regular due date. Each covered employer subject to Iowa Code section 96.7 shall file with the department quarterly reports on or before the due date, and any employer failing to file a quarterly report when due shall be delinquent.

23.8(3) Due date for new employer. The first contribution payment of any employer who becomes newly liable for contributions in any year shall become due and payable on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of one or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of \$1,500 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

a. The first contribution payment of any agricultural employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of ten or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of \$20,000 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

b. The first contribution payment of any domestic employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein the liability was established, or the last day of the month following that calendar quarter in which a total of \$1,000 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

23.8(4) Due date for elective coverage. The first contribution payment of any employing unit which elects with the written approval of such election by the department, to become an employer, or to have nonsubject services performed for it deemed employment, shall become due and payable on the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and shall include contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

23.8(5) Due date for newly liable employer. The first contribution payment of an employer who becomes newly liable for contributions in any year in any other manner shall become due and be payable on the last day of the month next following the quarter wherein such individual or employing unit became an employer. The first payment of such an employer shall include contributions with respect to all wages paid for employment for such individual or employing unit since the first day of the calendar year.

23.8(6) Delinquent date and penalty and interest.

a. A quarterly report or contribution payment or payment in lieu of contributions which is not received on or before the due date is delinquent. An employer who fails to file on or before the due date a contribution and wage report shall pay to the department for each such delinquent report, subject to waiver for good cause shown, a penalty as provided in Iowa Code section 96.14(2). No penalty shall apply to delinquent reports when the employer proves to the satisfaction of the department that no wages were paid.

b. An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the whole or part thereof remaining unpaid at the rate of 1 percent per month, or 1/30 of 1 percent for each day or fraction thereof, from and after the due date until payment is received by the department unless good cause is shown why such interest shall be waived.

23.8(7) Due date upon demand. If the department finds that the collection of any contribution or payment in lieu of contributions will be jeopardized by delaying the collection thereof until the date

otherwise described, upon written demand by the department, such contribution or payment in lieu of contribution shall become immediately payable, and shall become delinquent.

23.8(8) Extension of time. Upon written request filed with the department before the due date of any contribution report, the department may, for good cause shown, grant an extension in writing of the time for filing of the report and the payment of the contributions, but no extension shall exceed 30 days and no extension shall postpone payment beyond the last day for filing tax returns under the Federal Unemployment Tax Act. If an employer who has been granted an extension fails to pay the contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

This rule is intended to implement Iowa Code section 96.7(1).
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.9(96) Delinquency notice. Within 20 days from the delinquent date for filing Form 65-5300, Employer's Quarterly Contribution & Payroll Report, a Delinquency Notice, Form 65-5313, will be sent to all employers from whom no report has been received. Such notice shall state the employer's name, account number, experience rate, and the quarter for which the report needs to be made. The notice will be sent to the employer's last-known address or place of business. If the employer has sold or dissolved the business, the employer shall fill out the information section on Form 65-5313, showing the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer shall show the name and address of the successor and the employer's future mailing address. Such notice shall then be returned to the department for a change of status determination.

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.10(96) Payments in lieu of contributions.

23.10(1) An employer who has qualified for reimbursement payments or has had an election to become a reimbursable employer approved shall pay to the department an amount equal to the amount of regular or extended benefits paid, including benefits which are based on wage credits transferred from another employer. If extended benefits are in effect, employers shall reimburse one-half of the extended benefits paid; except governmental employers and Indian tribes shall reimburse all extended benefits paid.

23.10(2) At the end of each calendar quarter, the department shall bill each reimbursable employer on Form 65-5324, Notice of Reimbursable Benefit Charges. This statement shall be sent to the employer within 30 days of the quarter for which the benefits are charged and shall set out the social security number, name and amount of benefits charged to the employer for each such claimant together with the amount of any previous charges remaining unpaid and interest to the end of the quarter for which the statement is rendered. Payment of each quarter's charges shall be due within 30 days of the date the statement is sent. If the employer fails to reimburse the department within the period prescribed by these rules the department may attempt collection of the amount due including any of the following methods:

- a. Issuance of Notice of Assessment and Lien, Form 68-0043.
- b. Issuance of Notice of Jeopardy Assessment, Form 68-0138.
- c. Any other actions as prescribed by the law or these rules including collection by distress warrant.

Interest on delinquent reimbursable benefits shall be charged at the rate of 1 percent per month or one-thirtieth of 1 percent per day from the date payment was due until the date of payment.

This rule is intended to implement Iowa Code section 96.7(8).

871—23.11(96) Identification of workers covered by the Iowa employment security law.

23.11(1) Each employer shall ascertain the federal social security number of each worker employed by such employer in employment subject to the Iowa employment security law.

23.11(2) The employer shall report the worker's federal social security number in making any report required by the department of workforce development with respect to the worker.

23.11(3) If a worker failed to report to the employer such employee's correct federal social security number or fails to show the employer a receipt issued by an office of the social security board acknowledging that the worker has filed an application for an account number, the employer

shall inform the worker that Regulation 106 of the Internal Revenue Service, United States Treasury Department, under the Federal Insurance Contribution Act provides that:

a. Each worker shall report to every employer for whom the worker is engaged in employment a federal social security number with the worker's name exactly as shown on the social security card issued to the worker by the social security board.

b. Each worker who has not secured an account number shall file an application for a federal social security account number on Form SS-5 of the Treasury Department, Internal Revenue Service. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves employment if such date precedes such seventh day.

c. If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which the worker leaves the employ of the employer, whichever is the earlier, the worker does not have a federal social security account number, and has not shown the employer a receipt issued to the worker by an office of the social security board acknowledging that the worker has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex, and a statement as to whether the worker had previously filed an application on Form SS-5 and, if so, the date and place of such filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of the obligation to make an application on Form SS-5 as required in paragraph "b" of this subrule.

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.12 Reserved.

871—23.13(96) Employer elections to cover multistate workers.

23.13(1) Arrangement. The following rule shall govern the workforce development department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement.

23.13(2) Definitions. As used in this rule, unless the context clearly indicates otherwise:

a. "Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

b. "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

c. "Agency" means any officer, board, department, division, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

d. "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval; and interested agency means the agency of such jurisdiction.

e. "Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the service gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

f. "Total wages paid in covered employment," as it appears in Iowa Code section 96.7(2) for computing the benefit cost ratio, means total wages paid in covered employment, subject to contributions, as provided in Iowa Code section 96.7, and does not include wages paid by reimbursing employers whose payments to the unemployment fund, in lieu of contributions, are made in accordance with Iowa Code section 96.7.

23.13(3) Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.

a. Any employing unit may file an election, on Form 68-0599, to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who

customarily works for the employing unit in more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

- (1) Any part of the individual's services are performed;
- (2) The individual resides; or
- (3) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

b. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly. In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in the election.

c. If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

d. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

e. In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

23.13(4) *Effective period of election.*

a. Commencement. An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

b. Termination.

(1) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one particular jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(2) Except as provided in subparagraph (1) of this paragraph, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(3) Whenever an election under this rule ceases to apply to any individual, under subparagraph (1) or (2) of this paragraph the electing unit shall notify the affected individual accordingly.

23.13(5) *Reports and notices by the electing unit.*

a. The electing unit shall promptly notify each individual affected by its approved election on Form 68-0601 supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

b. Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall again notify the individual forthwith, as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

c. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services

for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires such individual to perform services in a new participating jurisdiction.

871—23.14(96) Elective coverage of excluded services.

23.14(1) An employing unit having services performed for it which are not subject to the compulsory coverage provisions of the Act may file an application Form 68-0598, Voluntary Election, for voluntary election to become an employer under the law or to extend its coverage to individuals performing services which do not constitute employment as defined in the law.

a. In no case shall an elective coverage agreement under Iowa Code section 96.8(3) be approved unless and until it has been established that the employing unit making application for elective coverage is normally and continuously engaged in a regular trade, business or occupation.

b. An application for elective coverage shall be disapproved if the department finds that the employing unit at the time of making the application was insolvent or expected to discontinue business for any reason within one year from the date the application is filed, or that the employing unit is not normally and continuously engaged in a regular trade, business or occupation.

c. The department may, on its own motion, request a written statement as to why an employing unit wishes to file an election to become a subject employer as provided for in Iowa Code section 96.8(3) “*a*” and may request evidence of financial stability.

d. Any written election for a period prior to the date of filing shall become binding upon approval by the department, and notification of the approval shall be forwarded to the employer. If for any reason the department does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

e. The date of filing of a voluntary election shall be deemed to be the date on which the written election, signed by a legally authorized individual, is received by the department.

f. Effect of election approval. Each approval of an election shall state the date as of which the approval is effective. The first contribution payment of any employing unit which elects to become a covered employer shall become due and shall be paid on or before the due date of the reporting period during which the conditions of becoming a covered employer by election are satisfied, and shall include employer contributions with respect to all wages paid on and after the date stated in such approval (as of which such employing unit becomes a covered employer), up to and including the last pay period in the reporting period in which the conditions of becoming a covered employer by election are satisfied.

23.14(2) Reserved.

871—23.15 and 23.16 Reserved.

871—23.17(96) Group accounts.

23.17(1) Reimbursable employers who desire to form a group account or reimbursable employers who wish to be added to an existing group account shall apply on Form 68-0534, Application for a Group Account.

a. New group accounts. The application shall list each proposed member and must be signed by each proposed member and shall appoint one member as the agent for the group for all dealings with the department.

b. Adding a member or members to an already existing group. The application shall list all members of the group including the new member(s) and shall be signed by all members of the group including the new member(s). The application shall set out one member as agent for the group, or an authorized agent of the group, with respect to all dealings with the workforce development department.

23.17(2) A government entity shall not be allowed to form a group with a nonprofit organization(s).

23.17(3) No application for a group account shall be approved if any member of the group is delinquent in the payment of contributions, interest or penalty, or in the filing of reports, or in the payment of reimbursable benefits.

23.17(4) If the application is denied by the department, a notice stating the reasons for denial will be sent to the agent for the group. A new application may be submitted by the group at any time.

23.17(5) If the application is approved by the department, a notice will be sent to the agent for the group. Such approval shall be effective with the first day of the quarter in which the application is received.

23.17(6) Such group account shall continue for a minimum period of one year from the first day of the quarter in which the application for a group account was received and no member may leave the group during such year except that withdrawal shall be allowed where the member's liability has terminated under Iowa Code section 96.8(2) or 96.8(4).

a. If a new member(s) is added to the group during the first year of the group's existence, the group shall continue for one year from the first day of the quarter in which the application to add the member is received and no member may leave the group during such year except where the member's liability has terminated under Iowa Code section 96.8(2) or 96.8(4).

b. If a new member(s) is added to the group after the group has been in existence for one year, only the new member(s) shall be obligated to remain with the group for an additional one-year period from the first day of the quarter in which such member joined the group.

23.17(7) After the group has been in existence for one year, unless provided for differently in 23.17(6) "a" or 23.17(6) "b," any member may withdraw by providing the agent for the group and the department with notice of the withdrawal in writing. Such withdrawal shall become effective with the first day of the quarter following the quarter in which notice is received by the department. For the withdrawal to be effective with the first day of the quarter immediately following the first year of the group's existence, notice of withdrawal must be filed during the last three months of the first year of the group's existence.

23.17(8) Rescinded IAB 5/14/03, effective 6/18/03.

23.17(9) Should a government group or any group member default with respect to any payments due the department, the amount of such delinquency shall be deducted from any further moneys due to the members of the group by the state as provided in Iowa Code section 96.14(2).

23.17(10) Each member of a group shall be jointly and severably liable for any defaults by any members of the group with respect to unpaid reimbursable benefit charges and any interest and penalty. All charges to the members of a group shall be in accordance with the provisions of Iowa Code section 96.7(13).

23.17(11) Upon the formation of a group, all benefits paid after the effective date of the group based upon wages paid by any member(s) of the group shall be charged to the group regardless of when the wages upon which such benefits were earned except those benefits based upon wages paid when the member(s) was a nonprofit contributory employer. Benefits based on wages paid when a member(s) was a government contributory employer that are paid after the effective date of the group will be charged to the group.

23.17(12) Upon the occasion of a member withdrawing from a group and the member continues to be a liable employer, such member shall be liable for the payment of all benefits paid after the date of withdrawal and attributable to employment with such member regardless of when the wages upon which the benefits are based were earned.

23.17(13) Liability for benefits upon termination of a group or withdrawal of a defaulting or no longer liable member.

a. Notwithstanding subrules 23.17(1) to 23.17(12), when a group is terminated upon the application of all members or under subrule 23.17(7) where there are only two members, liability for any reimbursable benefits which the department concludes are not collectible from a defaulting ex-member(s) of the group and said benefits are based upon wages paid prior to or while the group was in existence shall lie with each of the former members of the group jointly and severably.

b. Notwithstanding subrule 23.17(12) when an ex-member of a group is in default at the time of withdrawal from the group or withdraws under subrule 23.17(7) and it is determined that the benefits are not collectible from such member, the group has remained in existence, and the benefits so paid are

based upon wages paid prior to or while the ex-member was a member of the group, the group shall be held liable for the payment of such benefits.

23.17(14) Agent's responsibilities.

a. The agent for a group shall be responsible, on behalf of the group members, for all the duties of an employer as set out in the Iowa Code and these rules. Specifically such agent shall be responsible for the pro-rata apportioning of benefit charges to each member of the group as set out in Iowa Code section 96.7(10) or be based on an experience rating system approved by the department and shall accept all legal services and notices on behalf of all members of the group.

b. All correspondence on behalf of the group shall be between the agent for the group and the department.

c. Each member of a group may submit quarterly wage information and labor market information for the member's reporting unit electronically or each member of a group shall submit a quarterly payroll report to the group's agent who shall combine such reports into one report for all reporting units on Form 65-5300, Employer's Contribution & Payroll Report, and shall submit such combined report to the department on or before the delinquent date for such quarter.

d. Submittal of the quarterly report electronically by worksite reporting unit will eliminate the requirement to submit the multiple worksite report.

e. Should an agent member withdraw from a group, or resign as agent, it shall immediately advise the department of its intent in writing. Such notice must be made at least 90 days prior to the date of withdrawal. The department shall notify the remaining members of the group of the withdrawal and shall request that the group elect a new agent. Such election must be held and the department notified of the result within 30 days of the notice of the withdrawal from the department. Failure to notify the department within 30 days of the new agent shall result in the termination of the group by the department.

23.17(15) Transfers and successorships.

a. If a member of a group sells or otherwise transfers its business to a nonmember and the acquiring employer has made or, at the time of acquisition is eligible to and makes an election to make payments in lieu of contributions, the successor shall assume the position of the predecessor in the group as of the date of acquisition.

b. If a member of a group sells or otherwise transfers a substantial portion of its business to a nonmember and the predecessor is a nonprofit organization and the successor is a governmental entity, the successor shall not acquire membership in the group.

c. If a member of a group sells or otherwise transfers a substantial portion of its business to a nonmember and the predecessor is a government entity and the successor is a nonprofit organization, the successor shall not acquire membership in the group.

d. If a member of a group sells or otherwise transfers a substantial portion of its business to an organization or other entity not eligible to make an election to make payments in lieu of contributions, the successor shall not acquire membership in the group.

e. A member of a group may become a successor to any other organization and remain in the group so long as the member remains a nonprofit organization or governmental entity.

f. Successors which are not permitted to enter a group under 23.17(15) "b" to 23.17(15) "d" shall be held liable for benefits which are based upon wages paid by the predecessor the same as provided in subrule 23.17(12) for members withdrawing from a group.

This rule is intended to implement Iowa Code section 96.7(10).

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.18(96) Nature of relationship between employer-employee.

23.18(1) Commission sales persons and insurance solicitors. Commission sales persons generally are considered employees subject to the law regardless of the method of their remuneration unless they are independent contractors.

23.18(2) Directors and officers of a corporation. Directors who receive a reasonable fee for attending meetings and perform no other services are not employees of the corporation. Officers

of associations and corporations are included as employees if they perform services. Officers of a corporation who perform services for the corporation are employees.

23.18(3) *Members of family.*

a. Services performed by an individual in the employ of a son, daughter, or spouse, and services performed by a child under the age of 18 in the employ of a father or mother are exempt from the provisions of this Act.

b. Services performed by a foster parent in the employ of a foster child, by a stepparent in the employ of a stepchild, and by a child under the age of 18 years in the employ of a stepparent or foster parents are exempt from the provisions of this Act.

c. Services performed by a son or daughter over the age of 18 as an approved provider for consumer-directed care in the employ of a father or mother who is an approved consumer of a home- and community-based waiver services program are exempt from the provisions of Iowa Code chapter 96.

23.18(4) *Aliens.* This Act makes no distinction between citizens and lawful aliens. Lawful aliens in nonexempt employment are counted in determining whether the employer is subject to the Act and are covered by the contribution and benefit provision.

23.18(5) *Aged and minor employees.* Contributions are payable upon services rendered by an employee regardless of the age of the employee.

23.18(6) *Family employment.* Family employment includes parents, wife or husband and minor children under the age of 18 years working for an individual proprietor. This exclusion does not apply when the employing unit is a partnership unless an exempt relationship is held to each member of the partnership. This exclusion does not apply to corporations or to limited liability companies.

23.18(7) *Partners.* Bona fide partners are not considered employees even though they receive salaries.

23.18(8) *Apprentices-clerks.* This law makes no exceptions for persons serving a clerkship or other form of apprenticeship.

23.18(9) *Members of a limited liability company.* Members of a limited liability company that perform services other than for the purpose of acquiring membership in the limited liability company are employees.

[ARC 871B, IAB 5/5/10, effective 6/9/10]

871—23.19(96) Employer-employee and independent contractor relationship.

23.19(1) The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public, are independent contractors and not employees. Professional employees who perform services for another individual or legal entity are covered employees.

23.19(2) The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an

independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

23.19(3) Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

23.19(4) Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

23.19(5) The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

23.19(6) Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will be determined upon an examination of the particular facts of each case.

23.19(7) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

23.19(8) All classes or grades of employees are included within the relationship of employer and employee. For example, superintendents, managers and other supervisory personnel are employees.

871—23.20(96) Employment—student and spouse of student. Wages earned by a student who performs services in the employ of a school, college or university at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) are not covered wages for claim or benefit purposes.

Wages earned by an individual who is a full-time employee for a school, college or university whose academic pursuit is incidental to the full-time employment are covered wages.

Wages earned by the spouse of such a student in employment with the educational institution attended by the student are not covered wages for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

This rule is intended to implement Iowa Code section 96.19(18)“g”(6).

871—23.21(96) Excluded employment—student. Wages earned by a student who is enrolled at a nonprofit or public educational institution under a program taken for credit at such institution that combines academic instruction with work experience are normally excluded from the definition of employment. Provided, however, that no work performed by such individual in excess of the hours called for in the contract between the school and the employer or performed in a period of time during which the institution is on a regularly scheduled vacation and for which such student receives no academic credit shall be excluded from said definition.

This rule is intended to implement Iowa Code section 96.19(18)“g”(6).

871—23.22(96) Employees of contractors and subcontractors.

23.22(1) If one employer contracts with another employing unit for any work which is part of the first employer’s usual business, the first employer is liable for any contributions based on wages paid by the second employing unit in connection with the work providing the second employing unit is not liable to pay contributions.

23.22(2) Employees of the second contractor are counted as employees of the first contractor while performing services on the contract for the first contractor.

871—23.23(96) Liability of affiliated employing units. An employing unit not qualifying as a covered employer under any other section of this law shall be a liable employer if together with one or more employing units owned or controlled by the same interest, the combined employment or quarterly gross wages (counting together the number of workers or the combined gross quarterly wages of each enterprise) would total one or more workers in a portion of a day in each of 20 different weeks or have a combined gross quarterly payroll which equals or exceeds \$1,500 in a calendar quarter.

871—23.24(96) Localization of employment—employees covered—exemption.

23.24(1) When workers perform services in more than one state, the department will review each case individually and make a determination whether or not wages are reportable to Iowa based on the following guidelines in sequence:

a. Services performed in a state are considered localized in that state regardless of where the employer is located. The wages are reportable to the state where the services are performed.

b. When a worker performs services in more than one state and the length of service in any one state is equal to or greater than a reporting period, the worker is reportable to that state. A reporting period is defined as a full calendar quarter. This rule does not apply if work is performed in multiple states during the reporting period.

c. Where services are performed among two or more states in a reporting period, the base of operations is considered. The base of operations is the point from which the workers start and finish their work on a regular basis and that is the state to which the wages are reportable. In this type of case, the department has the right to waive Iowa coverage to another jurisdiction (state of the base of operations) as long as the employee is properly covered by the other state.

d. When workers perform services in more than one state and there is no base of operations in any one state, the state from which the worker is immediately directed and controlled is the state to which the wages are reportable provided that some services are performed by the worker in that state.

e. If the services of the workers are not localized in a state, the base of operations is not involved or the place where services are directed and controlled is not applicable, then the wages are reportable to the state in which the worker resides provided some services are performed in that state.

23.24(2) Reserved.

This rule is intended to implement Iowa Code section 96.19(18)“b.”

871—23.25(96) Domestic service.

23.25(1) Services of a household nature performed by an individual in or about the private home of the person by whom the individual is employed or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which the individual is employed are included within the term “domestic service.”

23.25(2) A private home is the fixed place of abode or residence of an individual or family, including the house and the lands on which the house stands.

23.25(3) Services of a general household nature are those ordinarily and customarily performed as an integral part of the upkeep operation and maintenance of a dwelling, residence or private home. In general, covered services of a household nature in or about a private home include services rendered by workers such as cleaning people, cooks, maids, housekeepers, caretakers, yard workers and similar domestic workers. In addition, services performed by babysitters, nannies, health aides and similar workers for members of the household are covered.

23.25(4) The services enumerated above are not covered under the term “domestic service” if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, offices or other commercial enterprises.

23.25(5) The term “domestic service” does not include the service of a skilled mechanic engaged in recognized independent craft not habitually rendered as a part of ordinary household duties. In situations

where it may be necessary to determine whether or not an employer-employee relationship exists between the householder and the household worker, the guidelines as set forth in 871—23.19(96) will be applied.

23.25(6) Rescinded IAB 5/14/03, effective 6/18/03.

23.25(7) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For the purpose of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university where the term “school, college, or university” is taken in its commonly or generally accepted sense.

23.25(8) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include but are not limited to services rendered by cooks, janitors, laundry persons, furnace persons, handy persons, gardeners and housekeepers.

23.25(9) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed there are not covered under the term “domestic service.”

23.25(10) Rescinded IAB 5/14/03, effective 6/18/03.

23.25(11) Where an individual is employed by a domestic service or home health care organization to perform domestic services in a private home, the individual is an employee of the service firm, not the householder.

This rule is intended to implement Iowa Code sections 96.19(13) and 96.19(16) “*m.*”

871—23.26(96) Definition of a farm—agricultural labor.

23.26(1) “Farm” as used in section 96.19(6) “*g*”(3) and as used in these rules means one or more plots of land not necessarily contiguous, including structures and buildings, used either primarily for raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and furbearing animals and wildlife or both such uses, if the activities conducted on the plot or plots of land have as their purpose the accomplishment of an objective which is agricultural in nature.

23.26(2) The definition of farm given in subrule 23.26(1) includes, but is not limited to, nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities. A parcel of real property or a portion of a parcel of real property which is used primarily for the raising of nursery stock from seeds, cuttings or transplanted stock is a farm. If any parcel of real property or a portion of a parcel of real property is used both for the raising of nursery stock and for display of nursery stock or allied products for sale, the parcel or portion is not a farm if the raising is not the primary operation. A parcel of real property or a portion of a parcel of real property which is used primarily to display nursery stock for sale, or to display an allied product for sale, or both, is not a farm. Allied product, as used in this rule, includes but is not limited to, garden supplies, lawn supplies, tools, equipment, fertilizers, sprays, insecticides or pottery.

23.26(3) If other than incidental sales of an allied product are made in connection with a nursery, the operations in connection with the sales area are commercial operations as distinguished from ordinary farm operations and services performed with respect to the sales areas are not agricultural labor.

23.26(4) A plot of land used primarily for the raising of Christmas trees is a farm.

23.26(5) The following shall be used to determine whether or not services are defined as agricultural labor.

a. Services performed by an individual on a farm, in the employ of any owner, tenant or operator, in connection with the operation constitutes agricultural labor if:

(1) The services are on the farm on which the materials in their raw or natural state were produced, and

(2) Processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operation.

b. If the service is performed as an incident to industrial, manufacturing or commercial operation it does not constitute agricultural labor. (Example: Services performed for an insurance company in repair and construction of farm buildings do not constitute agricultural labor.)

23.26(6) Services performed on nonfarm property while in the employ of one who is not the owner, tenant or operator of the farm to which the operation relates or any service rendered in connection with the maintenance and repair of equipment, used in operation on the farm, as well as related collection, clerical and bookkeeping services, are not agricultural labor.

23.26(7) Services performed in the handling or processing of any agricultural or horticultural commodity are included as agricultural employment if performed in the employ of the owner, tenant, or other farm operator, only if the commodity is in a nonmanufactured state and only if the operator produced more than half of the commodity with respect to which the service was performed.

23.26(8) Aerial seeding, fertilizing, spraying, dusting, custom planting, cultivating or combining of farm acres while in the employ of any agricultural enterprise is agricultural labor. These include mixing or loading into the airplane the spraying or dusting material, as well as the measuring of the swaths and the marking and flagging of the fields, and is considered agricultural as long as it is performed on a farm. If any of these services are performed on property other than a farm, they are not agricultural labor and are covered by the other provisions of the Iowa employment security law.

23.26(9) If the employer does not own or operate the farm which is being sprayed or dusted, any service related to employees in connection with maintenance and repair of the aircraft, trucks, or other equipment used in those operations, as well as related collection, clerical and bookkeeping services, are not agricultural labor and are not exempt under the Iowa employment security law.

23.26(10) Services performed on a farm in the employ of any person in connection with hatching poultry are agricultural labor. A plot of land together with the structures and buildings located off the farm, devoted to the hatching of poultry, is not considered to be a farm. Any service, under any contract of hire, performed off the farm in connection with the hatching of poultry shall not be considered agricultural labor.

23.26(11) Executive, supervisory, administrative, clerical, stenographic, and office work are not agricultural labor although they may be rendered on a farm and in relation to a farm.

23.26(12) Services performed on a farm incidental to the overall commercial activities which are not incidental to ordinary farming operation or directly related to the farming operation are not agricultural labor.

23.26(13) Services performed in connection with the processing of agricultural commodities performed on a farm, for a farm operation, are not agricultural labor unless one-half or more of the commodities processed are produced by the farm operator.

23.26(14) Services performed in agricultural employment as defined in Iowa Code section 96.19(18)“g”(3) or rule 23.26(96) by an agricultural employee one-half or more of any calendar month shall be considered agricultural employment the whole of that calendar month.

871—23.27(96) Exempt employment in the employ of a church, association of churches or an organization which is operated primarily for religious purposes.

23.27(1) The word “*church*” is used in its limited sense and is synonymous with an individual house of worship maintained by a particular congregation. Any service by an individual for a church, convention or association of churches is excluded from coverage. However, the exclusion does not apply to service performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church (or a convention or association of churches). Thus, the service of the janitor of a church is excluded, but the service of a janitor for a separately incorporated college, although it may be church related, is covered.

23.27(2) Service for a college devoted primarily to the preparation of students for the ministry is exempt, as is service for a novitiate or a house of study, training candidates to become members of

religious orders. On the other hand, a church-related (separately incorporated) charitable organization (such as an orphanage or a home for the aged) is not considered, under this Act, to be operated primarily for religious purposes.

23.27(3) The exclusion of service performed by ministers in the exercise of their ministry and by members of a religious order in performing the duties required by such order applies only when such service is performed for nonprofit organizations ordinarily required to be covered by the Iowa employment security law.

23.27(4) A minister is ordained, commissioned, or licensed, if such minister has been vested with ministerial status in accordance with the procedure followed by the particular church denomination. However, such minister does not have to be connected with a congregation. Ministerial authority continues until revoked by the church.

23.27(5) The term “*exercise of the ministry*” includes: the conduct of religious worship and the ministration of sacerdotal functions; service performed in the control, conduct, and maintenance of a religious organization under the authority of a religious body constituting a church or church denomination, or an organization operated as an integral agency of such a religious organization or of a church or church denomination; service performed for any organization under an assignment or designation by a church (not including cases in which a church merely helps a minister by recommending such minister for a position involving nonministerial services for an organization not connected with the church); and missionary service or administrative work in the employ of a missionary organization. Control, conduct, and maintenance of an organization do not include services such as operating an elevator, or being a janitor, but refers to services performed in the directing, management, or promotion of the activities of the organization.

23.27(6) Accordingly, service of a clergyman (clergywoman) as a chaplain in an orphanage or in an old-age home is excluded since such service is in the exercise of a ministry as is the service of members of a teaching or nursing order who are engaged in teaching or nursing. In the case of a member of a religious order, the criterion is whether the order requires the performance of such service.

23.27(7) School coverage.

a. Schools that are not separately incorporated and are affiliated with a church are exempt from insured employment because their employees are in the direct employ of a church or convention or association of churches.

b. Schools that are separately incorporated and are affiliated with a church are exempt from insured employment if such schools are operated primarily for religious purposes.

c. Schools that are not affiliated with a church are covered employers with covered employment.

“*Affiliated*” as used in this rule means operated, supervised, controlled, or principally supported by a church or convention or association of churches. A school which is operated primarily for religious purposes must have as its chief and principal purpose for operation a religious orientation. The school must have as its purpose of first or highest rank of importance the religious indoctrination of its students.

This rule is intended to implement Iowa Code section 96.19(18) “*a*”(6)(a) and (c).

871—23.28(96) Successor.

23.28(1) Definition of “*successor employer*” as used in Iowa Code section 96.7 and these rules means an employing unit which:

a. Acquired the organization, trade or business, or substantially all the assets of an employing unit that was subject to the provisions of chapter 96 prior to the acquisition, regardless of whether the acquirer was an employing unit prior to the acquisition. The acquiring employer must continue to operate the enterprise or business.

b. An employing unit that acquired a severable portion of the business of an employer who is subject to chapter 96 providing:

(1) The portion of the business or enterprise acquired would have in itself met the requirements of section 96.19(16) “*a.*”

(2) An application is made for a transfer of the records of the severable portion transferred within 90 days from the date of transfer.

(3) The transfer of records meets the approval of the predecessor and department and adequate information is furnished to meet the requirements.

c. Rescinded IAB 5/14/03, effective 6/18/03.

23.28(2) An “organization,” “trade” or “business” as used in Iowa Code section 96.19(16) “b” is acquired if an employing unit acquires factors of an employer’s organization, trade or business sufficient to constitute an entire existing going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The question of whether an organization, trade or business is acquired is determined from all the factors of the particular case. Among the factors to be considered are:

- a. The place of business.
- b. The staff of employees.
- c. The customers.
- d. The good will.
- e. The trade name.
- f. The stock in trade.
- g. The tools and fixtures.
- h. Other assets.

23.28(3) Substantially all of the assets as used in Iowa Code section 96.19(16) “b” are acquired if an employing unit acquires substantially all of the assets of any employer which generate substantially all of the employment, except those retained incident to the liquidation of obligations.

23.28(4) A segregable and identifiable part of enterprise as used in Iowa Code section 96.7(3) “b” is acquired if an employing unit acquires factors of any employer’s organization, trade or business sufficient to constitute an existing separable going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The part of the business acquired, if considered separately, would have been liable under section 96.19(16) “a.” The question of whether a distinct and severable portion is acquired is determined from all of the factors of the particular case. Among the factors to be considered are:

- a. The place of business.
- b. The staff of employees.
- c. The customers.
- d. The good will.
- e. The trade name.
- f. The stock in trade.
- g. The accounts receivable.
- h. The tools and fixtures.

23.28(5) “Successor liability” as used in Iowa Code chapter 96, and these rules, occurs for the acquiring employing unit when there is a transfer of the predecessor’s assets or other physical components necessary to continue the operation of the enterprise or business to the successor employer and the successor employing unit must continue to operate the business to the same basic extent as if there had been no change in the ownership or control of the business or enterprise.

23.28(6) Successor liability will be found to occur. If an enterprise or business is leased to a covered employer and any party or entity purchases or assumes the covered employer’s lease, or any party or entity acquires a new lease and substantially all of the assets of the covered employer, and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business, such party or entity acquires the covered employer’s experience.

23.28(7) The department will utilize the following general criteria when establishing successorship in specialized cases:

a. Where a covered employing unit is operating an enterprise or business under a lease agreement and it is terminated, there will be no transfer of the covered employing unit’s experience unless the lessor takes over and continues to operate the enterprise or business in which case the lessor will be considered the successor to the covered employer’s experience.

b. Where an enterprise or business is leased to a covered employing unit, and the lease agreement has terminated with the lessor acquiring a new lessee, the new lessee is not considered to be a successor to the experience of the predecessor lessee unless the new lessee acquires substantially all of the assets of the predecessor lessee and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business.

c. A franchise agreement will be treated the same as lease agreement.

d. If the bankruptcy court closes an enterprise or business, the court becomes the agent for the bankrupt employer.

(1) Where the court closes the enterprise or business and starts liquidating procedures, the employer's account is placed in an inactive status subject to termination and no successorship or transfer of the employer's experience is involved, or

(2) If the court appoints a trustee or receiver to continue the operation of the enterprise or business, the account address will be corrected to include the name of the trustee or receiver for mailing purposes. If the trustee or receiver obtains a new federal identification number for this business, a new account number will be established for the trustee or receiver as a successor to the original enterprise or business. If the trustee or receiver sells the enterprise or business as a going enterprise, the new owner will be a successor to the predecessor's experience.

e. If a covered employer is forced out of business through foreclosure proceedings there will be no transfer of the employer's experience unless the mortgagee takes over the operation of the business or enterprise and continues it to the same basic extent as though there had been no basic change in the ownership control.

This rule is intended to implement Iowa Code sections 96.7(3)“*b*,” 96.8 and 96.19(16)“*b*.”

871—23.29(96) Transfer of entire business.

23.29(1) Notice of acquisition.

a. Whenever any employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department for the purpose of accomplishing the transfer of the reserve account of the predecessor employer to the successor employing unit. Such notification must be in writing on Form 60-0126, Report to Determine Liability, and include the name and address of the predecessor, the date of acquisition, and the name and address of the successor. When such notice has been received or in the absence of the notice when necessary information establishing that the acquisition occurred has been received by the department, the actual contribution and benefit experience and taxable payrolls of the predecessor shall be transferred to the successor employing unit for determining its rate of contribution. Thereafter, benefits chargeable because of employment for such transferred organization, trade, or business shall be charged to the account of the successor. The predecessor must submit in writing a completed Form 60-0111, Employer Notice of Change.

b. Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate such merged or consolidated enterprise, the employing units involved shall file change of ownership Forms 60-0111, Employer Notice of Change, and 60-0126, Report to Determine Liability, with the workforce development department within 30 days from the date of the transaction. In addition to Forms 60-0111 and 60-0126, all entities involved in the merger shall file with the workforce development department the articles of merger, or if there are no articles of merger, a statement advising that the merger has transpired.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger occurred.

(2) The successor entity shall indicate on Form 60-0126, Report to Determine Liability, whether or not the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year in which the merger took place.

23.29(2) Contribution rate. The successor's contribution rate for the remainder of the calendar year beginning with the date of acquisition shall be assigned as follows:

a. If the successor had no account prior to the transfer and the successor purchased the business of only one predecessor, or more than one predecessor with identical rates, the rate assigned will be the rate of the predecessor employer or employers.

b. If the successor had no account prior to the transfer and purchased the business of more than one predecessor on the same day, the final rate assigned will be a computed rate based on the combined experience of all the predecessor employers.

c. If the successor had an account prior to the transfer, the rate assigned will be the successor's existing rate. However, the successor may apply for a recomputed rate based on the combined experience of the predecessor or predecessors and the experience of the successor.

This rule is intended to implement Iowa Code section 96.7(2) "b."

871—23.30(96) Successorship—liability for contributions and payments in lieu of contributions.

23.30(1) Any employer who becomes a successor to an employer account shall be held liable for any unpaid contributions, reimbursable benefit payments, interest, penalties or costs which are owed to the department by the predecessor at the time of the transfer. An employer which is found to be a successor to a reimbursable account shall also be liable to reimburse the department for benefits paid after the date of acquisition that are based on wages paid by the reimbursable predecessor prior to the date of acquisition whether or not the successor has elected, or is eligible to elect, to become a reimbursable employer with respect to the successor's payroll.

23.30(2) Transfers under the Bulk Sales Act, uniform commercial code of Iowa, shall not be held by the department to be exempted from the provisions of Iowa Code section 96.7. The transferee shall be held a successor to the employer account of the transferor and liable for any unpaid contributions, reimbursable benefit payments, interest, penalty, and costs owed to the department by the transferor notwithstanding any agreement between the two parties pursuant to the Bulk Sales Act, provided the transferee continues to operate the business.

This rule is intended to implement Iowa Code section 96.7.

871—23.31(96) Transfer of segregable portion of an enterprise or business.

23.31(1) Application and required information.

a. The experience of a distinct and segregable portion of an organization, trade, or business shall be transferred to an employing unit which has acquired such portion only if the successor employing unit:

(1) Files with the department a written application, on Form 60-0126, Report to Determine Liability, or in letter form, within 90 days after the date of purchase;

(2) Submits necessary information establishing the separate identity of the accounts within 30 days after request is made by the department unless the time is extended for good cause shown; and

(3) Continues to operate the acquired portion of the business.

b. Necessary information establishing the separate identity of the account includes but is not limited to:

(1) Written agreement to the transfer by the predecessor. The predecessor's signature on Forms 68-0068 and 68-0065, The Report of Employer on Transfer of One of Two or More Employing Units, will be sufficient. (See 23.31(1) "b" (4), (5));

(2) Date of acquisition of the segregable portion;

(3) Date of commencement of the segregable portion by the predecessor;

(4) Report showing the names of employees, their social security numbers, and their wages attributable to the acquired portion of the business for the six calendar quarters including and immediately preceding the quarter in which the acquisition occurred. (Form 68-0065, The Report of Employer on Transfer of One of Two or More Employing Units.)

(5) Report showing the predecessor and successor name, address, account numbers, information showing the total taxable wages and benefit charges to be transferred by quarter, for the 20 calendar

quarters including and immediately preceding the date of the acquisition. (Form 68-0068, The Report of Employer on Transfer of One of Two or More Employing Units.)

c. It shall be the sole responsibility of the successor employer to determine whether or not to apply for a partial transfer of experience. An application for a partial transfer may be withdrawn in writing at any time prior to the department mailing notice that the transfer has been approved.

d. It shall be the sole responsibility of the predecessor employer to determine whether or not to grant the partial transfer of experience. Permission to grant the partial transfer of experience may be withdrawn in writing at any time prior to the department mailing notice that the transfer has been approved.

23.31(2) *Portion of reserve and payroll transferred.* When the requirements for partial transfer as defined in subrule 23.31(1) have been met, the transfer shall be made in accordance with one of the following:

a. If the predecessor's account has been in existence less than five years prior to the acquisition or purchase date (or more than five years when records are available), the information necessary to calculate future rates will be transferred; or

b. If the predecessor's account has been in existence more than five years (and records prior to five years are unavailable) and the acquired portion has also been in existence more than five years,

(1) The actual taxable wages, and benefit charges attributable to the acquired portion for the five-year period immediately preceding the date of acquisition shall be transferred, plus

(2) That portion of the predecessor's benefit charges for the period commencing with the beginning date of the predecessor's account and ending five years prior to the acquisition date equal to the ratio of the taxable wages attributable to the acquired portion for the 12 completed calendar quarters immediately preceding the acquisition date to the total taxable wages reported by the predecessor for the same 12-quarter period, and

(3) The individual wage records attributable to the acquired portion (as supplied on Form 68-0065); or

c. If the predecessor's account has been in existence more than five years but the acquired portion came into existence within the last five years, the actual taxable wages, benefit charges, and individual wage records (as supplied on Form 68-0065) attributable to the acquired portion shall be transferred; or

d. In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

23.31(3) *Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date.* The successor employer will receive future benefit charges based on the wage credits transferred to said successor's account for the six-quarter period immediately preceding the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

23.31(4) *Notification of approval or denial of transfer and appeals.*

a. Upon receipt of application (see subrule 23.31(1)) and accompanying information as required, the department shall issue a determination approving or denying the partial transfer. The determination approving a partial transfer will include notice to both parties as to their contribution rate for the current year.

b. If the department finds in any case that the acquisition of a business or a severable portion thereof was made solely or primarily for the purpose of obtaining a more favorable rate of contribution, the transfer of the reserve account shall not be approved. An acquisition shall be deemed to have been solely or primarily for such purpose if the department finds an absence of any reasonable business purpose for the acquisition other than a more favorable contribution rate.

c. Any determination made hereunder denying a partial transfer shall become conclusive and binding upon both the predecessor and successor unless one or both of them file an appeal. For the specific procedure and requirements for perfecting an appeal of an employer liability determination see rules 23.52(96) to 23.56(96).

23.31(5) *Liability of successor for contribution.* Any individual or organization, whether or not an employing unit, which in any manner acquires the organization, trade or business or substantially all of

the assets thereof, and is held to be a successor, shall be liable for the payment of contribution, interest and penalty, due or accrued and unpaid by such predecessor employer, at the time of acquisition or purchase, if the department concludes that such contributions cannot be collected from the predecessor on the portion of such organization, trade or business acquired by the successor.

This rule is intended to implement Iowa Code section 96.7(3).
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.32(96) Mandatory and prohibited successorships.

23.32(1) This rule applies to the mandatory successorship in Iowa Code section 96.7(2) “b”(2) and the prohibited successorship in Iowa Code section 96.7(2) “b”(3). If one employing unit receives the organization, trade or business, or a portion thereof of an employing unit and there is substantially common ownership, management or control of the two, the attributable unemployment experience will be transferred. This section of the law does not require a transfer of substantially all of the assets nor does it require the transferred portion to be segregable or identifiable. The acquiring employer must continue to operate the organization, trade or business or must transfer operation to an entity with substantially common ownership, management or control with the acquiring entity. Mandatory successorship also applies when the acquirer was not an employing unit prior to the transfer.

a. A transfer of staff and the business activity of that staff to an acquiring employer unit which continues to operate the portion of the business will establish mandatory successor liability.

b. The mandatory and prohibited successorships contained in Iowa Code sections 96.7(2) “b”(2) and (3) apply to corporations, limited liability companies, government or governmental subdivisions or agencies, business trusts, estates, trusts, partnerships, sole proprietorships or associations, or any other legal entity as defined in Iowa Code chapter 96.

c. “Substantially common ownership, management or control” is determined from the facts of a particular case. Among the factors to be considered are:

- (1) The authority to make policy decisions.
- (2) The authority to perform personnel actions.
- (3) Direction and control of the day-to-day operations.
- (4) Financial investment.
- (5) Substantial or complete ownership by the same legal entity or entities.
- (6) Ability to conduct or liability for financial transactions on behalf of the business.
- (7) Authority to commit the business assets.
- (8) Common management which may include direction or overall supervision by an individual or group of individuals.

d. For a mandatory full successorship the tax rate shall be established as provided in subrule 23.29(2), and for a mandatory partial successorship the tax rate shall be established as provided in subrule 23.32(4).

23.32(2) In determining whether or not an acquiring entity continues to operate an organization, trade or business as used in Iowa Code section 96.7(2) “b”(2), the following rules apply.

a. The acquiring entity continues the ongoing business operation (taking into account any seasonal or prior operational pattern), and continues the same business activity as the prior employer. A temporary cessation of the business activity by the acquiring entity will not constitute a discontinuance of the business.

b. The acquiring entity, not having operated the business, reassigns or otherwise transfers the operation of the business to a third-party entity that has substantially common ownership, management or control with the acquiring entity. The third party is considered to be continuing the operation of the original entity.

23.32(3) Prohibited successor liability. Successor liability is prohibited when the department finds that a legal entity that is not subject to Iowa Code chapter 96 at the time of acquisition (regardless of whether or not common ownership, management or control exists) acquires an organization, trade or business solely or primarily for the purpose of obtaining a lower rate of contribution. Factors to be considered include:

- a.* The existing employer account has a tax rate less than would be assigned to a new employer,
- b.* The cost of acquiring the organization, trade or business as compared with any potential savings in contributions costs,
- c.* The acquiring entity substantially changed the organization, trade or business after a short period of time, and
- d.* A substantial number of new employees were hired to perform duties unrelated to the organization, trade or business operated prior to the acquisition.

23.32(4) When a mandatory transfer of a portion of a business occurs, the successor's experience and contribution rate will be determined as follows:

- a.* The experience transferred to the acquiring employing unit will be based on the percentage of employees moving from the predecessor to that unit.

(1) The percentage will be computed by comparing the number of employees on the successor's first quarterly report covering a complete calendar quarter to the average number of employees on the four complete quarterly reports filed by the predecessor immediately preceding the transfer. The average number of employees will be computed using only the predecessor's reports that have wages paid during those four quarters.

(2) Using this percentage, taxable wages and benefit charges, commencing with the beginning date of the predecessor's account, will be transferred from the predecessor's account to the successor's account.

- b.* If the successor had no account prior to the transfer, the rate assigned will be the rate of the predecessor for the remainder of the calendar year beginning with the date of acquisition.

- c.* If the successor already had an account prior to the transfer, the rate for the balance of the year in which the transfer took place will be recomputed by combining the transferred experience with the employer's own experience as of the last computation date.

- d.* For the years following the year of acquisition, the rates will be computed using the experience of the employer combined with the transferred experience.

- e.* Future benefit(s) will be charged to the base period employer who reported the base period wages.

- f.* The department will issue a notification when the partial transfer has been completed. The determination will include notice to both parties as to their contribution rate for the current year.

- g.* Any rate determination resulting from a partial transfer will become final unless one or both of the parties files an appeal. For the specific procedure and requirements for perfecting an employer liability determination appeal, see rule 23.52(96).

- h.* In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

23.32(5) Penalty contribution rate. The department may assess a penalty contribution rate of 2 percent for the current year and two subsequent years for an employer that the department finds has attempted to manipulate and circumvent the proper unemployment tax rate as provided in Iowa Code sections 96.7(2) "b"(2) and (3) by deliberate nondisclosure of a material fact.

- a.* The employer will be notified of the penalty contribution rate on Form 95-5306, Notice of Unemployment Insurance Contribution Rate.

- b.* If, after a liability determination has been issued, the department discovers, based upon new facts not available to the department at the time the determination was made, that a previously nonliable entity acquired a business solely or primarily to obtain a lower tax rate, the department will amend the original determination and assign a new employer rate and may provide a penalty contribution rate.

- c.* Interest will accrue on unpaid penalty contributions in the same manner as on regular contributions.

This rule is intended to implement Iowa Code sections 96.7(2) "b" and 96.16(5).

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.33 to 23.35 Reserved.

871—23.36(96) Predecessor—contribution rates for winding down a business. In the case where a predecessor has transferred its organization, trade, or business, or substantially all assets, to a successor in interest and the predecessor employer continues to operate a part of the business in order to wind down or close the business after the date of transfer, the predecessor shall retain the same account number but will recompute the eligibility year, determination date, effective date, law citation and tax rate to that of a newly covered employer. For the purposes of this rule, the term “wind down wages” may exclude wages earned before the sale or transfer that were paid in the four consecutive quarters after the quarter in which the sale or transfer occurred.

This rule is intended to implement Iowa Code sections 96.8(1) and 96.8(4) “a.”
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.37(96) Adjustments and refunds of contributions.

23.37(1) Whenever any employer discovers that the contribution report submitted is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution report submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit allowance will be made after three years from the date on which the overpayment was made. The Form 68-0061, Employer’s Wage Adjustment Report, shall be filed by paper or electronically to show corrections to the individual wage amounts, corrections of grand totals (total wages, taxable wages and contributions), and a full explanation for the adjustment. Adjustment shall be made by the department in the form of credit allowance or refund as provided in subrule 23.37(3) equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer’s erroneous report.

23.37(2) If the contribution and wage report first submitted by an employer understates the amount of wages paid for a given period, the employer will file using a Form 68-0061, Employer’s Wage Adjustment Report, for the period and make payment covering all additional contributions, penalty and interest due.

a. If it is apparent, upon examination of any regular or supplemental contribution report or Form 68-0061, Employer’s Wage Adjustment Report, that a greater contribution than is required by law has been paid, the department may, within three years from the date of such overpayment, make an adjustment and issue a credit adjustment memorandum for such overpayment.

b. If it is not apparent from the examination of any regular or supplemental contribution report or Form 68-0061, Employer’s Wage Adjustment Report, that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit adjustment shall file with the department a written application for such adjustment within three years from the date on which such overpayment was made. Such credit adjustment shall be granted only after a review of the application which will set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the department shall issue a credit adjustment or refund for the overpayment.

23.37(3) The amount of the credit will be deducted from the contributions in the employer’s account and credited to any outstanding account balance until the credit is used or canceled in accordance with these rules. If the employer fails to utilize the credit as provided above, the department shall, three years from the date of issuance, cancel the credit and show it as a nonrefundable credit. The department, upon request of the employer or on its own initiative, may issue a refund of the overpayment. The state comptroller is responsible for the issuance of the warrant.

23.37(4) When an employer requests a refund or credit of contributions paid due to an erroneous reporting of wages, the refund or credit shall be reduced by the amount of benefits paid and charged to the employer as a result of the erroneous wages.

23.37(5) All grounds and facts alleged in support of a claim for refunds or credit shall be clearly set forth. The employing unit shall furnish such proof in support of the claim as may be reasonably

necessary at the discretion of the department to support the validity and the amount of the claim and the fact that the employing unit making the application for refund or credit is legally entitled to it.
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.38(96) Denial of claim for refund or credit. A claim shall be denied if an employing unit within 30 days after written demand by the department fails to submit reasonable proof to support the validity and amount of the claim or fails to request an extension of time in which to submit the required information.

871—23.39(96) Issuance of a duplicate credit memo. Rescinded IAB 5/14/03, effective 6/18/03.

871—23.40(96) Computation of rates for private sector employer.

23.40(1) Experience rating. An employer's experience rate shall be computed by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's five-year average annual taxable payroll to arrive at the benefit ratio. This ratio shall be applied to the appropriate rate table, as determined by the department, to determine the employer's contribution rate for the next calendar year. Indian tribal contributory employers shall be considered private sector employers for the purpose of computing their contribution rate.

23.40(2) Administrative contribution surcharge.

a. For calendar years 2002 and 2003, each employer except a governmental entity and a 501(c)(3) nonprofit organization will have an administrative contribution surcharge added to the contribution rate. The administrative contribution surcharge shall be a percentage of the taxable wage base in effect for the rate year following the computation date which is equal to one-tenth of 1 percent of the Federal Unemployment Tax Act (FUTA) taxable wage base in effect on the computation date. The surcharge will be a three-place decimal number which is added to the contribution rate. The surcharge formula will provide a target revenue level of no greater than \$6,525,000 annually and the percentage surcharge will be capped at a maximum of \$7 per employee.

b. A portion of each payment received from an employer shall be considered administrative contribution surcharge and shall be credited to the administrative contribution surcharge fund. The administrative contribution surcharge shall be collectible, and interest shall accrue on unpaid surcharge at the same rate as on regular contributions.

c. The portion of the employer's payment credited to the administrative contribution surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The administrative contribution surcharge fund shall be a separate and distinct fund from the unemployment compensation fund. Interest earned on the moneys in the administrative contribution surcharge fund shall be credited to the administrative contribution surcharge fund. Moneys in the administrative contribution surcharge fund shall be appropriated by the general assembly.

23.40(3) Temporary emergency surcharge. If it becomes necessary to implement a temporary emergency surcharge on all employers, except zero rated employers, governmental employers, and 501(c)(3) nonprofit organizations, for any quarter to pay interest on moneys borrowed from the federal government to pay unemployment insurance benefits, the emergency surcharge shall be collected and credited in the following manner:

a. The emergency surcharge rate shall be added to the employer's regular contribution (tax) rate for the quarter. The add-on rate shall be a uniform percentage of each affected employer's regular contribution rate rounded to the nearest one-hundredth of a percent. The affected employers will be notified by the department of the surcharge by any appropriate means available at the time.

b. A portion of each payment that is received from an employer for a quarter in which the emergency surcharge is in effect shall be considered as being temporary emergency surcharge and shall be credited to the temporary emergency surcharge fund.

c. The portion of the employer's payment credited to the temporary emergency surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The temporary emergency surcharge shall be used to pay the interest accrued on the trust fund money advanced to the department of workforce development by the federal government.

e. The director of the department of workforce development shall prescribe the manner and the amount of the surcharge to be collected.

This rule is intended to implement Iowa Code sections 96.7(2), 96.7(11), 96.7(12) and 96.19(8).

871—23.41(96) Computation date defined. The computation date for the succeeding year's contribution rate shall be July 1. The rate computation shall include the taxable wages reported for the quarters prior to and ending on June 30 immediately preceding the computation date and benefit charges based on benefit warrants issued on or before June 30 immediately preceding the computation date. Delinquent reports received after September 30 immediately following the computation date shall not be used for the succeeding year's rate computation.

This rule is intended to implement Iowa Code section 96.19(8).

871—23.42(96) Crediting of interest earned on the unemployment trust fund. Interest received on moneys deposited with the Secretary of the Treasury of the United States shall be credited to the unemployment compensation fund.

This rule is intended to implement Iowa Code section 96.9(2) "c."

871—23.43(96) Charging of benefits to employer accounts.

23.43(1) How charged. Benefits paid to an eligible claimant shall be charged against the base period wage credits in the same inverse chronological order as the wages on which the wage credits are based were paid to the claimant.

23.43(2) Formula for charging employer accounts.

a. Wage credits in the most recent quarter of the base period will be used first and when wage credits in this quarter are exhausted, wage credits for the next most recent quarter will be used until each of the four quarters in the base period is exhausted or until the claimant is paid an amount not to exceed the claimant's maximum benefit amount.

b. Each employer who has wage credits in the quarter of the base period currently being used will be charged the employer's proportional share of each payment. The proportional share to be charged to each employer in the quarter will be the employer's percentage of the total wage credits in the quarter.

23.43(3) Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to and during the period in which the department is processing the reversal decision.

23.43(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges. On a second benefit year claim

where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

b. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting without good cause the part-time employer. The individual and the part-time employer which was voluntarily quit without good cause shall be notified on Form 65-5323 or 60-0186, Decision of the Workforce Development Representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer, and benefit charges shall not be assessed against the part-time employer's account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

23.43(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

23.43(6) Reserved.

23.43(7) Department-approved training. A claimant who qualifies and is approved for department-approved training (see rule 871—24.39(96)) shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

23.43(8) Ten times the weekly benefit amount in insured work requalification.

a. In order to meet the ten times the weekly benefit amount in insured work requalification provision, the following criteria must be met:

Subsequent to leaving or refusing work, the individual shall have worked in (except in back pay awards) and been paid wages equal to ten times the claimant's weekly benefit amount.

b. An employer's account shall not be charged with benefit payments to an eligible claimant who quit such employment without good cause attributable to the employer or who was discharged for misconduct or who failed without good cause either to apply for available, suitable work or to accept suitable work with that employer but shall be charged to the balancing account.

c. The requalification and transfer of charges shall occur for the employer if the requalifying employment is earned with an out-of-state covered employer. The transfer of charges shall be made to the balancing account.

d. Periods of insured employment with separate employers may be joined to collectively equal ten times the individual's weekly benefit amount when requalification cannot be accomplished by an individual insured employer. The employer from whom the individual left work, was discharged or with whom the individual failed to apply or accept suitable work, will not accrue any charges.

e. Before benefits can be paid or the transfer of charges can occur, sufficient evidence must be present to establish the fact that the criteria in subrule 23.43(8), paragraph "a," has been met. Verification of employment may be completed through the records of the department or by using any method establishing proof of the necessary wage credits, including the following:

(1) An employment verification form, 60-0227, is an affidavit prepared in duplicate stating: the insured employer's name, mailing address, the starting date of employment, and wages paid

subsequent to that date. The form must be signed by the claimant alleging that the facts are correct. Any misrepresentation in the form may result in overpayment, fraud charges and administrative penalty any or all thereof. A copy of the form must be mailed to the employer or employers for verification. The employer should review the information on the form and certify that it is either correct or in error. If the information is incorrect, the employer should give the proper information. If the employer fails to return the form within five days of date mailed, the information on the form will be presumed to be correct.

(2) Employment check stubs may be used in conjunction with the employment verification form, 60-0227, to indicate the requalifying period.

23.43(9) *Combined wage claim transfer of wages.*

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified on Form 65-5522, Notice of Wage Transfer, that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date the Form 65-5522 was mailed to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

c. Requests received from the paying state for amounts in excess of an amount equal to potential charges of an Iowa claim will not be charged to the Iowa employer, except for reimbursable employers.

d. When Iowa is the paying state on an interstate claim and Iowa wage credits are insufficient to have a valid Iowa claim, charges shall not be made against the Iowa employer's account but shall be charged to the balancing account, except for reimbursable employers.

23.43(10) Reserved.

23.43(11) *Extended benefits.*

a. Fifty percent of the amount of each week of extended benefits paid to an individual in accordance with rule 871—24.46(96) shall be charged against the account of the employer which is chargeable for the extended benefits; however, 100 percent of the amount of each week of extended benefits paid to an individual shall be charged against the account of the Indian tribal and governmental contributory or reimbursable employer which is chargeable for the extended benefits.

b. The lack of a one-week waiting period prohibits this state from receiving a payment from the U.S. Department of Labor for 50 percent of the amount of the first week of extended benefits paid to an individual. This amount shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

c. In the event that a payment from the U.S. Department of Labor for 50 percent of any week of extended benefits paid to an individual is reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the amount of the reduction shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

23.43(12) *Charging of benefits paid to individuals employed by two or more employers.*

a. Whenever wage reports submitted to the department show the employment of an individual by more than one employer in the same calendar quarter, benefits shall be charged to each employer's account in the same proportion as wages paid in the quarter.

b. Benefits for partial unemployment shall be charged in the same manner as benefits for total unemployment, except that no charges shall be made against the account of the base period contributory or reimbursable employer which continues to employ the individual on the same basis that the employer employed the individual during the individual's base period.

23.43(13) Government contributory charges. For the purpose of determining the base rate for government contributory employers, a percentage of all benefits that are paid but are not chargeable to employer accounts because of various provisions of the law, will be considered as belonging to government contributory employers. The percentage of the nonchargeable benefits considered to be attributable to government contributory employers for each calendar year will be determined by the ratio of the benefits actually charged to government contributory accounts for the year to the total benefits charged to all contributory accounts for the year.

23.43(14) Removal of benefit charges upon the sale or transfer of a clearly segregable part of an employer's business or enterprise when the acquiring employer does not receive a partial transfer of experience. Benefits based on wages earned with the transferring employer, paid to an individual who worked in and was paid wages for work with the acquiring employer shall be transferred to the balancing account. The transferring employer must protest this issue on the Notice of Claim, Form 65-5317, in a timely manner to receive relief from the charges. The relief of charges shall apply to both contributory and reimbursable employers.

23.43(15) Disaster relief. An employer shall not be charged with benefits for unemployment that is directly caused by a disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of regular benefits. The employer may protest the charges on the Notice of Claim, Form 65-5317, or the Quarterly Charge Statement. The employer must protest the charges within 30 days after the date of mailing of the Quarterly Charge Statement.

This rule is intended to implement Iowa Code sections 96.3(7), 96.5(1), 96.6(2), 96.7, 96.8(5), 96.9(5), 96.11(1), 96.16(4), and 96.29.

871—23.44(96) Benefits payments.

23.44(1) Overpayments. If a claimant is overpaid benefits, the employer will be relieved of benefit charges to such employer's account.

23.44(2) The employer shall not be relieved of benefit charges for a payment of back pay until the amount of the overpayment is recovered by the department.

23.44(3) Option of reimbursable credit or refund for an overpayment. The department shall credit the account of the reimbursable employer for overpayments. However, the employer may request a refund in those cases where the employer determines that it cannot use the credit against future charges within a reasonable period of time.

This rule is intended to implement Iowa Code sections 96.7(3), 96.11(1) and 96.20(2).

871—23.45 Reserved.

871—23.46(96) Termination of coverage. Rescinded IAB 5/5/10, effective 6/9/10.

871—23.47(96) Termination of accounts because of no wage reports.

23.47(1) If an employer discontinues business or continues business without employment, the employer may request that the employer's account be placed in an inactive status. Upon determination of an inactive status, the department shall notify the employer that the employer's account has been placed in an inactive status and that the employer is not required to file quarterly reports. However, the employer must notify the department if the employer resumes paying Iowa wages.

23.47(2) If the department finds that an employer has discontinued business or is no longer paying wages, the department may on its own motion place the account in an inactive status. However, the employer must notify the department if the employer resumes paying Iowa wages.

23.47(3) If prior to termination, an inactive account is found to have paid wages in any quarter, the employer account shall be reactivated, reports shall be secured for all quarters the account was inactive, including no wage reports for quarters for which there was no employment, and the account shall receive an experience rating; provided, the account has been in existence long enough to qualify for an experience rating.

23.47(4) If, on the rate computation date, the department finds that an employer has not paid wages during the eight consecutive calendar quarters immediately preceding the computation date, the employer's account shall be terminated effective the January 1 following the computation date. However, if the employer pays wages after the computation date and prior to the following January 1, the employer's account shall not be terminated, and the employer will receive an assigned rate or an experience rating.

23.47(5) If an employer has filed eight consecutive reports with zero wages, the account may be placed in inactive status.

This rule is intended to implement Iowa Code sections 96.7(2) "c" and "d" and 96.8(4) "b."
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.48(96) Previously covered employers. If a contributory employer's account has been properly terminated and the employer is again determined liable or a reimbursable employer again elects to be contributory, the employer shall receive a new account number and be treated the same as a newly covered employer.

This rule is intended to implement Iowa Code sections 96.7 and 96.8.
[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—23.49 and 23.50 Reserved.

871—23.51(96) Payments in lieu of contributions.

23.51(1) Each nonprofit organization which has been approved to make payments in lieu of contributions shall be billed each quarter for benefits paid during such quarter.

23.51(2) The payments to the unemployment fund which are required by Iowa Code section 96.7 for those employers who elect to reimburse the department shall be in an amount equal to the regular benefits and one-half of the extended benefits paid and charged to such employer's account. Government and Indian tribal reimbursable employers will be charged all of the extended benefits paid.

This rule is intended to implement Iowa Code section 96.8(5).

871—23.52(96) Employer liability appeal.

23.52(1) An initial employer liability determination including employer status and liability, assessments, rate of contributions, successions, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge with the department of inspections and appeals.

23.52(2) The appeal shall be in writing stating:

- a. The name, address and Iowa employer account number of the employer.
- b. The name and official position of the person filing the appeal.
- c. The decision which is being appealed.
- d. The grounds upon which the appeal is based.

23.52(3) The appeal shall be addressed or delivered to: Department of Workforce Development, Tax Bureau, 1000 East Grand Avenue, Des Moines, Iowa 50319. The employer shall provide adequate postage on appeals filed by mail. Appeals transmitted by facsimile that are received by the tax bureau after 11:59 p.m. central time shall be deemed filed as of the next regular business day.

23.52(4) Unless otherwise required, all determinations by the tax bureau will be sent by regular mail to the last-known address of the employer. The determination will be dated and the employer or other

interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a Notice of Reimbursable Benefit Charges, Form 65-5324.

23.52(5) If the department concludes, upon reviewing an appeal, that the original determination is correct, the tax bureau may write to the employer and further explain the decision. If the employer still desires a hearing before an administrative law judge, the employer should notify the department within 30 days of the date of the letter from the department.

23.52(6) Upon receipt of a request for hearing, the tax bureau will ask the department of inspections and appeals to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the administrative law judge. Documents that may be sent to the administrative law judge include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by an administrative law judge and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.5(17A,96).

23.52(7) In those cases in which the department finds that a genuine controversy exists or has existed regarding an employing unit's liability for contributions on all or a part of its employees or, a rate appeal or other employer liability question and the case has been resolved against such employing unit, then no interest or penalty will accrue from the date of such controversy between the department and the employing unit until 30 days after the decision becomes final.

871—23.53(96) Rate appeal and eligibility decision reversal.

23.53(1) An employer who appeals a rate notice or corrected rate notice within 30 days following the procedures outlined in rule 23.52(96) may have its rate recomputed based upon the reversal of a benefit eligibility decision under the following circumstances:

a. An employer may appeal on the grounds that benefit charges against the employer's account have been reversed by a decision issued subsequent to the rate computation date. The department will investigate and remove benefit charges, which have been reversed by a subsequent decision, from the computation and will issue a corrected rate notice to the employer.

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. The employer must pay any contributions that become due at the disputed rate prior to the receipt of the decision reversing the benefit charges; however, a refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5).

c. The employer's payment of contributions at the disputed rate in the circumstances described in 23.53(1) "b" will not be an acquiescence of the disputed rate.

d. The employer, in the circumstances described in 23.53(1) "b," must file a separate appeal of each rate notice received that contains the disputed benefit charges. If the employer does not file a timely appeal of each affected rate notice, any appeal filed following receipt of a decision reversing the allowance of benefits will be considered as applying only to rate notices that were timely appealed and to the next rate notice.

e. If the employer appeals on the grounds that the benefits charged against the employer's account were paid to an employee who was still working for the employer in the same employment as in the base period of the claim, the department will remove the charges and will issue a corrected rate notice. However, the employer's appeal must have been made within 30 days of the date on the first rate notice received that included any of the disputed charges. Provided further that the issue of charging of benefits

had not been previously adjudicated in either an appeal of the original claim notice or an appeal of a quarterly benefit charge statement.

23.53(2) Reserved.

871—23.54(96) Payment of disputed assessments.

23.54(1) Payment of a disputed assessment is held to be an acquiescence in the assessment only when a timely appeal is not filed.

23.54(2) An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file Form 65-5300, Employer's Contribution and Payroll Report, for all quarters for which the employer is held liable regardless of any appeal. Such reports are to be marked by the employer "Appeal Filed" and submitted with full payment of the disputed assessment, without payment or with a payment in the amount estimated to be owed by the employing unit.

871—23.55(96) Burden of proof.

23.55(1) The burden of proof in all employer liability cases shall rest with the employer.

23.55(2) The burden of proof shall rest with an employing unit which employs any individual during any calendar year but which considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.

23.55(3) The burden of proof in successorship and partial successorship cases for determinations and appeals shall rest with the employer that is appealing the determination of the department.

871—23.56(96) Informal settlement.

23.56(1) Pursuant to Iowa Code chapter 17A a controversy may, unless precluded by statute, at the discretion of the department be informally settled by mutual agreement of the department of workforce development and the person or employer who is or is about to be engaged in the controversy with the department. The settlement shall be effected by a written statement reciting the subject of the controversy and the proposed solution mutually agreed upon by the parties including a statement of the action to be taken, or to be refrained from, by each of the parties. The informal settlement shall constitute a waiver, by all parties, of the formalities to which they are entitled under the terms of Iowa Code chapter 17A, with respect to the specific fact situation which is the subject of the controversy.

Either party may initiate a proposal for informal settlement of the controversy by communicating a proposal to the other party before the contested hearing is convened.

23.56(2) If the parties agree to a settlement, the written statement shall be presented to the administrator of the division of unemployment insurance services for review and approval.

23.56(3) In the event a settlement is reached in a case which has been appealed to the courts, then the formal settlement will be presented to the appropriate district court. If an assessment of contributions or a decision upon which an assessment is based has become final without appeal, then the actual established contribution may be compromised by agreement of the parties and submission to the district court pursuant to Iowa Code section 96.14(5). Doubtful collectibility as contained in section 96.14(5) includes tax debts which are doubtful as to validity or as to collectibility. The department is not required to enter into any informal settlement or compromise with regard to any employer liability determination and may or may not do so at its own discretion.

871—23.57(96) Interest and penalty on contributions paid with adjustments submitted by employer.

23.57(1) If an employer, on its own motion, submits an adjustment for an error made on a previous report and pays any additional contributions due on the adjustment when the employer submits the adjustment, no interest on the additional contributions will be charged if it is shown to the satisfaction of the department that the error on the original report and subsequent late payment of the contribution

due on the adjustment was not the result of negligence, fraud, intentional disregard of the law or rules of the department.

23.57(2) If an employer submits an adjustment without payment, and payment is due, such employer will be assessed for the additional contributions plus interest as provided by law.

871—23.58(96) Assessment of unpaid contributions, interest and penalty. Rescinded IAB 5/14/03, effective 6/18/03.

871—23.59(96) Determination and assessment of estimated contributions and errors in reporting.

23.59(1) If the department finds from the examination of the employer's reports or account that the contributions have been underpaid because of a department error in assigning the contribution rate, the additional contributions shall be paid within 30 days after the department notifies the employer; however, no interest or penalty will accrue until 30 days after the notification.

23.59(2) Assessment—failure to make return.

a. If any employing unit fails to make a return as required the department shall make an estimate based upon any information in its possession or that may come into its possession of the amount of wages paid for employment in the period or periods for which no return was filed upon the basis of such estimates shall compute and assess the amounts of employer contributions payable by the employing unit together with interest and penalty.

b. Whenever the department determines that the collection of contributions from an employer is in jeopardy and the employer has failed to file the necessary reports of wages paid for the quarter for which such contributions are due and payable or have been declared due and payable prior to the reporting date set out in rule 23.8(96), the department shall prepare estimated reports.

c. Such estimates may be made by authorized personnel in the tax bureau and shall be referred to the collection unit where Form 68-0138, Notice of Jeopardy Assessment, shall be prepared.

This rule is intended to implement Iowa Code section 96.7.

871—23.60(96) Accrual of interest and penalties.

23.60(1) An employer who fails to file or make sufficient a report of wages paid to each of its employees for any period in the time and manner set forth in Iowa Code section 96.7 and rule 871—22.3(96) shall pay to the department a penalty in accordance with Iowa Code section 96.14(2).

23.60(2) The amount of the penalty for a delinquent or insufficient report shall be based on the total wages paid by the employer in the period for which the report was due, except that the penalty shall not be less than \$35 for the delinquent report or the insufficient report not made sufficient within 30 days of a request to do so. An insufficient report is defined as a quarterly report that does not have all social security numbers, all corresponding names, total wages for each employee, or a reporting unit number. Reports submitted without a correct account number, federal employer identification number, labor market information, signature, or report submitted for an unemployment account that has not yet been established by the employer or agent may be considered insufficient.

23.60(3) Interest and penalty shall not accrue with respect to contributions required from an employer based upon wages for employment in those cases in which the employer's liability is based solely upon the provisions of Iowa Code section 96.19(16) "g" until 30 days after determination of such liability under the federal Unemployment Tax Act.

23.60(4) Interest and penalty shall not accrue in those cases where the department finds that, as a matter of equity and good conscience, the employer should not be required to pay interest.

23.60(5) Interest as provided under Iowa Code section 96.14 shall accrue 30 days after the quarterly billing to reimbursable employers.

23.60(6) The penalties applicable to contributory employers shall be applicable to employers who have been approved to make payments in lieu of contributions.

23.60(7) Payment checks not honored by bank. An employer is liable for interest for a check in payment of contributions which is not honored by the bank upon which it is drawn.

This rule is intended to implement Iowa Code section 96.14(2).
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—23.61(96) Collection of interest and penalties. When a report is filed with contributions paid but penalties and interest due, penalties and interest may be assessed and a lien filed in the same manner as for unpaid contributions.

871—23.62(96) Rescission of interest and penalty.

23.62(1) Interest and penalty charges may be rescinded whenever an employer can provide documentary evidence to the satisfaction of the department that an inquiry in writing was directed to the department within 15 days following the end of the quarter for the report(s) or contribution(s) untimely filed or paid, and such contributions are paid in full.

23.62(2) Penalty charges only may be rescinded whenever the employer can show documentary evidence that the wages paid to employees used to determine liability to the department were reported to another state in good faith and the contributions thereon were properly paid to the state to which the wages were reported and that said employees were fully insured during the period of unreported liability to this department.

871—23.63(96) Cancellation of interest and penalty. The department may, at its discretion and for good cause, cancel interest and penalty upon written request for the waiver from the employer or an agent for the employer. Requests should be directed to the department at its administrative office. The employer will be advised if the request is denied.

In determining whether good cause has been shown, the department shall consider all relevant factors including but not limited to whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party which prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party's physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.64(96) Refund of interest and penalty.

23.64(1) Interest or penalty may be refunded only when it has been erroneously paid or overpaid. Interest or penalty erroneously collected in excess of the amount due may be credited or refunded to the employing unit or other person(s) who paid such interest or penalty subject to the following limitations.

a. If the department determines that a claim for refund or credit is allowable in accordance with the Iowa Code and these rules, it shall so find and make an adjustment as follows:

b. The amount of the overpayment shall first be applied against any unpaid liability then due from or accrued against the employing unit. The remainder of such portion of the overpayment shall be refunded to the employing unit or other person(s) by whom it was paid, or its or their successor, administrators or executors.

23.64(2) Reserved.

871—23.65(96) Liens for unpaid contributions, interest, and penalties.

23.65(1) Filing of liens and notice of jeopardy assessments.

a. If reports are filed by an employer for the purpose of determining the amount of contribution due, or an assessment of contribution due, and the employer fails to pay any part of the contributions, interest and penalties due as determined by the report or assessment, Form 68-0043, Notice of Assessment and Lien, will be sent to the employer.

b. If, 30 days after a Notice of Assessment and Lien, or a Notice of Jeopardy Assessment has been served (see subrule 23.59(2)) and the employer has failed to make payment in full of the amounts that were assessed, the department may file a lien with the county recorder of the county in which the employer has its principal place of business, or with the county recorder of any county in which the employer has real or personal property.

c. The lien, known as a Form 68-0024, Notice of Lien, shall state the date of assessment, the employer's name, address and account number, and the amount due. The recorder shall record the Notice of Lien as provided in Iowa Code section 96.14(3).

23.65(2) When the Notice of Lien is duly filed and recorded, the amount stated shall be a lien upon the entire interest of the employer, legal or equitable, in any real property, and upon any personal property, tangible or intangible, located in any county where the Notice of Lien or copy is filed.

23.65(3) As provided in Iowa Code section 96.14(3), the lien shall attach as of the date the assessment is mailed or personally served upon the employer.

23.65(4) The transfer, through sale, exchange, or other method, of a major portion of the assets of a delinquent employer shall not defeat or impair the lien in favor of the department, and the person acquiring such assets shall be held liable for payment of all delinquent contributions, interest, and penalties due from the delinquent employer. The department shall be made a party to any foreclosure action involving any real or personal property against which the department has or may claim a lien.

23.65(5) Liens against out-of-state employers and resident employers who remove themselves from the state of Iowa may be obtained in accordance with section 96.14(6).

23.65(6) The department may, at its discretion and in accordance with Iowa Code section 96.14(3), make an assessment and file a lien in the recorder's office in the county or state where the employer resides. Liens shall be recorded in accordance with the law governing liens in the state where filed, and the costs shall be borne by the employer.

23.65(7) No employment security lien(s) shall be released without payment of the contributions secured except as follows:

a. It is shown to the department's satisfaction that the lien(s) was filed in error. If this is shown, the lien shall be at the expense of the department.

b. Release of the lien(s) is ordered by a judge having jurisdiction over same.

c. A release is necessary to facilitate payment to the department from proceeds of sale in an equity action.

d. A foreclosure action has been initiated by a secured creditor and it is demonstrated to the department's satisfaction all of the following:

(1) The lien of the secured creditor is properly perfected and is senior to the employment security lien.

(2) The property, both real and personal, does not exceed in value the amount of the secured lien on which the foreclosure is taken.

23.65(8) In such cases, the department may release its lien(s) but such release shall be only in respect to the property foreclosed upon by the secured creditor.

23.65(9) Interest and penalty secured by a lien may be compromised by the department at its discretion.

23.65(10) Upon payment of contributions, interest, penalty, and costs, the department shall execute a Form 68-0199, Satisfaction of Lien, by filing it with the recorder's office for the county where the lien was filed. A copy of this satisfaction shall be mailed to the employer.

This rule is intended to implement Iowa Code section 96.14(3).

871—23.66(96) Jeopardy assessments.

23.66(1) If the department believes the collection of any contribution will be jeopardized by delay, the department may, whether or not the time otherwise prescribed by rule 23.8(96) for making return and paying any contribution has expired, immediately assess the contributions, together with all interest and penalty. The contributions, penalty and interest shall become immediately due and payable. The jeopardy assessment may be made by personal service upon the employer or the employer's agent by a

representative of the department or civil officer of the state. Should immediate personal service not be possible, the jeopardy assessment shall be sent by certified mail to the employer's address of record and such mailing shall be a satisfactory service.

23.66(2) If, after a jeopardy assessment has been served, the amount assessed remains unpaid and no appeal has been filed by the employer, a notice of lien shall be recorded in the recorder's office for the county or counties in which the employer resides or owns property. A copy of the lien shall be mailed to the employer at the address of record.

23.66(3) If, at the time of service of a jeopardy assessment, the employer protests or disputes the correctness of the assessment, the employer may furnish to the department and the department may accept a bond in an amount the department deems necessary but not to exceed double the amount of contributions due, provided the department is satisfied as to the security of the bond. So long as the bond remains in force and the assessment remains in dispute, the department shall not issue a distress warrant. If, after final adjudication of the jeopardy assessment, the employer fails to pay the assessed amount in full, the bond shall be forfeited to the extent necessary to satisfy the jeopardy assessment plus any accrued interest. Any overage shall be refunded to the employer by warrant or credit. If the bond is insufficient to pay the jeopardy assessment in full, the department may issue a distress warrant as provided in rule 23.67(96).

23.66(4) After a lien has been filed and the amount or any portion of the amount assessed and any additional accrued interest remains unpaid, the department may at any time issue a distress warrant instructing a sheriff or peace officer to levy upon and seize or attach any real or personal property of the employer in satisfaction of the amount assessed and secured by the lien.

This rule is intended to implement Iowa Code section 96.7(7).

871—23.67(96) Distress warrants.

23.67(1) In addition to and as an alternative to any other remedy provided by the Iowa Code and these rules, the department may proceed to enforce its lien by issuing to the sheriff of any county or to any civil officer of the state of Iowa having proper jurisdiction a distress warrant commanding the sheriff or civil officer to levy upon and sell any real or personal property which may be found within its jurisdiction belonging to an employer who has defaulted in the payment of any sum determined by the department to be due from the employer, and to pay the proceeds of the sale over to the clerk of district court in and for the county in which the property is found. All costs of the execution shall be charged to the employer.

23.67(2) The sale shall be held after the property has been levied upon, the period of redemption has expired, and the department has petitioned for and been granted a condemnation order in the district court in and for the county in which the property was levied upon, in accordance with the Iowa Code and the Iowa Rules of Civil Procedure.

23.67(3) No property belonging to the employer shall be exempt from execution.

23.67(4) Whenever a warrant is returned not satisfied in full, the department may proceed to issue a new warrant in the amount remaining unsatisfied, together with any additional interest, penalties, and costs, as provided above.

871—23.68 Reserved.

871—23.69(96) Injunction for nonpayment or failure to report.

23.69(1) In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file any reports required by the department.

23.69(2) Discretion as to whether or not to seek an injunction rests with the department.

23.69(3) When the department determines that an injunction should be obtained, the department will send by certified mail or by personal service to the employer at the last-known address for the employer a notice which shall provide the following information:

a. That the department plans to seek an injunction against the employer.

b. The period(s) for which there are delinquent contributions, interest, and penalty due or for which returns have not been filed.

c. The amount of indebtedness.

d. That the injunction will enjoin the employer from operating any businesses in the state of Iowa until one of the following conditions is met:

(1) The entire indebtedness is paid.

(2) The employer files a full and sufficient bond.

(3) The employer has entered into a court-approved plan providing for payment of the indebtedness.

e. The employer has ten days in which to respond to the department.

23.69(4) Upon expiration of the ten days following the notice, if the employer has not responded satisfactorily, the department shall file with the district court for the county in which the employer resides a petition requesting a hearing and an order granting the injunction.

23.69(5) Upon the issuance of a court order granting the injunction, the department shall proceed to periodically check to ensure that the employer is complying with the injunction order. Should the department find that the employer is not in compliance, it will ask the court for a finding of contempt and will ask the court to impose appropriate punishment.

23.69(6) Upon payment in full of the delinquent contributions, interest, and penalty, and the filing of all delinquent reports, the department shall have the injunction dissolved.

23.69(7) If the employer, as the result of a court-approved payment plan, is relieved by the court of the injunction and the employer fails to perform strictly as set out in the plan, the department may, at its discretion, ask the court to reinstate the injunction upon notice and hearing.

23.69(8) Any costs of these actions shall be borne by the employer.

871—23.70(96) Nonprofit organizations.

23.70(1) Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7 the election to reimburse the fund on Form 68-0463, Election to Make Payments in Lieu of Contributions, with the department for its consideration.

23.70(2) Election to Make Payments in Lieu of Contributions, Form 68-0463, must be signed by an authorized official of the nonprofit organization and shall be accompanied by:

a. A letter of intent indicating the organization's desire to be considered for reimbursable status.

b. A copy of the organization's letter of 501(c)(3) exemption from the Internal Revenue Service.

If the organization does not have a 501(c)(3) letter at the time of the filing of its election to become a reimbursable employer, it may file a written request with the department for an extension of time setting forth the reason for the request, and the department may grant such extension not to exceed 180 days. Included with this request for extension of time should be a copy of the application for exemption, Election to Make Payments in Lieu of Contributions, or evidence that the request for 501(c)(3) exemption has been made.

c. A corporate charter or other documents that brought the organization into being.

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the field audit unit. The request for reimbursable status will be examined by a field auditor or other authorized representative.

23.70(4) and **23.70(5)** Rescinded IAB 2/10/99, effective 3/17/99.

23.70(6) An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization shall be required to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new

election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. The new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due, and any excess shall be refunded to the organization.

23.70(7) to 23.70(9) Rescinded IAB 2/10/99, effective 3/17/99.

23.70(10) The department may for good cause extend the period within which a notice of election to become a reimbursable employer or a notice to terminate reimbursable status must be filed and permit an election to be retroactive.

23.70(11) Any nonprofit organization that terminates its election to reimburse the fund shall continue to be liable to reimburse the fund for benefits which are paid based on wages earned during the effective period of the employer's Election to Make Payments in Lieu of Contributions. All benefits charges based on wages paid after the date of the approval of the change of status to a contributory employer shall be charged to the employer's contributory account.

a. A nonprofit organization changing its tax status from reimbursable to contributory or contributory to reimbursable will retain the same employer account number. A nonprofit organization terminating its election to reimburse the fund shall be treated as a newly covered employer for the purpose of establishing a contribution rate, except as provided in paragraph "b."

b. The experience, while under each tax status, will not be combined for rate computation purposes unless the department finds, or has reason to believe, that the nonprofit organization changing from a reimbursable status to a contributory status is unable to reimburse the fund for benefits outstanding at the time of the change in status, plus any benefits paid after the change in status that are based on wages paid while the nonprofit organization was still in a reimbursable status. The department may then, at its own option, use the unreimbursed benefits in the computation of the nonprofit organization's contribution rate and transfer any contributions collected, above what the nonprofit organization would have paid as a newly covered employer, from the nonprofit organization's contributory account to the reimbursable account to apply against the unreimbursed benefits.

23.70(12) Any nonprofit organization which elects to change its status from contributory to reimbursable shall continue to be liable for charges on all benefits based on wages paid when the nonprofit organization was a contributory employer. These charges will be charged to the nonprofit organization's contributory account. The experience of the contributory account will not be merged with the nonprofit organization's reimbursable account.

23.70(13) In the event that a reimbursable nonprofit organization succeeds to a contributory employer, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the reimbursable nonprofit organization's unpaid benefit charges in the event that the reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the reimbursable nonprofit organization prior to the date of the sale or transfer.

23.70(14) In the event a reimbursable nonprofit organization discontinues business, the reimbursable nonprofit organization will continue to be liable to reimburse the fund in an amount equivalent to the amount of regular unemployment benefits and one-half of the extended benefits paid to an individual that is attributable to wages paid by the reimbursable nonprofit organization prior to the discontinuance of business.

This rule is intended to implement Iowa Code section 96.7(9).
[ARC 871B, IAB 5/5/10, effective 6/9/10]

871—23.71(96) Governmental entity—definition.

23.71(1) The definition of a governmental entity is a state, a state instrumentality, a political subdivision or a political subdivision instrumentality, or a combination of one or more of the preceding.

An instrumentality of one or more states or political subdivisions may be a part of a state or a political subdivision or it may be independent of political entities and thereby a separate governmental entity. The definition of a governmental entity is held to include but not be limited to:

a. An organization or any division, department, agency, commission, or board of a state or political subdivision established by proper authorities, authorized and created under constitutional provisions or statutes, for the purpose of carrying out a portion of the function of government, including both governmental and proprietary functions.

b. An instrumentality is one which is organized to carry on some function or purpose of government for a state or a political subdivision. There is expressed or implied statutory or other authority creating it. It is an independent legal entity, with power to hire, supervise, and discharge its own employees. Generally, it can sue or be sued in its own name, to hold, convey real and personal property and borrow money.

c. Political subdivisions include counties, cities, municipalities, towns, villages, townships, as well as irrigation, flood control, sanitation, utility, reclamation, drainage, improvement, and public school districts and authorities or any combination of these and similar governmental entities within the state of Iowa.

d. Instrumentalities shall include departments, boards, agencies, commissions, county or municipal corporations, associations and organizations of a state or a political subdivision of the state when it is operated by virtue of the authority, power, or powers conferred upon it by a state or political subdivision of the state, or when they are controlled, supervised or receive direction, expressed or implied, from a state or political subdivision of a state or such rights are vested in public authority or authorities, or the state or the political subdivision of a state has the right, expressed or implied, to control or direct the policy, operation or to influence the organizations or action of individuals, parties or interests that control those who manage or administer the affairs of such organizations.

23.71(2) In cases involving the status of an organization as to whether it is a state, a state instrumentality, a political subdivision of a state or a political subdivision instrumentality, the following factors may be taken into account:

a. Whether the revenues are subject to control by a state, a political subdivision of a state or an instrumentality of either.

b. They may have broad powers of taxation, appropriation or authority to levy special assessments on the land located in the district which will stand as a lien upon the property assessed.

c. It is created or existing by virtue of a state, a political subdivision of the state or instrumentality of either, which operates in the public interest, without profit to private persons, and whose purpose is presumed to be a public benefit and conducive to the public health, convenience and welfare.

d. Whether it is organized or used for a governmental purpose, or an aid in the function of government or it performs a governmental function.

e. Whether there is an expressed or implied statutory or other authority necessary or existing for the creation or use of the organization.

23.71(3) The term “employment” does not apply to services performed for this state, a political subdivision of this state, an Indian tribe or an instrumentality of either by an individual who is: an elected official; a member of a legislative body; a member of the judiciary of a state or political subdivision; a member of the state national guard, air national guard, or armed forces reserve; an employee on a temporary-duty basis in the case of fire, storm, snow, earthquake, flood or similar emergency; or in a position designated as a major nontenured policymaking or advisory position pursuant to state law if the position does not ordinarily require duties of more than eight hours per week.

a. The exclusion for a governmental entity or Indian tribe from coverage of unemployment of the services of an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency applies only to those individuals who are hired or pressed into service to assist directly with an emergency or urgent distress associated with an emergency, including such temporary tasks as firefighting, rescue, removal of storm debris, cleaning up mud and flood debris, restoration of public facilities, snow removal and road clearance. Volunteer firefighters and police officers, and snow removal personnel, who are called to duty in emergency situations such as fires, floods, emergency snow

removal or similar public emergency to perform services on a temporary basis for which they receive pay, are excluded from coverage. *City of Charles City v. Iowa Department of Job Service*, Law No. 2262, District Court for Floyd County. The exclusion does not apply to permanent employees whose usual responsibilities include emergency situations.

b. The provision which excludes an individual employed by a governmental entity or Indian tribe who exercises duties in a position defined in state law as a major nontenured policymaking or advisory position, or a policymaking or advisory position which ordinarily does not require duties of more than eight hours per week, covers those individuals holding positions designated by, or pursuant to, state law as a policymaking or advisory position. Political subdivisions which have authority to enact ordinances or resolutions without recourse to the state legislature but under authority of state law may also establish and define such positions. The positions may qualify for the exclusion if the political subdivision has enacted an ordinance or resolution creating or designating one of its positions as policymaking or advisory, provided power to make the ordinance or resolution is authorized or permitted by the laws of the state. If the state law or local ordinance or resolution properly designated the positions as policymaking or advisory, the exclusion is clearly applicable. Where the law or the ordinance does not clearly and specifically so categorize or label the position, other pertinent factors such as job descriptions, the qualification of individuals considered for and appointed to the position and the responsibilities involved shall be taken into account in determining the character of the position for purposes of applying the exclusion.

(1) “Policymaker” is defined as generally referring to the determination of the direction, emphasis and scope of action in the development of, and the administration of, governmental programs. Such responsibilities are confined to and inherent in jobs of the higher echelons of government.

(2) An “advisory position” is one which advises established governmental agencies and officers with respect to policy, program and administration without having authority to implement the recommendations.

(3) The word “major” in the phrase “major nontenured policymaking or advisory position” refers to high level governmental positions usually filled by appointment by the chief executive of the political entity (governor, mayor, etc.), or a council, and which involves responsibilities affecting the entire political entity, whether it be the state, county or city.

(4) The term “nontenured” is used in its usual meaning to mean that the position is not covered by merit system or civil service law or rules with respect to duration of appointment to the service.

(5) Service in a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours per week is exempted. It makes no difference whether the position is tenured or not. If the position ordinarily requires more than eight hours per week, the exclusion does not apply. The number of hours required should be determined by reference to the law establishing the position and the actual time spent by incumbents.

c. An elected official includes an individual appointed to serve the unexpired term of an elected position. Such an individual’s services for such period are excluded because the individual is performing excluded services.

d. An official elected by a body other than the public, such as by a vote by the legislature, board of supervisors, council, school board or trustees, to perform services for a government entity, such individual is not excluded from coverage.

e. Services performed for the state national guard or the air national guard are excluded from coverage of the employment security law only as to the services in the individual’s “military” capacity. It does not apply to any service performed in any other capacity.

f. If a member of the state national guard or air national guard is employed in a civilian capacity performing services for either organization as distinguished from “military” service, the civilian service would be covered as an employee of a governmental entity to the same extent as any other employee.

23.71(4) Exemption from “employment” for individuals performing services for a governmental entity or Indian tribe as part of an unemployment work relief or work training program. Services performed by an individual for a government entity or Indian tribe for the purpose of qualifying or repaying a welfare or relief grant will not be considered “employment” provided that:

- a. The major purpose of the program under which the work is performed is to relieve individuals from their unemployment or poverty.
- b. The government entity does not pay the welfare or relief grant directly to the individual but instead pays items such as rent, power bills, medical bills, etc., for the individual.
- c. The services performed by the individuals do not displace regularly employed workers of the government entity.

This rule is intended to implement Iowa Code sections 96.7(8) and 96.19(18)“a”(6)(e) and (g).

871—23.72(96) Governmental entity—elective coverage and liability.

23.72(1) Any governmental entity may elect to be a governmental contributory employer by filing a written application known as “Election to Pay Contributions as a Government Contributory Employer,” Form 68-0053, for elective coverage as a governmental contributory employer. The rules governing the selection of coverage status for governmental entities shall apply to Indian tribes. Any governmental entity failing to file such an election will be considered as a governmental reimbursable employer. The Form 68-0053 must be signed by a duly constituted governmental official. The election shall be approved if the department finds that:

- a. It is an application for all employees of the entity.
- b. The applicant is a “governmental entity.”
- c. It sets forth the name and address of the entity.

23.72(2) The effective date of an elective coverage agreement filed by a government entity is the first day of the calendar year in which the election was filed.

23.72(3) An agreement for elective coverage shall be continued in effect from period to period unless a written application for termination has been filed with the department 30 days before the beginning of the taxable year for which such termination shall first be effective following the initial one-year period of coverage.

23.72(4) An applicant may withdraw an application for elective coverage prior to final approval of the application. The department may, upon written request of the applicant, cancel an elective coverage agreement which has been finally approved if the applicant shows that the application was submitted through justifiable mistake, or error, or was submitted by a person not having proper authorization to bind the applicant.

23.72(5) If a governmental entity is succeeded in whole or in part by another governmental entity, the successor may elect to continue the elective coverage agreement of the predecessor or may elect to terminate the elective coverage agreement of the predecessor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity under an approved elective coverage agreement, the elective coverage agreement of the predecessor shall be continued to the same extent as the elective coverage agreement of the successor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity not under an approved elective coverage agreement, the successor shall meet the requirements of this section if it elects to continue the elective coverage agreement of the predecessor.

23.72(6) The contribution rate of a governmental contributory employer shall be determined by the ranking of the governmental contributory employer’s percentage of excess when compared to all other governmental contributory employers’ percentage of excesses and the rate assigned to each rank as determined by the base rate of all governmental contributory employers. The base rate is determined by adding or subtracting the difference between the benefits charged and the contributions paid by governmental contributory employers since January 1, 1980 (adjusted if necessary by excess contributions from calendar years 1978 and 1979), to or from the total benefits charged to governmental contributory employers during the preceding calendar year and dividing this sum by the total taxable wages reported by governmental contributory employers during the same calendar year. The contribution rate of a governmental contributory employer shall be payable on the taxable wages paid by the governmental contributory employer.

23.72(7) Liability upon the sale, transfer or discontinuance of a reimbursable governmental employer.

a. If a governmental reimbursable employer sells or otherwise transfers its enterprise, business, or operation to a subsequent employing unit, and the subsequent employing unit is determined to be a successor employer, the successor employer shall become liable to the department for the predecessor governmental reimbursable employer's benefit charges that are unpaid as of the date of the sale or transfer in the event that the predecessor governmental reimbursable employer cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the predecessor governmental reimbursable employer prior to the date of the sale or transfer.

b. If a reimbursable instrumentality of either a state or a political subdivision is discontinued other than by sale or transfer, the state or the political subdivision shall reimburse the department for the reimbursable instrumentality's benefit charges that are unpaid at the time the reimbursable instrumentality was discontinued. In addition, the state or the political subdivision shall be liable to reimburse the department for benefits paid after the discontinuance of the reimbursable instrumentality that are based on wages paid by the reimbursable instrumentality prior to the discontinuance.

This rule is intended to implement Iowa Code section 96.7(8).

871—23.73(96) Governmental entities—delinquent accounts.

23.73(1) Any governmental entity which is an employer and which becomes delinquent in the payment of contributions or the reimbursement of benefits shall be assessed for the same together with any interest and penalty due thereon.

23.73(2) Contributions are due within 30 days of the end of the quarter for which they are incurred. Reimbursable benefit payments are due 30 days after the date of the statement.

23.73(3) If an amount due from a governmental entity of this state remains due and unpaid for a period of 120 days after the due date, the department shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of revenue, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the department from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the department for the fund. However, the department shall notify the delinquent entity of the department's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

This paragraph is an exact quote from 1979 Iowa Acts, chapter 33, section 25. It is being used as a rule because it conflicts with the preceding paragraph in Iowa Code chapter 96. The preceding paragraph in section 96.14(3) states delinquency as a period exceeding two calendar quarters. The above period of 120 days is the most recent expression of the legislature.

This rule is intended to implement Iowa Code section 96.14(3) and 1979 Iowa Acts, chapter 33.

871—23.74 to 23.81 Reserved.

871—23.82(96) Definition of construction employer.

23.82(1) Construction. The department will utilize the North America Industry Classification System manual (2002 edition) to determine which employers will be classified as construction. The manual may be purchased through Bernan Press, 4611F Assembly Drive, Landham, MD 20706-4391, and is available on the Internet at <http://www.ntis.gov/naics>.

a. The construction sector is comprised of establishments primarily engaged in the construction of buildings and other structures, heavy construction (except buildings), additions, alterations, reconstruction, installation, and maintenance and repairs. Establishments engaged in demolition or wrecking of buildings and other structures, clearing of building sites, and sale of materials from demolished structures are also included. This sector also includes those establishments engaged in blasting, test drilling, landfill, leveling, earthmoving, excavating, land drainage, and other land preparation. The industries within this sector have been defined on the basis of their unique production

processes. As with all industries, the production processes are distinguished by their use of specialized human resources and specialized physical capital. Construction activities are generally administered or managed at a relatively fixed place of business, but the actual construction work is performed at one or more different project sites. Employers that provide workers primarily for construction will be classified as construction employers.

b. This sector is divided into three subsectors of construction activities: (1) building construction and land subdivision and land development; (2) heavy construction (except buildings), such as highways, power plants, and pipelines; and (3) construction activity by special trade contractors.

c. Establishments classified in Subsector 233, Building, Developing, and General Contracting, and Subsector 234, Heavy Construction, usually assume responsibility for an entire construction project, and may subcontract some or all of the actual construction work. Operative builders who build on their own account for sale and land subdividers and land developers, who engage in subdividing real property into lots for sale, are included in Subsector 233, Building, Developing, and General Contracting. (Special trade contractors are included in Subsector 234, Heavy Construction, if they are engaged in activities primarily relating to heavy construction, such as grading for highways.) Establishments included in these subsectors operate as general contractors, design-builders, engineer-constructors, joint-venture contractors, and turnkey construction contractors. Establishments identified as construction management firms are also included.

d. Establishments classified in Subsector 235, Special Trade Contractors, are primarily engaged in specialized construction activities, such as plumbing, painting, and electrical work, and work for builders and general contractors under subcontract or directly for project owners. Establishments engaged in demolition or wrecking of buildings and other structures, dismantling of machinery, excavating, shoring and underpinning, anchored earth retention activities, foundation drilling, and grading for buildings are also included in this subsector.

e. “Force account” construction is construction work performed by an establishment primarily engaged in some business other than construction, for its own account and use, and by employees of the establishment. This activity is not included in this industry sector unless the construction work performed is the primary activity of a separate establishment of the enterprise.

f. The installation of prefabricated building equipment and materials, such as elevators and revolving doors, is classified in the construction sector. Installation work incidental to sales by employees of a manufacturing or retail establishment is classified as an activity of those establishments.

23.82(2) The term “construction” includes, but is not limited to:

a. *Land subdividing and land development.* Establishments primarily engaged in subdividing real property into lots or developing lots for sale.

b. *Residential building construction.*

(1) Single-family housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations, and repairs) of single-family residential housing units.

Building alterations, single-family—general contractors

Building construction, single-family—general contractors

Custom builders, single-family houses—general contractors

Designing and erecting, combined: single-family houses—general contractors

Home improvements, single-family—general contractors

House construction, single-family—general contractors

House: shell erection, single-family—general contractors

Mobile home repair, on site—general contractors

Modular housing, single-family (assembled on site)—general contractors

One-family house construction—general contractors

Prefabricated single-family houses erection—general contractors

Premanufactured housing, single-family (assembled on site)—general contractors

Remodeling buildings, single-family—general contractors

Renovating buildings, single-family—general contractors

Repairing buildings, single-family—general contractors
 Residential construction, single-family—general contractors
 Row house (single-family) construction—general contractors
 Town house construction—general contractors

(2) Multifamily housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of multifamily residential housing units.

Apartment building construction—general contractors
 Building alterations, residential: except single-family—general contractors
 Building construction, residential: except single-family—general contractors
 Custom builders, residential: except single-family—general contractors
 Designing and erecting, combined: residential, except single-family—general contractors
 Dormitory construction—general contractors
 Home improvements, residential: except single-family—general contractors
 Prefabricated building erection, residential: except single-family—general contractors
 Remodeling buildings, residential: except single-family—general contractors
 Renovating buildings, residential: except single-family—general contractors
 Repairing buildings, residential: except single-family—general contractors
 Residential construction, except single-family—general contractors

c. Nonresidential building construction.

(1) Manufacturing and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of manufacturing and industrial buildings.

Building alterations, industrial and warehouse—general contractors
 Building components manufacturing plant construction—general contractors
 Building construction, industrial and warehouse—general contractors
 Clean room construction—general contractors
 Cold storage plant construction—general contractors
 Commercial warehouse construction—general contractors
 Custom builders, industrial and warehouse—general contractors
 Designing and erecting, combined: industrial—general contractors
 Dry cleaning plant construction—general contractors
 Factory construction—general contractors
 Food products manufacturing or packing plant construction—general contractors
 Grain elevator construction—general contractors
 Industrial building construction—general contractors
 Industrial plant construction—general contractors
 Paper pulp mill construction—general contractors
 Pharmaceutical manufacturing plant construction—general contractors
 Prefabricated building erection, industrial—general contractors
 Remodeling buildings, industrial and warehouse—general contractors
 Renovating buildings, industrial and warehouse—general contractors
 Repairing buildings, industrial and warehouse—general contractors
 Truck and automobile assembly plant construction—general contractors
 Warehouse construction—general contractors

(2) Commercial and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of commercial and industrial buildings.

Administration building construction—general contractors
 Amusement building construction—general contractors
 Auditorium construction—general contractors
 Bank building construction—general contractors
 Building alterations, nonresidential: except industrial and warehouses—general contractors

Building construction, nonresidential: except industrial and warehouses—general contractors
 Casino construction—general contractors
 Church, synagogue and related building construction—general contractors
 Civic center construction—general contractors
 Commercial building construction—general contractors
 Custom builders, nonresidential: except industrial and warehouses—general contractors
 Designing and erecting, combined: commercial—general contractors
 Dome construction—general contractors
 Farm building construction, except residential—general contractors
 Fire station construction—general contractors
 Garage construction—general contractors
 Hospital construction—general contractors
 Hotel construction—general contractors
 Institutional building construction, nonresidential—general contractors
 Mausoleum construction—general contractors
 Motel construction—general contractors
 Municipal building construction—general contractors
 Museum construction—general contractors
 Office building construction—general contractors
 Passenger and freight terminal building construction—general contractors
 Post office construction—general contractors
 Prefabricated building erection, nonresidential: except industrial and warehouses—general contractors
 Prison construction—general contractors
 Remodeling buildings, nonresidential: except industrial and warehouses—general contractors
 Renovating buildings, nonresidential: except industrial and warehouses—general contractors
 Repairing buildings, nonresidential: except industrial and warehouses—general contractors
 Restaurant construction—general contractors
 School building construction—general contractors
 Service station construction—general contractors
 Shopping center construction—general contractors
 Silo construction, agricultural—general contractors
 Stadium construction—general contractors
 Store construction—general contractors
d. Highway, street, bridge and tunnel construction.
 (1) Highway and street construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of highways (except elevated), streets, roads, or airport runways, and establishments identified as highway and street construction management firms, and establishments identified as special trade contractors engaged in performing subcontract work primarily related to highway and street construction.
 Airport runway construction—general contractors
 Alley construction—general contractors
 Asphalt paving; roads, public sidewalks and streets—contractors
 Concrete construction; roads, highways, public sidewalks, and streets—contractors
 Grading for highways, streets and airport runways—contractors
 Guardrail construction on highways—contractors
 Highway construction, except elevated—general contractors
 Highway signs, installation of—contractors
 Parkway construction—general contractors
 Paving construction—contractors
 Resurfacing streets and highways—contractors
 Road construction, except elevated—general contractors

Sidewalk construction, public—contractors

Street maintenance or repair—contractors

Street paving—contractors

(2) Bridge and tunnel construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of bridges, viaducts, elevated highways and tunnels, and establishments identified as bridge and tunnel construction management firms, and establishments identified as special trade contractors primarily engaged in performing subcontract work related to bridge and tunnel construction.

Abutment construction—general contractors

Bridge construction—general contractors

Causeway construction on structural supports—general contractors

Highway construction, elevated—general contractors

Overpass construction—general contractors

Trestle construction—general contractors

Tunnel construction—general contractors

Underpass construction—general contractors

Viaduct construction—general contractors

e. Other heavy construction.

(1) Water, sewer, and pipeline construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of water mains, sewers, drains, gas mains, natural gas pumping stations, and gas and oil pipelines, and establishments identified as water, sewer and pipeline construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to water, sewer, and pipeline construction.

Aqueduct construction—general contractors

Conduit construction—contractors

Distribution lines (oil and gas field) construction—general contractors

Gas main construction—general contractors

Manhole construction—contractors

Natural gas compressing station construction—general contractors

Pipe laying—general contractors

Pipeline construction—general contractors

Pipeline wrapping—contractors

Pumping station construction—general contractors

Sewage collection and disposal line construction—general contractors

Sewer construction—general contractors

Water main line construction—general contractors

(2) Power and communication transmission line construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of electric power and communication transmission lines and towers, radio and television transmitting/receiving towers, cable laying, and cable television lines, and establishments identified as power and communication transmission line construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to power and communication line construction.

Cable laying construction—contractors

Cable television line construction—contractors

Pole line construction—general contractors

Power line construction—general contractors

Telegraph line construction—general contractors

Telephone line construction—general contractors

Television and radio transmitting tower construction—general contractors

Transmission line construction—general contractors

(3) Industrial nonbuilding structure construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of heavy industrial nonbuilding structures, such as chemical complexes, or facilities, cement plants, petroleum refineries, industrial incinerators, ovens, kilns, power plants (except hydroelectric plants), and nuclear reactor containment structures, and establishments identified as industrial nonbuilding construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to industrial nonbuilding construction.

- Chemical complex or facilities construction—general contractors
- Coke oven construction—general contractors
- Discharging station construction, mine—general contractors
- Furnace construction for industrial plants—general contractors
- Industrial incinerator construction—general contractors
- Industrial plant appurtenance construction—general contractors
- Kiln construction—general contractors
- Light and power plant construction—general contractors
- Loading station construction, mine—general contractors
- Mine loading and discharging station construction—general contractors
- Mining appurtenance construction—general contractors
- Nuclear reactor containment structure construction—general contractors
- Oil refinery construction—general contractors
- Oven construction, bakers'—general contractors
- Oven construction for industrial plants—general contractors
- Petrochemical plant construction—general contractors
- Petroleum refinery construction—general contractors
- Power plant construction—general contractors
- Tipple construction—general contractors
- Washeries construction, mining—general contractors

(4) All other heavy construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction or repairs) of heavy nonbuilding construction projects (except highway, street, bridge, tunnel, water lines, sewer lines, pipelines, and power and communication transmission lines), and industrial nonbuilding structures, and establishments identified as all other heavy construction management firms, and establishments primarily engaged in construction equipment rental with an operator, and establishments identified as special trade contractors engaged in activities primarily related to all other heavy construction.

- Athletic field construction—general contractors
- Blasting, except building demolition—contractors
- Breakwater construction—general contractors
- Bridle path construction—general contractors
- Brush clearing or cutting—contractors
- Caisson drilling—contractors
- Canal construction—general contractors
- Channel construction—general contractors
- Channel cutoff construction—general contractors
- Clearing of land—general contractors
- Cofferdam construction—general contractors
- Cutting right-of-way—general contractors
- Dam construction—general contractors
- Dike construction—general contractors
- Dock construction—general contractors
- Drainage project construction—general contractors
- Dredging—general contractors
- Earthmoving, not connected with building construction—general contractors

Flood control project construction—general contractors
 Golf course construction—general contractors
 Harbor construction—general contractors
 Heavy equipment rental with an operator—contractors
 Hydroelectric plant construction—general contractors
 Irrigation projects, construction—general contractors
 Jetty construction—general contractors
 Land clearing—contractors
 Land drainage—contractors
 Land leveling (irrigation)—contractors
 Land reclamation—contractors
 Levee construction—general contractors
 Lock and waterway construction—general contractors
 Marine construction—general contractors
 Missile facilities construction—general contractors
 Pier construction—general contractors
 Pile driving—general contractors
 Pond construction—general contractors
 Railroad construction—general contractors
 Railway roadbed construction—general contractors
 Reclamation projects construction—general contractors
 Reservoir construction—general contractors
 Revetment construction—general contractors
 Rock removal-underwater—contractors
 Sewage treatment plant construction—general contractors
 Ski tow erection—general contractors
 Soil compacting service—contractors
 Submarine rock-removal—general contractors
 Subway construction—general contractors
 Tennis court construction, outdoor—general contractors
 Timber removal-underwater—contractors
 Trail building—general contractors
 Trailer camp construction—general contractors
 Trenching—contractors
 Waste disposal plant construction—general contractors
 Water power project construction—general contractors
 Water treatment plant construction—general contractors
 Waterway construction—general contractors
 Wharf construction—general contractors

f. Plumbing, heating and air conditioning contractors. Establishments primarily engaged in one or more of the following: (1) installing plumbing, heating, and air-conditioning equipment; (2) servicing plumbing, heating, and air-conditioning equipment; and (3) the combined activity of selling and installing plumbing, heating, and air-conditioning equipment. The plumbing, heating, and air-conditioning work performed includes new work, additions, alterations, and maintenance and repairs.

Air system balancing and testing—contractors
 Air conditioning, with or without sheet metal work—contractors
 Boiler cleaning—contractors
 Boiler erection and installation—contractors
 Drainage system installation (cesspool and septic tank)—contractors
 Dry well (cesspool) construction—contractors
 Fuel oil burner installation and servicing—contractors

Furnace repair—contractors
 Gasline hookup—contractors
 Heating equipment installation—contractors
 Heating, with or without sheet metal work—contractors
 Lawn sprinkler system installation—contractors
 Mechanical contractors
 Piping, plumbing—contractors
 Plumbing and heating—contractors
 Plumbing repair—contractors
 Plumbing, with or without sheet metal work—contractors
 Solar heating apparatus—contractors
 Sprinkler system installation—contractors
 Steam fitting—contractors
 Sump pump installation and servicing—contractors
 Ventilating work, with or without sheet metal work—contractors
 Water pump installation and servicing—contractors
 Water system balancing and testing—contractors
 Work combined with heating or air conditioning—contractors

g. Painting and wall covering contractors. Establishments primarily engaged in interior or exterior painting and interior wall covering. The painting and wall covering work includes new work, additions, alterations, and maintenance and repairs.

Bridge painting—contractors
 Electrostatic painting on site (including lockers and fixtures)—contractors
 House painting—contractors
 Painting of buildings and other structures, except roofs—contractors
 Paper hanging—contractors
 Ship painting—contractors
 Traffic lane painting—contractors
 Wallpaper removal—contractors
 Whitewashing—contractors

h. Electrical contractors. Establishments primarily engaged in one or more of the following: (1) performing electrical work at the site; (2) servicing electrical equipment at the site; and (3) the combined activity of selling and installing electrical equipment. The electrical work performed includes new work, additions, alterations, and maintenance and repairs.

Cable splicing, electrical—contractors
 Cable television hookup—contractors
 Communication equipment installation—contractors
 Electric work—contractors
 Electrical repair at site of construction—contractors
 Electronic control system installation—contractors
 Highway lighting and electrical signal construction—contractors
 Intercommunication equipment installation—contractors
 Sound equipment installation—contractors
 Telecommunications equipment installation—contractors
 Telephone and telephone equipment installation—contractors

i. Masonry, stone work, tile setting and plastering.

(1) Masonry and stone contractors. Establishments primarily engaged in masonry work, stone setting, and other stone work. The masonry work, stone setting and other stone work performed includes new work, additions, alterations, and maintenance and repairs.

Bricklaying—contractors
 Cement block laying—contractors
 Chimney construction and maintenance—contractors

- Concrete block laying—contractors
- Foundations, building of: block, stone or brick—contractors
- Marble work, exterior construction—contractors
- Masonry—contractors
- Refractory brick construction—contractors
- Retaining wall construction: block, stone or brick—contractors
- Stone setting—contractors
- Stone work erection—contractors
- Tuck pointing—contractors

(2) Drywall, plastering, acoustical, and insulation contractors. Establishments primarily engaged in drywall, plaster work, acoustical and building insulation work. The drywall, plaster work, acoustical and insulation work performed includes new work, additions, alterations, and maintenance and repairs.

- Acoustical work—contractors
- Ceilings, acoustical installation—contractors
- Drywall construction—contractors
- Insulation installation, buildings—contractors
- Lathing—contractors
- Plastering, plain or ornamental—contractors
- Solar reflecting insulation film—contractors
- Stucco construction—contractors
- Taping and finishing drywall—contractors

(3) Tile, marble, terrazzo, and mosaic contractors. Establishments primarily engaged in (1) setting and installing ceramic tile, marble (interior only), terrazzo, and mosaic, or (2) mixing marble particles and cement to make terrazzo at the job site. The tile, marble, terrazzo, and mosaic work performed includes new work, additions, alterations, and maintenance and repairs.

- Fresco work—contractors
- Mantel work—contractors
- Marble installation, interior; including finishing—contractors
- Mosaic work—contractors
- Terrazzo work—contractors
- Tile installation, ceramic—contractors
- Tile setting, ceramic—contractors

j. Carpentering and floor contractors.

(1) Carpentry contractors. Establishments primarily engaged in framing, carpentry, and finishing work. The carpentry work performed includes new work, additions, alterations, and maintenance and repairs.

- Carpentry work—contractors
- Folding door installation—contractors
- Framing—contractors
- Garage door installation—contractors
- Joinery, ship—contractors
- Ship joinery—contractors
- Store fixture installation—contractors
- Trim and finish—contractors
- Window and door (prefabricated) installation—contractors

(2) Floor laying and other floor contractors. Establishments primarily engaged in the installation of resilient floor tile, carpeting, linoleum, and wood or resilient flooring. The floor laying and other floor work performed includes new work, additions, alterations, and maintenance and repairs.

- Asphalt tile installation—contractors
- Carpet laying or removal service—contractors
- Fireproof flooring construction—contractors
- Floor laying, scraping, finishing and refinishing—contractors

Flooring, wood—contractors
 Hardwood flooring—contractors
 Linoleum installation—contractors
 Parquet flooring—contractors
 Resilient floor laying—contractors
 Vinyl floor tile and sheet installation—contractors

k. Roofing, siding, and sheet metal contractors. Establishments primarily engaged in the installation of roofing, siding, sheet metal work, and roof drainage-related work, such as downspouts and gutters. The roofing, siding and sheet metal work performed includes new work, additions, alterations, and maintenance and repairs.

Architectural sheet metal work—contractors
 Ceilings, metal; erection and repair—contractors
 Coppersmithing, in connection with construction work—contractors
 Downspout installation, metal—contractors
 Duct work, sheet metal—contractors
 Gutter installation, metal—contractors
 Roof spraying, painting or coating—contractors
 Roofing work, including repairing—contractors
 Sheet metal work: except plumbing, heating or air conditioning—contractors
 Siding—contractors
 Skylight installation—contractors
 Tinsmithing, in connection with construction work—contractors

l. Concrete contractors. Establishments primarily engaged in the use of concrete and asphalt to produce parking areas, building foundations, structures, and retaining walls and the use of all materials to produce patios, private driveways and private walks. The concrete work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalting of private driveways and private parking areas—contractors
 Blacktop work; private driveways and private parking areas—contractors
 Concrete finishers—contractors
 Concrete work: private driveways, sidewalks, and parking areas—contractors
 Culvert construction—contractors
 Curb construction—contractors
 Foundations, building of: poured concrete—contractors
 Grouting work—contractors
 Gunite work—contractors
 Parking lot construction—contractors
 Patio construction, concrete—contractors
 Sidewalk construction, except public—contractors

m. Water well drilling contractors. Establishments primarily engaged in drilling, tapping, and capping of water wells and geothermal drilling. The water well drilling work performed includes new work, additions, alterations, and maintenance and repairs.

Drilling water wells—contractors
 Geothermal drilling—contractors
 Servicing water wells—contractors
 Well drilling, water: except oil or gas field water intake—contractors

n. Other special trade contractors.

(1) Structural steel erection contractors. Establishments primarily engaged in one or more of the following: (1) erecting metal, structural steel and similar products of prestressed or precast concrete to produce structural elements of building exterior, and elevator fronts; (2) setting rods, bars, rebar, mesh and cages to reinforce poured-in-place concrete; and (3) erecting cooling towers and metal storage tanks. The structural steel erection work performed includes new work, additions, alterations, reconstruction, and maintenance and repairs.

- Building front installations, metal—contractors
- Concrete products, structural precast or prestressed: placing of—contractors
- Concrete reinforcement, placing of—contractors
- Curtain wall installation—contractors
- Elevator front installation, metal—contractors
- Iron work, structural—contractors
- Metal furring—contractors
- Steel work, structural—contractors
- Storage tanks, metal; erection—contractors
- Storefront installation, metal—contractors
- (2) Glass and glazing contractors. Establishments primarily engaged in installing glass or tinting glass. The glass work performed includes new work, additions, alterations, and maintenance and repairs.
 - Glass installation, except automotive—contractors
 - Glass work, except automotive—contractors
 - Glazing work—contractors
 - Tinting glass—contractors
- (3) Excavation contractors. Establishments primarily engaged in preparing land for building construction. The excavation work performed includes new work, additions, alterations, and repairs.
 - Excavation work—contractors
 - Foundation digging (excavation)—contractors
 - Grading: except for highways, streets and airport runways—contractors
- (4) Wrecking and demolition contractors. Establishments primarily engaged in wrecking and demolition of buildings and other structures.
 - Concrete breaking for streets and highways—contractors
 - Demolition of buildings or other structures, except marine—contractors
 - Dismantling steel oil tanks, except oil field work—contractors
 - Underground tank removal—contractors
 - Wrecking of building or other structures, except marine—contractors
- (5) Building equipment and other machinery installation contractors. Establishments primarily engaged in one or more of the following: (1) the installation or dismantling of building equipment, machinery or other industrial equipment; (2) machine rigging; and (3) millwrighting. The building equipment and other machinery installation work performed includes new work, additions, alterations, and maintenance and repairs.
 - Conveyor system installation—contractors
 - Dismantling of machinery and other industrial equipment—contractors
 - Dumbwaiter installation—contractors
 - Dust collecting equipment installation—contractors
 - Elevator installation, conversion, and repair—contractors
 - Incinerator installation, small—contractors
 - Installation of machinery and other industrial equipment—contractors
 - Machine rigging—contractors
 - Millwrights
 - Pneumatic tube system installation—contractors
 - Power generating equipment installation—contractors
 - Revolving door installation—contractors
 - Vacuum cleaning systems, built-in—contractors
- (6) All other special trade contractors. Establishments primarily engaged in specialized construction work. The other specialized work performed includes new work, additions, alterations, and maintenance and repairs.
 - Antenna installation, except household type—contractors
 - Artificial turf installation—contractors
 - Awning installation—contractors

Bathtub refinishing—contractors
Boring for building construction—contractors
Bowling alley installation and service—contractors
Cable splicing service, nonelectrical—contractors
Caulking (construction)—contractors
Cleaning building exteriors—contractors
Cleaning new buildings after construction—contractors
Coating of concrete structures with plastic—contractors
Core drilling for building construction—contractors
Countertop installation—contractors
Dampproofing buildings—contractors
Dewatering—contractors
Diamond drilling for building construction—contractors
Epoxy application—contractors
Erection and dismantling of forms for poured concrete—contractors
Fence construction—contractors
Fire escape installation—contractors
Fireproofing buildings—contractors
Forms for poured concrete, erection and dismantling—contractors
Gas leakage detection—contractors
Gasoline pump installation—contractors
Glazing of concrete surfaces—contractors
Grave excavation—contractors
House moving—contractors
Insulation of pipes and boilers—contractors
Lead burning—contractors
Lightning conductor erection—contractors
Mobile home site setup and tie down—contractors
Ornamental metal work—contractors
Paint and wallpaper stripping—contractors
Plastic wall tile installation—contractors
Posthole digging—contractors
Sandblasting of building exteriors—contractors
Scaffolding construction—contractors
Service and repair of broadcasting stations—contractors
Service station equipment installation, maintenance and repair—contractors
Shoring and underpinning work—contractors
Spectator seating installation—contractors
Steam cleaning of building exteriors—contractors
Steeplejacks
Swimming pool construction—contractors
Television and radio stations, service and repair of—contractors
Test boring for construction—contractors
Tile installation, wall: plastics—contractors
Waterproofing—contractors
Weatherstripping—contractors
Welding contractors, operating at site of construction
Window shade installation—contractors

23.82(3) *The assignment of standard industrial codes.* Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Ideally, the principal product or service should

be determined by its relative share of value added at the establishment. Since this is not possible for all sectors of the economy, the following should be used as a guide for determining industry codes:

Division	Data Measure
Agriculture, forestry and fishing (except agricultural services)	Value of production
Mining	Value of production
Construction	Value of production
Manufacturing	Value of production
Transportation, communication, electric, gas and sanitary services	Value of receipts or revenues
Wholesale trade	Value of sales
Retail trade	Value of sales
Finance, insurance, and real estate	Value of receipts
Service (including agricultural services)	Value of receipts or revenues
Public administration	Employment or payroll

In some cases it will not be possible to determine even on an estimated basis the value of production or similar appropriate measure for each product or service. In other cases an industrial classification based on measures of output will not accurately reflect the importance of the diversified activities. In these cases, employment or payroll should be used in lieu of the normal basis for determining the primary activity and subsequent code assignment of the establishment.

This rule is intended to conform to federal changes in the North American Industry Classification System and implements Iowa Code sections 96.7(2), 96.7(3), 96.7(4) and 96.11(1).

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¹ Agency rescinded prior to effective date

CHAPTER 24
CLAIMS AND BENEFITS

[Prior to 11/17/75, Ch 3]

[Prior to 9/24/86, Employment Security[370]]

[The filed emergency amendments were rescinded and the amendments to
Chapter 4 were adopted following Notice, 12/31/86 IAB, effective 2/4/87]

[Prior to 3/12/97, Job Service Division [345] Ch 4]

871—24.1(96) Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(1) *Additional claim.* An application for determination of eligibility filed on an established claim which follows a period of employment.

24.1(2) *Administrative office (state).* Same as central office.

24.1(3) *Agent state.* The state in which a worker claims benefits against another (liable) state through the facilities of the state employment security agency. See also liable state.

24.1(4) Reserved.

24.1(5) *Annual benefit amount.* See maximum annual benefits under benefits.

24.1(6) *Appeals.* See rule 871—26.1(96).

a. Administrative appeal. A request for a review by an appeals authority of a state employment security agency's determination on a claim for benefits, on a status report, or on an employer's contribution rate, or a request for a review by a higher appeals authority of a decision made by a lower appeals authority.

b. Employment appeal board of the department of inspections and appeals. The employment appeal board of the department of inspections and appeals is established to hear and decide disputed claims. The employment appeal board of the department of inspections and appeals will consist of three members appointed by the governor with the approval of two-thirds of the members of the senate. One member will represent the general public, one member will represent employers, and one member will represent employees.

This subrule is intended to implement Iowa Code section 96.6(4).

24.1(7) *Applicant.* Any individual applying for work at a workforce development center.

24.1(8) and 24.1(9) Reserved.

24.1(10) *Average weekly wages.* See wages.

24.1(11) *Base period.* The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or

b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

24.1(12) *Base period employer and chargeable employer.*

a. Base period employer. An employer who paid wages for employment to a claimant during the claimant's base period or an employer who is responsible for an individual's wages pursuant to Iowa Code section 96.3, subsection 5, pertaining to workers' compensation benefits.

b. Chargeable employer. An employer who had base period wages accruing to the employer's account due to an employer liability determination.

24.1(13) Benefit amount.

a. Maximum weekly benefit amount. The highest weekly benefit amount provided in a state employment security law.

b. Minimum weekly benefit amount. The lowest weekly benefit amount for a week of total unemployment provided in a state employment security law.

c. Weekly benefit amount. The full amount of benefits a claimant is entitled to receive for a week of total unemployment.

24.1(14) Benefit decision. The decision reached by a lower or higher appeals authority with respect to an appealed claim. See also benefit determination, under determination.

24.1(15) Benefit determination. See determination.

24.1(16) Benefit eligibility conditions. Statutory requirements which must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

24.1(17) Benefit formula. The combination of mathematical factors specified in the state employment security law as the basis for computing an individual's weekly benefit amount and maximum benefit amount.

a. Annual wage formula. A benefit formula which uses the claimant's total wages in insured work for a one-year period for computing the claimant's maximum benefit amount.

b. High quarter formula. A benefit formula which uses, for determining a claimant's weekly benefit amount, the quarter of the base period in which the claimant's wages in insured work were highest.

24.1(18) Benefits. Money payments to an individual with respect to unemployment.

a. Regular benefits. Benefits payable to an individual under this or any other state law (including benefits payable to federal civilian employees and ex-servicemembers pursuant to 5 U.S.C., chapter 85) other than extended benefits.

b. Extended benefits. Benefits payable to an individual (including benefits payable to federal civilian employees pursuant to 5 U.S.C., chapter 85) for weeks of unemployment which begin in an extended benefit period, which is a period when extended benefits are paid in this state.

24.1(19) Benefit wages. See wages.

24.1(20) Benefit year. That period to which the limitation of maximum duration of benefits is applicable, a year or approximately a year.

24.1(21) Benefit year, individual. The benefit year is a period of 365 days (366 in a leap year) beginning with and including the starting date of the benefit year. The starting date of the benefit year is always on Sunday and is the Sunday of the current week in which the claimant first files a valid claim unless the claim is backdated as allowed under paragraph 24.2(1) "h."

24.1(22) Calendar week. See week.

24.1(23) Central office. The state administrative office of the division of unemployment insurance services of the department of workforce development.

24.1(24) Reserved.

24.1(25) Claim. A request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment.

a. A claim may be filed under any one or more of the following programs:

- (1) The state program of unemployment insurance (UI),
- (2) The federal program of unemployment compensation for federal employees (UCFE) established by Title V of the United States Code, and
- (3) The federal program of unemployment compensation for ex-military personnel (UCX) established by Title V of the United States Code.

b. Unless otherwise specified, the term claim as used in the following definitions is applicable equally to each of the three programs.

(1) *Additional UI, UCFE, or UCX claim.* A notice filed at the beginning of a second or subsequent series of claims within a benefit year, when a break in job attachment has occurred since the last claim was filed, concerning which state procedures require that separation information be obtained.

(2) *Additional claim.* An application for determination of eligibility filed on an established claim which follows a period of employment.

(3) *Additional interstate claim.* A claim filed by an interstate claimant within the benefit year of a liable state in which insured status has already been established, after a break in the continuity of filing continued interstate claims, or to establish a new series of claims against that liable state from a new agent state.

(4) *Appealed claim.* See appeal, administrative.

(5) *Combined wage claim.* A claim filed under the interstate wage combining plans. See interstate agreement.

(6) *Compensable claim.* A request for benefit payment which certifies the completion of a week of total or partial unemployment to satisfy a claim benefit for a compensable week.

(7) *Contested claim.* A claim which has been protested by an employer, the department or an interested party regarding the claimant's right to benefits.

(8) *Continued claim.* A continued claim is a request for benefit payment. A continued claim is a compensable claim. It is an electronic, oral or written application which certifies to the completion of a week of total unemployment or partial employment to claim benefits for a compensable week.

(9) *Initial claim.* An application for a determination of eligibility for benefits which determination sets forth the weekly benefit amount and duration of benefits for a benefit year.

(10) *Initial interstate claim.* A new or an additional interstate claim.

(11) *Interstate claim.* A claim filed in one state (agent state) against another state (liable state).

(12) *Intrastate claim.* A claim filed in the state of residence against wages earned in that state or by an interstate commuter.

(13) *Mail claim.* A claim filed by mail.

(14) *New claim.* An application for the establishment of a benefit year.

(15) *New interstate claim.* The first interstate claim filed by a claimant against a liable state which serves as a request for determination of insured status.

(16) *New intrastate extended benefits claim.* The first intrastate claim filed for extended benefits in a new extended benefits period by a claimant in state having extended benefits provisions in its law. Each time such provisions become effective it is considered a new extended benefit period. Such first claims will include those which become effective, without any break in the benefit series, for the week following the week in which regular benefits are exhausted or are terminated by the end of the benefit year.

(17) *New UI, UCFE, or UCX claim.* A request for determination of insured status for purposes of establishing a new benefit year.

(18) *Reopened claim.* The first continued claim in a second or subsequent series of claims in a benefit year when no additional claim is reportable. An application for determination of eligibility for benefits and which certifies to the beginning date of a period of unemployment which falls within a benefit year previously established for which a continued claim or claims may be filed and which follows a break in a claim series previously established, due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

(19) *Second benefit year claim.* A new claim with an effective date for a second benefit year which is filed within 180 calendar days following the last week of the individual's previous benefit year. The individual is notified of the expiration of the previous benefit year.

(20) *Transitional claim.* A new claim dated as of any date in the seven-day period immediately following a week benefits were claimed.

(21) *Valid UI, UCFE or UCX claim.* A new claim on which a determination has been made that the individual has met the wage or employment requirements (and, under some laws, other eligibility conditions) to establish a benefit year.

(22) *Voice response continued claim.* Rescinded IAB 8/6/03, effective 9/10/03.

24.1(26) Claimant.

- a. An individual who has filed a request for determination of insured status or a new claim, or,
- b. An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.
- c. Courtesy claimant. See transient claimant.
- d. Transient claimant. A transient claimant is defined as one who is moving from place to place and who indicates to the agent-state local office that the stay will be only temporarily in the area served by that office. Unlike a visiting claimant, a transient claimant does not have the intrastate claim forms and instructions from the regular reporting local office. Refer to subrule 24.23(36).
- e. Visiting claimant. A visiting claimant is one who has received permission from the regular reporting office to report temporarily to a local office of another state and who has been furnished intrastate claim forms on which to file claims.

24.1(27) Reserved.

24.1(28) Claim series. A series of claims filed for continuous weeks of unemployment or for a period of unemployment during which the lapse in compensability or in reporting is deemed by the state insufficient to interrupt the series.

24.1(29) Compensable claim. See claim.

24.1(30) Compensable week. See week.

24.1(31) Compensation. Same as benefits.

24.1(32) Contested claim. See claim.

24.1(33) Continued claim. See claim.

24.1(34) Covered employment. Same as insured work.

24.1(35) Covered worker. An individual who has earned wages in insured work.

24.1(36) Day. The period of time between any midnight and the midnight following.

24.1(37) Department. The chief executive officer of the department of workforce development is the director who shall be appointed by the governor with the approval of two-thirds of the members of the senate. It shall be the duty of the director to administer Iowa Code chapter 96.

24.1(38) Determination.

a. *Benefit determination.* A decision with respect to a request for determination of insured status, a notice of unemployment, or a claim for benefits.

b. *Coverage determination.* A determination as to whether an employing unit is a subject employer and whether service performed for it constitutes employment as defined under a state employment security law. See status determination.

c. *Determination of insured status.* A determination as to whether an individual meets the employment requirements necessary for the receipt of benefits; and, if so, such individual's weekly benefit amount and maximum benefit amount.

d. *Initial determination.* The first determination with respect to a claim or a request for determination of insured status.

e. *Monetary determination.* Same as determination of insured status.

f. *Nonmonetary determination.* A determination as to whether a claimant is barred from receiving benefits for reasons other than those affecting the claimant's insured status.

g. *Reconsidered determination.* Same as redetermination.

h. *Redetermination.* A determination made with respect to a claimant after reconsideration by the initial determining authority.

i. *Status determination.* A determination as to whether an employing unit whose status is not known is a subject employer.

24.1(39) Disqualification provisions. Those provisions of a state employment security law that set forth the conditions that bar an individual from receiving benefits for a specified period or cancel or reduce the individual's benefits or credits.

24.1(40) Duration of benefits. The number of weeks for which benefits are paid or payable for total unemployment in a benefit year. Because there may be deductible wages and other compensation,

duration is often described in terms of the total amount of benefits arrived at by multiplying the weekly benefit amount by the number of weeks of total unemployment.

a. Actual duration. The number of full weeks of benefits received by an individual, or the equivalent thereof expressed in terms of dollars.

b. Maximum duration. The highest number of weeks of total unemployment for which benefits are payable to any individual in a benefit year under a state employment security law.

24.1(41) Earnings limit. An amount equal to the weekly benefit amount plus \$15.

24.1(42) Eligibility requirements. Same as benefit eligibility conditions.

24.1(43) Employment interview. A conversation between an applicant and an interviewer directed toward obtaining and recording information pertinent to classification and selection, and giving information pertinent to job seeking.

24.1(44) Employment office. An office maintained by the department of workforce development in accordance with Iowa Code sections 96.12 and 96.25.

24.1(45) Employment security administration fund. See funds.

24.1(46) Employment security law. A body of law which establishes a free public employment service, or a system of unemployment insurance, or both and which may also establish other systems compensating for wage loss, such as temporary disability insurance in Iowa Code chapter 96.

24.1(47) Employment security program. The federal-state program comprising public employment services and unemployment insurance.

24.1(48) Fact-finding interview. A face-to-face or telephonic discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement containing information on a specific eligibility or disqualification issue. This differs from an eligibility review interview in that a specific issue must exist as a result of a statement made by either the claimant, the liable state, an employer, or the staff of the department.

24.1(49) First UI, UCFE, or UCX payment. A payment issued to a claimant for the first compensable week of unemployment in a benefit year.

24.1(50) Full-time week. See week.

24.1(51) Funds.

a. Administrative funds. Funds made available from federal, state, local and other sources to meet the cost of state employment security administration.

b. Contingency fund. An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state employment security agencies arising from increases in workload or other specified causes.

c. Special employment security contingency fund. A contingency fund established pursuant to Iowa Code section 96.13(3) into which all interest, fines, and penalties are paid.

d. Employment security administration fund. A special fund in the state treasury, established by state law, in which are deposited moneys granted by the manpower administration and monies from other sources, for the purpose of paying the cost of administering the state employment security program.

e. Title V funds. Funds appropriated by Congress to pay unemployment insurance benefits under Title V of the United States Code to federal, civilian and military employees.

f. Unemployment fund. A special fund established under a state employment security law for the receipt and management of contributions and the payment of unemployment account, clearing account, and unemployment trust fund account.

g. Unemployment trust fund. A fund established in the treasury of the United States which contains all moneys deposited with the treasury by state employment security agencies to the credit of their unemployment fund accounts and by the railroad retirement board to the credit of the railroad unemployment insurance account.

24.1(52) Handbook. The handbook for interstate claims-taking provided by the Employment and Training Administration of the United States Department of Labor.

24.1(53) High quarter formula. See benefit formula.

24.1(54) to 24.1(56) Reserved.

24.1(57) Individual base period. See base period.

24.1(58) *Individual benefit year.* See benefit year.

24.1(59) *Initial claim.* See claim.

24.1(60) *Initial determination.* See determination.

24.1(61) *Insured unemployment.* Unemployment during a given week for which benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

24.1(62) *Insured work.* Employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act.

24.1(63) *Insured worker.* An individual who has had sufficient insured work in such individual's base period to meet the employment requirements for receipt of benefits under a state employment security law.

24.1(64) *Interstate agreement.*

a. Interstate benefit payment plan. The plan under which each state acts as an agent for every other state in taking claims for individuals who are not in the state in which they earned their base period wages.

b. Interstate reciprocal coverage agreement. An administrative interstate agreement, permitted under most state employment security laws, which provides for the election of coverage of services under specified conditions which may or may not constitute an exception to the mandatory coverage provisions of the state law.

c. Wage-combining agreements. An interstate agreement which allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states.

24.1(65) *Interstate claim.* See claim.

24.1(66) *Interstate claimant.* An individual who files a claim for benefits in an agent state on the basis of employment covered by the employment security law of a liable state.

24.1(67) *Benefit rights information.* Information provided to a claimant for the purpose of explaining the claimant's rights and responsibilities under the law. Such information may be given on a group basis or on an individual basis or the information may be provided electronically.

24.1(68) *Office.*

a. Unemployment insurance service center. A full-time office staffed with workforce development staff to provide unemployment insurance services to the public.

b. Workforce development center. A full-time office staffed with workforce development personnel to provide unemployment insurance or job placement service to the public.

24.1(69) *Lag quarter.* The completed quarter between a claimant's base period and the quarter which includes the beginning date of such claimant's benefit year.

24.1(70) *Layoffs.* See separations.

24.1(71) *Liable state.* Any state against which a worker claims benefits through the facilities of a workforce development center or the job service division of another (agent) state. See also agent state.

24.1(72) *Mail claim.* See continued claims.

24.1(73) *Mass separation.* The separation from a given employing unit of a large number of workers at approximately the same time and for a reason common to all such workers.

24.1(74) *Mass separation notice.* A report of a mass separation sent to the local workforce development center by an employer, stating the number of workers separated and listing their names and other required data. Such a notice serves as a substitute for individual separation notices.

24.1(75) *Maximum benefit amount.* The maximum total amount of benefits an individual may receive during the individual's benefit year.

24.1(76) *Maximum benefits.* The maximum total amount of benefits payable to a claimant during the claimant's benefit year.

24.1(77) *Maximum weekly benefit amount.* See benefit amount.

24.1(78) *Microfiche.* Rescinded IAB 8/6/03, effective 9/10/03.

24.1(79) *Military separations.* See separations.

- 24.1(80)** *Minimum weekly benefit amount.* See benefit amount.
- 24.1(81)** *Month.* The time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.
- 24.1(82)** *Multistate worker.* An individual who performs service for one employer in more than one state.
- 24.1(83)** *New claim.* See claim.
- 24.1(84)** *Noncovered employment.* Excluded employment, or employment for an employer below the size-of-firm coverage requirements of the state employment security law.
- 24.1(85)** *Notice of separation.* A report submitted by an employer at the time when a worker is separated from employment, on which the employer indicates the dates of the last day worked, the separation date and the reason the worker was separated.
- 24.1(86)** *Odd job earnings.* Any earnings which a claimant may have during a week of unemployment as a result of temporary work with an employing unit other than the claimant's regular employing unit.
- 24.1(87)** *Opening.* A single job for which a workforce development center has on file a request to select and refer an applicant or applicants.
- 24.1(88)** *Outstanding job order request.* An active request for referral of one or more applicants to fill one or more job openings in a single occupational classification; also, the record of such request.
- 24.1(89)** *Clearance order.* Rescinded IAB 8/6/03, effective 9/10/03.
- 24.1(90)** *Partial benefits.* Benefits payable to an individual for a week of partial unemployment.
- 24.1(91)** *Partial earnings allowance.* The amount of earnings that are disregarded in calculating a claimant's benefit for a week.
- 24.1(92)** *Partial unemployment.* See week of unemployment.
- 24.1(93)** *Part-time worker.* A person engaged in, or available only for, part-time work.
- 24.1(94)** *Placement.* An acceptance by an employer of a person for a job as a direct result of workforce development center activities, provided the employment office has completed all of the following four steps: receipt of an order, prior to referral; selection of the person to be referred without designation by the employer of any particular individual or group of individuals; referral; and verification from a reliable source, preferably the employer, that a person referred has been hired by the employer and has entered on the job.
- 24.1(95)** Reserved.
- 24.1(96)** *Qualifying employment.* The amount of insured work which an individual must have had within a specified period in order to be an insured worker. See also benefit eligibility conditions.
- 24.1(97)** *Qualifying wages.* See wages.
- 24.1(98)** *Quits.* See separations.
- 24.1(99)** *Railroad unemployment insurance account.* An account, established pursuant to the Railroad Unemployment Insurance Act, maintained in the federal unemployment trust fund for the payment of benefits provided in that Act.
- 24.1(100)** *Readout.* Printed data from the claimant database or other types of records stored in the computer.
- 24.1(101)** *Reciprocal coverage agreement.* See interstate agreements.
- 24.1(102)** *Reconsidered determination.* Same as redetermination—see determination.
- 24.1(103)** *Referee appeals.* See appeal, administrative. (Administrative law judge)
- 24.1(104)** *Referral.* The act of arranging to bring to the attention of an employer (or another workforce development center) the qualifications of an applicant who is available for a job opening on file for which the applicant has been selected by a workforce development center.
- 24.1(105)** *Registration.* The process of applying for work through an office of the department of workforce development.
- 24.1(106)** *Report to determine liability.* Same as status report.
- 24.1(107)** *Reporting requirements.* The rules of procedures of the department of workforce development concerning the frequency and time of required reporting by claimants.

24.1(108) *Renewal.* The transfer from the inactive to the active file of the application of an applicant who is again considered to be available for referral to job openings.

24.1(109) *Request for determination of insured status.* A request by an individual for a determination of insured status.

24.1(110) *Selection.* The process of choosing a qualified applicant for referral to a job by carefully analyzing and comparing employer requirements with applicant interests and abilities.

24.1(111) *Self-employment.*

24.1(112) *Self-filing (of claim).* The partial or complete filling out of a claim form or request for determination of insured status by the claimant.

24.1(113) *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

24.1(114) *Short-time placement.* A placement in a job which the employer expects to involve work in each of three days or less, whether or not consecutive.

24.1(115) *Social security number.* The identification number assigned to an individual by the Social Security Administration under the Social Security Act.

24.1(116) *Status determination.* See determination.

24.1(117) *Supplemental benefit payment.* A payment issued for the sole purpose of adjusting an underpayment for one or more previous weeks.

24.1(118) *Taxable wages.* See wages.

24.1(119) *Total unemployment.* See week of unemployment.

24.1(120) Reserved.

24.1(121) *Transient.* A claimant who is moving from place to place and who indicates to the agent-state area claims office that such claimant will be only temporarily in the area served by the area office.

24.1(122) *Unemployment fund.* See funds.

24.1(123) *Unemployment trust fund.* See funds.

24.1(124) *Unemployment trust fund account.* See accounts.

24.1(125) *Valid claim.* See claim.

24.1(126) *Verification.* The determination from a reliable source, preferably the employer, whether an applicant referred by a workforce development center has been hired by the employer and has entered on the job. In the case of applicants referred to seasonal agricultural openings, verification is considered complete when it is confirmed that a referred worker has been hired, even though confirmation of the worker's entry on the job may be lacking.

24.1(127) *Visiting claimant.* A claimant who files claims against such claimant's home state through some extension of that state's intrastate claims procedures.

24.1(128) *Wage combining agreement.* See interstate agreement.

24.1(129) *Wage credits.* Wages earned in insured work.

24.1(130) *Wages.* Average weekly wages.

a. For an individual worker, the result obtained by dividing the individual's total wages in a specified period either by the total number of weeks in the period or by the number of weeks for which wages were payable to the individual during the period.

b. For a group of workers, the result obtained by dividing the total wages for one or more quarters by the number of weeks in the period, and then dividing by the average monthly employment during the period.

24.1(131) Qualifying wages. The amount of wages a worker must have earned in insured work within a specified period in order to be an insured worker. See also benefit eligibility conditions.

24.1(132) Taxable wages. Wages subject to contribution under a state employment security law, or wages subject to tax under the federal Unemployment Tax Act.

24.1(133) Reserved.

24.1(134) Weekly indemnity insurance benefits. Payment for nonoccupational illness or injury pursuant to a benefit plan implemented by an employer.

24.1(135) Week. A seven-day period beginning at 12:01 a.m. on Sunday and terminating at midnight on the following Saturday.

a. *Calendar week.* A period of seven consecutive days usually ending at Saturday midnight, used by some state employment security agencies as a unit in the measurement of employment or unemployment.

b. *Compensable week.* A week for which benefits have been claimed.

c. *Full-time week.* The number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

24.1(136) Weekly benefit amount. See benefit amount, or,

24.1(137) Weekly benefit amount. The compensation payable to an individual, with respect to employment, under the employment security law of any state.

24.1(138) Week of unemployment. A week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount (usually the weekly benefit amount), or,

24.1(139) Week of unemployment. A week during which an individual performs no work and earns no wages, except as indicated and has earnings which do not exceed the earnings limit.

a. *Week of partial unemployment.* A week in which an individual worked less than the regular full-time hours for such individual's regular employer, because of lack of work, and earned less than the weekly benefit amount (plus the partial earnings allowance, if any, in the state's definition of unemployment) but more than the partial earnings allowance, so that, if eligible for benefits, the claimant received less than such claimant's full weekly benefit amount plus \$15.

b. *Week of part total unemployment.* A week of otherwise total unemployment during which an individual has odd jobs or subsidiary work with earnings in excess of the amount specified in the state law as allowable without resulting in a reduction in the individual's benefit payment.

c. *Week of total unemployment.* A week in which an individual performs no work and earns no wages.

24.1(140) Workload. The measure of the volume of work for each functional area of the state agency; i.e., the number of contribution (payroll) reports processed, the number of claims taken, the number of applications for employment.

This rule is intended to implement Iowa Code sections 96.3(5), 96.3(7), 96.4(3), 96.5(5) "c," 96.6, 96.7(2) "a"(2), 96.11, 96.19(16), and 96.23.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—24.2(96) Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

a. Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment, shall file an initial claim for benefits electronically, in person at a local department office, or by other means prescribed by the department and register for work. A claim filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed.

b. When filing an initial claim for benefits, an individual must provide the following information to the department:

- (1) The name and complete mailing address of such individual's last employing unit or employer.
- (2) The location of the last job.
- (3) Last day of work.
- (4) The reason for separation from work.
- (5) That such individual is unemployed.
- (6) That the individual registers for work.
- (7) The individual's last job occupation.

(8) Number, name and relationship of any dependents claimed. As used in this subparagraph, "dependent" is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant, stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A "spouse" is defined as an individual who does not earn more than \$120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A "dependent" means an individual who has been or could have been claimed for the preceding tax year on the claimant's income tax return or will be claimed for the current income tax year. The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

- (9) The individual's social security number and alien registration number, if applicable.
- (10) Such other information as required by the department.

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. The claims taker will then assign a group code to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. The group codes are:

(1) Group "1" claimants are workers who have a definite attachment to a specific employer or trade and have reasonable employment prospects in a reasonable period of time. These claimants will be registered for work.

(2) Group "2" claimants are those individuals who do not otherwise meet the qualification for group "1," "3," "4," "5," or "6" under this section. Group "2" claimants may also include the following: claimants who were employed in demand occupations; irregular employment record (in reference to occupation); delay in claim filing; moved to address remote from labor market or transportation problems; unfavorable job prospects because of recent arrival in locality; farming activities; self-employment assuming otherwise eligible; students or prospective students; pensioners; domestic care or problems; previous fraud or overpayment record; physical impairment or poor health which would limit employability; personal or other restrictions (wages, hours, travel).

(3) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer." This group pertains only to those individuals who worked full-time and will again work full-time if the individual's employment, although temporarily suspended, has not been terminated. After a period of

temporary unemployment, claimants in this group are reviewed for placement in group “1,” “2,” “5” or “6.”

(4) Group “4” claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee’s job. Group “4” claimants with an individual benefit year starting prior to July 1, 1984, shall be able to work, available for work and have the search for work provisions of Iowa Code section 96.4(3) waived. Group “4” claimants with an individual benefit year starting on or after July 1, 1984, shall have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group “4” code shall not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(5) Group “5” claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership is acceptable as evidence of membership in such an organization. Loss of membership shall result in an assignment to group “2.”

(6) Group “6” claimants are those individuals whose occupations are of a nature that utilize résumés or who are normally unable, due to factors such as occupation, distance, etc., to make in-person contacts for employment.

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

d. Reserved.

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly in the individual’s account at a financial institution or on a selected debit card.

(2) In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

(3) The department retains the ultimate authority to choose the method of reporting and payment.

f. After the initial claim has been filed, the claimant will receive from the local office or the administrative office a Form 65-5318, which is a notice of the action taken on the claim, and if such claimant is eligible for benefits this notice will state the date on which the benefit year will begin, the amount per week, and the maximum amount for which the claimant is eligible.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

(2) An individual claiming benefits using the weekly continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The individual shall set forth the following:

1. That the individual continues the claim for benefits;
2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, was able to work and available for work;

3. That the individual indicates the number of employers contacted for work;

4. That the individual knows the law provides penalties for false statements in connection with the claim;

5. That the individual has reported any job offer received during the period covered by the claim;
 6. Other information required by the department.
 - h.* Effective starting date for the benefit year.
 - (1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.
 - (2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:
 1. The failure of the department to recognize the expiration of the claimant's previous benefit year;
 2. The claimant filed an interstate claim against another state which has been determined as ineligible.
 - (3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of a calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.
 - i.* An individual shall be entitled to partial benefits for any week of less than full-time work, provided the wages earned during such week are less than the individual's weekly benefit earning limit, plus \$15. If the individual has been placed on reduced employment the individual may be entitled to partial benefits, and should file a claim in accordance with the instructions pertaining to the partial claims procedure.
 - j.* Reserved.
 - k.* Any individual who is disqualified for benefits because of the individual's failure to report as directed to file a claim following the date specified may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request and the decision may be appealed to an administrative law judge for a hearing and decision on the merits. If the petition is allowed the petitioner shall be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.
- 24.2(2)** Filing a claim for unemployment insurance benefits (not applicable to interstate claims).
- a.* A notice of claim filing, which includes the name and social security number of the individual claiming benefits, shall be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.
 - b.* Even though the claims taker may believe that the claimant cannot meet the eligibility conditions required by statute, the claims taker shall in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim shall be accepted without hesitance. The claimant must provide adequate proof of identification such as a driver's license, car registration, or union membership card or supply personally identifying information.
 - c.* If a claim was filed in a previous quarter and was determined not eligible because of no wage records, or lack of qualifying earnings, a benefit year has not been established and a new claim will be taken. A new claim should not be taken if the claimant previously has filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker shall explain to the claimant that another claim filed in the same quarter would also be determined as ineligible because additional wage credits (if any) would not be available until a subsequent quarter. The claimant should be advised to file a new claim during the first full week of the next calendar quarter.
 - d.* If the check of the files does not disclose a previous claim and the claimant states that a claim has not been filed during the past year, a new claim shall be taken.
 - e.* Partially unemployed claims.
 - (1) A partially unemployed individual shall file a claim for benefits in the same manner as an initial claim for unemployment insurance.

(2) Reporting wages. A partially unemployed individual shall report all wages which are earned for each week benefits are claimed.

(3) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus \$15 for four consecutive weeks before the individual is required to file an additional claim for benefits.

24.2(3) Filing a claim for unemployment insurance benefits (interstate only).

a. Initial interstate claims. All interstate claimants must file an Iowa claim electronically or through a department representative.

b. When the department is acting as an agent for another state unemployment insurance agency with respect to the filing of an initial claim for benefits, the department shall require an interstate claimant to complete and file an Initial Interstate Claim, Form 61-1000(IB-1), unless otherwise directed by the interstate handbook.

24.2(4) Cancellation of unemployment insurance claim.

a. A request for cancellation of an unemployment insurance claim may be made by the individual in writing and be directed to the Unemployment Insurance Service Center, Department of Workforce Development, P.O. Box 10332, Des Moines, Iowa 50306. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made.

b. A cancellation request which is the result of employer coercion or intimidation shall be denied and the employer could be subjected to serious misdemeanor charges.

c. Cancellation requests within the ten-day protest period. The claims section, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

e. If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state shall not be reestablished with the same effective date.

f. Voiding a claim. If it is determined a claim has been filed under an incorrect social security number, the claim shall be voided rather than canceled.

g. All unemployment insurance claims canceled shall be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(4), 96.4(1), 96.4(3), 96.5(1) "h," 96.5(3), 96.6(1), 96.6(2), 96.15, 96.16, 96.19(4), 96.19(24), and 96.20.
[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—24.3(96) Social security number needed for filing.

24.3(1) The claims taker must have the social security number of the claimant. The correct social security number is essential in the processing of the claim. Therefore, if the claimant has a social security card, the number must be taken from that card or be provided by the claimant. If the claimant has two or more social security numbers, the claim shall be held until the claimant ascertains which number is correct.

24.3(2) When a claimant does not have a social security card and no other record of the claimant's social security number is available the claims taker shall advise the claimant that the number may be available from the claimant's employer.

24.3(3) In all such instances, the claims taker shall take the claim and hold it pending receipt of the social security number for a period not to exceed 30 days. If no number is provided by the claimant within 30 days, the claims taker shall submit the claim without a number. Such claims will be determined as ineligible (no wage credits).

24.3(4) and **24.3(5)** Rescinded IAB 8/6/03, effective 9/10/03.

24.3(6) The department will assist the claimant in every reasonable manner so that the claim may be processed in the shortest possible time.

871—24.4(96) Benefit rights information.

24.4(1) *Intrastate benefits.* Benefit rights information is provided to each individual filing an initial claim for benefits to explain those provisions in the law and rules which govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program. The benefit rights information may be given by an individual or group type interview or by telephone or electronically. A Form 70-6200, Facts About Unemployment Insurance, will be provided which explains the individual's rights, benefits, and responsibilities under Iowa's unemployment insurance program.

24.4(2) *Interstate benefits.* Benefit rights information is not required for each individual who files an initial claim for interstate benefits. Claimants will be advised to contact the liable state which will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

24.4(3) *Federal benefits.* Rescinded IAB 8/6/03, effective 9/10/03.

871—24.5(96) Mass separation—definition and procedure.

24.5(1) *Mass separation.* A mass separation is a layoff of all or a large number of workers, either permanently, indefinitely, or for a specific duration by one or more employers in the same area, at approximately the same time, and for the same common reason.

a. The special procedures for mass claim filing may be applied by the department, and the procedures may include taking claims at a designated site or utilizing an electronic mass claim entry form.

b. If other facilities must be obtained for a mass layoff, the order of precedence for obtaining such facilities will be as follows:

- (1) Interested employer involved.
- (2) Bona fide union which represents the workers.
- (3) Public facility (i.e., courthouse, city hall).

24.5(2) *Cooperation of employers.* To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. The workforce development center shall provide the information to legal counsel for the unemployment insurance

services bureau so that the mass claim separation can be coordinated between the affected parties. This information should include:

- a. The number of workers to be separated.
- b. The date of separation and, if staggered, the number on each date.
- c. Reason for layoff.
- d. Its probable duration.
- e. If recall is anticipated, the date it will begin and, if staggered, the number to be recalled on each date.
- f. Rescinded IAB 8/6/03, effective 9/10/03.
- g. Reserved.
- h. If the layoff is for vacation or inventory purposes, the employer shall follow the vacation pay procedure in rules 871—24.16(96) and 871—24.17(96).

24.5(3) *Methods of mass claim taking.* The department may adopt a plan, which is based on the employer's workers, the circumstances and the size of the layoff.

24.5(4) *Announced mass separation.* If a mass separation occurs about which the department of workforce development has not been advised in advance in sufficient time to preschedule claimants, then the claimants will be advised of the alternative methods to file their claims as quickly as possible. The department will develop a plan to provide service to the claimants as quickly as possible under the circumstances.

This rule is intended to implement Iowa Code section 96.6(1).

871—24.6(96) Profiling for reemployment services.

24.6(1) The department of workforce development and the department of economic development will jointly provide a program which consists of profiling claimants and providing reemployment services.

24.6(2) Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

24.6(3) Reemployment services may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history, and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

24.6(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

24.6(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

24.6(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services.

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.

- b. Reserved.

This rule is intended to implement Iowa Code section 96.4(7).

871—24.7(96) Workers' compensation or indemnity insurance exclusion and substitution.

24.7(1) An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and has insufficient wage credits in the base period may qualify for unemployment insurance benefits. Under specific circumstances as described below, the department shall exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period which were prior to the workers' compensation or indemnity insurance benefits.

24.7(2) An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

24.7(3) The department shall make an initial determination of eligibility for unemployment insurance benefits. If the individual has no wage records or lacks qualifying wage requirements, the department shall substitute three or more calendar quarters of the base period with those three or more consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation benefits or indemnity insurance benefits. The qualifying criteria for substituting quarters in the base period are that the individual:

- a. Must have received workers' compensation benefits under Iowa Code chapter 85 or indemnity insurance benefits for which an employer is responsible during the excluded quarters, and
- b. Did not receive wages from insured work for:
 - (1) Three or more calendar quarters in the base period, or
 - (2) Two calendar quarters and lacked qualifying wages from insured work during another quarter of the base period.

24.7(4) Subject to the provisions of subrule 24.7(3), the department shall use the following criteria for allowances and disqualifications.

a. *Allowances.* When the allowance criteria are met, the department shall always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:

- (1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings, the department will exclude and substitute all four quarters of the base period.
- (2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.

b. *Disqualifications.* The request for retroactive substitution of base period quarters shall be denied if the individual received workers' compensation or indemnity insurance benefits in:

- (1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.
- (2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.
- (3) Less than three base period quarters.

24.7(5) The individual shall be requested to complete the Affidavit and Questionnaire, Form 60-0286, which requests the following information:

- a. Individual's name and social security number.
- b. Name of employer responsible for the workers' compensation benefits or the indemnity insurance benefits.
- c. Names of employers and periods worked for the period preceding the workers' compensation or the indemnity insurance pay period.
- d. Name of the workers' compensation or indemnity insurance carrier or, if self-insured, the name of the employer.
- e. Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

24.7(6) The department will mail the redetermined initial claim to the individual. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits shall be notified of the redetermination and shall be responsible for the charges on the redetermined claim which are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits shall have the right to protest as provided in rule 871—24.8(96).

[ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—24.8(96) Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(1) Issuance of a notice of the filing of an initial claim or a request for wage and separation information to employing units.

a. The Form 65-5317, Notice of Claim, and the Form 68-0221, Request for Wage and Separation Information, shall be:

(1) Addressed to the address or addresses as requested by the employing unit and agreed to by the department, to the business office of the employing unit where the records of the individual's employment are maintained, or to the employing unit's place of business where the individual claiming benefits was most recently employed; and

(2) Sent electronically via the United States Department of Labor State Information Data Exchange System (SIDES).

b. A notice of the filing of an initial claim or a request for wage and separation information shall be mailed to an owner, partner, executive officer, departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

(2) Rescinded IAB 2/10/99, effective 3/17/99.

24.8(3) Completing and signing of forms by an employing unit which may affect the benefit rights of an individual.

a. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be accomplished by properly completing the form or computerized format provided by the department.

b. A notice of separation, and any paper response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be executed by the employing unit on the form provided by the department under the signature of an individual proprietor, a partner, an executive officer, a department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment or by completing the computerized form designated by the department.

c. Rescinded IAB 8/2/17, effective 9/6/17.

d. Failure by an employing unit or its authorized agent to timely submit any notice or response requested by the department shall result in the department representative's making a determination of the individual's rights to benefits based on the information available.

24.8(4) Mailing of determinations, redeterminations and decisions to employing units.

a. An employing unit which has filed a timely response or protest to the notice of the filing of an initial claim shall be notified in writing of the determination as to the individual's rights to benefits. If an employing unit of the individual has submitted timely information affecting the individual's rights to benefits, including facts which disclose that the individual voluntarily quit without good cause attributable to the employing unit or was discharged for misconduct in connection with employment, the employing unit shall be notified in writing of the department's decision as to the cause of termination of the individual's employment.

b. Any notice of determination or decision shall contain a statement setting forth the employing unit's right of appeal.

c. Determinations as to an individual's right to benefits, decisions as to the cause of termination of the individual's employment, decisions as to an employing unit's experience record and correspondence related thereto shall be sent to:

(1) The address of the employing unit to which the notice of the filing of an initial claim was mailed;
or

(2) The address requested by the employing unit on the document filed with the department in response or protest to the notice of the filing of an initial claim;

(3) If the employing unit in its response or protest to the notice of the filing of an initial claim furnishes the address of an agent for the employing unit and requests that further documents and correspondence be sent to the agent, the department representative shall comply, provided there is on file with the department an approved authorization (power of attorney) designating the agent to represent the employing unit.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.9(96) Determination of benefit rights.

24.9(1) Monetary determinations.

a. When an initial claim for benefits is filed, the department shall mail to the individual claiming benefits a Form 65-5318, Iowa Monetary Record, which is a statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual

within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

c. If newly discovered facts are obtained by the department or a written request for reconsideration is filed by the individual and is timely, an unemployment insurance representative shall examine the facts or the written request for reconsideration and shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the monetary record shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual within ten days of the date of the mailing of the redetermination specifying the grounds of objection to the redetermined monetary record. For the purposes of this paragraph, if the newly discovered facts obtained by the department would result in a change of the individual's maximum benefit amount of \$25 or less, the department representative is not required to issue a redetermination unless a redetermination is requested by the individual, the employer, or a representative of another state or federal agency responsible for the administration of an unemployment insurance law.

d. For the purposes of this subrule, the appeal period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday, or holiday. Also, failure of an individual to properly complete and sign any document relating to the adjudication of a claim shall result in the return of the document to the individual for proper completion or signature; however, an extension of the appeal period to allow for the return of the documents shall not be granted.

24.9(2) Nonmonetary determinations.

a. When a protest of an initial claim for benefits is filed, the department shall mail to the individual claiming benefits, and the most recent or any other base period employing unit, Form 65-5323, Unemployment Insurance Decision, which affects the individual's right to benefits.

b. When an issue could result in a decision detrimental to an interested party, the interested party shall be afforded the opportunity to present facts and evidence which may include an informational fact-finding interview scheduled by the department. An interested party, at the party's expense and with the party's equipment, may record (video or audio) the proceedings. All participants must be informed of the recording of the interview. The recording of the interview must not be disruptive or distracting in nature.

c. Each of these decisions of the unemployment insurance representative shall constitute a final decision unless there are newly discovered facts which affect the validity of the original decision or a written request for reconsideration is filed by the individual, or the most recent or any other base period employing unit, within ten days of the date of the mailing of the decision specifying the grounds of objection to the decision.

d. If newly discovered facts are obtained by the department or a written request for reconsideration is timely filed by the individual, or the most recent or any other base period employing unit, an unemployment insurance representative shall examine the newly discovered facts or the written request for reconsideration and shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the decision shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual, or the most recent or any other base period employing unit, within ten days of the date of the mailing of the redetermination specifying the grounds for objection to the redetermined decision.

e. For the purposes of this subrule, the protest period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday or holiday. Also, failure by an individual or an employing unit to properly complete or sign any document relating to the adjudication of a claim shall result in the return of the document to the individual or employing unit for proper completion or signature; however, an extension of the protest period to allow for the return of the document shall not be granted.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.10(96) Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual

information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

24.10(2) “A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

24.10(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

24.10(4) “Fraud or willful misrepresentation by the individual,” as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7) “b” as amended by 2008 Iowa Acts, Senate File 2160.

871—24.11(96) Eligibility review program.

24.11(1) *Purpose.* The eligibility review program is used to accelerate the individual's return to work and systematically review the individual's efforts toward the same goal.

24.11(2) *Individuals requiring an eligibility review.*

a. Selected individuals claiming intrastate benefits and interstate benefits shall be required to complete the eligibility review Form 60-0232 at times determined by the department after they have filed an initial or additional claim.

b. Rescinded IAB 8/6/03, effective 9/10/03.

24.11(3) *Eligibility review form.* Form 60-0232 contains information relating to eligibility and availability furnished by and to the individual, instructions and advice on reemployment that is given to the individual and the results of the individual's job search efforts.

a. The Eligibility Review Form 60-0232 encourages individuals to record information that bears directly on reemployment prospects and continued eligibility data.

b. It should conserve benefit funds through early identification of individuals who are restricting their availability.

c. It assures that job-ready individuals receive maximum exposure to available jobs by a workforce development center.

24.11(4) Eligibility review procedure.

a. After an individual has claimed a number of weeks of intrastate benefits as designated by the department, the workforce development center shall receive a computer selected list of individuals claiming benefits. The list shall be retained in the workforce development center so work search assistance and reemployment services can be provided as needed by the claimant.

b. No eligibility review will be performed on an individual unless monetary and nonmonetary eligibility are established.

c. An Eligibility Review Questionnaire shall be mailed or provided to the individual.

d. A copy of the Eligibility Review Questionnaire shall be sent to the workforce development center only on an individual who is in an active status at the time of its printing. If the individual fails to respond to the Eligibility Review Questionnaire within the designated period of time printed on the questionnaire, the workforce development center shall issue a Form 60-0131, Notice to Report. If the individual does not respond after this action has been taken, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

e. In cases of illness, injury or pregnancy, an unemployment insurance representative shall determine when and if a personal appearance shall be conducted. The representative shall be responsible for determining continuing eligibility or noneligibility of the individual based on the information obtained on the Form 60-0141, Request for Medical Report, or the facts presented during the interview. If the representative believes an additional Form 60-0141 may be needed, the representative shall initiate the request in the regular manner. Special attention shall be given to work search, i.e., number of contacts, types of contacts and the available job market information.

f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

g. Rescinded IAB 8/6/03, effective 9/10/03.

24.11(5) Scheduling first eligibility review interview. Individuals shall be scheduled for an eligibility review interview if:

They are in demand occupations and still unemployed; it appears that they need help in finding work or their eligibility is suspect.

24.11(6) Eligibility Review Form 60-0232.

a. The Eligibility Review Form shall be completed by the individual. This form documents the information provided by the individual. The unemployment insurance representative reviews the information to determine if there are any disqualifying issues that need to be reviewed by conducting an interview in the local office or by telephone. If the interview is conducted by telephone, the individual may waive the opportunity for an in-person interview. The form also contains the individual's work search plan and the unemployment insurance representative's advice and instruction to the individual concerning eligibility requirements and work search plans.

b. Rescinded IAB 8/6/03, effective 9/10/03.

24.11(7) Conducting the first eligibility review interview.

a. All available evidence must be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.

c. The interview as recorded on the form must convey to the individual the requirements that must be satisfied to maintain eligibility insofar as work search and availability are concerned.

d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.

e. The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy considering local labor market information and the individual's occupation.

f. The final objective of the interview is to determine whether a subsequent interview is needed. This shall be based on expected return to work date, job openings in area, local labor market conditions, etc.

24.11(8) *Eligibility Review Statistics, Form 68-0150*. Rescinded IAB 8/6/03, effective 9/10/03.

This rule is intended to implement Iowa Code sections 96.4(3) and 96.6(1).

871—24.12 Reserved.

871—24.13(96) Deductible and nondeductible payments.

24.13(1) *Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96). The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

24.13(2) *Deductible payments from benefits.* The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

b. Commissions. However, the commission payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

c. Incentive pay. However, the incentive payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

d. Strike pay. However, the strike pay is only deductible when it is a payment received for services rendered and the individual is otherwise eligible for benefits.

e. Remuneration other than cash. The cash value of all remuneration payable in any medium other than cash, board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

f. Stand-by pay. When an individual is paid to hold oneself in readiness for a call to specific work for an employer but is not called, since the work is given to another, the payment is stand-by pay which is deductible from benefits when earned by the individual during the period when the individual is claiming benefits.

g. Tips or gratuity. However, the amount of the tips or gratuity is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

24.13(3) *Fully deductible payments from benefits.* The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

24.13(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

a. Self-employment income. However, the individual must meet the benefit eligibility requirements of Iowa Code section 96.4(3).

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

c. Remuneration for work performed by the individual claiming benefits in exchange for county relief in the form of groceries, rent, etc.

d. Payment for unused sick leave.

e. National guard duty pay. This includes reserve unit drill pay for any branch of the armed service.

f. Supplemental unemployment benefit plans approved by the department. See 871—subrule 23.3(1), paragraph "e," for criteria and employer procedure for obtaining department approval.

g. Pension to the blind.

h. Payment for terminal leave. Any payment received by military personnel for unused leave upon discharge.

i. Compensation for military service-connected disability from the Department of Veterans Affairs.

j. Payments to the surviving spouse of a regular or disability pension based on the work of the deceased spouse.

k. Deferred wage compensation. Remuneration received by the individual for wages earned in a period prior to the individual's claim for benefits shall not be deductible during the period in which the individual is claiming benefits.

l. Witness and jury fees. These fees are reimbursement for expenses and are not considered as wages.

m. Supplemental security income. This payment is nondeductible because it is financed by income taxes and not social security taxes and is based on need factors such as age, mental or physical disability, and personal income, and not on previous employment.

n. Federal social security benefit and social security disability payments.

This rule is intended to implement Iowa Code sections 96.3(3), 96.5, 96.5(5), 96.11(1), and 96.19(38).

[ARC 1367C, IAB 3/5/14, effective 4/9/14]

871—24.14 and 24.15 Reserved.

871—24.16(96) Vacation pay.

24.16(1) If the employer properly notifies the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation

pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term “vacation pay” shall include paid time off and annual leave payments.

24.16(2) If the employer makes the original designation of the vacation period in a timely manner, the employer may extend the vacation period by designating the period of the extension in writing to the department before the period of extension begins.

24.16(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff during the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

24.16(4) Unless otherwise specified by the employer, the amount of the vacation pay shall be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

This rule is intended to implement Iowa Code section 96.5(7).
[ARC 1367C, IAB 3/5/14, effective 4/9/14]

871—24.17(96) Vacation pay procedure.

24.17(1) Employer notice specified vacation or holiday pay only. The Form 65-5317, Notice of Claim, the Form 62-2048, Request for Federal Wage and Separation Information, and the Form 62-2049, Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay, shall be used as notification to the department that vacation pay is applicable. The Forms 65-5317, 62-2048, and 62-2049 received in the administrative office shall be routed to the appropriate office for the following action:

a. Upon receipt of the vacation information, the unemployment insurance representative shall compare the amount of vacation reported by the employer with the computer record. If the computer record shows any discrepancies with the vacation information provided by the employer that would affect the claimant’s eligibility for unemployment insurance benefits for any week claimed, the claimant shall be afforded the opportunity to present facts and evidence, which may include an informational fact-finding interview scheduled by the department. The unemployment insurance representative may afford the employer the opportunity to present additional facts and evidence after ascertaining such from the claimant. If the employer is afforded such an opportunity to provide additional facts and evidence, the unemployment insurance representative shall also afford the claimant the opportunity to present additional facts and evidence.

b. After affording the claimant an opportunity to present facts and evidence regarding the receipt of vacation pay, and potentially affording the employer and the claimant an opportunity to provide additional facts and evidence, the representative shall consider all information submitted by the interested parties and issue to the employer and the claimant the appropriate decision concerning the vacation pay. The unemployment insurance representative shall then check the current status of the claim on the computer record to ascertain if any weeks have been reported.

c. If the computer record shows that the claimant has not reported or claimed for some or all of the weeks indicated for the vacation period, the unemployment insurance representative shall take no further action on the weeks not claimed.

d. The claimant shall be instructed to only report vacation pay applicable to the first week. The claimant shall also be instructed that vacation pay designated by the employer in excess of one week may result in an overpayment of benefits.

24.17(2) Reserved.

This rule is intended to implement Iowa Code section 96.5(7).
[ARC 3116C, IAB 6/7/17, effective 7/12/17]

871—24.18(96) Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual’s weekly benefit amount plus \$15 before being disqualified for

excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

871—24.19(96) Determination and review of benefit rights.

24.19(1) Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. Such notice to the claimant shall advise of the weekly benefit amount, duration of benefits, wage records, other data pertinent to benefit rights, and if disqualified, the time of and reason for such disqualification. If a claimant is ineligible, such claimant shall be advised of such ineligibility and the reason therefor. Each notice of benefit determination which the department is required to furnish to the claimant shall, in addition to stating the decision and its reasons, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

24.19(2) Each interested party will be afforded the opportunity to have a fact-finding interview by telephone regarding matters which are scheduled for a hearing. An interested party may request an in-person fact-finding interview as a reasonable accommodation under the federal Americans with Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department shall reserve the right to call any interested party in for an in-person fact-finding interview.

24.19(3) Upon receiving a written request for review or, on its own initiative and on the basis of the facts as it may have in its possession or may acquire, the claims section may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. The claimant or any other party filing the request for review shall be promptly notified of the decision or referral. Unless the claimant or any other party files an appeal within ten days after the date of mailing, the latter decision shall be final and benefits shall be paid or denied in accordance therewith.

[ARC 3116C, IAB 6/7/17, effective 7/12/17]

871—24.20 and 24.21 Reserved.

871—24.22(96) Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

24.22(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable,

gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

24.22(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

b. Job test. The best method of testing availability for work is an offer of work or job test. If a job test is not possible because of lack of a suitable offer, the active search for work is relied on and conclusions are likely to be based entirely on the fact that the individual did or did not make a search, without regard to the fact that the individual's personal efforts had little probability of success.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

d. Jury duty. The individual is considered available for work while serving on jury duty because time spent in jury service is not a personal service performed under a contract of hire in an employment situation but is a public duty required by law. Jury duty does not render the individual as employed and ineligible for benefits even though it may involve the individual full-time. Witness and jury fees will be considered as reimbursement for expenses and not as wages.

e. Company employment office. The department is not bound by a union/company contract that requires the individual to report at the company employment office. The individual is an independent agent seeking work, and may be found available, if an otherwise diligent search of work is made.

f. Part-time worker; student—other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

g. Work release program while incarcerated. For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3); but the department will review any situation concerning an individual incarcerated in a jail, who can meet the able to work, availability for work, and actively seeking work requirements of Iowa Code section 96.4(3).

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional

employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38) "a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

k. Effect of religious convictions on Sabbath day work. An individual is considered as available for work if the precepts of the individual's religion prohibit work on the Sabbath. An individual who refuses to work on the Sabbath designated by the individual's religion, because of conscientious observance of the Sabbath as a matter of religious conviction, is also deemed to have good cause for refusing the work.

l. Available for work. To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to seek work in some other occupation in which job openings exist, or if that does not seem likely to result in employment, the individual may be required to accept counseling for possible retraining or a change in occupation.

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

n. Corporate officers. To be considered available, the corporation officer must meet the same tests of availability as are met by other individuals. The individual must be desirous of other work, be free from serious limitations and be seriously searching for work. The reported efforts of a corporate officer to seek work should be studied to distinguish those directed toward obtaining work for the officer as an individual and those directed to obtaining work or business for the corporation. Any effort to obtain business for the corporation to perform is a service to the corporation and is not evidence of the individual's own availability for work.

o. Lawfully authorized work. An individual who is not lawfully authorized to work within the United States will be considered not available for work.

24.22(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual

as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

d. Week-to-week disqualification. Active search for work disqualifications are to be made on a week-to-week basis and are not open-end disqualifications.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to the individual who is receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant.

(2) The individual is referred to suitable work, when possible, to those employers who have outstanding requests with the department of workforce development for referrals. The individual must meet the minimum lawful requirements of the employer. The individual applies to and obtains the signatures of the employer so designated on the form provided, unless the employer refuses to sign the form. The individual must return the form to the department as directed. The individual's failure to obtain the signature of designated employers, who have not refused to sign the form, disqualifies the individual from future benefits until requalified by earning ten times the weekly benefit amount.

(3) The group assignment of individuals is used, to a certain extent, in determining which ones are required to make personal applications for work. Other factors, however, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(4) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors which may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

g. Reverse referral. A reverse referral is defined as an employer hiring only through the department of workforce development and all individuals applying for employment with the employer are referred to the department. An individual may use the department as work contacts during a week with the employer's name and the workforce development employee's name listed as the individual contacted. The workforce development center must be contacted in person by the individual to utilize each reverse referral registration job contact.

h. Job search assistance. Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

This rule is intended to implement Iowa Code section 96.4(3).

[ARC 871B, IAB 5/5/10, effective 6/9/10]

871—24.23(96) Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

24.23(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

24.23(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

24.23(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

24.23(7) Where an individual devotes time and effort to becoming self-employed.

24.23(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

24.23(9) Reserved.

24.23(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

24.23(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

24.23(12) If a claimant is in jail or prison, such claimant is not available for work.

24.23(13) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(14) An individual is deemed not available for work because such individual cannot be contacted by the department for referral to possible employment.

24.23(15) Where a claimant has demanded a wage in excess of the wages most commonly paid in such claimant's locality for the suitable work the individual is seeking.

24.23(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

24.23(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

24.23(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

24.23(19) Availability for work is unduly limited because the claimant is not willing to accept work in such claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

24.23(21) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

24.23(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

24.23(24) Rescinded IAB 8/2/17, effective 9/6/17.

24.23(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

24.23(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

24.23(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

24.23(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

24.23(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.23(30) Failure to attend the major portion of the scheduled workweek for department approved training.

24.23(31) Where the claimant spent the major portion of the period traveling while relocating.

24.23(32) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.19(38) “c” are met.

24.23(33) Where the claimant left employment prior to a scheduled date of layoff when such claimant could have remained in employment during this period. No disqualification may be imposed in accordance with Iowa Code section 96.5(1) “g” for the period subsequent to the date of the scheduled layoff if such claimant is otherwise eligible. The claimant will be disqualified for the period between the last day worked and the date of the scheduled layoff because of voluntary unemployment.

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

24.23(36) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(37) An individual shall be deemed to have failed to make an effort to secure work if the individual has followed a course of action designed to discourage prospective employers from hiring such individual in suitable work.

24.23(38) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(39) Where the work search or the Eligibility Review Form has been deliberately falsified for the purpose of obtaining unemployment insurance benefits. The general guide for disqualifications for falsification of work search is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the representative because each case must be decided on its own merits. The administrative penalty recommended for falsification is:

- a. First offense—six weeks penalty.
- b. Second offense—nine weeks penalty.
- c. Third offense—total disqualification for the remainder of the benefit year plus consideration of the possibility of filing fraud charges depending on the circumstances.

24.23(40) Reserved.

24.23(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(38) “c” and 96.29.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.24(96) Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual’s weekly benefit amount, provided the individual is otherwise eligible.

24.24(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

b. Upon notification of a job opening for a claimant, a representative of the department shall notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant shall be disqualified until such time as the claimant contacts the local workforce development center or unemployment insurance service center.

24.24(2) Job within claimant’s capabilities.

a. The job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

b. If the claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer to work until such time as the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.24(3) *Each case decided on its own merits.* Based upon the facts found by the department through investigation it shall then be determined whether the work was suitable and whether the claimant has good cause for refusal. Each case shall be determined on its own merits as established by the facts. A reason constituting good cause for refusal of suitable work may nevertheless disqualify such claimant as being not available for work.

24.24(4) *Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3).* Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

24.24(5) *Bumping rights to a job.* A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits.

24.24(6) *Claimant physically unable to perform job.* A medical certification from a medical practitioner must be submitted to support the claimant's statement that work offered is not suitable because of the claimant's physical condition.

24.24(7) *Gainfully employed outside of area where job is offered.* Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

24.24(8) *Refusal disqualification jurisdiction.* Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa Code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

24.24(9) Reserved.

24.24(10) *Distance to new job.* Without a prior specific agreement between the employer and employee the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification.

24.24(11) *Bulletin board notice of work.* A bulletin board notice for employees to work during a plant shutdown shall not constitute an offer of work by the company. Such offer of work must be by personal contact to the employee.

24.24(12) *Claimant discourages prospective employers.* When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, the claimant shall be deemed to have refused suitable work as contemplated by the statute.

24.24(13) *Claimant moved to another state.* A claimant who moves to another state shall not be subject to disqualification for refusal to return to a previously held job.

24.24(14) *Employment offer from former employer.*

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3) “*b*” are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

24.24(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- a.* Any risk to the health, safety and morals of the individual.
- b.* The individual’s physical fitness.
- c.* Prior training.
- d.* Length of unemployment.
- e.* Prospects for securing local work by the individual.
- f.* The individual’s customary occupation.
- g.* Distance from the available work.
- h.* Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.
- i.* Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.
- j.* Whether the position offered is due directly to a strike, lockout, or other labor dispute.
- k.* Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.
- l.* Whether the individual would be required to join or resign from a labor organization.

24.24(16) Disabled accessibility to job. A job offer shall not be suitable if a disabled individual has no access to a building or its facilities.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(2), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.11(1), 96.16, 96.19(38), and 96.29.

871—24.25(96) Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs “*a*” through “*i*,” and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(1) The claimant’s lack of transportation to the work site unless the employer had agreed to furnish transportation.

24.25(2) The claimant moved to a different locality.

24.25(3) The claimant left to seek other employment but did not secure employment.

24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

24.25(5) Reserved.

24.25(6) The claimant left as a result of an inability to work with other employees.

24.25(7) The claimant failed to return to work upon the termination of a labor dispute.

24.25(8) The claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant shall be considered to be on leave from employment. It shall only be considered a voluntary quit issue when upon release from military service such claimant does not return to such claimant’s employer to apply for employment within 90 days; provided, that such person shall give evidence to the employer of satisfactory completion of such military service and further provided that such person is still qualified to perform the duties of such position.

24.25(9) Reserved.

24.25(10) The claimant left employment to accompany the spouse to a new locality. No disqualification shall be imposed when Iowa Code section 96.5(1) “b” is applicable.

24.25(11) The claimant left to get married.

24.25(12) The claimant left without notice during a mutually agreed upon trial period of employment.

24.25(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

24.25(14) Reserved.

24.25(15) Reserved.

24.25(16) The claimant is deemed to have left if such claimant becomes incarcerated.

24.25(17) The claimant left because of lack of child care.

24.25(18) The claimant left because of a dislike of the shift worked.

24.25(19) The claimant left to enter self-employment.

24.25(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

24.25(21) The claimant left because of dissatisfaction with the work environment.

24.25(22) The claimant left because of a personality conflict with the supervisor.

24.25(23) The claimant left voluntarily due to family responsibilities or serious family needs.

24.25(24) The claimant left employment to accept retirement when such claimant could have continued working.

24.25(25) The claimant left to take a vacation.

24.25(26) The claimant left to go to school.

24.25(27) The claimant left rather than perform the assigned work as instructed.

24.25(28) The claimant left after being reprimanded.

24.25(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

24.25(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

24.25(31) The claimant left work to keep from earning enough wages during the year to adversely affect claimant’s receipt of federal old-age benefits (social security).

24.25(32) The claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required by the job.

24.25(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

24.25(34) The claimant left because work was irregular due to weather conditions; however, this working condition was not unusual in claimant’s type of employment.

24.25(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

a. Obtain the advice of a licensed and practicing physician;

b. Obtain certification of release for work from a licensed and practicing physician;

c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

d. Fully recover so that the claimant could perform all of the duties of the job.

24.25(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

24.25(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual’s training and experience.

24.25(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

24.25(39) Reserved.

24.25(40) Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.6(2), 96.16, 96.19(6) "a," and 96.19(38).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.26(96) Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

24.26(2) The claimant left due to unsafe working conditions.

24.26(3) The claimant left due to unlawful working conditions.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

24.26(5) The claimant was laid off by the employer for being pregnant; however, availability must still be determined.

24.26(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

24.26(7) Reserved.

24.26(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

24.26(9) The claimant left employment upon the advice of a licensed and practicing physician for the sole purpose of taking a family member to a place having a different climate and subsequently returned to the claimant's regular employer and offered to perform services, but the claimant's regular or comparable work was not available. However, during the time the claimant was at a different climate the claimant shall be deemed to be unavailable for work notwithstanding that during the absence the claimant secured temporary employment. (Family is defined as: wife, husband, children, parents, grandparents, grandchildren, foster children, brothers, brothers-in-law, sisters, sisters-in-law, aunts, uncles or corresponding relatives of the classified employee's spouse or other relatives of the classified employee or spouse residing in the classified employee's immediate household.)

24.26(10) A claimant who underwent a mandatory retirement as of a certain age because of company policy or in accordance with an agreement between the employer and union.

24.26(11) The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

24.26(12) When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

24.26(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

24.26(14) Rescinded IAB 7/28/99, effective 9/1/99.

24.26(15) Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

24.26(16) The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

24.26(17) Reserved.

24.26(18) Reserved.

24.26(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 871—24.24(96) are controlling

in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

24.26(20) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

24.26(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

24.26(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

24.26(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

24.26(24) Reserved.

24.26(25) Temporary active military duty. A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty. The employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position; provided, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position.

24.26(26) Reserved.

24.26(27) Refusal to exercise bumping privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

24.26(28) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification shall be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.19(38).

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1) "g."
[ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—24.28(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.28(1) The claimant shall be eligible for benefits even though having voluntarily left employment, if subsequent to leaving such employment, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.28(2) The claimant shall be eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if subsequent to the disqualification, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.28(3) Reserved.

24.28(4) Reserved.

24.28(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

24.28(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

24.28(7) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the administrative law judge and such decision has become final.

24.28(8) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

This rule is intended to implement Iowa Code section 96.5(1) "a."

871—24.29(96) Business closing.

24.29(1) Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

24.29(2) Going out of business means any factory, establishment, or other premises of an employer which closes its door and ceases to function as a business; however, an employer is not considered to have gone out of business at the factory, establishment, or other premises in any case in which the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business.

24.29(3) Verification of going out of business. When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business at a factory, establishment, or other premises, the unemployment insurance representative completes a Form 60-0240, Verification of Business Closing, and refers Form 60-0240 to the field audit section for assignment to a field auditor who verifies the business closing. A Form 62-2056, Review of Business Status for Closing Credits, is completed for each succeeding claimant who requests to be included in a redetermination for business closing credits. This form is added to the Form 60-0240 already in the department file for the appropriate pending investigation. Upon return of the Form 60-0240 from the field audit section, an unemployment insurance representative will issue the appropriate decisions to all claimants who

requested that their unemployment insurance claim be redetermined as a business closing based on the results of the investigation.

871—24.30 Reserved.

871—24.31(96) Subsequent benefit year condition.

24.31(1) The claimant must have been paid benefits on a previous claim.

24.31(2) If the claimant has the qualifying wages for the establishment of a second benefit year as specified in Iowa Code section 96.4(4) which were earned prior to the filing of the previous claim, the claimant must, during or subsequent to that year, have worked in (except in back pay awards) and have been paid wages for insured work totaling at least eight times the claimant's weekly benefit amount from the claimant's previous benefit year as of the end of the benefit year end date. Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.

24.31(3) Insured work means insured work in any state.

24.31(4) Employment for a railroad under the Railroad Unemployment Insurance Act is insured work.

24.31(5) The amount equal to eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work need not be in addition to the qualifying wages for the establishment of a second benefit year.

24.31(6) Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work shall be removed upon the verification that the claimant worked in and has been paid wages for insured work totaling eight times the claimant's weekly benefit amount from the claimant's previous benefit year during or subsequent to the previous benefit year.

This rule is intended to implement Iowa Code section 96.4(4).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.32(96) Discharge for misconduct.

24.32(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

b. Any individual who has been discharged or suspended for misconduct connected with work is disqualified for benefits until the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.32(2) Reserved.

24.32(3) Gross misconduct.

a. For the purposes of these rules gross misconduct shall be defined as misconduct involving an indictable offense in connection with the claimant's employment, provided that such claimant is duly convicted thereof or has signed a statement admitting that such claimant has committed such act.

b. An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than \$500 or by imprisonment in the county jail for more than 30 days.

24.32(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

24.32(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

24.32(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

24.32(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

24.32(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

24.32(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.

871—24.33(96) Labor disputes.

24.33(1) Definition. As used in sections 96.5(3) "b"(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

24.33(2) Initial requirements—workforce development center.

a. As soon as the workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a report on Form 68-0535, Labor Dispute Report, shall be sent to the administrative office of the department of workforce development, attention: legal counsel, unemployment insurance services division, advising of the labor dispute or work stoppage.

b. If the labor dispute or work stoppage is terminated before the report is transmitted to the legal counsel, unemployment insurance services division, the information concerning the termination of the dispute and the date of the worker's return to work must also be entered on Form 68-0535.

c. When the labor dispute or work stoppage is terminated subsequent to the filing of the initial Form 68-0535, the legal counsel, unemployment insurance services division, shall be notified of the termination and return to work dates.

d. In those instances where an association represents a group of employers, include the names and addresses of the employers who are involved in the labor dispute in your report. Include also the name

and address of the association and the name of the association official who can furnish information about the work stoppage.

e. In taking initial claims in which there is a labor dispute, the workforce development center will complete an initial application for unemployment, Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, in the normal manner and will also include the union name and local union number.

f. If a claim notice is inadvertently returned by the employer to the workforce development center stating there is a labor dispute, the protest with the postmarked envelope attached shall be transmitted to the unemployment insurance service center.

g. If there is a work stoppage at the premises of an employer and it is a known fact that there has not been a union and that at present there is no union representation nor any attempt by a union to organize the workers of the plant, a statement must be taken from each individual claiming benefits.

h. Statements from each individual claiming benefits are not required on the labor dispute issue whenever there is union representation even though some of the individuals may not be union members.

i. Statements from each individual claiming benefits will be taken whenever the work stoppage is considered as a nonunion stoppage, meaning no union representation at the premises of the employer. In such cases, each individual's statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

j. When there is a termination of the work stoppage, or if the issues have not been resolved and all workers returned to work, a report must be made to the legal counsel, unemployment insurance services division. The report will include the:

(1) Date on which an agreement was reached on the issues which caused the work stoppage.

(2) Date on which the workers returned to work, or a schedule as to how the workers will return to work.

k. The requirements in subrules 24.33(1) and 24.33(2) will cover the establishment and termination reports of the work stoppage and give the information necessary for the claims section to investigate the work stoppage when claims are filed on which a protest is made that the claimant is involved in a work stoppage.

l. During the period of a labor dispute, the claims involved in the labor dispute are processed as though no separation from the employer had occurred. Therefore, if an individual is still unemployed after the termination of the labor dispute, such individual has either been laid off, voluntarily left, or has been discharged from employment, and an additional claim must be taken if the individual continues in claim status.

m. When the employer or the union requests advice and information pertaining to what action should be taken in regard to the labor dispute, the workforce development center, at that time, should obtain all the information possible from the caller for inclusion in the labor dispute report to the unemployment insurance services division.

n. The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on Form 65-5317, Notice of Claim. The employer will receive a copy of the decision which may be appealed.

o. Form 65-5317, Notice of Claim Filing, will be used by the employer to report total unemployment due to strike, lockout or other labor dispute.

p. Employer shall use Form 60-0154, Notice of Separation or Refusal of Work, or the electronic version of that form, to report separations from work by employees for reasons of voluntary leaving, misconduct and job refusal. Form 60-0154 shall not be used by employers to report labor disputes because the document is not designed for that type of an employment separation or work refusal.

24.33(3) Initial determination.

a. In any case in which the payment or denial of benefits will be determined by the provisions of Iowa Code section 96.5(4), the representative of the unemployment insurance services division shall promptly review the evidence submitted, and such additional evidence as may be required, and shall make a decision upon the issues involved under that subsection.

b. The representative of the unemployment insurance services division shall promptly notify all interested parties to the claim of the decision. Said parties shall have ten days, from the date of mailing the decision to the last known address of record, to appeal the decision.

[ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—24.34(96) Labor dispute—policy.

24.34(1) Reserved.

24.34(2) Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

24.34(3) The relationship between employer and employee continues during the period of the labor dispute unless severed by the employer or employee.

a. If the relationship is severed by the employer, Iowa Code section 96.5(2) concerning discharge for misconduct shall govern.

b. If the relationship is severed by the employee, Iowa Code section 96.5(1) concerning voluntary leaving shall govern.

24.34(4) An individual who is unemployed because of a labor dispute and accepts employment elsewhere during the period of the labor dispute, must return to the previous employer when said labor dispute is settled or be subject to a determination on the issue of voluntary leaving.

24.34(5) Any individual unemployed because of failure or refusal to cross a picket line during a labor dispute shall be deemed to be involved in such labor dispute.

24.34(6) If an initial determination by the representative of the unemployment insurance services division of a labor dispute issue is appealed, the case shall be assigned to an administrative law judge, who shall receive the testimony of any party to the hearing and shall issue a decision on the labor dispute. Such decision may be appealed in conformity with these rules to the employment appeal board of the Iowa department of inspections and appeals.

24.34(7) An individual not involved in or participating in a labor dispute who failed to report to work because of a picket line shall be deemed to have voluntarily left employment. However, if the individual was subjected to hostility or violence in an attempt to cross a picket line, then the individual shall be deemed to have involuntarily left employment.

a. The division shall presume that any strike or lockout is being conducted in a lawful manner unless evidence to the contrary has been introduced. The division shall presume that any picketing is being conducted in a peaceful manner and that ingress or egress to the employer's facility is not being unlawfully impeded.

b. The division shall presume that where an injunction has been sought against actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct and such injunction shall have been denied on the basis that actual or threatened unlawful conduct has not been established that the picket line is peaceful unless evidence is introduced which establishes the violent nature of picket line activity.

c. If an injunction is obtained, the division shall presume the picket line is peaceful as of the date the injunction is issued unless evidence is introduced which proves the contrary proposition.

24.34(8) A lockout is not a labor dispute if the claimant is willing to continue working under the preexisting terms and conditions of the expired collective bargaining agreement for a reasonable period of time while a new collective bargaining agreement is negotiated. A lockout is a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get more desirable terms for the employer.

a. The test for determining whether a stoppage of work is a lockout or labor dispute is to determine the final cause and the party ultimately responsible for the work stoppage. If the employees have offered to continue working for a reasonable period of time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations and the employer refuses to maintain the status quo by extending the expired contract, the resulting work stoppage constitutes a lockout and the claimants shall not be disqualified because of a labor dispute.

b. A cessation of employment by the employer is not a lockout if:

(1) The stoppage of work is in the same facility or another facility of the employer and the claimant is directly involved in the labor dispute and the collective bargaining negotiations will directly affect the claimant's condition of employment, or

(2) The claimant or the recognized collective bargaining agent declines an offer from the employer to extend the expired collective bargaining agreement while negotiations continue for a reasonable period of time taking into consideration the nature of the employer's business, or

(3) The employer can demonstrate that its refusal to allow employees to continue working under the terms and conditions of the expired collective bargaining agreement is due to a compelling reason of such degree that the extension of the contract would be unreasonable under the circumstances.

24.34(9) To constitute a labor dispute there must be a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment shall be deemed to have voluntarily quit.

24.34(10) When individuals, not as a group, union, or under union direction or suggestion but individually, left their work voluntarily in protest against the discharge of a fellow employee by their employer, in an unauthorized strike, it is held to be a voluntary quit.

24.34(11) Employment offered by an employer involved in a labor dispute or an employer who becomes involved in a labor dispute prior to acceptance by the claimant is considered:

a. Not suitable if the offer is made to a person who would be a new employee or a former employee who was laid off before the labor dispute and the vacancy was created by the strike, lockout, or other labor dispute.

b. Suitable if the offer was made to a former employee, who was previously laid off, provided the position offered is not vacant because of the strike, lockout, or other labor dispute and the provisions of section 96.5(4) shall apply.

c. Suitable if the offer is made to a new employee, who was not previously laid off by the same employer, and the vacancy was not created by a labor dispute.

24.34(12) Other employment accepted during periods of labor disputes does not free the claimant from the labor dispute section of the Iowa employment security law unless the claimant severs relationship with employer and obtains bona fide employment elsewhere.

This rule is intended to implement Iowa Code sections 96.5(3) and 96.5(4).

871—24.35(96) Date of submission and extension of time for payments and notices.

24.35(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1) "a" and "b," on the date it is received by the division.

24.35(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

24.35(3) Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last-known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

24.35(4) Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system shall be considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted shall be presumed to be the date of the document, unless otherwise indicated by the facts.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.36(96) Interstate benefits.

24.36(1) An interstate claimant is an individual who claims benefits under the unemployment insurance law of one or more liable states. Interstate benefits are payable under the plan approved by the national association of state workforce agencies to unemployed individuals absent from the state(s) in which wage credits were earned.

24.36(2) The division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state law and rules and shall be in substantial compliance with those rules promulgated by the United States Department of Labor as published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650.

871—24.37(96) Payment of benefits to interstate claimants.

24.37(1) Section 96.20 of the employment security law of Iowa authorizes the department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both. In conformity with this section, the department of workforce development prescribes:

a. *Applicability.* This regulation shall govern the department in its administrative cooperation with other states adopting a similar regulation for the payment of unemployment insurance benefits to interstate claimants.

b. *Definitions.* As used in this rule unless the context clearly requires otherwise:

(1) *"Interstate benefit payment plan."* This is the plan approved by the national association of state workforce agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(2) *"Interstate claimant."* This is an individual who claims benefits under the unemployment insurance law of one or more liable states. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such a claimant in a specified area.

(3) *"State."* This includes the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

(4) *"Agent state."* This means any state in which an individual files a claim for benefits from another state.

(5) *"Liable state."* A liable state is any state against which an individual files, from another state, a claim for benefits.

(6) *"Benefits."* This is the compensation payable to an individual, with respect to unemployment, under the employment security law of any state.

(7) *"Week of unemployment."* This is any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

c. *Registration for work.*

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, rules, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

d. Benefit rights of interstate claimants.

(1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction. The department will respect the prior adjudication of a liable state if the department is made aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state's requalification criteria.

(3) The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims filed on or after July 5, 1953.

e. Claim for benefits.

(1) Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms or by using the procedures provided by the liable state and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(2) Rescinded IAB 8/6/03, effective 9/10/03.

f. Determination of claims.

(1) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim unless the liable state has a procedure for taking out-of-state claims.

g. Appellate procedure.

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified representative of the agent state.

24.37(2) Extended benefits interstate claims. When extended benefits are in effect and a claimant is filing for extended benefits, an eligible individual shall be limited to a maximum of two weeks of the extended benefit entitlement if the individual moves from this state, before or during an extended benefit period triggered by this state's "on" indicator, to another state in which an extended benefit period is not in effect.

This rule is intended to implement Iowa Code sections 96.6(1) and 96.29(3).

871—24.38(96) Combined wage claim.

24.38(1) Purpose of plan. The combined wage program is to enable an unemployed worker with covered employment or wages in more than one state to combine all such employment and wages in one state in order to qualify for benefits or to receive increased benefits.

a. Each state will cooperate with every other state by implementing these uniform combined wage procedures, rules and regulations. This includes the District of Columbia, U.S. Virgin Islands and the Commonwealth of Puerto Rico.

b. The benefit year, base period, qualifying wages, benefit rate, and duration of benefits under the unemployment compensation law of the paying state shall be the benefit year, base period, qualifying wages, benefit rate, and duration of benefits applicable to a combined wage claimant.

c. The rights of the individual under the combined wage claim plan shall be determined by the paying state after the combining of all wages available from the transferring states; however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department shall respect the prior adjudication of the transferring state if the department is aware of the decision and will apply the Iowa requalification criteria, unless the individual has requalified pursuant to the liable state's requalification criteria.

d. All other provisions of the unemployment compensation laws and rules of the state agency of the paying state shall be applied to the combined wage claim.

e. The state in which the claim is filed will be the paying state except in those cases in which the individual does not qualify after the transfer has been completed or if the claimant meets the definition of a commuter.

24.38(2) *Exception to combining wage credits.* Under the following circumstances, wages and employment are not transferable to the paying state:

a. Any employment and wages which have been transferred to any other paying state and not returned unused.

b. Wages that have been used by the transferring state as the basis of a monetary determination which established a benefit year.

c. Any employment and wages that have been canceled or are unavailable as a result of a transferring state determination made prior to the request for transfer.

24.38(3) The claimant will be told that if there was a previous election to file a combined wage claim, the claimant may withdraw the combined wage claim any time, up to the date the paying state's monetary determination becomes final. However, if the claimant withdraws a combined wage claim and benefits have been paid, the claimant will be required to repay any such benefits. This repayment may be done electronically, by cash, by check, by money order, or by an authorization to the state(s) from which such claimant next claims benefits to reimburse the combined wage paying state for any benefits which said claimant will be paid.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.39(96) Department-approved training or retraining program. The intent of department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

24.39(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

a. The educational establishment at which the claimant would receive training.

b. The estimated time required for such training.

c. The occupation which the training is allowing the claimant to maintain or pursue.

24.39(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for

work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

24.39(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).
[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.40(96) Training extension benefits.

24.40(1) The purpose of training extension benefits is to provide the individual with continued eligibility for benefits so that the individual may pursue a training program for entry into a high-demand or high-technology occupation. Training extension benefits are available to an individual who was laid off or voluntarily quit with good cause attributable to the individual's employer from full-time employment in a declining occupation or is involuntarily separated from full-time employment as a result of a permanent reduction of operations.

24.40(2) The weekly benefit amount shall be pursuant to the same terms and conditions as regular unemployment benefits and the benefits shall be for a maximum of 26 times the weekly benefit amount of the claim which resulted in eligibility. Both contributory and reimbursable employers shall be relieved of charges for training extension benefits.

24.40(3) The course or courses must be for a high-demand or high-technology occupation. The department will make available to serve as a guide a list of high-demand, high-technology, and declining occupations. The lists shall be available on the department's Web site and workforce centers.

a. High-technology occupations include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. A high-technology occupation is one which requires a high degree of training in the sciences, engineering, or other advanced learning area and has work opportunities available in the labor market area or the state of Iowa.

b. A high-demand occupation means an occupation in a labor market area or the state of Iowa as a whole in which the department determines that work opportunities are available.

c. A declining occupation has a lack of sufficient current demand in the individual's labor market area or the state of Iowa for the occupational skills possessed by the individual, and the lack of employment opportunities is expected to continue for an extended period of time.

d. A declining occupation includes an occupation for which there is a seasonal variation in demand in the labor market or the state of Iowa, and the individual has no other skill for which there is a current demand.

e. A declining or high-demand occupation will be determined by using Iowa labor market information for each region in the state.

24.40(4) The individual must be enrolled in the training no later than the end of the benefit year which included the separation which made the individual eligible for training benefits or the week in which any federal benefit program based upon that benefit year is exhausted. Enrolled before the end of the benefit year means the individual has taken all steps available for entry into the training and has secured a reserved position in the training class. The individual has paid tuition or will pay tuition when the training starts. The training class may begin after the end of the benefit year. The application for training benefits must be received 30 days after the end of the benefit year or 30 days after federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program in order to continue to be eligible for training extension benefits.

24.40(5) Training benefits shall cease to be available if the training is completed; the individual quits the training course; the individual exhausts the training extension maximum benefit amount; or the individual fails to make satisfactory progress; and benefits shall cease no later than one calendar year following the end of the benefit year in which the individual became eligible for the benefits. Individuals

must file and receive benefits under any federal or state unemployment insurance benefit program until the claim has expired or has been exhausted, in order to maintain eligibility for training extension benefits.

This rule is intended to implement 2009 Iowa Code Supplement section 96.3(5).
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—24.41(96) Unemployed parents program (FIP/UP). Under Public Law 94-566, an unemployed parent who is eligible for both unemployment insurance and family investment program/unemployed parent (FIP/UP) shall be required to collect any unemployment insurance to which the individual is entitled before receiving any payments under the FIP/UP program.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

871—24.42(96) Retention of DHS referral form. When an unemployed parent presents the DHS referral Form PA-2138-5 to the workforce development center representative, the representative will take the form, sign it and complete an application for job placement assistance and/or employment insurance benefits.

24.42(1) The weekly benefit amount and maximum benefit amount of the claimant will be entered in job service comments on Form PA-2138-5. If the person is not monetarily eligible, that notation will be entered and the form mailed to human services.

24.42(2) A FIP/UP claimant may have the claim protested which can affect eligibility. Human services may request additional information on a subsequent Form PA-2138-5 concerning nonmonetary allowances or disqualifications on the claim, which will be furnished in the comments section of the form.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

871—24.43 and 24.44 Reserved.

871—24.45(96) Trade Act of 1974. Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618), shall be determined in accordance with the rules of the United States department of labor as published in the Code of Federal Regulations, chapter 29, parts 70 and 91. The Trade Act of 1974 is designed to pay unemployment benefits to workers who become unemployed due to foreign production of goods replacing domestic production.

871—24.46(96) Extended benefits.

24.46(1) Purpose. Extended benefits are benefits paid to an eligible individual during periods of high unemployment in a state under the Federal-State Extended Unemployment Compensation Act of 1970 and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615. The purpose of extended benefits is to extend the period of time for which an individual may receive benefits to allow the individual additional time to locate employment in recognition of the likelihood that employment is more difficult to find during periods of high unemployment in a state. The cost of extended benefits is shared between the federal and state governments.

24.46(2) Determination of when extended benefits are paid.

a. When paid. The state “on” indicator determines when extended benefits are paid in this state. A state “on” indicator is in effect during a week for which the rate of insured unemployment is 5 percent or greater and 120 percent or greater than the average of the rates of insured unemployment for the same week in the two immediately preceding calendar years.

b. When not paid. The state “off” indicator determines when extended benefits are not paid in this state. A state “off” indicator is in effect during a week for which the rate of insured unemployment is less than 5 percent or less than 120 percent of the average of the rates of insured unemployment for the same week in the two immediately preceding calendar years.

c. Period of payment. The extended benefit period is the period of time when extended benefits are paid in this state. An extended benefit period begins with the third week following a week for which there is a state “on” indicator in effect. An extended benefit period ends either with the completion of the thirteenth consecutive week beginning with the third week following a state “on” indicator, or later,

with the completion of the third week following the first week for which there is a state “off” indicator. However, another extended benefit period shall not begin until the fourteenth week following the end of a previous extended benefit period.

d. Rate of insured unemployment. For the purposes of this subrule, the rate of insured unemployment means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits (excluding state plant closing benefits and benefits paid to federal civilian employees and ex-servicemembers under 5 U.S.C., chapter 85) in this state for weeks of unemployment with respect to the most recently completed 13-consecutive-week period by the average monthly insured employment for the first four of the six most recently completed calendar quarters immediately preceding the end of the 13-week period.

24.46(3) Announcement and notice of the beginning and ending of an extended benefit period.

a. Announcement by director. The beginning or ending date, whichever is appropriate, of an extended benefit period is announced by the director of the department of workforce development through appropriate news media in this state. As the case may be, the announcement clearly describes the unemployed individuals who may become eligible or ineligible for extended benefits.

b. Notice to individuals. The Form 65-5309, Notice to Individuals, is used by the department to notify individuals of:

(1) The beginning of an extended benefit period. The notice of potential entitlement to extended benefits is sent to each individual who has exhausted all rights to regular benefits either prior to the beginning of, or during, the extended benefit period and who has a benefit year which will not end prior to the beginning of the extended benefit. The notice describes those actions required of the individual to claim the extended benefits.

(2) The ending of an extended benefit period. The notice of termination of entitlement to extended benefits is sent to each individual who is currently filing a claim for extended benefits of the ending of an extended benefit period. The notice describes the effect on the individual’s right to extended benefits.

24.46(4) Amount and duration of extended benefits.

a. Weekly extended benefit amount. An individual’s weekly extended benefit amount paid for a week of total unemployment during the individual’s eligibility period is equal to the individual’s weekly regular benefit amount paid for a week of total unemployment during the individual’s applicable benefit year.

b. Duration of extended benefits. The total amount of extended benefits which an individual may receive during the individual’s applicable benefit year is limited to 50 percent of the total amount of regular benefits, excluding any state plant closing benefits, received by the individual during that benefit year or 13 times the individual’s weekly regular benefit amount paid for a week of total unemployment during that benefit year whichever is less; however, an individual is limited to two weeks of extended benefits if the individual files an interstate claim for extended benefits in a state in which an extended benefit period is not in effect.

c. Eligibility period. The eligibility period is the period of weeks in and after an individual’s benefit year which begin in an extended benefit period when an individual is eligible to receive extended benefits; however, if a benefit year ends within an individual’s eligibility period for extended benefits, the remaining extended benefits which the individual is entitled to receive in that portion of the eligibility period which extends beyond the end of the individual’s benefit year, is reduced, but not below zero, by an amount arrived at by multiplying the number of weeks of Federal Trade Readjustment Act benefits received by the individual during the benefit year times the individual’s weekly extended benefit amount.

d. Applicable benefit year. The applicable benefit year includes the period of one year from the date that an individual files a valid claim for benefits and any weeks following this one-year period in which the individual’s eligibility period for extended benefits has not expired and the individual is not able to establish a second benefit year for regular benefits.

24.46(5) Eligibility requirements for extended benefits. Except where the results are inconsistent with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 as amended and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615, the provisions of this state’s law which apply to claims for, and the payment of, regular benefits apply to

claims for, and the payment of, extended benefits. An individual is eligible to receive extended benefits for a week of unemployment during the individual's eligibility period if the department finds that all of the following conditions are met:

a. The individual is an exhaustee. An exhaustee is an individual who has exhausted all entitlements to regular benefits under this or any other state law as well as federal civilian employee, railroad unemployment insurance, and ex-servicemember benefits.

An individual is also an exhaustee:

(1) If the individual may be entitled to additional regular benefits as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year.

(2) If the individual's benefit year has expired prior to the week, and the individual has no, or insufficient, wages on the basis of which to establish a new benefit year.

(3) If the individual has no right to benefits under other laws of the federal government, as specified in the regulations issued by the United States Secretary of Labor, or a contiguous country with which the United States has an agreement, but if the individual is seeking benefits and the appropriate agency finally determines that the individual is not entitled to the benefits, then the individual is an exhaustee.

b. The individual has one and one-half times the high quarter wages. An individual is required to have been paid wages for insured work during the individual's base period in an amount at least one and one-half times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest.

c. The individual is required to actively seek, apply for or accept, suitable work. When an individual files an initial claim for extended benefits, the Form 60-0274, Notice for Individuals Claiming Extended Benefits, is used to determine the individual's prospects for obtaining work and to notify the individual that, beginning with the week following the week in which the individual is furnished this notice:

(1) If the individual's prospects for obtaining work within a reasonably short period are "good," the individual is required to actively seek, apply for or accept, suitable work in which, all other considerations being reasonably equal, the gross average weekly wage equals or exceeds 65 percent of the individual's average weekly wage from the highest earnings quarter of the individual's base period.

(2) If the individual's prospects for obtaining work within a reasonably short period are "not good," the individual is required to actively seek, apply for or accept, suitable work which is within the individual's capabilities to perform and which offers a gross average weekly wage which exceeds the individual's weekly extended benefit amount for a week of total unemployment plus any supplemental unemployment benefits; however, the individual is not required to actively seek, apply for or accept, work which offers a gross average weekly wage less than the federal or state minimum wage whichever is higher.

(3) For the purposes of this paragraph, reasonably short period means four weeks. If an individual whose prospects for obtaining work are "good" has not secured work within four weeks following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, then the individual is notified on Form 65-5309, Notice to Individuals, that the individual's prospects for obtaining work are now considered as "not good."

(4) For the purposes of this paragraph, actively seeking work means that, for each week following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, the individual is required to provide tangible evidence on the weekly claim for benefits that the individual is making a systematic and sustained effort to search for suitable work.

(5) If prospects are determined to be "not good," an individual shall not be disqualified for failing to apply for or accept work which is not offered in writing or is not listed with this state's employment service.

d. The individual is required to requalify following a disqualification for failure to actively seek, apply for or accept, suitable work. To become eligible for extended benefits following a disqualification for failure to actively seek, apply for or accept, suitable work, the individual is required to be employed

in insured work for four weeks, which need not be consecutive, and earn four times the individual's weekly extended benefit amount.

871—24.47(96) Disaster benefits. Benefits under the Disaster Relief Act of 1974. Unemployment benefits payable under Public Law 93-288, the Disaster Relief Act of 1974, will be determined in accordance with the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 625 and 650, and Chapter 32, Part 1710.16. These benefits are payable to claimants who are unemployed due to natural disasters. A claimant who is eligible for regular unemployment benefits shall not be eligible for disaster unemployment assistance.

871—24.48(96) UCFE claims. Benefits under the Federal Employer's Compensation Act. Unemployment benefits for civilian federal employees shall be determined in accordance with the applicable state law and rules as well as the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650. These benefits are payable under the Federal Employer's Compensation Act, 5 U.S.C. 8101-8150, 8191-8193, and are based on wages earned by civilians in covered federal employment.

871—24.49(96) UCX claims. Benefits under the Ex-servicemember's Unemployment Compensation Act.

24.49(1) Applicable law. Unemployment benefits for ex-military personnel shall, in addition to being determined in accordance with applicable Iowa law and rules, be determined in substantial compliance with the rules and guidelines of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 614 and 650.

24.49(2) When payable. These benefits are payable under the Ex-servicemember's Unemployment Compensation Act of 1958, 5 U.S.C. 8850. They allow unemployment compensation to be based on wages earned while on active military duty.

871—24.50(96) Temporary extended unemployment compensation.

24.50(1) to 24.50(5) Rescinded IAB 8/6/03, effective 9/10/03.

24.50(6) Overpayments will be offset up to and including 50 percent of the temporary extended unemployment compensation benefit payment.

24.50(7) Waiver of overpayments.

a. Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

(1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors shall be considered:

- (1) Whether the overpayment was the result of a decision on appeal;
- (2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and
- (3) Whether recovery of the overpayment will cause financial hardship to the individual.

This rule is intended to implement Iowa Code sections 96.11 and 96.29.

871—24.51(96) School definitions.

24.51(1) Educational institution means public, nonprofit, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

24.51(2) Educational service agency means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

24.51(3) Employment definitions.

a. Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution which consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services which consist of directing or supervising the instructional activities of others; or services which consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(2) Research: Services performed for an educational institution which consist of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor which is varied in character and requires the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

(3) Principal administrative: Services performed for an educational institution which consist of managing the educational institution or one of its major divisions or departments. Such services include the responsibility for establishing and administering policies, rules, and regulations which have major impact on the overall operations and functions of the educational institutions or one of its major divisions or departments. Work and activities are performed under general direction and broad objectives and missions, with the authority to determine goals and the techniques and methods of operations of the educational institution or one of its major divisions or departments. The duties performed by the individual rather than the title held should determine whether the prohibition applies. Neither providing a title nor withholding it should be controlling in itself.

b. Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in an instructional, research, or principal administrative capacity.

24.51(4) Holiday recess. See vacation period subrule 24.51(8).

24.51(5) Institution of higher education means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or

postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

24.51(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

24.51(7) School duration period.

a. Academic year is defined as that period of time that school personnel are obligated by contract to render services to the educational institution during the school year.

b. Term is defined as either of the two periods into which the yearly period of instruction is normally divided, commonly referred to as a semester. If the educational institution operates on a quarterly basis, then term shall mean the same as a quarter period. If the educational institution operates on a trimester basis, then term shall mean the same as a trimester period or any other division in a school year during which instruction is regularly given to students.

c. Twelve-month employment. School employees that perform services for educational institutions 12 months of a calendar year or years.

24.51(8) Vacation period or holiday recess. In Iowa Code section 96.4(5), the term “established and customary” vacation period or holiday recess involved in this provision includes those scheduled at Christmas and in the spring, when those vacation periods or recesses occur within a term.

24.51(9) Between terms or academic years denial means any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual’s contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such terms or academic years.

871—24.52(96) Determining eligibility of school claims after employer protest.

24.52(1) Claim filed. When a claim has been filed by an employee of an educational institution, the department shall send a Form 65-5317, Notice of Claim, to the educational institution and such educational institution wishing to protest such a claim shall return such notice to the department and shall include on it a statement as to whether or not the individual who filed a claim had been given reasonable assurance for the ensuing academic year or term. The statement should include the date and method of such notification. A copy of the notification may be attached to Form 65-5317, Notice of Claim.

24.52(2) If the statement from the school indicates that there is no reasonable assurance of the employee returning to work for the ensuing academic year or term, the claim will be allowed, subject to meeting all other eligibility requirements. However, if an educational institution submits a statement or the claimant furnishes information concerning a reasonable assurance of school employment, the employee is subject to a denial of benefits. If the fact-finding should result in a disqualification, the effective starting date of the disqualification shall be determined as follows:

a. No earlier than the effective starting date of the claim as it would serve no useful purpose. If the job offer was prior to the beginning date of the claim and the claimant refuses the offer, the issue shall still be adjudicated since the issue is determined as a voluntary quit rather than a job refusal pursuant to subrules 24.25(37) and 24.26(19).

b. The Sunday of the week in which the job was offered under any of the following conditions:

(1) The employer protest was made within ten-day protest period.

(2) The department was notified within ten days of the date of the offer.

(3) The claimant was in a reporting status on a claim for unemployment insurance at the time the offer was made and the claimant failed to notify the department of the offer.

c. The Sunday of the week in which the claimant or employer notified this department of the offer unless the offer was prior to the week that the department was notified of the offer and the claimant was in reporting status on a claim for unemployment insurance at that time. In this situation, the effective starting date of disqualification shall be the Sunday of the week in which the job offer was made.

d. The Sunday of the week in which the employer notified the department of the offer to the claimant. A refusal to accept the offer of employment shall be adjudicated under the voluntary quit section of the law pursuant to subrules 24.25(37), 24.26(19) and 24.52(11).

24.52(3) Professional employee. Unemployment insurance payments which are based on school employment shall not be paid to a professional employee for any week of unemployment which begins between two successive academic years, between regular terms, or during a period of paid sabbatical leave if the individual has a contract or reasonable assurance to perform services in any such capacity for any educational institution for both such academic years or both such terms. However, unemployment insurance payments can be made which are based on non-school-related wage credits pursuant to subrule 24.52(6).

24.52(4) Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph “e.”

24.52(5) Twelve-month, year-round employee. An educational institution employee who performs services on a 12-month, year-round basis whose employment is terminated through layoff or reduction in force prior to the completion of the 12-month period, is eligible for benefits and shall not be disqualified under the provisions of Iowa Code section 96.4(5). An offer of reemployment to the 12-month, year-round employee for the succeeding academic year or term shall be adjudicated under Iowa Code section 96.5(3), regarding offers of suitable work and no disqualification may be imposed prior to the week in which the employment is scheduled to commence.

24.52(6) Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

24.52(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

24.52(8) Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a “when earned” basis rather than on a “when paid” basis.

Deferred wages currently paid which are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9) “b” and paragraph 24.13(2) “o.”

24.52(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

24.52(10) Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2) “i”(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2) “i”(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2) “i”(3) if they are:

- (1) Able and available for work.
- (2) Making an earnest and active search for work each week.
- (3) Placing no restrictions on their employability.
- (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

24.52(11) Declination of new contract or reasonable assurance.

a. The school employee who is not employed on a 12-month, year-round basis and who fails or refuses to accept a contract or reasonable assurance of employment in the succeeding academic term or year shall have the separation adjudicated under the voluntary quit provision of Iowa Code section 96.5(1) pursuant to subrule 24.25(37).

b. This subrule also applies to substitute teachers who fail or refuse to accept a contract or reasonable assurance of employment in the succeeding academic term or year pursuant to subrules 24.26(19) and 24.26(22).

24.52(12) Delayed offer and acceptance of a contract or reasonable assurance of employment in the succeeding term or year. School employees who are not offered a contract or reasonable assurance of employment in the succeeding academic term or year are eligible for benefits if all other eligibility conditions are met. However, school employees who subsequently receive a contract or reasonable assurance of employment for the following term or year shall be disqualified under the “between terms denial” provision.

24.52(13) Continuing supplemental (part-time) school employment after loss of nonschool employment. All employers, including employers of part-time workers are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer account, whether contributory or reimbursable, pursuant to Iowa Code section 96.7(3) “a”(2).

871—24.53(96) Noncovered school-related employment.

24.53(1) Pursuant to rule 871—23.20(96), wages earned by a student who performs services in the employ of a school at which the student is enrolled and is regularly attending classes (either on a full-time

or part-time basis) cannot be used as wage credits for claim or benefit purposes. However, wages earned by an individual who is a full-time employee for a school whose academic pursuit is incidental to the full-time employment may be used for claim and benefit purposes.

24.53(2) Pursuant to rule 871—23.20(96), wages earned by the spouse of such a student in employment with the educational institution attended by the student cannot be used for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

24.53(3) Pursuant to rule 871—23.21(96), wages earned by a student who is enrolled at a nonprofit or public educational institution under a program taken for credit at such institution that combines academic instruction with work experience are normally excluded from the definition of employment. Provided, however, that work performed by such individual in excess of the hours called for in the contract between the school and the employer or performed in a period of time during which the institution is on a regularly scheduled vacation and for which such student receives no academic credit shall be considered as insured employment.

871—24.54(96) Church school coverage. Schools affiliated with a church are exempt from coverage but may volunteer coverage by request to the department of workforce development. Schools not affiliated with a church are covered employers with covered employment. Church school coverage is defined pursuant to rule 871—23.27(96).

871—24.55 and 24.56 Reserved.

871—24.57(96) Athletes—disqualifications. “Athletes” as used in Iowa Code section 96.5(9), is intended to apply to professional athletes. A professional athlete is an individual whose occupation is participating in athletic or sporting events for wages. A semiprofessional athlete is within the scope of Iowa Code section 96.5(9), if such sports services are compensation in covered wages. Auxiliary personnel, such as coaches, trainers, etc., are not considered professional athletes and are not within the scope of Iowa Code section 96.5(9).

24.57(1) As used in Iowa Code section 96.5(9), “any services, substantially all of which consist of participating in sports or athletic events” means all services performed by an individual in any subject employment during the individual’s base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

24.57(2) As used in Iowa Code section 96.5(9), “participating in sports or athletic events” means any services performed in an athletic activity by an individual as:

- a. A regular player or team member.
- b. An alternate player or team member.
- c. An individual in training to become a regular player or team member.
- d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

24.57(3) The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons shall be determined by the department after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

24.57(4) For the purposes of Iowa Code section 96.5(9), a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

- a. The individual has an express or implied multiyear contract which extends into the subsequent sport season, or,
- b. The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and

c. There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season, and

d. The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

24.57(5) Benefits which will be paid with respect to weeks of unemployment during a sports season shall be based on all wage credits of the individual. Wage credits would include those earned in sports as well as in other employment covered by an employment security law. With respect to weeks of unemployment that begin during a period between sports seasons (or similar periods) no benefits are payable on the basis of any athletic or nonathletic wages if substantially all (see subrule 24.57(1)) of the services performed by the individual during the base period were in sports or athletic events.

24.57(6) When a professional athlete is denied benefits because there is a reasonable assurance that the individual will again perform services as a professional athlete in the next ensuing season but the assurance fails to materialize, the denial of benefits is effective until the date established that the assurance is ineffective. Following the ineffective date, benefits can be paid if the individual is otherwise eligible. If an assurance given to an individual is found to be not a bona fide assurance, benefits are payable if the individual is otherwise eligible.

24.57(7) Benefits will be paid with respect to weeks of unemployment between sports seasons (or similar periods) based on wage credits of the individual, paid in other employment covered by employment security law except those in sports or athletic events or training, or preparing to so participate.

24.57(8) Athletes—denial of benefits. An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This rule is intended to implement Iowa Code section 96.5(9).

871—24.58(96) Voluntary shared work. The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of employees in an affected unit and those employees will receive a portion of their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the workforce by allowing certain employees to collect unemployment insurance benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer may apply to participate in the program by completing a shared work plan application which must be approved by the department. The employer shall submit the plan to the department 30 days prior to the proposed implementation date. The employer will administer the program in cooperation with the department. Participating employees will complete the employee information form and claim for benefits and return them to the employer who will submit them to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

24.58(1) A shared work plan will last no longer than 52 weeks from the date on which the plan is first effective. The minimum length of a plan is four weeks.

24.58(2) Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

24.58(3) A plan which has been approved may be modified at the discretion of the department. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and must demonstrate that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

24.58(4) Approval of a plan may be denied or revoked at the discretion of the department if the plan and its actual operation do not meet all the requirements stated in Iowa Code section 96.40 including, but not limited to, the providing of false or misleading information to the department, unequal treatment

of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

24.58(5) The employer may file in writing an appeal of a denial of approval of a plan or revocation of approval by the department within 30 days from the date the decision is issued. The employer's appeal will be forwarded to the appeals section so that a hearing may be scheduled before an administrative law judge.

24.58(6) If the employer provides as part of the plan a training program that will provide a substantive increase in the workplace and employability skills of the employee so as to reduce the potential for future periods of unemployment, the department shall consider the employee to be attending department-approved training and shall relieve the employer of charges for benefits paid to the individual attending training under the plan.

This rule is intended to implement 2009 Iowa Code Supplement section 96.40 as amended by 2010 Iowa Acts, Senate File 2279.

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—24.59(96) Child support intercept. An individual who owes a child support obligation and who has been determined to be eligible for unemployment insurance benefits under Iowa Code chapter 96, shall have this information furnished to the child support recovery unit. The department of workforce development shall deduct and withhold from benefit payments the amount which is specified by the child support recovery unit. The term "benefits" for child support intercept purposes shall be defined as meaning any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any workforce development agreement under any federal law administered by the department.

24.59(1) Information furnished to child support recovery unit. The department of workforce development shall furnish information to the child support recovery unit concerning all new claims filed that are monetarily eligible for benefits under any state or federal program administered by the department.

24.59(2) Action taken by child support recovery unit. The child support recovery unit shall contact the claimant so that an opportunity is afforded to the claimant for a signed agreement to have a specified amount deducted and withheld from the claimant's benefits. The child support recovery unit shall submit a copy of the signed agreement to the department of workforce development and the department shall deduct and withhold the amount specified in the agreement.

24.59(3) Garnishments. Failure of the child support recovery unit to reach an agreement with the claimant for a specified amount to be deducted may result in the child support recovery unit initiating a garnishment action through legal process under Iowa Code chapter 642. The department of workforce development shall deduct and withhold from the claimant's benefits the amount specified. Notwithstanding section 96.15, benefits under chapter 96 are not exempt from garnishment, attachment, or execution if garnished by the child support recovery unit as established in Iowa Code section 252B.2, to satisfy the child support obligation of an individual who is eligible under this chapter. Child support obligation is defined as only those obligations which are enforced pursuant to the plan as described in Section 454 of the Social Security Act under Part D of Title IV entitled "State Plan for Child Support."

24.59(4) Treatment of amount deducted for child support. Any amount deducted from unemployment insurance payments for child support obligations shall be treated as if it were paid to the individual as benefits under Iowa Code chapter 96.

24.59(5) Processing of payments. The child support recovery unit shall furnish to the department the name and address of the designated public official to whom the amount deducted must be remitted. After the deduction, the remaining balance shall be credited to the claimant.

24.59(6) Notice to claimant. The department shall mail a notice to the claimant which explains the beginning date and the amount of the deduction from the claimant's weekly benefit amount which satisfies the individual's child support obligation to the child support recovery unit. This notice will be issued when the first deduction is made from the benefit payment. The notice shall explain the authority for the deduction and include the claimant's right of appeal.

24.59(7) Appeal rights on the child support deduction.

a. Any appeal on a child support deduction is limited to either the validity of workforce development's authority to make the deduction or the accuracy of the amount deducted.

b. The claimant will be advised to seek remedy either through the child support recovery unit or through the court system whenever the question of reasonableness or fairness of the deducted amount is raised in terms of ability to pay.

c. The department does not have the authority under Iowa Code chapter 96 to change the amount of the deduction as specified by garnishment or voluntary agreement or to adjudicate any appeal from garnishment or voluntary agreement.

This rule is intended to implement Iowa Code sections 96.3 and 96.20.

871—24.60(96) Alien. Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

24.60(1) Section 3304(a)(14) of the Federal Unemployment Tax Act requires that the state law deny benefits which are based on services performed by an alien who has not been legally admitted to the country as a permanent resident. This provision does not deny benefits on the basis of services performed by noncitizens. It applies to services performed by individuals who do not have legal status of permanent residence in this country.

24.60(2) It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

b. If the answer is "no," the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94 "Arrival and Departure Record" and the Forms I-151 and I-551 "Alien Registration Receipt Card." These forms are issued by the Immigration and Naturalization Service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the immigration and naturalization service. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 871—24.56(96), administrative penalties, and rule 871—25.10(96), prosecution on overpayments.

d. Rescinded IAB 8/6/03, effective 9/10/03.

24.60(3) Disqualification of aliens.

a. Aliens shall be disqualified for services performed unless such alien is an individual who:

- (1) Was lawfully admitted for permanent residence at the time such services were performed or;
- (2) Was lawfully present in this country for purpose of performing such service or;
- (3) Was permanently residing in this country under color of law at the time such services were performed.

b. Color of law permanent residence is defined as:

(1) An alien admitted as a refugee under Section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157, in effect after March 31, 1980;

(2) An alien granted asylum by the attorney general of the United States under Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158;

(3) An alien granted a parole into the United States for an indefinite period under Section 212(d)(5)(B) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(B);

(4) Reserved.

(5) An alien who entered the United States prior to June 30, 1948, and who is eligible for lawful permanent residence pursuant to Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259; or

(6) An alien who has been formally granted deferred action or nonpriority status by the immigration and naturalization service.

24.60(4) Certain nonimmigrants may perform service in this country. All nonimmigrant aliens 18 years and older are required by law to carry alien registration card Form I-94. The immigration and naturalization service places a symbol on the Form I-94 which indicates eligibility to perform service in this country.

a. Nonimmigrant aliens who are allowed to perform certain types of service are:

Class of worker	Symbol on I-94	Employment Permitted
(1) Ambassador, Consular officers and their immediate families	A-1	May accept employment with permission from the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(2) Other foreign government officials and their immediate families.	A-2	Same as for A-1.
(3) Treaty trader, spouse and children	E-1	Admitted to work for a specific employer or as a sole proprietorship or partnership.
Treaty investor, spouse and children	E-2	
(4) Student	F-1	May accept employment of up to 20 hours per week with permission from the Immigration Service. I-94 will be stamped: "Employment Authorized." Employment should not displace a USC or permanent resident alien.
	M-1	
(5) Representatives of foreign governments to international organization such as the U.N.	G-1	May accept employment if approved by the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
	G-2	
	G-3	
	G-4 G-5	
(6) Temporary worker of distinguished merit and ability	H-1	Are admitted to work on a petition of an employer. Can only work for that employer unless permission is granted by the Immigration Service to change employers.
(7) Temporary workers performing services unavailable in the U.S.	H-2	Same as for H-1.
(8) Trainee	H-3	Same as for H-1.
(9) Exchange visitor	J-1	May be admitted to work in a specific program or may be granted permission to work after entry. I-94 will be stamped: "Employment Authorized."
Spouse and children	J-2	
(10) Fiancé or fiancée of USC entering solely to conclude valid marriage	K-1	May accept employment upon approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."
Child of a K-1	K-2	
(11) Intra company transferee entering to continue employment with same employer.	L-1	Admitted upon petition by an employer. May only work for that employer. May accept employment if approved by the Immigration Service. I-94 will be stamped: "Employment Authorized."
Dependents.	L-2	
(12) NATO representatives	NATO-1	Dependents may accept employment with approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."
	NATO-2	
	NATO-3	
	NATO-4	
	NATO-5	
	NATO-6	
	NATO-7	

b. Immigrant aliens who are not allowed to perform services are:

Class of worker	Symbol on I-94	Employment Status
(1) Attendant, servant or personal employee of an A-1 or A-2	A-3	May not accept employment.
(2) Temporary visitor for business	B-1	May not accept employment.
(3) Temporary visitor for pleasure	B-2	May not accept employment.
(4) Alien in transit	C-1 C-2 C-3	May not accept employment.
(5) Transit without a visa	TRWOV	May not accept employment.
(6) Seaman	D-1 D-2	May not accept employment.
(7) Dependent of student	F-2 M-2	May not accept employment.
(8) Spouse or child of an H-1, H-2 or H-3	H-4	May not accept employment.
(9) Representative of foreign information media including spouse and children	I	May not accept employment.

This rule is intended to implement Iowa Code section 96.5(10).

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¹ See rule 345—4.50(96)

² Effective date of 24.26(14) and 24.26(15) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.

CHAPTER 25
BENEFIT PAYMENT CONTROL
[Prior to 9/24/86, Employment Security[370]]
[Prior to 3/12/97, Job Service Division [345] Ch 5]

871—25.1(96) Definitions.

“Administrative penalty” means the disqualification of a claimant from the receipt of benefits due to fraud or misrepresentation or the willful and knowing failure to disclose a material fact for a period of not more than the remaining benefit year, including the week in which such determination is made.

“Allegation of fraud” means any form of communication from a party which implies fraudulent activity.

“Anonymous tip” means information about suspected fraudulent activity received from a party who wishes to remain unidentified.

“Appeals” means a request for a review by an appeals authority of the department from any determination made by a representative of the department, and including any request for a review by a higher appeals authority of a decision made by a lower appeals authority. It also includes any appeal from a determination of a representative, or any appeal or request for a hearing by a properly affected party.

“Benefits” means money payments to an individual with respect to unemployment. See 871—subrule 24.1(18).

“Claim” means a request for benefit payment. See 871—subrule 24.1(25).

“Claimant.” See 871—subrule 24.1(26).

“Earnings” means the remuneration for services performed.

“Employing unit” means any individual or entity which engages the services of one or more individuals; one for whom employees work and who pays their wages or remuneration.

“Evidence” means any witnesses’ testimony, records, documents, copies of documents, statements, demonstrations, or any other relevant testimony or concrete objects before the department or at an employment appeal hearing or trial of an issue for the purpose of inducing belief in the minds of the hearing officer, department, court or jury as to the truth of a contention.

“Fact-finding interview” means a discussion between a claimant or an employer and an investigator for the purpose of obtaining from the claimant or employer a statement containing information on a specific eligibility or disqualification issue.

“Fraud” means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury.

“Fraudulent activity” means actions based on or in the spirit of fraud.

“Initial determination” means the first determination with respect to a claim or a request for determination of insured status.

“Intent” means the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective.

“Investigator” means investigation and recovery section investigator.

“Local office” means the workforce development center office in which claims functions are performed.

“Material fact” means a fact which necessarily has some bearing on the subject matter, such as is necessary to determine the issue.

“Misconduct.” See 871—subrule 24.32(1), paragraph “a,” and 871—subrule 24.32(3).

“Misrepresentation” means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

“Month” means the time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

“Overpayment” means the amount of unemployment insurance benefits erroneously paid to a claimant due to error, misrepresentation, or fraud.

“Social security account number.” See 871—subrule 24.1(115).

“Surveillance” means the observance of activities.

“Wage cross match audit” means the computerized quarterly cross match of benefits received by Iowa claimants and wages reported by employers to the state of Iowa.

“Wages” means the same as earnings. See rules 871—24.13(96) and 871—24.16(96).

a. When a money value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

b. Cash value of room and board.

(1) If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in the Act (Iowa Code chapter 96) the reasonable cash value of same shall be deemed wages.

(2) Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals, or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in subparagraphs (4) and (5) of this paragraph.

(3) In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in subparagraph (4) of this paragraph.

Full board and room per week	\$272.00
Meals (without lodging) per week	92.00
Meals (without lodging) per day	18.40
Lodging (without meals) per week	180.00
Lodging (without meals) per day	36.00
Individual meals:	
Breakfast	4.00
Lunch	4.80
Dinner	9.60
A meal not identifiable as either breakfast, lunch, or dinner	4.00

(4) The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with subparagraph (3) of this paragraph, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

“Week.” See 871—subrule 24.1(135).

This rule is intended to implement Iowa Code chapter 96 and sections 96.3(3), 96.3(5), 96.19(38), 96.19(12), and 96.19(20).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—25.2(96) Policy of the investigation and recovery section.

25.2(1) The policy of the investigation and recovery section is to take aggressive action to prevent, detect, and deter benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others and investigate and penalize fraudulent actions on the part of claimants and employing units.

25.2(2) It shall be the policy of the investigation and recovery section to maximize the recoupment of overpayments from those claimants who have received benefits to which they were not entitled. It shall also be the policy of the section to seek prosecution of persons whom the section believes have committed serious violations of the employment security law of Iowa.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

871—25.3(96) Functions of the investigation and recovery section. The function of the investigation and recovery section is to:

25.3(1) Investigate and make determinations on issues within the scope of the investigation and recovery bureau which are referred by the general public, employing units, agency personnel, other agencies, and anonymous sources. The bureau shall examine allegations of the following type:

- a. Failure to report earnings while receiving unemployment insurance benefits.
- b. Collusion between claimant and employer or between two or more claimants, in the fraudulent obtaining of benefits.
- c. The use of multiple identities and social security numbers to obtain unemployment insurance benefits.
- d. Forgery and fraudulent certification for unemployment insurance benefits by one person impersonating another.
- e. Corporations, partnerships, individual proprietorships, and other employing units which fraudulently evade unemployment insurance coverage and tax assessment. Determine status of claimants employed by these entities.
- f. Claims involving contrived or fictitious employment, (i.e., family relationships).
- g. Cases of possible concurrency in claiming workers' compensation, railroad retirement, or social security while receiving benefits. Also concurrency of claiming benefits outside of Iowa while receiving unemployment insurance benefits. Possible welfare concurrency will be referred to the appropriate agency.
- h. Issues of availability, capability, voluntary leaving of employment, refusal of employment, misconduct, intervening employment, and industrial controversy where the facts are complex and field work is necessary to establish proper findings.
- i. Validity of alien registration numbers through a cross-check with U.S. Citizenship and Immigration Services. If an alien has falsely claimed to be a U.S. citizen or used a false alien registration card in order to receive benefits, prosecution cases will be prepared when appropriate. Refer to rule 871—24.60(96) for the definition of alien.

25.3(2) Collect refunds of overpayments resulting from determinations of claimant fraud.

25.3(3) Prepare all cases for prosecution.

- a. Submit cases to the county attorneys.
- b. Assist county attorneys and others by presenting evidence and giving testimony in court proceedings.

25.3(4) Formulate methods and procedures to prevent and detect all types of fraud by claimants, employing units, and unemployment insurance services personnel.

25.3(5) Provide liaison with local, state, and federal law enforcement agencies.

25.3(6) Testify and produce evidence before hearing officers and employment appeal board hearings regarding fraudulent activities.

25.3(7) Conduct internal audits as established by federal guidelines.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—25.4(96) Allegation of claimant fraud. The procedure to be followed where an allegation of claimant fraud has been made is:

25.4(1) Upon receipt of an allegation of claimant fraud, if the alleging party supplies sufficient information to proceed with an investigation, the alleging party shall be advised that the investigation and recovery bureau will make a full investigation of the allegation. The alleging party will be advised

of the bureau's findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party.

25.4(2) The allegations will be promptly forwarded to the investigation and recovery section for investigation.

25.4(3) If the findings revealed through the investigation by the investigation and recovery bureau indicate that a disqualification would have resulted for the period benefits were paid, an informal fact-finding interview shall be scheduled to allow the party making the allegation and the claimant an opportunity to give testimony. The investigation and recovery bureau will determine if separate fact-finding interviews are necessary for the claimant and party making the allegations and any other party with pertinent information.

25.4(4) If the claimant or any other party with pertinent information wishes to invoke the fifth amendment right to remain silent, the investigator can require the claimant or any other party with pertinent information to answer all questions or produce any pertinent documents. However, the claimant or any other party with pertinent information cannot be prosecuted on the basis of any transaction, matter, or thing concerning which the claimant or any other party with pertinent information is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence.

25.4(5) In the event a local office receives an allegation by anonymous communication, the office will forward such information to the investigation and recovery bureau.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

871—25.5(96) Allegation of employing unit fraud. The following is the general procedure to be followed by the investigation and recovery bureau in an employing unit fraud investigation:

25.5(1) Upon receipt of an allegation of employing unit fraud the party making the allegation will provide sufficient information to proceed with an investigation. Information such as the identification and location of the employing unit, the individual or group of individuals suspected of fraudulent action, and what fraudulent action is occurring will be provided, if possible.

25.5(2) The allegation will be promptly forwarded to the investigation and recovery bureau for investigation.

25.5(3) The investigations and recovery unit may seek the assistance and expertise of the tax bureau staff.

25.5(4) If the findings, revealed through the investigation by the investigation and recovery bureau, indicate that misrepresentation occurred on the part of the employer, an informal fact-finding interview will be scheduled for the party or parties to allow them an opportunity to present testimony either refuting or affirming the allegation of employer fraud.

25.5(5) If the employer wishes to invoke the fifth amendment, the investigator can require the employer to answer all questions. However, the employer cannot be prosecuted on the basis of any transaction, matter, or issue concerning which such employer is compelled, after having invoked the privilege against self-incrimination, to testify or produce evidence.

25.5(6) In the event a workforce development office receives an allegation, the office will forward such information to the investigation and recovery bureau, provided the communication identifies and supplies sufficient information to proceed with an investigation.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—25.6(96) Investigation of fraud (procedure).

25.6(1) Upon receipt of an allegation of fraudulent activity, an investigation file will be prepared containing all necessary documents. A case number will be assigned and the case assigned to an investigator. All investigation files will remain confidential.

25.6(2) The investigator will make a thorough review of all documents contained within the file and determine what issues need to be investigated. Documented evidence will be obtained from claimants,

employing units, witnesses, law enforcement agencies, local, state, and federal agencies, and any other source as may be necessary.

25.6(3) The investigation shall include the gathering of pertinent evidence and statements regarding any suspected fraudulent activity.

25.6(4) An investigator shall have the authority to request all pertinent books, papers, correspondence, memoranda, and other records necessary in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records concerning the matter or events under investigation. Any person, when requested by an investigator to produce records or give testimony, must be available personally to give testimony to or to produce records within a reasonable time for the investigator. If any person does not comply with the investigator's request to give testimony to the department or produce records, a subpoena may be issued summoning the individual to appear before the investigator to give testimony or present the records.

If the investigator determines that any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery bureau may immediately issue a subpoena duces tecum which orders an individual to produce some document or paper that is pertinent to a pending investigation by the investigation and recovery bureau, in order to secure the production of such records.

25.6(5) The investigation and recovery bureau may seek the assistance and expertise of the field auditors.

25.6(6) Surveillance of an individual or location may be conducted by the investigator when that individual or location is pertinent to the investigation.

25.6(7) Upon completion of the investigation, a determination shall be made as to whether or not fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated and the alleging party shall be advised of the investigation and recovery bureau's findings, if such investigation could affect the employer account of the alleging party. The case may be prepared for prosecution if prosecution is warranted.

25.6(8) A detailed report will be entered in the case management system upon completion.

This rule is intended to implement Iowa Code sections 96.16, 96.11(6) and 96.11(7).

871—25.7(96) Determination of overpayment by reason of claimant's fault or fraud.

25.7(1) Determination by reason of the claimant's own fault, employer's fault, agency fault, or fraud as provided in Iowa Code section 96.16, that the claimant has received benefits to which such claimant was not entitled shall be made by the investigations and recovery unit on the basis of such facts as it may obtain.

25.7(2) A notice of such determination shall be promptly given to the affected claimant. Such notice shall be dated and shall advise the claimant as to the benefit weeks involved and shall advise the claimant as to the reason for overpayment and the total amount of said overpayment. Unless the claimant, within ten days after such notification was mailed to the claimant's last-known address, files with the department a written request for review of, or an appeal from, such determination, the determination shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.7(3) Upon receiving a written request for review, the investigation and recovery bureau, based upon such facts as it has or may acquire, may affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.7(4) The claimant may directly appeal the decision of the investigation and recovery bureau without a request for review, in which case the appeal will be referred directly to the appeals section of the department.

25.7(5) Claimants affected by determinations made in accordance with this rule shall have the same rights to further appeal as are provided in Iowa Code section 96.6.

25.7(6) When such determination has become final the benefits shall be recovered.

a. The department shall always demand immediate repayment of the overpayment as its first option for those claimants not in benefit claiming status at the time of the initial overpayment determination. If not paid immediately, the overpayment amount will be deducted from future benefits. Recovery of overpayments due to misrepresentation or fraud may also include the filing of a notice of lien or other civil action. Upon finalization of the determination of overpayment by reason of a claimant's fault or fraud, interest shall accrue at a rate of 1/30th of 1 percent per day until the overpayment is paid in full.

b. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment to the department.

c. If a claimant fails to respond to the first statement of overpayment a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment the department will consider a monthly repayment agreement. Monthly amounts based on the minimum repayment agreement schedule below will be printed on the second billing. The first repayment is expected 10 days from the date of the second repayment statement and the additional repayments every 30 days thereafter until the debt is paid in full. The department reserves the right to accept or reject any proposed repayment agreement. The following minimum repayment agreement is acceptable by the department.

Amount of Original Overpayment	Minimum Monthly Payments	Number of Months Required to Liquidate the Overpayment
Under \$199	\$ 25	1 to 8
\$200 to \$399	\$ 40	5 to 10
\$400 to \$599	\$ 50	8 to 12
\$600 to \$799	\$ 65	9 to 13
\$800 to \$999	\$ 80	10 to 13
\$1000 to \$1499	\$ 90	11 to 17
\$1500 to \$1999	\$100	15 to 20
\$2000 to \$2999	\$110	18 to 28
\$3000 and over	\$130	23 to —

d. If a claimant fails to respond to the second repayment statement a third notice shall be sent in approximately 30 days. The department has the option to send a notice which allows the claimant another 10 days to make full repayment of the indebtedness or a partial payment with an acceptable signed repayment agreement to prevent further collection action by the department, or the department may send a lien warning letter as the third billing notice. This warning gives 10 days to make full payment which will prevent lien filing. The department may proceed with any appropriate civil action to collect the debt which would include, but not be limited to, a judgment in a court having jurisdiction over the matter. The same type of action may be pursued by the department in those cases where a claimant defaults on a repayment schedule.

e. If the department receives a cash repayment to liquidate all or part of an indebtedness the department shall issue a receipt and mail it to the claimant's last-known address. If the department receives a repayment that is not identified by a social security number, name or other means of identification, the money shall be retained until such time as a positive identification can be made and proper credit given to the claimant.

f. An overpayment to the claimant will cause the employer to be relieved of charges except when the overpayment is a result of payment of a back pay award.

g. Reserved.

h. An underpayment of \$5 or less will not be set up and paid to an individual unless the individual requests the payment in writing.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.8(5), 96.11(1), 96.16, and 96.19(38).

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—25.8(96) Recovery of benefit overpayments when benefits are erroneously received.

25.8(1) *Good faith overpayment.* If an individual has acted in good faith in claiming benefits for any week and it is later determined that the individual is not entitled to receive the benefits, the department shall recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. The department shall mail the overpayment decision to the claimant's last-known address. Once the overpayment amount has been established, an overpayment schedule shall be set up to leave a proper audit trail even if the claimant pays to the department a sum equal to the overpayment.

a. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment in the form of a negotiable check, money order, or bank draft payable to the Department of Workforce Development.

b. If a claimant fails to respond to the first statement of overpayment a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment the department will consider a monthly repayment agreement.

c. Rescinded IAB 10/15/03, effective 11/19/03.

d. If an individual has acted in good faith and is without fault in claiming federal unemployment compensation under any of the following programs:

- (1) Unemployment Compensation Federal Employees (UCFE)
- (2) Unemployment Compensation Ex-servicemembers (UCX)
- (3) Trade Readjustment Allowances (TRA)
- (4) Disaster Unemployment Assistance (DUA)

and it is subsequently determined that the individual is not entitled to the benefits, the department shall have the right to recover the benefits in accordance with the procedure outlined in subrule 25.8(1). Any federal unemployment compensation overpayments recovered shall be credited to the appropriate account of the United States. Three years after the instance of the federal unemployment compensation overpayment, if the department concludes that continued collection efforts would result in diminishing returns, then the unrecovered amount will be removed from the department accounting records. An administrative record will be maintained for possible collection through offset or other appropriate method. If no collection action has taken place during the three years after the department has removed the overpayment from its accounting records, then the overpayment will be disposed of.

Any overpayment of Trade Readjustment Allowances or Trade Adjustment Assistance or Disaster Unemployment Assistance will be offset at the rate of 50 percent of the benefit amount otherwise payable to the individual for unemployment insurance, extended benefits or any other federal unemployment compensation program.

25.8(2) *Misrepresentation.*

a. Whenever it is found that a claimant has received benefits through misrepresentation and has been assessed with an overpayment, no further benefits shall be paid to such claimant until the total amount of the overpayment has been reimbursed or otherwise liquidated to the satisfaction of the department.

b. The claimant may make refund of an overpayment by cash or by means of an offset against future benefit payments, at the discretion of the department.

(1) If the department seeks to recover the amount of the benefits, the department may file a lien with the county recorder for the amount of the overpayment against the property and rights to property, whether real or personal, belonging to the individual.

(2) The department may attempt to collect the overpayment in the manner provided in Iowa Code section 96.14(3).

c. Any benefits which may become due an individual against whom a fraudulent overpayment is outstanding may be used to reduce the amount of the fraudulent overpayment. The employer's account will be noncharged for overpayments caused by fraud or misrepresentation.

d. If it is found that an individual has received benefits through misrepresentation and has been assessed with an overpayment under any of the following programs:

(1) Unemployment Compensation Federal Employees (UCFE)

(2) Unemployment Compensation Ex-service members (UCX) and criminal charges are not involved, the department will limit deduction from future benefits to a two-year period following the original determination of overpayment. If an individual is convicted for fraud, the department shall have the right to recover any resulting overpayment in accordance with the procedure outlined in subrule 25.8(2).

25.8(3) *Purging uncollectible overpayments.* On the last working day of each calendar month, the department reviews all outstanding overpayments, which are ten years or older from the date of the overpayment decision, and determines as uncollectible and purges from its records the unpaid balances of overpayments which are ten years or older from the date of the most recent recovery of a part of the outstanding overpayment.

This rule is intended to implement Iowa Code sections 96.7(2), 96.11(1), 96.11(11), 96.11(13), 96.14(3), 96.16, 96.20, and 96.29.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—25.9(96) Administrative penalties.

25.9(1) When, subsequent to the filing of a valid claim, it has been determined that within the preceding 36 calendar months the claimant fraudulently reported or failed to report wages earned during a week, or failed to disclose a material fact upon separation from employment from such claimant's most recent employing unit or employer, with intent to obtain benefits, or failed to disclose a material fact concerning any claimant's ability to work, availability for work, or any other eligibility requirements, with intent to obtain benefits, such claimant shall forfeit all unemployment insurance benefits for the week in which the determination is made and for a period of not more than such claimant's remaining benefit year.

25.9(2) Penalties.

a. Any penalties imposed by this rule shall be in addition to those imposed by Iowa Code section 96.16.

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator because each case must be decided on its own merits. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The department shall also consider the filing of fraud charges whenever an administrative penalty is imposed against a claimant. If the same offense is repeated, loss of benefits through the end of the benefit year will result.

c. The department shall issue a determination which sets forth the specific penalty being applied.

(1) The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts.

(2) The determination shall be based on the facts obtained and shall become final within ten days after the decision was mailed to the claimant's last-known address, unless an appeal is made to the department by the filing of a notice of appeal at any office of the department of workforce development. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.9(3) Sources of information concerning the application of an administrative penalty shall be the same as those pertaining to fraud and overpayment, namely:

a. Employer report of wages, with comparative analysis of them with concurrent benefit payments.

b. Local office obtaining late reports by claimant of deductible income items or potentially disqualifying circumstances.

c. Tips and leads from other sources of claimant being employed while claiming benefits or that such claimant did not otherwise meet the eligibility requirements.

d. Cross-checking of information on death tapes from the vital statistics section, division of administration, department of public health.

e. Review of claims using social security numbers not issued by the social security administration.

f. Cross-checking of information from the Iowa centralized employer registry.

25.9(4) The claimant shall be notified of the possible application of the administrative penalty by Form 65-5315, Notice of Unemployment Insurance Fact-Finding Interview, in the same manner a claimant is notified of a possible overpayment.

25.9(5) If the claimant wishes to invoke the right to remain silent, the investigator can require the claimant to answer all pertinent questions. However, the claimant cannot be prosecuted on the basis of any transaction, matter, or event concerning which the claimant is compelled to testify or produce evidence after the individual has claimed the privilege against self-incrimination.

25.9(6) The claimant shall be afforded an opportunity to give testimony, either refuting or affirming the allegation of intent to defraud and may be represented by legal counsel at such hearing.

25.9(7) Rescinded IAB 10/15/03, effective 11/19/03.

25.9(8) In the event any claimant is aggrieved by the representative's determination assessing an administrative penalty or by the severity of the penalty assessed, such claimant shall have the same protest and appeal rights as provided for all other determinations involving a denial of benefits.

25.9(9) A criminal conviction of a claimant for fraud or an order of the court requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery bureau from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery bureau.

This rule is intended to implement Iowa Code sections 96.5(8), 96.11(1), and 96.11(10).

871—25.10(96) Prosecution on overpayments.

25.10(1) When an overpayment occurs due to misrepresentation, the case shall be given a thorough and detailed review of the facts, as obtained by the investigation and recovery bureau, to determine if a prosecution for fraud would meet the county attorney's criteria.

a. The claimant shall be afforded an opportunity to give testimony either refuting or affirming the overpayment.

b. The investigation and recovery bureau will issue a decision concerning the overpayment.

25.10(2) Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the investigation and recovery bureau from instituting criminal proceedings against the claimant.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.11(96) Prosecution for fraud (procedure).

25.11(1) If prosecution is warranted, supportive documentation and evidence will be requested and thoroughly reviewed upon receipt by the investigator.

25.11(2) A handwriting sample will be taken from claimant when necessary and submitted for investigation.

25.11(3) A summary of the case will be prepared and the case taken to the county attorney for filing of criminal charges.

25.11(4) Upon request by the county attorney, the investigator may make recommendations regarding plea bargaining, dismissals, and sentencing and participate in the mediation process.

25.11(5) Investigators may testify and produce evidence at district court and grand jury proceedings.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.12(96) Wage cross match audit procedure.

25.12(1) Each quarter, cross match audit Forms 65-5321 are mailed to selected employers requesting wage information on specific claimants as it concerns benefit payments.

25.12(2) The form, upon completion by the employer, is sent to the investigation and recovery bureau for entering in the Iowa workforce development database system. If the form is not completed properly, it is sent to the employing unit for correct information and then returned for processing. Any potential cases of conflict generated by the computer program will result in an investigation assignment and investigation packet. Claimants will be notified by means of Form 65-5332 (Preliminary Audit Notice) and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031 on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5323.

25.12(3) An employer may choose to participate in the automated crossmatch procedure by following the electronic submission guidelines.

25.12(4) An employer that fails to respond to a request for wage information pertaining to specific claimant(s) as such request pertains to benefit payments will be charged a fee of \$25 per claimant.

This rule is intended to implement Iowa Code section 96.11(1).

[ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—25.13(96) Duplicate benefit warrants.

25.13(1) *Undelivered warrant.* If any warrant issued in payment of benefits is returned undelivered to the department by the postmaster, such warrant will be canceled 90 days after the original issue date unless it can be mailed to the new correct address. If a warrant remains outstanding beyond a period of six months from the date of issuance after the end of the quarter in which the warrant was issued, this warrant will be canceled when the department receives notification from the state comptroller's office.

25.13(2) *Canceled warrant.* On a quarterly basis, the comptroller shall cause to be canceled each benefit warrant which, at this time, has been outstanding six months or longer. Any individual who has an outdated warrant less than five years old may contact the department for assistance. The individual will be instructed to return the outdated warrant to the unemployment insurance service center with a request that a duplicate warrant be issued. If the outdated warrant is more than five years old, miscellaneous claim Form 60-0224 should be used to request reissuance of the warrant. The miscellaneous claim form shall be transmitted to the state board of appeals for determination, at its regular monthly meeting, as to payment or nonpayment of the warrant.

25.13(3) *Lost and uncashed warrant.*

a. In the event that a warrant issued in payment of benefits is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrules 25.13(1) and 25.13(2), the payee shall contact the department representative for assistance. All information will be forwarded to the unemployment insurance service center.

b. The department will ascertain whether the warrant has been cashed and take the following action:

(1) If the warrant has been cashed, the procedure in subrule 25.13(4) of this rule shall be followed.

(2) If the warrant has not been cashed, the department shall issue a stop payment order on the warrant, and a Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, will be mailed to the individual for completion. The affidavit is a sworn statement that the original warrant was not received and that the warrant will be surrendered voluntarily if received by the claimant. The claimant should be warned that the warrant cannot be cashed after the stop payment order is in effect.

c. The affidavit shall be personally prepared in duplicate by the claimant, and the claimant's signature on the affidavit must be notarized. The affidavit shall be transmitted in duplicate to the unemployment insurance service center.

d. The department will then request that the state comptroller reissue a duplicate warrant, and this warrant will be mailed to the claimant by the department.

e. If the claimant should cash the original warrant after the stop payment order is in place, an overpayment shall be set up and possible prosecution considered, if warranted.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the original warrant shall be sent to the unemployment insurance service center.

25.13(4) Forged warrants.

a. In the event that the original warrant has been endorsed by and paid to someone allegedly not authorized to receive payment, the payee whose endorsement was forged will be given the opportunity to examine the endorsement on the copy of the warrant.

b. If the payee determines that the endorsement is a forgery, the following action shall be taken:

(1) The Form 68-0320, affidavit as to forged endorsement, shall be personally prepared in duplicate by the claimant and the claimant's signature on the affidavit must be notarized.

(2) The claimant shall be required to file a police report with the local law enforcement agency and return a copy of the police report to the unemployment insurance service center.

(3) A copy of the original warrant, the notarized affidavit and the copy of the police report will be sent to the unemployment insurance service center for action. The department will explain to the claimant that the documents will be reviewed and that a handwriting analysis may be completed.

c. The investigation and recovery bureau will make a handwriting analysis to determine if the warrant was forged. If the handwriting is determined to be a forgery, a duplicate warrant will be issued to the payee only after the state comptroller has recouped the money.

25.13(5) Employer account credit. At the time of cancellation of any outstanding benefit warrant(s), the employer account shall be credited with the amount of the warrant(s) so canceled. The reissuance of any benefit warrant canceled in subrule 25.13(1) or 25.13(2) shall be charged to the employer account.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.14(96) Payments of benefits due deceased person.

25.14(1) Benefits due deceased claimants. An eligible week for a deceased claimant will be one where the week is claimed by the individual prior to death. If benefits are due a deceased person, the benefits shall be paid to the person or persons who have been issued letters testamentary or of administration pursuant to an application filed within 30 days after the claimant's death.

25.14(2) In the event that no application for letters testamentary or of administration has been filed within 30 days after the claimant's death, the benefits which were due shall be paid to the decedent's surviving spouse, if any; or, if no spouse survives the decedent and the decedent is survived by an unmarried minor child or children, the benefits shall, at the discretion of the department, be paid:

a. To the guardian or guardians of unmarried minor child or children for their benefit; or

b. To the person or institution who or which the department finds shall have assumed the obligation of providing support for or maintenance of such minor child or children; or

c. To any person who the department finds has furnished to such child or children necessities of a value equaling or exceeding the amount of benefits; or

d. To any person who the department finds has paid expenses of the claimant's last illness or burial expenses in an amount equaling or exceeding the amount of benefits.

25.14(3) The comptroller shall cause any unredeemed warrant or warrants payable to a deceased person to be surrendered and voided and shall issue a new warrant or warrants bearing the same dates and numbers and made payable to the entitled person or persons under the provisions of this rule. The issuance of the new warrant or warrants shall fully discharge the department of its obligation in respect to the claims covered thereby and no other person shall claim or assert any right to them.

25.14(4) Any person claiming entitlement to the payment of benefits under this regulation shall present said claim in writing within 60 days after the death of the claimant and shall offer proof thereof in such form as the department may require; however, the department may, upon good cause shown, extend the time for presentation of said claim. In the event no claim is made for the payment of such benefits within the time limit specified above or any extension thereof, the benefits shall not be paid but shall remain in the unemployment compensation fund.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.15(96) Back pay—benefit recovery and charging.

25.15(1) When an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period from the individual's employer, the department shall recover the benefits in the following manner:

a. The department shall first attempt to reach an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer and to remit that amount to the unemployment compensation fund.

b. If the department fails to reach an agreement with the individual and the employer as provided in paragraph "a," then the department shall either deduct an amount equal to the benefits received by the individual from any future benefits received by the individual or have the individual pay the department an amount equal to the benefits received by the individual.

c. The burden of proof shall rest with the employer to establish the dollar amount of the back pay award which is remuneration for lost wages and the specific period of time to which the remuneration applies.

25.15(2) If the department reaches an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer, then the employer's account shall be relieved of benefit charges in an amount equal to the amount remitted by the employer to the unemployment compensation fund; however, if the department fails to reach an agreement, then the benefit charges shall not be relieved until the benefits paid to the individual are recovered either by deducting that amount from any future benefits received by the individual or by having the individual pay that amount to the department.

871—25.16(96) State payment offset. An individual who is owed a payment from the state of at least \$50 and owes an overpayment of benefits of at least \$50 is subject to an offset against the individual's payment from the state to recover all or a part of the individual's overpayment of benefits and to reimburse the department of revenue for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

25.16(1) If the individual has made no attempt to repay the overpayment of benefits within the preceding six months, the individual's name and social security number are given to the department of revenue.

25.16(2) The department of revenue notifies the department that an overpaid individual is owed a payment from the state. The department then notifies the overpaid individual of the potential offset against the individual's payment from the state.

25.16(3) In the case of a joint or combined income tax filing, the individual has ten days from the postmark date on the decision to request a split of the refund to ensure the other party's portion of the refund is not offset. When a request is made, the department notifies the department of revenue to make the split. The department then notifies the overpaid individual of the amount of the offset. If the request for split of the refund is not made timely, the entire income tax refund becomes subject to offset.

25.16(4) Any appeal by the individual is limited to the validity of the department's authority to recoup the overpayment through offset.

25.16(5) In the event that the amount of the offset exceeds the remaining overpayment, the department shall issue to the individual a special check equal to the amount of the excess.

This rule is intended to implement Iowa Code sections 96.11 and 421.17(26,29).

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