

State of Iowa

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

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

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

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

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

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

Agriculture and Land Stewardship Department[21]

Replace Analysis
Replace Chapter 64
Replace Chapter 76

Civil Rights Commission[161]

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City Development Board[263]

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Replace Chapter 6

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Replace Chapters 30 and 31

Petroleum Underground Storage Tank Fund Board, Iowa Comprehensive[591]

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- Replace Chapter 28
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- Replace Chapter 132
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- Replace Chapter 163
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- Replace Chapter 172
- Replace Chapter 400
- Replace Chapter 540
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Labor Services Division[875]

- Replace Chapter 10

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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[Appeared as Ch 1, 1973 IDR]

[Ch 16, IAC 7/1/75 renumbered as 11.3, 12.1 to 12.33, and 16.24 and 16.25 renumbered 16.6 and 16.7

as per written instructions from Ag. Dept. 10/11/77]

[Prior to 7/27/88, see Agriculture Department 30—Ch 16]

21—64.1(163) Reporting disease. Whenever any person or persons who shall have knowledge of the existence of any infectious or contagious disease, such disease affecting the animals within the state or resulting in exposure thereto, which may prove detrimental to the health of the animals within the state, it shall be the duty of such person or persons to report the same in writing to the State Veterinarian, Bureau of Animal Industry, Wallace State Office Building, Des Moines, Iowa 50319, who shall then take such action as deemed necessary for the suppression and prevention of such disease. The diseases as classified by the Office International Des Epizooties are included. The following named diseases are infectious or contagious and the diagnosis or suspected diagnosis of any of these diseases in animals must be reported promptly to the Iowa department of agriculture and land stewardship by the veterinarian making the diagnosis or suspected diagnosis:

64.1(1) Multiple species diseases.

- Anthrax
- Aujeszky's disease
- Bluetongue
- Brucellosis (*Brucella abortus*)
- Brucellosis (*Brucella melitensis*)
- Brucellosis (*Brucella suis*)
- Crimean Congo haemorrhagic fever
- Echinococcosis/hydatidosis
- Epizootic haemorrhagic disease
- Equine encephalomyelitis (Eastern)
- Foot and mouth disease
- Heartwater
- Japanese encephalitis
- Johne's disease
- Leptospirosis
- New world screwworm (*Cochliomyia hominivorax*)
- Old world screwworm (*Chrysomya bezziana*)
- Q fever
- Rabies
- Rift Valley fever
- Rinderpest
- Surra (*Trypanosoma evansi*)
- Trichinellosis
- Tularemia
- Vesicular stomatitis
- West Nile fever

64.1(2) Cattle diseases.

- Bovine anaplasmosis
- Bovine babesiosis
- Bovine genital campylobacteriosis
- Bovine spongiform encephalopathy
- Bovine tuberculosis
- Bovine viral diarrhoea
- Contagious bovine pleuropneumonia
- Enzootic bovine leukosis

- Haemorrhagic septicaemia
 - Infectious bovine rhinotracheitis/infectious pustular vulvovaginitis
 - Lumpy skin disease
 - Theileriosis
 - Trichomonosis
 - Trypanosomosis (tsetse-transmitted)
- 64.1(3) *Swine diseases.***
- African swine fever
 - Classical swine fever
 - Nipah virus encephalitis
 - Porcine cysticercosis
 - Porcine reproductive and respiratory syndrome
 - Swine vesicular disease
 - Transmissible gastroenteritis
- 64.1(4) *Sheep and goat diseases.***
- Caprine arthritis/encephalitis
 - Contagious agalactia
 - Contagious caprine pleuropneumonia
 - Enzootic abortion of ewes (ovine chlamydiosis)
 - Maedi-visna
 - Nairobi sheep disease
 - Ovine epididymitis (*Brucella ovis*)
 - Peste des petits ruminants
 - Salmonellosis (*S. abortusovis*)
 - Scrapie
 - Sheep pox and goat pox
- 64.1(5) *Equine diseases.***
- African horse sickness
 - Contagious equine metritis
 - Dourine
 - Equine encephalomyelitis (Western)
 - Equine infectious anaemia
 - Equine influenza
 - Equine piroplasmosis
 - Equine rhinopneumonitis
 - Equine viral arteritis
 - Glanders
 - Venezuelan equine encephalomyelitis
- 64.1(6) *Avian diseases.***
- Avian chlamydiosis
 - Avian infectious bronchitis
 - Avian infectious laryngotracheitis
 - Avian mycoplasmosis (*M. gallisepticum*)
 - Avian mycoplasmosis (*M. synoviae*)
 - Duck virus hepatitis
 - Fowl cholera
 - Fowl typhoid
 - Highly pathogenic avian influenza and low pathogenic avian influenza in poultry
 - Infectious bursal disease (Gumboro disease)
 - Marek's disease
 - Newcastle disease
 - Pullorum disease

- Turkey rhinotracheitis
- 64.1(7) *Lagomorph diseases.***
 - Myxomatosis
 - Rabbit haemorrhagic disease
- 64.1(8) *Fish diseases.***
 - Epizootic haematopoietic necrosis
 - Epizootic ulcerative syndrome
 - Gyrodactylosis (*Gyrodactylus salaris*)
 - Infectious haematopoietic necrosis
 - Infectious salmon anaemia
 - Koi herpesvirus disease
 - Red sea bream iridoviral disease
 - Spring viraemia of carp
 - Viral haemorrhagic septicaemia
- 64.1(9) *Mollusc diseases.***
 - Infection with abalone herpes-like virus
 - Infection with *Bonamia exitiosa*
 - Infection with *Bonamia ostreae*
 - Infection with *Marteilia refringens*
 - Infection with *Perkinsus marinus*
 - Infection with *Perkinsus olseni*
 - Infection with *Xenohalictis californiensis*
- 64.1(10) *Crustacean diseases.***
 - Crayfish plague (*Aphanomyces astaci*)
 - Infectious hypodermal and haematopoietic necrosis
 - Infectious myonecrosis
 - Taura syndrome
 - White spot disease
 - White tail disease
 - Yellowhead disease
- 64.1(11) *Amphibian diseases.***
 - Infection with *Batrachochytrium dendrobatidis*
 - Infection with ranavirus
- 64.1(12) *Other diseases.***
 - Camel pox
 - Chronic wasting disease
 - Leishmaniosis

Reporting is required for any case or suspicious case of an animal having any disease that may be caused by bioterrorism, epidemic or pandemic disease, or novel or highly fatal infectious agents or biological toxins and that might pose a substantial risk of a significant number of animal fatalities, incidents of acute short-term illness in animals, or incidents of permanent or long-term disability in animals.

This rule is intended to implement Iowa Code sections 163.1, 163.2, 189A.12, 189A.13 and 197.5. [ARC 9102B, IAB 9/22/10, effective 9/1/10; ARC 0230C, IAB 7/25/12, effective 8/29/12]

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21—64.2(163) Disease prevention and suppression. Whenever the chief of division of animal industry shall have knowledge of an outbreak of any contagious, infectious or communicable disease among domestic animals in the state, the chief of the division of animal industry shall take such action as necessary for the prevention and suppression of such disease, including establishment, enforcement and maintenance of quarantines. The chief of the division of animal industry is authorized and empowered to obtain assistance of any peace officer.

This rule is intended to implement Iowa Code sections 163.1 and 163.10.

21—64.3(163) Duties of township trustees and health board. Whenever notice is given to the trustees of a township or to a local board of health that animals are suspected of being affected with or having been exposed to any contagious, infectious or communicable disease, they may impose such restrictions as deemed necessary to prevent the spread of the disease. It shall be the duty of such township trustees or local boards to immediately notify the chief of division of animal industry.

This rule is intended to implement Iowa Code section 163.17.

21—64.4(163) “Exposed” defined. An animal must be considered as “exposed” when it has stood in a stable with, or been in contact with, any animal known to be affected with a contagious, infectious or transmissible disease; or if placed in a stable, yard or other enclosure where such diseased animal or animals have been kept unless such stable, yard or other enclosure has been thoroughly cleaned and disinfected after containing animals so affected.

This rule is intended to implement Iowa Code section 163.1.

21—64.5(163) Sale of vaccine. No attenuated or live culture vaccine or virus shall be sold or offered for sale at retail except to a licensed veterinarian of this state, nor shall it be administered to any livestock or poultry except by a licensed veterinarian of the state of Iowa. This does not apply to the sale of and administration of virulent classical swine fever virus when sold to and administered by valid permit holders for its use on hogs owned by themselves on their own premises.

This rule is intended to implement Iowa Code section 163.1.

[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.6(163) “Quarantine” defined. The term “quarantine” shall be construed to mean the perfect isolation of all diseased or suspected animals from contact with other animals as well as the exclusion of other animals from yards, stables, enclosures or grounds where suspected or diseased animals are or have been kept.

This rule is intended to implement Iowa Code section 163.1.

21—64.7(163) Chiefs of Iowa and U.S. animal industries to cooperate. The department of agriculture and land stewardship hereby authorizes and directs the chief of division of animal industry to cooperate with the bureau of animal industry, United States Department of Agriculture, in all regulations for the prevention, control and eradication of contagious and infectious diseases among domestic animals in the state of Iowa.

This rule is intended to implement Iowa Code section 163.1.

21—64.8(163) Animal blood sample collection. Any animal slaughtered in Iowa is subject to having blood samples taken in order to determine whether the animal is infected with an infectious or contagious disease. Upon written notification from the department or from the United States Department of Agriculture, the management of a slaughter facility shall provide for or permit the collection of blood samples for testing from any animal confined at or being slaughtered at such a facility.

If the department or the United States Department of Agriculture chooses to place government employees or private contractors in the facility for the purpose of collecting the blood samples, neither the facility nor the management of the facility shall charge a fee for providing such access. In addition, the slaughter facility shall provide blood collectors access to facilities routinely available to plant employees such as rest rooms, lockers, break rooms, lunchrooms, and storage facilities to facilitate blood collection in the same manner and on the same terms as the facility provides access to the facility to meat inspectors employed by the department or the Food Safety Inspection Service of the United States Department of Agriculture.

21—64.9 Reserved.

[July 1952 IDR; File 6/3/55; Amended 3/12/62]

[Filed 12/21/76, Notice 11/3/76—published 1/12/77, effective 2/17/77]

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GLANDERS AND FARCY CONTROL

21—64.10(163) Preventing spread of glanders. No person owning or having the care or custody of any animal affected with glanders or farcy, or which there is a reason to believe is affected with said disease, shall lead, drive or permit such animal to go on or over any public grounds, unenclosed lands, street, road, public highway, lane or alley; or permit such animal to drink at any public watering trough, pail or spring, or keep such diseased animal in any enclosure in or from which such diseased animal may come in contact with, or in proximity to, any animal not affected with such disease.

This rule is intended to implement Iowa Code section 163.20.

21—64.11(163) Disposal of diseased animal. Whenever any animal affected with glanders dies or is destroyed the carcass of such animal shall be disposed of as determined by the department.

As glanders is transmissible to human beings great care must be exercised in handling diseased animals or carcasses.

This rule is intended to implement Iowa Code section 163.1.

[ARC 2591C, IAB 6/22/16, effective 7/27/16]

21—64.12(163) Glanders quarantine. It shall be the duty of the chief of division of animal industry to maintain quarantine on all animals affected with glanders until such animals have been destroyed by consent of the owner or otherwise, and carcasses disposed of in accordance with 21—64.11(163) and the premises where the same have been kept thoroughly cleaned and disinfected.

This rule is intended to implement Iowa Code section 163.2.

21—64.13(163) Tests for glanders and farcy. In suspected cases of glanders and farcy the most efficient field test is the intrapalpebral mallein test, and as valuable aids to diagnosis the mallein Strass' agglutination and precipitation tests shall be recognized.

This rule is intended to implement Iowa Code section 163.1.

21—64.14 Reserved.

[Filed 6/3/55]

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

[Filed ARC 2591C (Notice ARC 2517C, IAB 4/27/16), IAB 6/22/16, effective 7/27/16]

BLACKLEG CONTROL

21—64.15(163) Blackleg. Upon the appearance of an outbreak of blackleg on any premises all calves and yearlings on the premises should be promptly immunized. All carcasses of animals dead of blackleg must be burned intact without removal of the hide. Such carcasses may be disposed of by removal within 24 hours by the operator of a regularly licensed rendering plant. In the event that the owner of any animal dead from blackleg neglects or refuses to make such disposition of the carcass or carcasses as indicated above, then in such cases the disposal shall be handled in accordance with 21—61.33(163).

This rule is intended to implement Iowa Code sections 167.18 and 163.2.

21—64.16 Reserved.

[Filed 6/3/55]

[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]

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

DEPARTMENT NOTIFICATION OF DISEASES

21—64.17(163) Notification of chief of animal industry. It shall be the duty of any city or local board of health or township trustees, whenever notice is given of animals being affected with rabies, glanders, scabies, classical swine fever or any contagious or infectious disease or having been exposed to the same, to promptly notify the state veterinarian.

This rule is intended to implement Iowa Code section 163.17.
[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.18 to 64.22 Reserved.

[Filed 6/3/55]

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RABIES CONTROL

21—64.23(163) Rabies—exposed animals. Whenever rabies is known to exist in any community it shall be the duty of all owners of dogs or other exposed animals to immediately confine such dogs or animals securely to prevent them from spreading the infection should they develop the disease.

This rule is intended to implement Iowa Code section 351.39.

21—64.24(163) Rabies quarantine. When quarantine is established in any community on account of the existence of rabies all dogs not confined or muzzled shall be promptly destroyed.

This rule is intended to implement Iowa Code section 351.40.

21—64.25(351) Control and prevention of rabies.

64.25(1) *Antirabies vaccine.*

a. Vaccines and immunization procedures recommended in the Compendium of Animal Rabies Vaccines prepared by the National Association of Public Health Veterinarians, Inc. are approved by the Iowa department of agriculture and land stewardship.

b. Reserved.

64.25(2) *Tag and certificate.*

a. The veterinarian shall issue a tag with the numerical number thereon and the certificate of vaccination shall designate the tag number.

b. Each rabies vaccination certificate issued by the veterinarian must be an Official Rabies Vaccination Certificate approved by the Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 351.35.

21—64.26 to 64.29 Reserved.

[Filed 6/3/55, amended 7/13/65, 3/21/67]

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SCABIES OR MANGE CONTROL

21—64.30(163) Scabies or mange quarantine. Whenever the state veterinarian shall have knowledge of any horses, cattle, sheep or swine affected with scabies or mange, owners of any horses, cattle, sheep or swine affected shall medicate the animals at intervals the state veterinarian deems necessary with a method approved by the state veterinarian.

This rule is intended to implement Iowa Code section 166A.8.
[ARC 9102B, IAB 9/22/10, effective 9/1/10]

21—64.31 Reserved.

[Filed 6/3/55]

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DISEASE CONTROL AT FAIRS AND EXHIBITS

21—64.32(163) State fairgrounds—disinfection of livestock quarters. It shall be the duty of the chief of division of animal industry to supervise the disinfection of all buildings, stalls and pens at the state fairgrounds just prior to the opening of such fair and to supervise the disinfecting daily of hog pens and such other enclosures.

This rule is intended to implement Iowa Code section 163.1.

21—64.33(163) County fairs—disinfection of livestock quarters. It shall be the duty of all secretaries of all county fairs or exhibitions of livestock in the state of Iowa, excepting the Iowa state fair, to supervise the disinfecting of all buildings, stalls and pens prior to the opening of such county fair or exhibition of livestock and to disinfect hog pens and all such enclosures daily during such fairs and exhibitions.

This rule is intended to implement Iowa Code section 163.1.

21—64.34(163) Health requirements for exhibition of livestock, poultry and birds at the state fair, district shows and exhibitions.

64.34(1) General requirements. All animals, poultry and birds intended for any exhibition will be considered under quarantine and not eligible for showing until the owner or agent presents an official Certificate of Veterinary Inspection. Unless otherwise indicated herein, the Certificate of Veterinary Inspection must be issued by an accredited veterinarian within 30 days (14 days for sheep and 7 days for swine) prior to the date of entry and must indicate that the veterinarian has inspected the animals, poultry or birds and any nurse stock that accompany them, and that they are apparently free from symptoms of any infectious disease (including warts, ringworm, footrot, draining abscesses and pinkeye) or any communicable disease. Individual Certificates of Veterinary Inspection will not be required in certain classes, if the division superintendent for the exhibition has made prior arrangements with the official fair veterinarian and state veterinarian to have all animals and birds inspected on arrival.

64.34(2) Cattle.

a. Individual identification and certificate. All cattle intended for exhibition shall have individual official identification and be accompanied by a Certificate of Veterinary Inspection.

b. Tuberculosis. Cattle originating from a USDA accredited-free state or zone may be exhibited without other testing requirements when accompanied by a Certificate of Veterinary Inspection that lists individual official identification. Cattle from a herd or area under quarantine for tuberculosis may not be exhibited. Cattle from a state or zone which is not a USDA accredited-free state or zone must meet the following requirements:

- (1) Have had an individual animal test conducted within 60 days of the exhibition; or
- (2) Originate from a tuberculosis accredited-free herd, with the accredited herd number and date of last test listed on the Certificate of Veterinary Inspection; and
- (3) Have been issued a preentry permit from the state veterinarian's office.

c. Brucellosis.

(1) Native Iowa cattle originating from a herd not under quarantine may be exhibited when accompanied by a Certificate of Veterinary Inspection that lists individual official identification.

(2) Cattle originating outside the state must meet one of the following requirements:

1. Originate from brucellosis class "free" states, accompanied by a Certificate of Veterinary Inspection that lists individual official identification; or

2. Be beef heifers under 24 months of age and dairy heifers under 20 months of age which are official brucellosis vaccinates, accompanied by a Certificate of Veterinary Inspection that lists the official calfhood vaccination tattoo and individual official identification; or

3. Be animals of any age that originate from a herd not under quarantine, accompanied by a Certificate of Veterinary Inspection that lists a report of a negative brucellosis test conducted within 30 days prior to opening date of exhibition and individual official identification; or

4. Originate from a certified brucellosis-free herd, accompanied by a Certificate of Veterinary Inspection that lists individual official identification, herd number, and date of last test; or

5. Be calves under six months of age, accompanied by a Certificate of Veterinary Inspection that lists individual official identification.

(3) All brucellosis tests must have been confirmed by a state-federal laboratory. All nurse cows which accompany calves to be exhibited must meet the health requirements set forth in 64.34(2) "c."

(4) All cattle originating from states not classified as "free" for brucellosis must have been issued a preentry permit from the state veterinarian's office.

64.34(3) Market beef cattle. Steers and beef-type heifers exhibited in market classes must be accompanied by a Certificate of Veterinary Inspection, showing individual official identification for each animal, and must originate from a herd not under quarantine.

64.34(4) Swine. All swine shall originate from a herd or area not under quarantine. All swine shall have official identification and be accompanied by a Certificate of Veterinary Inspection. The Certificate of Veterinary Inspection shall indicate that a licensed and accredited veterinarian has inspected the swine and that the swine appear free from symptoms of any infectious or communicable disease. An initial inspection shall have occurred within seven days prior to the date of entry into the exhibition site. All swine shall be inspected again upon arrival at the exhibition site and before the swine are unloaded or leave a designated and isolated inspection area. Biosecurity and sanitary practices shall be implemented for all inspections. All identification is to be recorded on the pseudorabies test chart and the Certificate of Veterinary Inspection.

a. Brucellosis. All breeding swine six months of age and older must:

- (1) Originate from a brucellosis class "free" state; or
- (2) Originate from a brucellosis validated herd with herd certification number and date of last test listed on the Certificate of Veterinary Inspection; or
- (3) Have a negative brucellosis test conducted within 60 days prior to show and confirmed by a state-federal laboratory.

b. Aujeszky's Disease (pseudorabies)—all swine.

(1) Native Iowa swine. Exhibitors of native Iowa swine that originate from a Stage IV or lower-status county must present a test record and Certificate of Veterinary Inspection that indicate that each swine has had a negative test for pseudorabies within 30 days prior to the show (individual show regulations may have more restrictive time restrictions), regardless of the status of the herd, and that show individual official identification. Exhibitors of native Iowa swine that originate from a Stage V county must present a Certificate of Veterinary Inspection that lists individual official identification. No pseudorabies testing requirements will be necessary for native Iowa swine that originate from Stage V counties. Electronic identification will not be considered official identification for exhibition purposes.

(2) Swine originating outside Iowa. All exhibitors must present a test record and Certificate of Veterinary Inspection that indicate that each swine has had a negative test for pseudorabies within 30 days prior to the show (individual show regulations may have more restrictive time restrictions), regardless of the status of the herd, and that show individual official identification. Electronic identification will not be considered official identification for exhibition purposes.

64.34(5) Sheep and goats. All sheep and goats must be individually identified and a record of the identification noted on the Certificate of Veterinary Inspection and must originate from a herd or flock not under quarantine. Any evidence of club lamb fungus, draining abscesses, ringworm, footrot, sore mouth or any other contagious disease shall eliminate the animal from the show. The Certificate of Veterinary Inspection for sheep shall require clinical inspection by an accredited veterinarian within 14 days (30 days for goats) prior to date of entry to exhibition grounds.

a. Sheep and goats—scrapie. All sexually intact sheep must be identified with an individual scrapie flock of origin identification tag, and this number must be listed on the Certificate of Veterinary Inspection.

All sexually intact goats must be identified with an individual scrapie flock of origin identification tag or by an official registered tattoo, and one of these numbers must be listed on the Certificate of Veterinary Inspection. The Certificate of Veterinary Inspection must also include a statement certifying the herd's participation in the scrapie program.

b. Goats—brucellosis and tuberculosis. Goats must be from a state certified brucellosis-free herd or have a record of a negative brucellosis test performed within 90 days of the exhibition. In addition, they must originate from a herd having a negative tuberculosis test within the last 12 months or have a record of a negative tuberculosis test performed within 90 days of exhibition.

64.34(6) Horses and mules. Native Iowa horses and mules can be exhibited when accompanied by an individual Certificate of Veterinary Inspection listing individual identification or a description of the individual animals.

All equine, six months of age or older, originating from outside the state shall be accompanied by an official Certificate of Veterinary Inspection listing individual identification or a description of the individual animals; and indicating that each animal in the shipment has had a negative official equine infectious anemia test within 12 months of importation. The testing laboratory, laboratory accession number and date of test must appear on the certificate.

64.34(7) Poultry and birds. All poultry exhibited must come from U.S. pullorum-typhoid clean or equivalent flocks; or have had a negative pullorum-typhoid test performed within 90 days of the exhibition by an authorized tester. An approved certificate verifying this status shall accompany the exhibit.

64.34(8) Dogs and cats. Dogs and cats exhibited must have current, official rabies vaccination certificates.

64.34(9) Removal from fair or exhibition. The veterinary inspector in charge shall order that any livestock, poultry or birds found to be infected with any contagious or infectious disease be removed from the fair or exhibition.

64.34(10) Cervidae. For the purposes of this subrule, "Cervidae" means all animals belonging to the Cervidae family, and "CWD susceptible Cervidae" means whitetail deer, blacktail deer, mule deer, red deer, and elk.

a. Native Iowa Cervidae. Native Iowa Cervidae from a herd not under quarantine may be exhibited without additional testing for brucellosis or tuberculosis. CWD susceptible Cervidae intended

for exhibition must originate from a herd that has completed at least one year in the CWD monitoring program. Native Iowa Cervidae may be exhibited without other testing requirements when the Cervidae are accompanied by a Certificate of Veterinary Inspection that lists individual official identification and the monitored CWD cervid herd number or certified CWD herd number for CWD susceptible Cervidae, including the status level and anniversary date, and contains the following statement:

“All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to the herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year.”

b. Cervidae originating outside Iowa. Cervidae that originate outside Iowa must obtain an entry permit from the state veterinarian’s office prior to import into Iowa. Cervidae that originate outside Iowa which are six months of age or older must originate from a herd not under quarantine and have been tested negative for Tuberculosis (TB) by the Single Cervical Tuberculin (SCT) test (Cervidae) or by the Cervid TB Stat-Pak test within 90 days of exhibition, or originate from an Accredited Herd (Cervidae), or originate from a Qualified Herd (Cervidae), with test dates shown on the Certificate of Veterinary Inspection. Herd status and SCT test are according to USDA Tuberculosis Eradication in Cervidae Uniform Methods and Rules, effective January 22, 1999.

Cervidae that originate outside Iowa which are six months of age or older must also have been tested negative for brucellosis within 90 days of exhibition, or originate from a certified brucellosis-free cervid herd, or a cervid class-free status state (brucellosis). This negative test result must be determined by brucellosis tests approved for cattle and bison, and the test must have been conducted in a cooperative state-federal laboratory.

(1) All CWD susceptible Cervidae must have originated from a monitored or certified CWD cervid herd in which the animals have been kept for at least one year or to which the animals were natural additions. The originating herd must have achieved a CWD status equal to completion of three years in an approved CWD monitoring program, and the CWD herd number and enrollment date must be listed on the Certificate of Veterinary Inspection. Cervidae originating from a herd with a diagnosis, sign, or epidemiological evidence of CWD or from an area under quarantine for chronic wasting disease shall not be exhibited. The following statement must appear on the Certificate of Veterinary Inspection:

“All Cervidae listed on this certificate originate from a chronic wasting disease monitored or certified herd in which these animals have been kept for at least one year or to which the animals were natural additions. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year.”

(2) Other Cervidae. For all other Cervidae, the following statement must appear on the Certificate of Veterinary Inspection:

“All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year.”

This rule is intended to implement Iowa Code sections 163.1 and 163.14.

[ARC 9942B, IAB 12/28/11, effective 1/1/12; ARC 0656C, IAB 3/20/13, effective 3/1/13; ARC 4885C, IAB 1/29/20, effective 3/4/20]

21—64.35(163) Health requirements for exhibition of livestock, poultry and birds at exhibitions. Each county fair shall have an official veterinarian who will inspect all livestock, poultry and birds when they are unloaded or shortly thereafter. No Certificate of Veterinary Inspection will be required on livestock, poultry and birds exhibited at a county 4-H or FFA show. Quarantined animals or animals from quarantined herds cannot be exhibited. Evidence of warts, ringworm, footrot, pinkeye, draining abscesses or any other contagious or infectious condition will eliminate the animal from the show.

64.35(1) Swine exhibition requirements. “Swine exhibition” means an exhibit, demonstration, show, or competition involving an event on the state fairgrounds, a county fair, or other exhibition event. The sponsor of the exhibition must retain an Iowa licensed veterinarian to supervise the health of the swine at the exhibition location. The sponsor must electronically file the approved registration form and obtain approval from the state veterinarian at least 30 days before the event. The registration form includes

the name of the exhibition and the address and telephone number of its location; the name, address and telephone number of the veterinarian; and the date of the planned exhibition. Sales of swine will not be allowed unless the event has been registered and received approval from the state veterinarian 30 days prior to the event.

64.35(2) *Swine exhibition report required.* The sponsor of the swine exhibition shall electronically submit to the department the approved report form within five business days after the conclusion of the exhibition. The form includes the name of the exhibition and the address and telephone number of its location; the name, address and telephone number of the veterinarian; the date that the exhibition occurred; the name, address and telephone number of the owner of the swine; and the address and telephone number of the premises from which the swine was moved after the exhibition if such premises is a different premises.

64.35(3) *Dogs and cats.* All dogs and cats exhibited in county exhibitions must have a current, official rabies certification.

64.35(4) *Poultry and birds.* Except as provided in this subrule, all poultry exhibited must come from U.S. pullorum-typhoid clean or equivalent flocks; or have had a negative pullorum-typhoid test performed within 90 days of exhibition by an authorized tester. An approved certificate verifying this status shall accompany the exhibit.

However, no testing for salmonella pullorum-typhoid shall be required for “market classes” of poultry, if the poultry are consigned to a slaughter establishment directly from the exhibition. Poultry exhibited in these “market classes” shall be maintained separate and apart from poultry not exempted from the testing requirements. Separate and apart shall include both of the following: holding poultry so that neither poultry nor organic material originating from the poultry has physical contact with other poultry; and poultry exhibited in “market classes” shall be maintained in enclosures at least ten feet apart or separated by an eight-foot high solid partition from all other poultry. Poultry exhibited in “market classes” shall be so declared at the time of entry into this exhibition or before.

All enclosures maintaining poultry shall be thoroughly cleaned and disinfected.

64.35(5) *Sheep and goats.* All sexually intact sheep must have an individual scrapie flock of origin identification tag. All sexually intact goats must have an individual scrapie flock of origin identification tag or an official registered tattoo.

64.35(6) *Cervidae.* Native Iowa Cervidae from a herd not under quarantine may be exhibited without additional testing for brucellosis or tuberculosis. CWD susceptible Cervidae intended for exhibition must originate from a herd that has completed at least one year in the CWD monitoring program. Native Iowa Cervidae may be exhibited without other testing requirements when the Cervidae are accompanied by a Certificate of Veterinary Inspection that lists individual official identification and the monitored CWD cervid herd number or certified CWD herd number for CWD susceptible Cervidae, including the status level and anniversary date, and contains the following statement:

“All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to the herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year.”

64.35(7) *Show veterinarian.* The decision of the show veterinarian shall be final.

This rule is intended to implement Iowa Code sections 163.1 and 163.14.

[ARC 9942B, IAB 12/28/11, effective 1/1/12]

21—64.36 and 64.37 Reserved.

[Filed 6/3/55]

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DISEASE CONTROL BY CONVEYANCES

21—64.38(163) Transportation companies—disinfecting livestock quarters. All railroad and transportation companies are hereby required to provide for proper drainage of all stockyards, pens, alleyways and chutes, and to clean and disinfect the same between April 15 and May 15 of each year and at such other times as may be deemed necessary. All expense incurred for the disinfecting and supervision of same must be paid by the railroad company. The chief of the division of animal industry shall enforce this rule.

This rule is intended to implement Iowa Code section 163.1.

21—64.39(163) Livestock vehicles—disinfection. It is hereby ordered by the state of Iowa, secretary of agriculture, that all cars or vehicles that have been used for conveying any animal or animals that have been found to have suffered or are suffering from any contagious or infectious diseases must be cleaned and disinfected thoroughly before leaving the yards where such animal or animals have been unloaded within the state of Iowa.

This rule is intended to implement Iowa Code section 163.1.

21—64.40 Reserved.

[Filed 6/3/55]

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

INTRASTATE MOVEMENT OF LIVESTOCK

21—64.41(163) General. All places where livestock is assembled, either bought or sold for purposes other than immediate slaughter, whether by private sale or public auction, when not under federal supervision must be under state supervision.

64.41(1) The management of all livestock auction markets shall make application for, and obtain a permit from the department to conduct such sales.

64.41(2) Before movement, the livestock shall comply with requirements as set forth below.

64.41(3) Livestock imported for resale shall meet all health requirements governing their admission into the state as set forth in 21—Chapter 65.

This rule is intended to implement Iowa Code sections 163.1, 163.11, and 163.14.

21—64.42(163) Veterinary inspection.

64.42(1) All livestock markets shall be under the general supervision of the Chief, Bureau of Animal Industry, Iowa Department of Agriculture and Land Stewardship, Des Moines, Iowa 50319, and the

direct supervision of the approved veterinary inspector. Markets shall pay inspection fees directly to the veterinary inspector.

64.42(2) The veterinary inspector shall:

- a. Examine all livestock moving through the market.
- b. Prohibit the sale of any animal deemed to be diseased.
- c. Issue quarantines when required, and
- d. Supervise the cleaning and disinfection of yards following sales.

This rule is intended to implement Iowa Code section 163.1.

21—64.43(163) Swine.

64.43(1) *Brucellosis*. All breeding swine four months of age or over moving through a livestock market or offered for sale or sold by the owner by private treaty must:

- a. Originate from a validated herd, or from a validated brucellosis-free state according to Title 9 CFR as amended effective May 23, 1994, and published in the Federal Register, Vol. 59, No. 77, April 21, 1994, or
- b. Be proved negative to a brucellosis test conducted within 60 days prior to sale or service and originate from a herd not under quarantine.

All breeding swine showing a positive reaction to a brucellosis test conducted at a livestock market shall be tagged in the left ear with a reactor tag and moved direct to slaughter on permit. The herd of origin shall be placed under quarantine for immediate test. Such quarantine to remain in effect until a complete negative herd test is conducted.

The negative animals from a reactor group disclosed at an auction market can return to the farm of origin under strict quarantine to be tested no sooner than 30 days nor later than 60 days from the date of test.

64.43(2) Reserved.

This rule is intended to implement Iowa Code sections 163A.1 and 163A.3.

21—64.44(163) Farm deer. Rescinded IAB 11/26/03, effective 12/31/03.

21—64.45 and 64.46 Reserved.

[Filed 7/14/64; amended 1/12/66, 5/14/68, 7/9/68, 4/18/73]

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BRUCELLOSIS

21—64.47(163) Definitions as used in these rules.

64.47(1) “*Department*” means the Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa.

64.47(2) “*Federal Office*” means the Animal, Plant and Health Inspection Service, United States Department of Agriculture, Federal Building, Des Moines, Iowa 50309.

64.47(3) “*Brucellosis*” means the disease of brucellosis in animals.

64.47(4) “*Brucellosis test*” means the blood serum test for brucellosis, applied in accordance with a technique approved by the department.

64.47(5) “*B.R.T.*” means a brucellosis ring test as applied to milk and cream, and used as a presumptive test for locating possible brucellosis infected herds according to a technique approved by the department.

64.47(6) “*Brucellosis test classification*” means the designation of animals tested by the methods of card test or rivanol or any other method approved jointly by the state and federal departments of agriculture.

64.47(7) “*Veterinarian*” means a graduate of an approved veterinary school who is licensed and registered to practice veterinary medicine in this state.

64.47(8) “*Designated animals*” means only the following named bovine animals: beef cattle, dairy cattle, American bison or “buffalo,” and their hybrids.

This rule is intended to implement Iowa Code section 163A.9.

21—64.48 Reserved.

21—64.49(163) Certified brucellosis-free herd. In order to qualify a herd of cattle as brucellosis-free and receive a certificate evidencing same, the owner thereof shall comply with the following requirements:

64.49(1) *Certified brucellosis-free herd.* A herd may qualify for initial certification by a minimum of three consecutive negative milk ring tests (B.R.T.) conducted at not less than 90-day intervals, followed by a negative herd blood test conducted within 90 days after the last negative milk ring test; or at least two consecutive negative blood tests not less than 10 months nor more than 14 months apart. A herd may qualify for recertification by a negative blood test within 60 days of each anniversary date, and the certification period being 12 months. If recertification is not conducted within 60 days following the anniversary date, then certification requirements are the same for initial certification.

64.49(2) *Additions to certified herds.*

a. To certified herds:

(1) From herds with equal status.

(2) From once-tested clean herds. Calf vaccinated animals up to 30 months of age on certificate of vaccination—over 30 months if negative; or nonvaccinated animals on evidence of negative retest not less than 60 days from date of negative herd test.

b. To once-tested clean herds:

(1) From herds with equal or superior status.

(2) From other herds, calfhooed vaccinated animals up to 30 months of age on certificate of vaccination; over 30 months, if negative; nonvaccinated animals if tested negative, then segregated and retested negative in not less than 60 days.

64.49(3) The owner or veterinarian shall make a request to the chief, division of animal industry for certification or recertification, for a brucellosis-free herd when the required tests are completed.

This rule is intended to implement Iowa Code section 164.4.

21—64.50(163) Restraining animals. To facilitate the vaccination, taking of blood sample or identifying animals as reactors, it shall be the duty of the owner to confine the animals in a suitable enclosure and to restrain the individual animal in a manner sufficient to permit the veterinarian to perform any of the services required under laws and rules of Iowa.

This rule is intended to implement Iowa Code section 164.4.

21—64.51(163) Quarantines.

64.51(1) Bovine animals classified as reactors shall be quarantined on the premises and not permitted to mingle with other cattle until disposed of for slaughter under a permit issued by the department or its authorized agent.

64.51(2) All bovine animals comprising a herd operating under control Plan A shall be quarantined when one of its members has been classified as a reactor, such quarantine to remain in effect until two consecutive negative brucellosis tests, 30 to 60 days apart, have been made. No animals of such a herd may be moved or sold except to slaughter under permit issued by the department or its authorized agent except that the department in hardship cases may permit the movement of such animals other than to

slaughter with quarantines remaining in effect at the new location, together with any new animals with which they may commingle.

64.51(3) Owners of animals tested for brucellosis shall hold the entire herd on the premises until the results of the test are determined.

64.51(4) Notice of quarantine shall be delivered in writing by the department or its authorized agent to the owner or caretaker of all cattle quarantined. A report of such quarantine shall also be filed with the department as prescribed.

This rule is intended to implement Iowa Code sections 164.15 and 164.19.

21—64.52(163) Identification of bovine animals.

64.52(1) *Identification tag.* Every veterinarian, in conjunction with the testing of any bovine animal for brucellosis or the vaccination of any such animal, shall insert an identification tag of the type approved by the department in the right ear of each animal which is not so identified; provided that in the case of an animal registered with a purebred association, the registry or tattoo number assigned to the animal by such association may be used for identification in lieu of an identification tag.

64.52(2) *Official vaccinates.* An animal vaccinated with RB-51 brucella abortus vaccine must have an official identification tag in the right ear or an individual animal registration tattoo. Additionally, the animal must be tattooed in the right ear with the U.S. Registered Shield and the letter “V,” which shall be preceded by a letter “R” and followed by a number corresponding to the last digit of the year in which the animal was vaccinated.

64.52(3) *Reactor identification.* Bovine-reactor cattle eight months of age or over shall be permanently branded with a hot iron on the tailhead over the fourth to the seventh coccygeal vertebrae with the letter “B” not less than two inches nor more than three inches high and shall also be tagged in the left ear with a reactor identification tag approved by the department within 15 days of the date on which they were disclosed as reactors. This subrule shall not apply to official calthood vaccination as defined in Iowa Code section 164.1. Such vaccinates need not be branded if they react to the brucellosis test until 30 months of age.

This rule is intended to implement Iowa Code sections 164.11 and 164.12.
[ARC 9102B, IAB 9/22/10, effective 9/1/10]

21—64.53(163) Cleaning and disinfection. After any disclosure of reactors to the brucellosis test and following their disposal for slaughter, the owner of such cattle shall be required to clean and disinfect all barns and premises in which said cattle have been held. Such cleaning and disinfection shall be done in accordance with instructions and with a disinfectant approved by the department.

This rule is intended to implement Iowa Code section 163.1.

21—64.54(163) Disposal of reactors.

64.54(1) Reactor cattle disclosed in herds operating under Plan A shall be tagged and branded within 15 days of the date the blood samples were taken. In accordance with Iowa law, an additional 30 days will be allowed for slaughter.

64.54(2) All reactors shall be disposed of for slaughter only in plants operating under federal meat inspection or slaughtering establishment approved by the department and must be accompanied by a shipping permit ADE 1-27 issued by an accredited veterinarian.

64.54(3) No cattle shall be disposed of through public sales or sales barns.

This rule is intended to implement Iowa Code section 164.17.

21—64.55(163) Brucellosis tests and reports.

64.55(1) All brucellosis tests conducted at state-federal expense must be performed at a state-federal laboratory as determined by the department.

64.55(2) The department shall approve a veterinarian as eligible to conduct brucellosis tests upon successful completion of a course of training and instruction provided by the department. The department shall specify the standards for maintaining such approval.

64.55(3) All brucellosis tests conducted by a veterinarian must be reported to the department, on forms prescribed, within seven days following completion of such tests. A copy of such tests shall also be given to the herd owner by the veterinarian.

64.55(4) Reports of vaccination shall be rendered by the veterinarian within 30 days in compliance with the regulation. It is from the information on these reports that the owner of the cattle will receive recognition as being under official supervision.

This rule is intended to implement Iowa Code section 164.10.
[ARC 9102B, IAB 9/22/10, effective 9/1/10]

21—64.56(163) Suspect animals designated as reactors.

64.56(1) A nonvaccinated animal classified as a suspect on the brucellosis test may be reclassified as a reactor by the veterinarian obtaining the blood sample provided that such an animal is known to have aborted and is from a herd containing reactors.

64.56(2) Animals so designated in 64.38(1) and 64.38(2) will be eligible for indemnity in accordance with the laws and rules governing same.

This rule is intended to implement Iowa Code section 163.1.

21—64.57(163) Indemnity not allowed.

64.57(1) No indemnity shall be paid unless the test was previously authorized by proper state or federal authority.

64.57(2) No indemnity may be paid on an animal which was vaccinated when it was more than eight months of age.

64.57(3) Rescinded.

64.57(4) No indemnity may be paid as a result of a test of an official vaccinate less than 30 months of age.

64.57(5) No indemnity may be paid upon reactors unless they are tagged, branded and slaughtered according to the state and federal regulations.

64.57(6) No indemnity may be paid upon cattle entering the state of Iowa which have not met the requirements for entry as breeding or dairy cattle.

64.57(7) No indemnity can be paid on reactors owned by the state or county.

64.57(8) No indemnity may be paid on unregistered reactor bulls, steers or spayed heifers.

64.57(9) No indemnity will be paid for brucellosis reactors when known reactors have been held on the premises for more than 30 days from the date on which they were tagged and branded.

64.57(10) No indemnity will be paid when infected premises have not been cleaned and disinfected to the satisfaction of the department in such a manner as to prevent the further spread of the disease.

64.57(11) No indemnity will be paid if the claimant has failed to comply with any of the requirements of these rules.

64.57(12) No indemnity will be paid on brucellosis reactors disclosed in a herd unless a state-federal cooperative agreement has been signed by the owner prior to conducting the brucellosis test.

64.57(13) No indemnity will be allowed unless all animals comprising the herd, both beef and dairy type, have been subjected to a brucellosis test conducted at the state-federal laboratory.

64.57(14) No indemnity will be paid on any reactors unless they are slaughtered in a plant operating under federal meat inspection and accompanied by a shipping permit ADE 1-27 issued by an accredited veterinarian.

This rule is intended to implement Iowa Code section 163.15.

21—64.58(163) Area testing.

64.58(1) Counties shall be tested in the order that valid petitions are received unless the department shall decide that it is not expedient to make tests in that order.

64.58(2) All provisions of the rules as promulgated under authority of Iowa Code section 164.2 are also in effect for counties designated as under area testing.

64.58(3) An area may be declared modified certified brucellosis-free by the application of two milk tests not less than six months apart, together with a blood test of all milk reacting herds and such other herds as are not included in the milk test. The number of reactors (exclusive of officially calf vaccinated animals under 30 months of age) must not exceed 1 percent of the cattle and the herd infection must not exceed 5 percent. Infected herds shall be quarantined until they have passed at least two consecutive blood tests not less than 60 days apart.

64.58(4) If testing as outlined in 64.58(3) above reveals an animal infection rate of more than 1 percent, but not over 2 percent and a retest of the infected herds applied within 120 days discloses not more than 1 percent animal infection in not over 5 percent of the herds, the area may then be certified.

64.58(5) If the test of an area as outlined under 64.58(3) results in more than 2 percent reactors, or if a retest of infected herds as under 64.58(3) does not qualify the area for certification, it shall be necessary to make a complete area retest.

64.58(6) Recertification. Areas may be recertified with the application of semiannual milk tests, follow-up blood tests of milk reacting herds and blood tests at three-year intervals on 20 percent of all herds not included in the milk test, if the incidence of infection does not exceed 1 percent of the cattle and 5 percent of the herds under test.

64.58(7) If testing as outlined under 64.58(6) reveals an animal infection rate of more than 1 percent, but not over 2 percent and a retest of the infected herds applied within 120 days discloses not more than 1 percent animal infection in not over 5 percent of the herds, the area may then be certified.

64.58(8) Any area not qualifying for recertification under the provisions of 64.58(7) shall be required to reestablish its certified status through testing procedures as outlined under 64.58(3).

64.58(9) The report of suspicious ring test of any herd shall be cause for a brucellosis test to be made.

64.58(10) The report of negative ring test will exempt a herd from brucellosis test unless such herd is due a test because of previous infection.

64.58(11) Milk producing herds missed on more than one regularly scheduled ring test will be required to have a brucellosis test made.

This rule is intended to implement Iowa Code sections 163.1, 164.2, 164.4, and 165.2.

21—64.59 to 64.62 Reserved.

[Filed 11/26/57, amended 4/18/73]

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BOVINE BRUCELLOSIS

21—64.63(164) Back tagging in bovine brucellosis control.

64.63(1) All bovine animals two years of age and older received for sale or shipment to a slaughtering establishment shall be identified with a back tag issued by the department. The back tag will be affixed to the animal as directed by the department.

64.63(2) It shall be the duty of every livestock trucker, when delivering to an out-of-state market, and every livestock dealer, livestock market operator, stockyards operator and slaughtering establishment to identify all such bovine animals not bearing a back tag at the time of receiving possession or control of such animals. A livestock trucker may be exempted from this requirement if the animals are identified as to the farm of origin when delivered to a livestock market, stockyards or slaughtering establishment agreeing to accept responsibility for back tag identification.

64.63(3) Every person required to identify animals under this rule shall file reports of such identification on forms prescribed by the department. Each such report will cover all animals identified during the preceding week.

This rule is intended to implement Iowa Code section 164.30.

21—64.64(164) Fee schedule.

64.64(1) *Bleeding.* Thirty dollars per stop (herd) and five dollars per head for all cattle bled.

64.64(2) *Tagging and branding reactors.* Fifteen dollars for the first reactor and five dollars for each additional reactor.

This rule is intended to implement Iowa Code section 164.6.
[ARC 9102B, IAB 9/22/10, effective 9/1/10]

21—64.65(163) Definitions.

64.65(1) *Bleeding.* Bleeding shall mean the taking of a blood sample in a vial or tube, to be submitted to a laboratory for testing and diagnosis of diseases.

64.65(2) *Injection.* Injection shall mean the injection of tuberculin into a prescribed area of the animal as a diagnostic test for tuberculosis.

64.65(3) *Reading.* Reading shall mean the examination of the injection site to ascertain whether or not there has been a reaction. A reaction at the injection site is a positive diagnosis of tuberculosis.

64.65(4) *Stop.* Stop shall mean a personal visit at a particular farm for the expressed purpose of testing animals for tuberculosis or brucellosis, for reading animals for tuberculosis, or for tagging and branding animals diagnosed as having tuberculosis or brucellosis.

This rule is intended to implement Iowa Code section 164.4.

21—64.66 Reserved.

[Filed 9/26/67, amended 9/25/73, 10/10/73, 12/9/74]

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ERADICATION OF SWINE BRUCELLOSIS

21—64.67(163A) Brucellosis test. When reactor animals are revealed on any test, the herd of origin and all exposed animals shall be placed under quarantine and inspections and tests performed as provided in Iowa Code chapter 163A.

This rule is intended to implement Iowa Code section 163A.12.

21—64.68(163A) Veterinarians to test. The department will designate a federal or state veterinarian or it may designate a licensed accredited veterinarian to make the inspections and tests. The expense of the tests may be charged to the county brucellosis eradication fund as provided in Iowa Code section 163A.12.

This rule is intended to implement Iowa Code section 163A.12.

21—64.69 and 64.70 Reserved.

21—64.71(163A) Fee schedule.

64.71(1) *Bleeding.* Thirty dollars per stop (herd) and five dollars per head for all animals bled.

64.71(2) *Tagging of reactors.* Thirty dollars per stop (herd) and two dollars per head for all swine tagged.

This rule is intended to implement Iowa Code section 163A.12.
[ARC 9102B, IAB 9/22/10, effective 9/1/10]

21—64.72 Reserved.

[Filed 5/14/73, amended 9/25/73, 12/9/74]

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ERADICATION OF BOVINE TUBERCULOSIS

21—64.73(163) Tuberculin tests classified. Tuberculin tests adopted by the department of agriculture and land stewardship are:

64.73(1) The subcutaneous or “Thermal” test.

64.73(2) The intradermic or “Skin” test.

64.73(3) The ophthalmic or “Eye” test.

64.73(4) The TB Stat-Pak test for cervids.

This rule is intended to implement Iowa Code section 165.13.

[ARC 0656C, IAB 3/20/13, effective 3/1/13]

21—64.74(163) Acceptance of intradermic test. The intradermic tuberculin test will be accepted provided it has been applied by a regularly employed state or federal veterinarian, an accredited veterinarian or by an approved veterinarian when endorsed by the authorities of the state of origin, provided the observations be made at the seventy-second hour.

This rule is intended to implement Iowa Code section 164.4.

21—64.75(163) Adoption of intradermic test. The intradermic test is hereby adopted for area tuberculosis eradication work.

This rule is intended to implement Iowa Code section 164.4.

21—64.76(163) Ophthalmic test. The ophthalmic test will not be accepted as an official test except when applied in combination with either the subcutaneous or intradermic test.

This rule is intended to implement Iowa Code section 164.4.

21—64.77(163) Tuberculin test deadline. All tuberculin tests must be made within 30 days of date of shipment.

This rule is intended to implement Iowa Code section 164.4.

21—64.78(163) Health certificate. All certificates of health must show the number of cattle included in the test, the name of the owner and the post-office address.

This rule is intended to implement Iowa Code section 164.7.

21—64.79(163) Ear tags. All cattle not identified by registration name and number shall be identified by a proper metal tag bearing a serial number attached to the right ear.

This rule is intended to implement Iowa Code section 164.11.

21—64.80(163) Cattle importation. No cattle shall be imported into the state of Iowa except in accordance with 21—65.4(163).

This rule is intended to implement Iowa Code sections 163.11 and 165.36.

21—64.81(163) Tuberculin reactors. All herds of breeding cattle in counties that are under state and federal supervision for the eradication of tuberculosis in which reactors have been found may be held in quarantine until they have passed a negative tuberculin test.

All cattle that react to the tuberculin test, as well as those which show physical evidence of tuberculosis, shall be marked for identification by branding with the letter “T” not less than two or more than three inches high on the hip near the tailhead, and to the left ear shall be attached a metal tag bearing a serial number and the inscription “REACTOR”.

This rule is intended to implement Iowa Code section 165.4.
[ARC 9102B, IAB 9/22/10, effective 9/1/10]

21—64.82(163) Steers—testing. All untested steer cattle shall be handled and maintained as a separate unit from the breeding cattle (which means they shall be quarantined, watered and fed apart from breeding cattle).

This rule is intended to implement Iowa Code sections 163.1 and 164.4.

21—64.83(163) Female cattle—testing. Female cattle, the products of which are intended for family use, may be tuberculin tested without being denied the use of the same pastures and the same watering troughs as steers in feeding. This does not apply to female cattle, the products of which are handled commercially; neither does it apply where the feeding cattle are other than steers. Cows kept under such conditions cannot be sold for any purpose other than slaughter without being subjected to an additional tuberculin test.

This rule is intended to implement Iowa Code sections 163.1 and 164.4.

21—64.84(163) Certificates and test charts. Certificates and test charts must be made to conform with United States Bureau of Animal Industry rules governing the interstate movement of cattle; the original must be attached to the waybill and a copy forwarded to the Chief of Division of Animal Industry, Iowa Department of Agriculture and Land Stewardship, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 163.1 and 164.4.

21—64.85(163) Slaughtering reactors. Reactors to the tuberculin test brought in for immediate slaughter must be consigned to a slaughtering establishment having federal inspection and must be transported thereto in accordance with section V, Regulation 7, of B.A.I. Order No. 309.

64.85(1) When it is found on slaughter that animals are affected with tuberculosis, the chief, division of animal industry, may order an immediate investigation, and if deemed advisable have all breeding cattle on the premises from which the tubercular animals originated, tested for tuberculosis.

64.85(2) When cattle within the state of Iowa are sold under sale contract to pass a 60- or 90-day tuberculin test and have failed to pass the same, before being returned to the original owner, the party wishing to return such animal or animals shall first obtain a permit from the chief, division of animal industry, Iowa department of agriculture and land stewardship, to do so.

64.85(3) When cattle are sold out of the state of Iowa under sale contract to pass a 60- or 90-day tuberculin test and failing to pass the same, before being returned to the original owner, the party wishing to return such animal or animals shall first furnish a tuberculin test chart showing the reaction, giving the date of reaction and proving to the satisfaction of the chief, division of animal industry, that such animals are reactors.

This rule is intended to implement Iowa Code section 165.4.

21—64.86(163) Agriculture tuberculin rules. The rules adopted by the Iowa department of agriculture and land stewardship governing the establishment of tuberculosis-free accredited herds and accredited areas or units in Iowa will be applied to such herds, and areas or units in cooperation with the bureau of animal industry, United States department of agriculture.

This rule is intended to implement Iowa Code section 165.12.

21—64.87(163) “Tuberculosis-free accredited herd” defined. A tuberculosis-free accredited herd is one which has been tuberculin tested by the subcutaneous method or any other test approved by the bureau of animal industry, under the supervision of the Iowa department of agriculture and land stewardship and the United States department of agriculture or a veterinary inspector employed by the

state in which cooperative tuberculosis eradication work is being conducted jointly by the United States department of agriculture and the state. Further, it shall be a herd in which no animal affected with tuberculosis has been found upon two annual or three semiannual tuberculin tests, as above described, and by physical examination.

This rule is intended to implement Iowa Code section 165.12.

21—64.88(163) Retesting. The entire herd, or any cattle in the herd, shall be tuberculin tested or retested at such time as is considered necessary by the federal or state authorities.

This rule is intended to implement Iowa Code section 165.32.

21—64.89(163) Accredited herd. No herd shall be classed as an accredited herd, in which tuberculosis has been found by the application of the test as referred to in 21—64.63(163), until such herd has been successfully subjected to two consecutive tests with tuberculin applied at intervals of not less than six months, the first interval dating from the time of removal of the tuberculous animals from the herd.

This rule is intended to implement Iowa Code section 165.12.

21—64.90(163) Selection of cattle for tuberculin tests. No cattle shall be presented for the tuberculin test which have been injected with tuberculin within 60 days immediately preceding or which have at any time reacted to a tuberculin test.

This rule is intended to implement Iowa Code sections 165.10, 165.13 and 165.26.

21—64.91(163) Identification for test. Prior to each tuberculin test satisfactory evidence of the identity of the registered animal shall be presented to the inspector. Any grade cattle maintained in the herd or associated with the animals of the herd shall be identified by a tag or other marking satisfactory to the state and federal officials.

This rule is intended to implement Iowa Code section 163.1.

21—64.92(163) Removing cattle from herd. All removals of cattle from the herd, either by sale, death or slaughter, shall be reported promptly to the said state or federal officials, giving the identification of the animal, and if sold, the name and address of the person to whom transferred. If the transfer is made from the accredited herd to another accredited herd the shipment shall be made in only cleaned and disinfected cars. No cattle which have not passed a tuberculin test approved by the state and federal officials shall be allowed to associate with the herd.

This rule is intended to implement Iowa Code section 163.1.

21—64.93(163) Milk. All milk and other dairy products fed to calves shall be that produced by an accredited herd, or if from outside or unknown sources it shall be pasteurized by heating to not less than 150° F. for not less than 20 minutes.

This rule is intended to implement Iowa Code section 163.1.

21—64.94(163) Sanitary measures. All reasonable sanitary measures and other recommendations by the state and federal authorities for the control of tuberculosis shall be complied with.

This rule is intended to implement Iowa Code section 163.1.

21—64.95(163) Interstate shipment. Cattle from an accredited herd may be shipped interstate on certificate obtained from the office of the chief, division of animal industry, or from the office of the bureau of animal industry without further tuberculin test, for a period of one year, subject to the rules of the state of destination.

This rule is intended to implement Iowa Code section 165.36.

21—64.96(163) Reactors—removal. All cattle which react to the tuberculin test and for which the owner desires indemnity, as provided by statute, must be removed immediately from the cattle barn, lots and pastures where other cattle are being kept.

64.96(1) The barn or place where reacting cattle have been housed or kept shall be thoroughly cleaned and disinfected immediately.

64.96(2) Feed places and floors must be cleared of all hay and manure and scraped clean.

64.96(3) All loose boards and decayed woodwork should be removed, and when deemed necessary, and requested by the veterinarian, must be accomplished before it will be considered that the place has been properly cleaned and disinfected.

64.96(4) The feeding places, troughs, floors and partitions near the floor should be washed and scoured with hot water and lye.

This rule is intended to implement Iowa Code section 163.1.

21—64.97(163) Certificate. Strict compliance with these methods and rules shall entitle the owner of tuberculosis-free herds to a certificate, “TUBERCULOSIS-FREE ACCREDITED HERD”, to be issued by the United States Department of Agriculture, bureau of animal industry and the division of animal industry, Iowa department of agriculture and land stewardship. Said certificate shall be good for one year from date of test unless revoked at an earlier date.

This rule is intended to implement Iowa Code section 165.12.

21—64.98(163) Violation of certificate. Failure on the part of the owners to comply with the letter or spirit of these methods and rules shall be considered sufficient cause for immediate cancellation of the cooperative agreement with them by the state and federal officials.

This rule is intended to implement Iowa Code section 165.12.

21—64.99(163) Tuberculin—administration. In accordance with the provisions of Iowa Code chapter 165, the Iowa department of agriculture and land stewardship shall have control of the sale, distribution and use of all tuberculin used in the state and shall formulate regulations for its distribution and use. Only such persons as are authorized by the department, inspectors of the B.A.I. and regularly licensed practicing veterinary surgeons of the state of Iowa shall be entitled to administer tuberculin to any animal included within the meaning of this chapter.

This rule is intended to implement Iowa Code section 165.13.

21—64.100(163) Sale of tuberculin. No person, firm or corporation shall sell or distribute tuberculin to any person or persons in the state of Iowa except under the following conditions:

64.100(1) That the person or persons are legally authorized to administer tuberculin.

64.100(2) That all sales of tuberculin shall be reported to the secretary of agriculture on proper forms, which forms may be obtained from the chief, division of animal industry.

64.100(3) Reports of all sales and distribution of tuberculin in the state of Iowa shall be made in triplicate; the original copy to be delivered with the tuberculin to the person obtaining same; the duplicate to be forwarded to the Chief, Division of Animal Industry, Des Moines, Iowa 50319; and the triplicate copy to be retained by the manufacturer or distributor. All reports shall be made within 60 days from date of sale.

This rule is intended to implement Iowa Code section 165.12.

21—64.101(165) Fee schedule.

64.101(1) Injection. Thirty dollars per stop (herd) and two dollars per head.

64.101(2) Reading. Thirty dollars per stop (herd) and two dollars per head.

64.101(3) Tagging and branding reactors. Five dollars first reactor and three dollars each additional reactor.

This rule is intended to implement Iowa Code section 165.17.

[ARC 9102B, IAB 9/22/10, effective 9/1/10]

21—64.102 and 64.103 Reserved.

[Filed 11/26/57, amended 7/13/65]

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[Filed Emergency ARC 0656C (Notice ARC 0642C, IAB 3/6/13), IAB 3/20/13, effective 3/1/13]

CHRONIC WASTING DISEASE (CWD)

21—64.104(163) Definitions. Definitions used in rules 21—64.104(163) through 21—64.119(163) are as follows:

“*Accredited veterinarian*” means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1, of the Code of Federal Regulations, revised as of January 9, 2013, to perform functions required by cooperative state/federal animal disease control and eradication programs.

“*Adjacent herd*” means one of the following:

1. A herd of Cervidae occupying premises that border an affected herd, including herds separated by roads or streams.
2. A herd of Cervidae occupying premises that were previously occupied by an affected herd within the past four years as determined by the designated epidemiologist.

“*Affected cervid herd*” means a cervid herd from which any animal has been diagnosed as affected with CWD and which has not been in compliance with the control program for CWD as described in rules 21—64.104(163) through 21—64.119(163).

“*Certificate*” means an official document, issued by a state veterinarian or federal animal health official or an accredited veterinarian at the point of origin, containing information on the individual identification of each animal being moved, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, and any other information required by the state veterinarian.

“*Certified CWD cervid herd*” means a herd of Cervidae that has met the qualifications for and has been issued a certified CWD cervid herd certificate signed by the state veterinarian.

“*Cervidae*” means all animals belonging to the Cervidae family.

“*Cervid CWD surveillance identification program*” or “*CCWDSI program*” means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae 12 months of age and older including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of official laboratory reports shall be maintained by the owner for purposes of completion of the annual inventory examination for recertification. Such diagnosis shall include examination of brain and any other tissue as directed by the state veterinarian. If there are deaths for which tissues were not submitted for laboratory diagnosis due to postmortem changes or unavailability, the department shall determine compliance.

“*Cervid dealer*” means any person who engages in the business of buying, selling, trading, or negotiating the transfer of Cervidae, but not a person who purchases Cervidae exclusively for slaughter on the person’s own premises or buys and sells as part of a normal livestock production operation.

“*Cervid herd*” means a group of Cervidae or one or more groups of Cervidae maintained on common ground or under common ownership or supervision that are geographically separated but can have interchange or movement.

“*Cervid herd of origin*” means a cervid herd, or any farm or other premises, where the animals were born or where they currently reside.

“*Chronic wasting disease*” or “*CWD*” means a transmissible spongiform encephalopathy of cervids.

“*CWD affected*” means a designation applied to Cervidae diagnosed as affected with CWD based on laboratory results, clinical signs, or epidemiologic investigation.

“*CWD exposed*” or “*exposed*” means a designation applied to Cervidae that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals,

contact with animals from a CWD affected herd or contact with a contaminated premises in the past five years.

“*CWD susceptible Cervidae*” means whitetail deer, blacktail deer, mule deer, red deer, elk, moose, and related species and hybrids of these species.

“*CWD suspect*” or “*suspect*” means a designation applied to Cervidae for which laboratory evidence or clinical signs suggest a diagnosis of CWD but for which laboratory results are inconclusive.

“*Designated epidemiologist*” means a veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the state veterinarian.

“*Group*” means one or more Cervidae.

“*Individual herd plan*” means a written herd management and testing plan that is designed by the herd owner, the owner’s veterinarian, if requested, and a designated epidemiologist to identify and eradicate CWD from an affected, exposed, or adjacent herd.

“*Monitored CWD cervid herd*” means a herd of Cervidae that is in compliance with the CCWDSI program as defined in this rule. Monitored herds are defined as one-year, two-year, three-year, four-year, and five-year monitored herds in accordance with the time in years such herds have been in compliance with the CCWDSI program.

“*Official cervid CWD test*” means an approved test to diagnose CWD conducted at an official laboratory.

“*Official cervid identification*” means one of the following:

1. A USDA-approved identification ear tag that conforms to the alphanumeric national uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of January 9, 2013.
2. A plastic or other material tag that includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.
3. A legible tattoo which includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.

“*Official laboratory*” means a USDA-approved American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory or the National Veterinary Services Laboratory, Ames, Iowa.

“*Permit*” means an official document that is issued by the state veterinarian or USDA area veterinarian-in-charge or an accredited veterinarian for movement of affected, suspect, or exposed animals.

“*Quarantine*” means an imposed restriction prohibiting movement of cervids to any location without specific written permits.

“*State*” means any state of the United States; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; or Guam.

“*Traceback*” means the process of identifying the herd of origin of CCWDSI-positive animals, including herds that were sold for slaughter.

[ARC 0391C, IAB 10/17/12, effective 11/1/12; ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.105(163) Supervision of the cervid CWD surveillance identification program. The state veterinarian’s office will conduct an annual inventory of Cervidae in a herd enrolled in the CCWDSI program.

21—64.106(163) Surveillance procedures. For cervid herds enrolled in this voluntary certification program, surveillance procedures shall include the following:

64.106(1) Slaughter establishments. All slaughtered Cervidae 12 months of age and older must have brain tissue submitted at slaughter and examined for CWD by an official laboratory. This brain tissue sample will be obtained by a state or federal meat inspector or accredited veterinarian on the premises at the time of slaughter.

64.106(2) Cervid herds. All cervid herds must be under continuous surveillance for CWD as defined in the CCWDSI program.

64.106(3) Identification. All cervid animals must receive the identification before 12 months of age and be identified with either:

a. Two forms of official cervid identification, or

b. One form of official cervid identification along with either a state-approved tag or a tag from the North American Elk Breeders Association or North American Deer Farmers Association.

[ARC 0391C, IAB 10/17/12, effective 11/1/12; ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.107(163) Official cervid tests. The following are recognized as official cervid tests for CWD:

1. Histopathology.

2. Immunohistochemistry.

3. Western blot.

4. Enzyme-linked immunosorbent assay (ELISA).

5. Any other tests performed by an official laboratory to confirm a diagnosis of CWD.

[ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.108(163) Investigation of CWD affected animals identified through surveillance. Traceback must be performed for all animals diagnosed at an official laboratory as affected with CWD. All herds of origin and all adjacent herds having contact with affected animals as determined by the CCWDSI program must be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals must be quarantined. The department will investigate CWD suspect herds.

[ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.109(163) Duration of quarantine. Quarantines placed in accordance with these rules must maintain compliance with rules 21—64.104(163) through 21—64.119(163). Quarantines maintaining compliance shall be removed after five years from the date of the last CWD detected test or after all animals have died or been depopulated and have been tested without the detection of CWD.

[ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.110(163) Herd plan. The herd owner, the owner's veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating CWD in each affected herd. The plan must be designed to reduce and then eliminate CWD from the herd, to prevent spread of the disease to other herds, and to prevent reintroduction of CWD after the herd becomes a certified CWD cervid herd. Animals that die, are depopulated, or are otherwise killed must be tested for CWD. The herd plan must be developed and signed within 60 days after the determination that the herd is affected. The plan must address herd management and adhere to rules 21—64.104(163) through 21—64.119(163). The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain certified CWD cervid herd status. No movement restrictions may be removed prior to formalization of the agreement.

[ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.111(163) Identification and disposal requirements. Affected and exposed animals must remain on the premises where they are found until they are identified and disposed of in accordance with direction from the state veterinarian. The department and the Iowa department of natural resources shall approve disposal issues of affected and exposed animals including manner and site.

[ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.112(163) Cleaning and disinfecting. Premises must be cleaned and disinfected under state supervision within 15 days after affected animals have been removed.

21—64.113(163) Methods for obtaining certified CWD cervid herd status. Certified CWD cervid herd status must include all Cervidae under common ownership. The animals that are part of a certified herd cannot be commingled with other cervids that are not certified, and a minimum geographic separation of 30 feet between herds of different status must be maintained in accordance with the USDA Uniform Methods and Rules as defined in APHIS Manual 91-45-011, revised as of January 22, 1999.

The escape, disappearance or death of any cervid shall be promptly reported along with identification numbers and estimated time of escape, disappearance or death. Tissue samples shall be available. A herd may qualify for status as a certified CWD cervid herd by one of the following means:

64.113(1) Purchasing a certified CWD cervid herd. Upon request and with proof of purchase, the department shall issue a new certificate in the new owner's name. The anniversary date and herd status for the purchased animals shall be the same as for the herd to which the animals are added; or if part or all of the purchased herd is moved directly to premises that have no other Cervidae, the herd may retain the certified CWD status of the herd of origin. The anniversary date of the new herd is the date of the most recent herd certification status certificate.

64.113(2) Upon request and with proof by records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI program for a period of five years.

[ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.114(163) Recertification of CWD cervid herds. A herd is certified for 12 months. Annual inventories conducted by the department, a state-authorized veterinarian, or authorized federal personnel are required every 9 to 15 months from the anniversary date. A complete physical herd inventory will be completed by the department, a state-authorized veterinarian, or authorized federal personnel every three years. For continuous certification, adherence to the provisions in these rules and all other state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated if CWD affected or exposed animals are determined to originate from that herd.

[ARC 1024C, IAB 9/18/13, effective 10/23/13]

21—64.115(163) Movement into a certified CWD cervid herd.

64.115(1) Animals originating from certified CWD cervid herds may move into another certified CWD cervid herd with no change in the status of the herd of destination.

64.115(2) The movement of animals originating from noncertified or lesser status herds into certified CWD cervid herds will result in the redesignation of the herd of destination to the lesser status.

21—64.116(163) Movement into a monitored CWD cervid herd.

64.116(1) Animals originating from a monitored CWD cervid herd may move into another monitored CWD cervid herd of the same status.

64.116(2) The movement of animals originating from a herd which is not a monitored CWD cervid herd or from a lower status monitored CWD cervid herd will result in the redesignation of the herd of destination to the lesser status.

21—64.117(163) Recognition of monitored CWD cervid herds. The state veterinarian shall issue a monitored CWD cervid herd certificate, including CWD monitored herd status as CWD monitored Level 1 during the first calendar year, CWD monitored Level 2 during the second calendar year, CWD monitored Level 3 during the third calendar year, CWD monitored Level 4 during the fourth calendar year, CWD monitored Level 5 during the fifth calendar year, and CWD certification at the completion of the fifth year and thereafter.

21—64.118(163) Recognition of certified CWD cervid herds. The state veterinarian shall issue a certified CWD cervid herd certificate when the herd first qualifies for certification. The state veterinarian shall issue a renewal form annually.

21—64.119(163) Effective period. Rescinded IAB 9/14/05, effective 8/16/05.

These rules are intended to implement Iowa Code chapter 163 and Iowa Code Supplement chapter 170.

21—64.120 to 64.132 Reserved.

[Filed 8/18/00, Notice 7/12/00—published 9/6/00, effective 10/11/00]

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ERADICATION OF SWINE TUBERCULOSIS

21—64.133(159) Indemnity. Indemnity may be paid for losses incurred by slaughtering establishments in the event native Iowa swine purchased by the establishments for immediate slaughter are determined to have tuberculosis by the official meat inspector at the establishment, subject to laboratory confirmation at the discretion of the department by any laboratory procedure acceptable to the department. Indemnity will be paid by the county of origin of the swine provided that swine shall be identified to the farm of origin located in that county. If no identification can be established on swine no indemnity may be paid.

If the county bovine tuberculosis eradication funds are insufficient, the claim may be filed and may be paid in subsequent years.

Indemnity will be paid to the producer of swine only after proof of cleaning and disinfecting of premises has been established.

If a herd of swine is tested for tuberculosis at program expense authorization must be given by an official of the Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code sections 159.5 and 163.15.

21—64.134(159) Fee schedule.

64.134(1) Injection. Thirty dollars per stop (herd) and two dollars per head.

64.134(2) Reading. Thirty dollars per stop (herd) and one dollar per head.

64.134(3) Tagging. Five dollars for first reactor and one dollar for each additional reactor.

This rule is intended to implement Iowa Code section 159.5(13).

[ARC 9102B, IAB 9/22/10, effective 9/1/10]

21—64.135 to 64.146 Reserved.

[Filed 10/16/73]

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 effective 9/1/10]

PSEUDORABIES DISEASE

21—64.147(163,166D) Definitions. As used in these rules:

“*All-in-all-out*” means a management system whereby feeder swine are handled in groups kept “separate and apart” from other groups in a production facility. These groups are removed from the production facility with the completely vacated area being cleaned and sanitized prior to the introduction of another group.

“*Aujeszky’s disease*,” commonly known as pseudorabies, means the disease wherein an animal is infected with Aujeszky’s disease virus, irrespective of the occurrence or absence of clinical symptoms.

“*Breeding swine*” means boars, sows and gilts used, or intended for use, exclusively for reproductive purposes.

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

“*Exigent circumstances*” means an extraordinary situation that the secretary concludes will impose an unjust and undue economic hardship if coupled with the imposition of these rules.

“*Fertility center*” means a premises where breeding swine are maintained for the purposes of the collection of semen, ovum, or other germplasm and for the distribution of semen, ovum, or other germplasm to other swine herds.

“*Herd*” means any group of swine maintained for 60 days or more on common ground for any purpose, or two or more groups of swine that have been intermingled without regard to pseudorabies status and are under common ownership or possession and that have been geographically separated within the state of Iowa. Two or more groups of swine are assumed to be one herd, unless an investigation by the epidemiologist has determined that intermingling and contact between groups has not occurred.

“*Low incidence state/area*” means a state or subdivision of a state with little or no incidence of pseudorabies and which qualifies for Stage III, or higher, and has been designated Stage III, or higher, by the National Pseudorabies Control Board as defined in the State/Federal Industry Program Standards for pseudorabies eradication; or an area outside the United States with a low incidence of pseudorabies determined by at least an equivalent testing protocol as is used to establish Stage III status.

“*Native Iowa feeder pig*” means a feeder pig farrowed in Iowa, and always located in Iowa.

“*Premises*” means a parcel of land together with buildings, enclosures and facilities sufficient for swine production.

“*Restricted movement*” means movement of swine in accordance with 2000 Iowa Acts, Senate File 2312, section 17.

“*Vicinity*” means a distance less than one-half mile.

21—64.148(163,166C) Pseudorabies tests and reports. Rescinded IAB 9/6/89, effective 10/11/89.

21—64.149(163,166C) Approval of qualified pseudorabies negative herd. Rescinded IAB 9/6/89, effective 10/11/89.

21—64.150(163,166C) Shipment of breeding swine and feeder pigs. Rescinded IAB 9/6/89, effective 10/11/89.

21—64.151(163,166D) Quarantines.

64.151(1) Except for sales to slaughter or to pseudorabies-approved premises, owners of animals tested for pseudorabies shall hold the entire herd on the premises until results are determined.

64.151(2) Infected herds not on an approved cleanup plan. All known pseudorabies infected herds, not on an approved herd cleanup plan, are subject to restricted movement to slaughter according to 64.154(2)“c” and 64.155(8).

64.151(3) Quarantine releasing procedures.

a. A herd of swine shall no longer be classified as a known infected herd after removal of all positive swine and at least one of the following three conditions have been met:

(1) All swine have been removed and the premises have been cleaned and disinfected and maintained free of swine for 30 days or a period of time determined adequate by an official pseudorabies epidemiologist.

(2) All swine seropositive to an official test have been removed and all remaining swine, except suckling pigs, are tested and found negative 30 days or more after removal of the seropositive animals.

(3) All swine seropositive to an official test have been removed, and all breeding swine that remain in the herd and an official random sample consisting of at least 30 animals from each segregated group of grower-finisher swine over two months of age are tested and found negative 30 days or more after removal of the seropositive animals. A second test of grower-finisher swine at least 30 days after the first test is required.

b. In nurseries and finishing herds without any breeding swine and where no pigs are received from quarantined premises, quarantines may be released as follows:

(1) A negative official random-sample test consisting of at least 30 animals from each segregated group, conducted at least 30 days following depopulation with cleaning and disinfection of the premises and 7 days' downtime, or

(2) A negative official random-sample test consisting of at least 30 animals from each segregated group, conducted at least 30 days following a similar negative official random-sample test.

A similar official random-sample test must then be conducted between 60 and 90 days following quarantine release.

Any quarantine releasing procedure deviating from the above procedures or Iowa Code section 166D.9 must be approved by the official pseudorabies epidemiologist and the state veterinarian.

21—64.152(163,166D) Nondifferentiable pseudorabies vaccine disapproved. The only pseudorabies vaccine or pseudorabies vaccine combination used in this state shall be a differentiable vaccine.

After July 1, 1993, this vaccine must be differentiable by a licensed and approved differentiable pseudorabies test capable of determining gp1 negative swine vaccinated with a gp1 gene deleted vaccine.

21—64.153(166D) Pseudorabies disease program areas.

64.153(1) Pseudorabies disease program areas as declared by the Iowa department of agriculture and land stewardship: all counties in the state of Iowa.

64.153(2) All producers will permit sufficient swine in their herds to be tested at program expense to determine the health status of the herd at intervals during the course of the program as deemed necessary by the department.

The owner shall confine the swine to be tested in a suitable place and restrain them in a suitable manner so that the proper tests can be applied. If the owner refuses to confine and restrain the swine, after reasonable time the department may employ sufficient help to properly confine and restrain them and the expense of such help shall be paid by the owner.

The swine tested shall be sufficient in number, and by method of selection, to quality for the surveillance program required to attain and maintain the program stages according to the most recent "State-Federal-Industry Program Standards" for pseudorabies eradication.

64.153(3) No indemnities will be paid for condemned animals.

64.153(4) Any person possessing swine is required to provide the name and address of the owner or the owner's agent to a representative of the department.

64.153(5) Beginning on October 1, 1999, all swine located within three miles of a pseudorabies-infected herd are required to be vaccinated with an approved pseudorabies vaccine within seven days of notification by a regulatory official. One dose of vaccine shall be administered to growing swine prior to 14 weeks of age or 100 pounds. Swine over six months of age or greater than 200 pounds, used or intended to be used for breeding, shall receive vaccine on a schedule designed to administer at least four doses throughout a 12-month period. The department may require a herd test to monitor both the pseudorabies status and the pseudorabies vaccine status of the herd.

A waiver for this vaccination requirement may be issued by the state veterinarian, based on epidemiological investigation and risk determination. Herd testing, at a level determined by the pseudorabies epidemiologist, will be required as a condition for issuance of a vaccination waiver.

In addition, beginning April 19, 2000, all swine located in a county designated as in Stage II of the national pseudorabies eradication program are required to be vaccinated with a modified-live differentiable vaccine. Breeding swine shall at a minimum receive quarterly vaccinations. Feeder swine shall at a minimum receive one vaccination administered when the swine reach 8 to 12 weeks of age or 100 pounds. These vaccination requirements shall be waived if:

a. The swine are part of a herd's being continuously maintained as a qualified negative herd; or

b. The swine are part of a herd located within a county where both of the following conditions apply:

(1) The department has determined that the county has a six-month history of 0 percent prevalence of pseudorabies infection among all herds in the county, and

(2) All contiguous counties have a 0 percent prevalence of pseudorabies infection among herds in that county.

64.153(6) All premises containing swine which are located in the Stage II area of Iowa must have a monitoring test for the premises conducted between January 1, 2000, and August 31, 2000.

21—64.154(163,166D) Identification.

64.154(1) All breeding and feeder swine being exhibited or having a change of ownership must be identified by a method approved by the Iowa department of agriculture and land stewardship. The identification shall be applied by the owner, the pig dealer, or the livestock dealer at the farm of origin or by the pig dealer or the livestock dealer at the first concentration point.

64.154(2) Approved identification.

a. Breeding swine.

(1) Ear tags or tattoos with an alphabetic or numeric system to provide unique identification for each animal.

(2) Ear notches or ear tattoos, if applied according to the standard breed registry system.

(3) Electronic devices, other devices, or marks which, when applied, will permanently and uniquely identify each animal.

(4) Breeding swine qualified to move intrastate without individual tests may move without unique identification of each animal, if they are all identified as a group to the herd of origin by an official premises tattoo.

b. Feeder swine.

(1) Ear tags or tattoos with an alphabetic or numeric system to provide unique identification with each herd, each lot, or each individual swine.

(2) Electronic devices, other devices, or marks which, when applied, will provide permanent identification with each herd, each lot, or each individual swine.

c. Restricted movement swine.

(1) All infected herds not on an approved herd cleanup plan shall only move swine directly to slaughter by restricted movement. All animals from infected herds must move by restricted movement to slaughter (slaughtering plant or fixed concentration point) or to an approved premises detailed in the herd cleanup plan. The department may, until a herd plan is approved and showing progress, require the movement of all slaughter swine by “direct movement,” to slaughter only, by a Permit for Restricted Movement to Slaughter which provides a description of the animals, the owner, the consignee, the date of movement, the destination, and the identification or vehicle seal number if applicable. These “restricted movement to slaughter only swine” shall be individually identified by approved metal ear tags applied at the farm of origin, if required. The transportation vehicle must be sealed at the farm of origin. This seal shall be applied by an accredited veterinarian. This seal shall be removed by an accredited veterinarian, USDA official, department official, or the person purchasing the swine upon arrival of the consignment at the destination indicated on the Permit for Restricted Movement to Slaughter.

The ear tags shall have an alphabetic or numeric numbering system to provide unique identification with each herd, each lot, or each individual swine. They shall be applied prior to movement and listed on the Permit for Restricted Movement to Slaughter, if required. This Permit for Restricted Movement to Slaughter shall be issued and distributed by an accredited veterinarian as follows:

1. Original to accompany shipment.
2. Mail a copy to the department.
3. Veterinarian issuing permit will retain a copy.

(2) The vehicle sealing requirement may be waived by the department. Written application for waiver must be directed to the state veterinarian’s office, and written waivers may be granted for herds in compliance with an approved herd cleanup plan. The minimal requirements for granting a waiver shall be:

1. No clinical disease in the herd for the past 30 days.

2. Complete herd vaccination documentation.
3. Compliance with herd plan testing requirements.
4. Concurrence of herd veterinarian and regulatory district veterinarian.

No waiver shall be granted, and waivers already granted shall be voided, for herds still classified as infected four months from the initial infection date. The department may impose additional requirements on a case-by-case basis.

The department may grant an extension to this waiver for a period of up to four additional months on a case-by-case basis. Written application for waiver extension must be directed to the state veterinarian's office, and written waivers may be granted for herds in compliance with an approved herd cleanup plan.

64.154(3) Approved ear tags available from the Iowa department of agriculture and land stewardship:

- a. Pink tags to identify pseudorabies vaccinated swine.
- b. Silver tags to identify feeder pigs from pseudorabies noninfected herds.
- c. Blue tags to identify other swine.

64.154(4) Farm-to-farm movement of native Iowa feeder pigs.

a. Native Iowa feeder pigs sold and moved farm-to-farm within the state are exempt from identification requirements if the owner transferring possession and the person taking possession agree in writing that the feeder pigs will not be commingled with other swine for a period of 30 days. The owner transferring possession shall provide a copy of the agreement to the person taking possession of the feeder pigs.

b. "Moved farm-to-farm" as used in this rule means feeder pigs farrowed and raised in Iowa by a farm owner or operator and sold to another farm owner or operator who agree, in writing, not to commingle these pigs for at least 30 days.

Feeder pigs purchased for resale by a pig dealer cannot be moved farm-to-farm, as described in the above paragraph. They must be accompanied by a Certificate of Veterinary Inspection and be identified.

c. Identification-exempt feeder pigs must originate from a "monitored," or other "noninfected," herd. The "monitored herd" number, or other qualifying number, and the date of expiration must also be shown on the Certificate of Inspection.

All identification-exempt feeder pigs aboard the transport vehicle must be from the same farm of origin and be the only pigs aboard. They must be kept in "isolation" and transported by "direct movement" to the farm of destination.

d. The veterinarian will certify, by signature on the Certificate of Inspection, that the above conditions have been met and that the pigs are exempt from the identification requirements and will qualify for movement according to 64.155(4).

64.154(5) Swine being relocated intrastate without a change of ownership are exempt from health certification, identification requirements, and transportation certification except as required by Iowa Code chapter 172B provided relocation records sufficient to determine the origin, the current pseudorabies status of the herd of origin, the number relocated, the date relocated, and destination of the relocated swine are available for inspection.

Swine relocated within a herd held on multiple premises are exempted from this health certification, identification requirement, and transportation certification, except as required by Iowa Code chapter 172B and the above record-keeping requirements.

Relocation records, if required, shall be maintained and available for inspection for a minimum of two years.

64.154(6) This rule should not be construed to implement or affect the identification requirements set down in Iowa Code sections 163.34, 163.35, 163.36, and 163.37. Records of identification applied to slaughter swine at concentration points shall be reported weekly to the department on forms provided by the department.

21—64.155(163,166D,172B) Certificates of inspection. The following certificates shall be used as outlined. All are provided by the department. All require inspection by a licensed accredited veterinarian.

64.155(1) Iowa origin Interstate Certificates of Veterinary Inspection shall be used for exporting breeding swine or feeder swine out of the state.

64.155(2) Intrastate Certificates of Veterinary Inspection shall be used for the following movements:

a. The intrastate movement of feeder swine, with a change of ownership, originating from noninfected herds requires approved identification and noninfected herd identification number, showing the date of last test on a Certificate of Veterinary Inspection. The feeder swine shall be quarantined for 30 days.

b. The intrastate movement, with a change of ownership, of breeding swine from nonquarantined herds requires approved identification and noninfected herd number, or individual test results and dates tested included on a Certificate of Veterinary Inspection only. The breeding swine shall be quarantined for 30 days.

c. The concentration points to farm movement of feeder swine originating from noninfected herds requires approved identification and herd identification number and date tested included on a Certificate of Veterinary Inspection. The feeder swine shall be quarantined for 30 days.

d. The concentration point to farm intrastate movement of noninfected breeding swine from nonquarantined herds requires approved identification and noninfected herd number or individual test results and dates tested included on a Certificate of Veterinary Inspection. The breeding swine shall be quarantined for 30 days.

e. The farm to an approved premises or from a concentration point to an approved premises movement of feeder swine requires approved identification and approved premises number to be included on a Certificate of Veterinary Inspection. A statement, "Quarantined until slaughter," shall be included on a Certificate of Veterinary Inspection.

f. Movement of exhibition swine to an exhibition when a certificate is required must be with a Certificate of Veterinary Inspection.

64.155(3) QLSM certificate. A QLSM certificate shall be used when moving swine under restricted movement and quarantined until moved to slaughter. The certificate shall be used for the following movements:

a. Movement of feeder swine from quarantined herds to approved premises. Approved identification and approved premises number shall be included on the certificate. The swine are quarantined to slaughter or can be moved to another approved premises on a certificate of inspection.

b. Movement of feeder swine from herds of unknown status, feeder pig cooperators herd plans, or herd cleanup plans. Approved identification shall be included on the certificate. This certificate is used for farm-to-farm or concentration point to farm movements.

64.155(4) A Farm-to-Farm Certificate of Veterinary Inspection or an Intrastate Certificate of Veterinary Inspection shall be used for moving identification-exempt native Iowa feeder pigs farm-to-farm according to 64.154(4) "b." Feeder swine purchased for resale by a pig dealer must be identified and accompanied by a Certificate of Inspection.

64.155(5) Import Interstate Certificates from out-of-state origins shall accompany shipments of breeding swine and feeder swine into Iowa.

a. Feeder swine: If a state of origin does not issue a monitored herd number, then the certificate shall include the statement, "These pigs are from a noninfected herd and the date of last test was _____," or "These pigs are from a monitored herd tested within the last 12 months. Date of last test was _____." The certificate shall include the following statement: "These feeder pigs are quarantined until moved to slaughter."

b. Breeding swine: Individual test results and date tested or noninfected herd number and date of last test shall be included on the certificate.

c. Feeder swine from low incidence state/area of origin. The certificate shall include the following statements, "These pigs were born and raised in the state/area of _____," (state/area name) and "These feeder pigs are quarantined until moved to slaughter."

d. Beginning January 1, 1998, all imported feeder swine, except those from qualified negative herds entering qualified negative herds, must be vaccinated for pseudorabies with a G1 deleted vaccine within 45 days of arrival if imported into a county with a pseudorabies prevalence greater than 3 percent.

This requirement must be stated on the import interstate certificate. Imported swine consigned directly to slaughter are exempt from vaccination requirements.

64.155(6) Slaughter affidavits shall accompany all shipments of feeder swine or finished swine from concentration points moving direct to slaughter.

64.155(7) Transportation certificate. This certificate involves shipments of swine from farm or approved premises moving direct to slaughter as detailed in Iowa Code chapter 172B. Veterinary inspection not required.

64.155(8) Rescinded IAB 10/22/97, effective 10/1/97.

21—64.156(166D) Noninfected herds.

64.156(1) *Qualified pseudorabies negative herd—recertification.*

a. Recertification of a qualified pseudorabies negative herd and a qualified differential negative herd shall be by monthly testing, as detailed in Iowa Code section 166D.7(1)“*a.*”

b. The status of a qualified pseudorabies negative herd will be revoked if:

- (1) A positive test is recognized and interpreted by a pseudorabies epidemiologist as infected.
- (2) Pseudorabies infection is diagnosed.
- (3) Recertification testing is not done on time.
- (4) Inadequate number of animals are tested.
- (5) Once a qualified pseudorabies negative herd is decertified, the herd must meet all requirements of Iowa Code section 166D.7, to recertify as a qualified pseudorabies negative herd.

64.156(2) *Iowa monitored feeder pig herd.*

a. Test requirements for a monitored feeder pig herd status include a negative herd test every 12 months of randomly selected breeding animals according to the following schedule:

1-10 head	Test all
11-35 head	Test 10
36 or more	Test 30 percent or 30, whichever is less.

Effective July 1, 2000, all breeding herd locations in Stage II counties must have a monitored or better status or move by restricted movement.

b. A monitored identification card will be sent by first-class mail to the herd owner shown on the test chart if test results qualify the herd as monitored. An expiration date which is 12 months from the date that the certifying tests were drawn will be printed on the card.

It is the owner’s responsibility to retest the herd annually. The monitored status is voided on the date of expiration. A monitored herd status is revoked if:

- (1) A positive test is recognized and interpreted by a pseudorabies epidemiologist and interpreted as infected.
- (2) Pseudorabies infection is diagnosed.
- (3) Recertification test is not done on time.
- (4) Not enough tests, according to herd size and vaccination status, are submitted.

c. Additions of swine to a monitored herd shall be from noninfected herds, according to Iowa Code section 166D.7.

d. Feeder pigs sold for further feeding require a monitoring test conducted within the six months prior to movement if the feeder pigs have been maintained on the same site as the breeding herd.

e. Monitored, or higher, status feeder pigs sold may regain, and maintain, monitored status by a negative test of all or a random sample of 30 head of each segregated group, whichever is less, within 30 days prior to resale.

f. Nursery units located in Stage II counties and not in the vicinity of the breeding herd are required to maintain a monitored status on the nursery unit in order for the swine to be eligible to be relocated to a finishing premises. Feeder pigs sold from these nursery units must meet the requirements of a negative test of all or a random sample of 30 head of each segregated group, whichever is less, within 30 days prior to sale. An official random-sample test shall be required for each segregated group of swine on

an individual premises every 12 months for the maintenance of this monitored status. These testing requirements apply to swine eligible for relocation movement. Testing requirements for this random sampling are:

Test 10 head per building, minimum 14 head per site.

Effective July 1, 2000, all nursery locations in Stage II counties must have a monitored or better status or move by restricted movement.

g. Off-site finishing units located in the Stage II counties are required to maintain a monitored status on the finishing unit in order for the swine to be eligible to be sold to slaughter. An official random-sample test will be required for each segregated group of swine on an individual premises every 12 months for the maintenance of this monitored status. These testing requirements also apply to swine eligible for relocation movement. Testing requirements for this random sampling are:

Test 10 head per building, minimum 14 head per site.

Effective July 1, 2000, all finishing locations in Stage II counties must have a monitored or better status or move by restricted movement.

h. Relocation, and sales to slaughter, require a 12-month monitoring test.

64.156(3) *Qualified differentiable negative herd—recertification.*

a. Recertification of a qualified differentiable negative herd will include monthly testing, as detailed in Iowa Code section 166D.7. A minimum of five breeding swine or 10 percent of the breeding herd, whichever is greater, must be tested each month.

b. The status of a qualified differentiable negative herd will be revoked if:

(1) A positive test is recognized and interpreted by a pseudorabies epidemiologist as infected.

(2) Pseudorabies infection is diagnosed.

(3) Recertification testing is not done on time.

(4) Inadequate number of animals are tested.

(5) Once a qualified differentiable negative herd is decertified, the herd must meet all requirements in Iowa Code section 166D.7 to recertify as a qualified differentiable negative herd.

64.156(4) *Maintaining qualified negative status (progeny).* Progeny from qualified negative (unvaccinated) or from qualified negative (vaccinated) herds moved to a facility not within the vicinity of the herd of origin and unexposed to lesser status swine may maintain qualified negative status by a monthly negative test of 10 percent or 60 head, whichever is less, of swine that have been on the premises for at least 30 days.

64.156(5) *Other qualified pseudorabies negative herds.* Any breeding herd in a Stage IV or V State/Area or an area outside the United States with a low incidence of pseudorabies equivalent to a Stage IV or V State/Area is recognized as a qualified pseudorabies negative herd.

64.156(6) *Fertility centers.* Breeding swine in a fertility center shall attain a “noninfected herd” status by an initial negative test of all breeding swine in the center. This status shall be maintained by a monthly negative test of a random sample of five head or 10 percent, whichever is greater, of the swine at the center. All additions of swine to the fertility center must originate from a “noninfected” herd, must be placed in isolation for 30 days or more, and must test negative for pseudorabies 20 days or more after being isolated.

a. Semen and germplasm must be identified to the fertility center of origin.

b. Imported semen or germplasm must originate from a fertility center, or “noninfected” herd, with requirements at least equivalent to the above, and be identified to the fertility center.

21—64.157(166D) Herd cleanup plan for infected herds (eradication plan).

64.157(1) The herd cleanup plan shall be a written plan approved and on file with the department.

64.157(2) The herd cleanup plan shall contain:

a. Owner’s name, location and herd number.

b. Type of herd plan selected, e.g., offspring segregation, test and removal, depopulation.

c. Description of the plan, which shall include the following requirements:

(1) The breeding herd shall be maintained on an approved vaccination program, at least four times per year;

(2) The progeny shall be weaned and segregated by five weeks of age or less, and progeny group isolation shall be maintained according to the terms of the herd plan;

(3) The herd must be visited on a regular basis (at least quarterly) by the herd veterinarian to monitor progress of the herd cleanup plan. This will include monthly testing if applicable, overseeing management procedures which may include all-in, all-out swine movement, ventilation, sanitation, disinfection, and vaccine handling;

(4) Vaccine shall be administered to the progeny swine at least once, or more often if required by the herd plan;

(5) Feeder pig movement or relocation from the premises of origin must be detailed in writing in the herd cleanup plan. Feeder pig movement or relocation from the premises of origin will only be allowed to approved premises and must be detailed in writing in the herd cleanup plan. Movement will not be allowed from the herd if the herd has experienced clinical symptoms of pseudorabies in the past 30 days. Effective April 19, 2000, all movements from infected premises shall be by restricted movement. "Movement" in this paragraph includes movement to a premises in the production system not in the vicinity of the current location, irrespective of whether there is a change of ownership;

(6) Culled breeding swine must move by restricted movement directly to slaughter (slaughtering plant or fixed concentration point) or to an approved premises in compliance with Iowa Code section 166D.10 as amended by 2000 Iowa Acts, Senate File 2312, section 16, and as detailed in the herd cleanup plan. No swine moved from infected herds may be represented as breeding swine;

(7) Herds identified as infected on or after August 1, 1999, with breeding swine, shall implement a test and removal herd cleanup plan which allows for the phased test and removal of bred animals for one farrowing cycle, followed by a whole herd test and removal plan. Effective August 1, 2000, a whole herd test and removal plan shall be implemented for all infected breeding herds. The herd plan shall include the following:

1. All breeding swine, including boars, shall be tested within 14 days of the herd's being classified as infected. Testing shall also include progeny, if applicable.

2. All breeding swine must be identified by an approved ear tag, or other approved identification method, at the time of blood collection.

3. Until August 1, 2000, all seropositive, unbred breeding swine must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days after blood collection. All seropositive, bred swine must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days of weaning. All replacement breeding stock must be vaccinated prior to addition into the herd and must be retested 60 days after entry into the herd. Effective August 1, 2000, all seropositive animals, bred or unbred, must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days of the whole herd test. All known positive animals in the herd on August 1, 2000, must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), by August 15, 2000.

4. A whole herd test shall be required within 30 days after the removal of the last known positive animal. Any additional seropositive animals must be removed from the herd by restricted movement, direct to slaughter, within 15 days of the collection date. Whole herd retests shall be required at 30-day intervals, with removal of positive animals within 15 days of the test, until it has been determined that the herd is noninfected.

5. Seropositive swine must be removed from the herd, by restricted movement, direct to a buying station or to a slaughtering establishment.

All swine movement from infected herds must be by restricted movement directly to slaughter or to an approved premises as detailed in the herd cleanup plan.

When a herd is designated a noninfected herd, or has been depopulated, by procedures detailed in Iowa Code section 166D.9, the plan is completed;

(8) Beginning October 1, 1999, a herd cleanup plan shall be implemented for all infected finishing herds which shall include the following:

1. A description of the premises, including the location, capacity, physical layout, owner's name, and herd number.
2. Vaccination requirements:
 - Every animal, unless such animal is within three weeks of anticipated slaughter, must be vaccinated with an approved pseudorabies vaccine within seven days of notification by a regulatory official.
 - New animals introduced into the infected premises are to be vaccinated with an approved pseudorabies vaccine according to the timetable outlined in the herd plan.
 - If, through subsequent testing, additional buildings on the site are determined to be infected, all swine on the site shall be managed by all-in, all-out production.
3. Testing requirements:
 - A minimum of 14 swine, selected randomly, per building, shall be tested immediately.
 - Swine shall be retested, at a minimum of 14 animals, selected randomly, per building, every 45 days, if necessary, until the premises are determined to be noninfected.
4. Description, restrictions, and requirements of pig flow through the facilities.
5. All movements from infected finishing sites shall be by restricted movement and only to slaughter.
 - d.* Specific movement limitations which may include approved destination locations, "restricted movement to slaughter," or other appropriate animal movement control measures.
 - e.* Signatures of the herd owner, the owner's veterinarian, and the epidemiologist or the epidemiologist's representative.

64.157(3) Rescinded IAB 10/22/97, effective 10/1/97.

64.157(4) Rescinded IAB 10/22/97, effective 10/1/97.

64.157(5) If this herd cleanup plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd and is subject to "restricted movement to slaughter," according to 2000 Iowa Acts, Senate File 2312, section 17, until a new and approved cleanup plan is in place and showing progress according to a designated epidemiologist.

64.157(6) Rescinded IAB 10/22/97, effective 10/1/97.

64.157(7) A deviation from a herd cleanup plan may be used in exigent circumstances if the deviation has the approval, in writing, of the epidemiologist and the state veterinarian.

21—64.158(166D) Feeder pig cooperator plan for infected herds.

64.158(1) A feeder pig cooperator plan shall be a written plan approved and on file with the department.

64.158(2) Feeder Pig Cooperator Plan Agreement—revised effective April 1, 1995.

Feeder Pig Cooperator Plan Agreement—Revised

Date:

Herd I.D. Number:

Owner's Name:

Address:

Telephone Number:

The Feeder Pig Cooperator Plan Agreement shall include the following:

1. The herd has not experienced clinical signs of pseudorabies within the previous 30 days.
2. Maintain the breeding herd on an approved vaccination program, at least four times per year.
3. Wean and segregate progeny by five weeks of age or less and maintain progeny group isolation until moved as feeder pigs.
4. The herd must be visited at least quarterly by the herd veterinarian to monitor progress of herd cleanup plan; this shall include quarterly testing, if applicable, overseeing management procedures including all-in, all-out swine movement, ventilation, animal waste handling, sanitation, disinfection and vaccine handling.

5. Feeder pigs may be marketed or moved intrastate as cooperator pigs by restricted movement to approved premises detailed in the herd cleanup plan provided that all requirements of this plan are followed.

6. All feeder pigs must be vaccinated prior to sale. Vaccine shall be administered according to individual's herd plan.

7. All feeder pigs must be identified prior to sale with an official pink feeder pig ear tag, or a tattoo, approved by the department, beginning with the letters PR. All movement of feeder pigs from the herd shall be by restricted movement and only be allowed to approved premises detailed in the herd cleanup plan. All feeder pigs are quarantined to farm of destination until sold to slaughter. Movement to slaughter must be by restricted movement.

8. Breeding swine shall move directly to slaughter, or an approved premises in compliance with Iowa Code section 166D.10 as amended by 2000 Iowa Acts, Senate File 2312, section 16, and as detailed in the herd cleanup plan, and by restricted movement. No swine from infected herds may be represented as breeding swine.

9. The producer shall maintain a record of all test charts, all sales transactions by way of health certificates or restricted movement permits, and vaccine purchases for at least two years. These records shall be available to department officials upon request.

10. When this herd is determined, through procedures as detailed in Iowa Code section 166D.9, to become a noninfected herd or is depopulated, the plan is completed.

11. I agree, if this plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd and subject to restricted movement, direct to slaughter or to an approved premises.

I am currently enrolled in an approved herd cleanup plan. I further agree to comply with all the requirements contained in this Feeder Pig Cooperator Plan Agreement.

Herd Owner:

Date:

Herd Veterinarian:

Date:

21—64.159(166D) Herds of unknown status. Feeder pigs from herds of unknown status may not move after September 30, 1993; however, these herds may test to determine status and feeder pigs may be moved according to 64.156(1), 64.156(2), 64.156(3), 64.157(3), or 64.158(2).

The owner must provide test data, prior to movement, proving that these requirements have been met.

21—64.160(166D) Approved premises. The purpose of an approved premises is to maintain feeder swine and feeder pigs under quarantine with movement either direct to slaughter or to another approved premises. Effective June 1, 2000, all swine moved or relocated from an infected herd on an approved herd cleanup plan may only move by restricted movement to an approved premises for further feeding or to slaughter (slaughtering plant or fixed concentration point).

64.160(1) The following are requirements establishing, renewing, or revoking an approved premises permit:

a. A permit application, as part of the herd cleanup plan, must indicate the name of the premises operator and address of the premises.

b. To be valid, an approved premises must be detailed as part of a herd cleanup plan and approved by a department or inspection service official certifying that the facility meets the following guidelines:

(1) Must be a dry lot facility located in an area of confirmed cases of pseudorabies.

(2) Shall not be in the vicinity of a breeding herd. Effective June 1, 2000, an approved premises shall not be located in a county designated as in Stage III of the national pseudorabies eradication program, nor shall it be located in a county which has achieved 0 percent prevalence of pseudorabies infection among all herds in the county as of March 1, 2000, or later. Effective August 1, 2000, an approved premises shall not be located within one and one-half miles of a noninfected herd or three miles of a qualified negative herd.

- (3) Shall be built such that it can be thoroughly cleaned and disinfected.
- (4) The lay of the land or the facilities shall not be conducive to animal waste draining onto adjacent property.
- (5) Only feeder swine and cull swine may be moved onto this premises. Boars and sows are to be maintained separate and apart.
- (6) Swine on the premises must be maintained in isolation from other livestock.
 - c. The permittee must provide to the department or inspection service, during normal business hours, access to the approved premises and to all required records. Records of swine transfers must be kept for at least one year. The records shall include information about purchases and sales, names of buyers and sellers, the dates of transactions, and the number of swine involved with each transaction.
 - d. Swine must be vaccinated for pseudorabies according to the herd cleanup plan. Vaccination records must be available for inspection during normal business hours.
 - e. Dead swine must be disposed of in accordance with Iowa Code chapter 167. The dead swine must be held so as to prevent animals, including wild animals and livestock, from reaching the dead swine.
 - f. Swine must be moved direct to slaughter or to another approved premises by restricted movement and as detailed in the herd cleanup plan.
 - g. An approved premises permit may be revoked by following quarantine release methods as detailed in Iowa Code section 166D.9, or failure to comply with departmental operation rules, or if swine have been removed from the premises for a period of 12 or more months.
 - h. Renewal of an approved premises will not be permitted when:
 - (1) The approved premises is not compliant with the requirements of this rule.
 - (2) Federal law prohibits approved premises.
 - (3) The approved premises no longer is part of an approved herd cleanup plan, or the county where the approved premises is located no longer allows approved premises or the site of the approved premises no longer complies with requirements.
 - i. Revocation of an approved premises will result in the issuance of a quarantine by the department effective until quarantine release methods have been followed as detailed in Iowa Code section 166D.9, or the approved premises has been depopulated by restricted movement to slaughter or to another approved premises as detailed in the herd cleanup plan.

64.160(2) An approved premises will be considered permitted as long as the approved premises is compliant with all regulations and is part of an approved herd cleanup plan.

21—64.161(166D) Sales to approved premises. After June 1, 2000, all feeder pigs and cull swine except those from “noninfected herds” must be moved directly to an approved premises by restricted movement for further feeding; however, these pigs may continue to move as cooperator pigs if a “Feeder Pig Cooperator Plan Agreement—Revised” is approved by the department and movement is permitted by the department.

21—64.162(166D) Certification of veterinarians to initiate approved herd cleanup plans and approved feeder pig cooperator plan agreements and fee basis.

64.162(1) Requirements for certification. To be certified, the veterinarian shall meet both of the following requirements:

- a. Be an accredited veterinarian.
- b. Attend and complete continuing education sessions as determined by the department.

64.162(2) Responsibilities. A certified veterinarian is authorized to do the following:

- a. Complete and submit herd plan and herd agreement forms (supplied by the department) within ten days of completion for approval by the department.
- b. Review and update herd plans and herd agreements and report to the department any changes made.

64.162(3) Revocation of certification. Failure to comply with the above requirements of this rule will result in revocation of certification.

64.162(4) Remuneration. Compensation will be made to the veterinarian or veterinarians certified to initiate herd plans and herd agreements. Payment will be made from pseudorabies program funds, if available and authorized for these purposes. Fees for payment shall be established by the department by order. Payment will be made for the following:

- a. Initial herd cleanup plan with or without an accompanying feeder pig cooperators agreement. Payment will be made upon submission of the completed form and department approval of the plan.
- b. Review of herd cleanup plan. Payment will be made upon submission of the completed form and department approval of the plan review.
- c. Upon completion of the herd cleanup plan and release of the infected status, the veterinarian will receive a payment.
- d. All other herd consultation or time devoted to herd plan implementation shall be at owner's expense.

64.162(5) Fee basis. The following fees are allocated to the testing veterinarian when approved by the department, provided funding is available:

- a. Herd stop fee per stop not to exceed four stops per year.
- b. Bleeding fee per animal, not to exceed 100 tests per herd, per year.
- c. Differentiable vaccine reimbursement per dose, when dispensed during the first 24 months from the date of initial program area designation. Doses of pseudorabies differentiable vaccine are dispensed to infected herds on approved cleanup plans, based upon date of herd plan approval, according to the number of breeding swine.
- d. Fees for additional herd stops and tests may be allocated by approval from the department.

[ARC 5830C, IAB 8/11/21, effective 9/15/21]

21—64.163(166D) Nondifferentiable pseudorabies vaccine disapproved. Transferred and amended, see 21—64.152(163,166D), IAB 8/19/92.

These rules are intended to implement Iowa Code chapters 163 and 166D.

21—64.164 to 64.169 Reserved.

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PARATUBERCULOSIS (JOHNE’S) DISEASE

21—64.170(165A) Definitions. Definitions used in rules 21—64.170(165A) through 21—64.178(165A) are as follows:

“*Accredited veterinarian*” means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1 of the Code of Federal Regulations, revised as of January 1, 2000, to perform functions required by cooperative state-federal animal disease control and eradication programs.

“*Approved laboratory*” means an American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory or the National Veterinary Services Laboratory, Ames, Iowa. An approved laboratory must have successfully passed the Johne’s diagnostic proficiency test in the previous year.

“*Certificate*” means an official document that is issued at the point of origin by a state veterinarian, federal animal health official, or accredited veterinarian and contains information on the individual identification of each animal being moved, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, and any other information required by the state veterinarian.

“*Designated epidemiologist*” means a veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the state veterinarian.

“*Individual herd plan*” means a written herd management plan that is designed by the herd owner, the owner’s veterinarian, if requested, and a designated epidemiologist to identify and control Johne’s disease in an affected herd. The individual herd plan may include optional testing.

“*Johne’s disease-affected animal*” means an animal which has reacted positively to an organism-based detection test conducted by an approved laboratory.

“*Permit*” means an official document for movement of affected or exposed animals that is issued by the state veterinarian, USDA Area Veterinarian-in-Charge, or accredited veterinarian.

“*State*” means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.171(165A) Supervision of the Johne’s disease program. The state veterinarian’s office will provide supervision for the Johne’s disease program.

[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.172(165A) Official Johne’s disease tests. Organism-based detection tests will be considered as official Johne’s disease tests. These tests include, but are not limited to, Polymerase Chain Reaction (PCR) tests and bacteriological culture.

[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.173(165A) Vaccination allowed. Vaccination against Johne’s disease is allowed with the permission of the state veterinarian. The herd owner requesting vaccination of the herd must sign and

follow a Johne's disease herd control plan consisting of best management practices designed to prevent the introduction of and control the spread of Johne's disease. A risk assessment may be included as part of the herd control plan. The herd owner shall submit animal vaccination reports to the department on forms provided by the department.

[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.174(165A) Herd plan. The herd owner, the owner's veterinarian, if requested, and the designated epidemiologist may develop a plan for preventing the introduction of and controlling the spread of Johne's disease in each affected herd.

[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.175(165A) Identification and disposal requirements. Affected animals must remain on the premises where they are found until they are permanently identified by an accredited veterinarian applying a C-punch in the right ear of the animal. Affected animals may be moved only for the purpose of consigning the animal to slaughter.

21—64.176(165A) Segregation, cleaning, and disinfecting. Positive animals, consigned to slaughter through a state-federal approved auction market, must be maintained separate and apart from noninfected animals. Positive animals must be the last class of animal sold. Cleaning and disinfection of the alleyways, pen(s) and sale ring used to house positive animals must be accomplished prior to the next scheduled sale. Affected animals entering slaughter marketing channels must be moved directly to the slaughter facility or the slaughter market concentration point. Transportation vehicles used to haul affected animals shall be cleaned and disinfected after such use and before transporting any additional animals.

21—64.177(165A) Intrastate movement requirements.

64.177(1) Animals that are positive to an official Johne's disease test may be moved from the farm of origin for slaughter only if the animals are moved directly to a recognized slaughtering establishment and accompanied by an owner-shipper statement that identifies the animals as positive to an official Johne's disease test and the statement is delivered to the consignee. Positive animals shall be identified prior to movement by application of a C-punch in the right ear of the animal.

64.177(2) Animals that are positive to an official Johne's disease test may be moved within Iowa for slaughter and consigned to a state-federal approved slaughter market if the animals are accompanied by an owner-shipper statement that identifies the animals as positive to an official Johne's disease test and the statement is delivered to the consignee. Positive animals shall be identified prior to movement by application of a C-punch in the right ear of the animal.

64.177(3) Animals that are positive to an official Johne's disease test may be moved within Iowa for purposes other than slaughter only by permit from the state veterinarian.

[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.178(165A) Import requirements.

64.178(1) Animals that are positive to an official Johne's disease test may be imported into Iowa for slaughter if the animals are moved directly to a recognized slaughtering establishment and accompanied by an owner-shipper statement that identifies the animals as positive to an official Johne's disease test and the statement is delivered to the consignee. All animals must be officially identified.

64.178(2) Animals that are positive to an official Johne's disease test may be imported into Iowa for slaughter and consigned to a state-federal approved slaughter market if the animals are accompanied by an owner-shipper statement that identifies the animals as positive to an official Johne's disease test and the statement is delivered to the consignee. Positive animals shall be identified at the market, prior to sale, by application of a C-punch in the right ear of the animal.

64.178(3) Animals that are positive to an official Johne's disease test may be imported into Iowa for purposes other than slaughter only by permit from the state veterinarian.

[ARC 0230C, IAB 7/25/12, effective 8/29/12]

21—64.179 to 64.184 Reserved.

These rules are intended to implement Iowa Code Supplement chapter 165A.

[Filed 3/28/02, Notice 2/6/02—published 4/17/02, effective 5/22/02]

[Filed ARC 0230C (Notice ARC 0140C, IAB 5/30/12), IAB 7/25/12, effective 8/29/12]

LOW PATHOGENIC AVIAN INFLUENZA (LPAI)

21—64.185(163) Definitions. Terms used in these rules are defined as follows:

“Affected poultry flock” means a poultry flock from which any animal has been diagnosed as infected with LPAI and which is not in compliance with the provisions of the control program for LPAI as described in this chapter.

“Approved laboratory” means the Iowa State University Veterinary Diagnostic Laboratory, Ames, Iowa, or other American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory, including the National Veterinary Services Laboratory, Ames, Iowa.

“Designated epidemiologist” means a state veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the state veterinarian.

“House/housing facilities” means the individual barn that houses the poultry.

“Individual flock plan” means a written flock management and testing plan that is designed by the flock owner, the owner’s veterinarian, if requested, and a designated epidemiologist to identify and eradicate LPAI from an affected or exposed flock and to prevent the spread of the disease to an adjacent flock.

“Low pathogenic avian influenza (LPAI)” means an infectious, contagious disease of poultry caused by Type A influenza virus. For the purposes of these rules, LPAI shall include only subtypes identified as H5 or H7.

“LPAI affected” means a designation applied to poultry diagnosed as infected with LPAI based on laboratory results, clinical signs, or epidemiologic investigation.

“LPAI suspect” means a designation applied to poultry for which laboratory evidence or clinical signs suggest a diagnosis of LPAI but for which laboratory results are inconclusive.

“Monitored LPAI poultry flock” means a flock of poultry that is in compliance with the surveillance and testing procedures set forth in these rules.

“Official avian influenza test” means an approved test conducted at a laboratory approved to diagnose avian influenza.

“Poultry” means commercial egg-laying and meat-producing chickens and commercial turkeys. “Poultry” also means breeder flocks.

“Poultry flock” means a group of poultry, generally of the same age, that are hatched, housed, managed, and sold together as one unit.

“Quarantine” means an imposed restriction prohibiting movement of poultry to any location without specific written permits.

“Slaughter/disposal” means the removal or depopulation of the poultry flock.

21—64.186(163) Supervision of the low pathogenic avian influenza program. The state veterinarian’s office shall provide oversight and supervision of the LPAI program in Iowa.

21—64.187(163) Surveillance procedures. Surveillance procedures shall only apply to commercial poultry flocks of 10,000 or more layers, commercial chicken broiler operations with 10,000 or more broilers, and commercial turkey operations with 1,000 or more turkeys. Breeders that participate in, and qualify under, the USDA, APHIS, NPPI U.S. Avian Influenza Clean Program meet or exceed the surveillance provisions of this plan and are exempt from further certification under this rule. For poultry flocks, surveillance procedures shall include the following:

64.187(1) Turkeys and turkey poults.

a. Preslaughter/movement testing. A minimum of six blood samples per flock may be collected and forwarded to an approved laboratory for LPAI testing within 21 days prior to depopulation or movement; or

b. Slaughter/disposal testing. Six blood samples per flock shall be collected at slaughter/disposal and forwarded to an approved laboratory for LPAI testing.

c. Sick flock testing. Twenty blood samples shall be collected between 10 days and 21 days after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing, and 20 pharyngeal swabs shall be collected at onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

d. Routine serologic testing. A test for LPAI should be included.

64.187(2) Laying chickens and pre-lay pullets.

a. Preslaughter/disposal/movement testing. Eleven blood samples shall be collected and forwarded to an approved laboratory for LPAI testing within 30 days prior to depopulation or disposal of spent hens or movement of pre-lay pullets to another farm.

b. Sick flock testing. Twenty blood samples shall be collected between 10 days and 21 days after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing, and 20 pharyngeal swabs shall be collected at onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI of 11 birds per barn during a 12-month period shall be collected and forwarded.

64.187(3) Broiler chickens.

a. Preslaughter testing. Eleven blood samples may be collected and forwarded to an approved laboratory for LPAI testing within 21 days prior to depopulation; or

b. Slaughter/disposal testing. Eleven blood samples shall be collected at slaughter/disposal and forwarded to an approved laboratory for LPAI testing.

c. Sick flock testing. Twenty blood samples shall be collected between 10 days and 21 days after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing, and 20 pharyngeal swabs shall be collected at onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

d. Routine serologic testing. A test for LPAI should be included.

[ARC 1802C, IAB 12/24/14, effective 1/1/15]

21—64.188(163) Official LPAI tests. Official tests for LPAI are:

1. Agar Gel Precipitin (AGP);
2. Enzyme Linked Immunosorbent Assay (ELISA);
3. Any other tests performed by an approved laboratory to confirm a diagnosis of LPAI.

Tests positive to screening for avian influenza through AGP, ELISA, and any other tests performed by an approved laboratory to confirm a diagnosis of LPAI must be forwarded to National Veterinary Services Laboratory, Ames, Iowa, for subtype testing.

4. Influenza type A antigen detection tests approved by the state veterinarian. All influenza type A antigen detection tests performed shall be prior-approved by the state veterinarian, and all positive tests results shall be reported immediately to the state veterinarian. A monthly report of all test results shall be reported to the state veterinarian.

21—64.189(163) Investigation of LPAI affected poultry identified through surveillance. All poultry diagnosed at an approved laboratory as infected with LPAI must be traced back to the flock or farm of origin.

All flocks having contact with affected or exposed poultry as determined by the designated epidemiologist must be investigated epidemiologically. All farms of origin and flocks having contact with affected or exposed poultry must be quarantined, pending the results of the epidemiological investigation.

21—64.190(163) Duration of quarantine. Quarantines imposed in accordance with these rules shall be in effect for a minimum of three months after the last detection of active avian influenza virus on the premises. Active avian influenza virus on the premises will be determined through the use of sentinel poultry or virus isolation.

21—64.191(163) Flock plan.

64.191(1) The flock owner, the owner's veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating LPAI in each affected flock. The plan must be designed to reduce and then eliminate LPAI from the flock, to prevent spread of the disease to other flocks, and to prevent reintroduction of LPAI after the flock becomes disease-free. The flock plan must be developed and signed within 15 days after the determination that the flock is affected.

64.191(2) The flock plan will include, but is not limited to, the following areas:

a. Movement of vehicles, equipment, and people on and off the premises.
b. Cleaning and disinfection of vehicles entering and leaving the premises.
c. Proper elimination of daily mortality through composting on premises, incineration on premises, or other approved method.

d. Biosecurity procedures for people entering or leaving the facility.

e. Controlled marketing.

(1) No poultry may be removed from the premises for a minimum of 21 days after the last detection of active avian influenza virus on the premises. Immune flocks that have recovered from avian influenza infection may remain on the premises for the remainder of their scheduled life span.

(2) After 21 days, poultry marketing will only be allowed for delivery to slaughter establishments at the close of business for the week.

(3) Routes used to transport poultry to slaughter must avoid other poultry operations.

(4) Trucks used to transport poultry from an infected premises must be cleaned and disinfected and may not enter another poultry facility for at least 24 hours.

(5) Eggs which are washed, sanitized, and packed in new materials may be moved into normal marketing channels, but trucks hauling these eggs must not visit another premises between the production site and the market. Egg handling materials must be destroyed at the plant or cleaned, sanitized, and returned to the premises of origin without contacting materials going to other premises. Disposable egg flats or sanitized, plastic flats must be used to transport eggs.

(6) Eggs that are sold as "nest run" and are not washed and sanitized must be moved directly to only an "off-line" breaking operation for pasteurization and used for breaking only. The egg handling materials must be handled as described in (5) above.

(7) Liquid eggs from layer flocks may continue to move from breaking operations directly to pasteurization plants provided that the transport vehicles are cleaned and disinfected before entering and leaving the premises.

f. Vaccination. Avian influenza vaccine will be considered for use only if allowed by the state veterinarian and USDA APHIS.

(1) Killed H5 or H7 vaccine may be used to immunize all noninfected poultry remaining on the premises. Laying-flock replacement poultry should be vaccinated at least two weeks before entering the laying operation.

(2) Twenty sentinel (nonvaccinated) poultry will be kept in each vaccinated flock, and all 20 will be tested for avian influenza every 30 days.

(3) Avian influenza virus will be considered to be no longer active when all sentinel poultry are serologically negative on two consecutive tests conducted at least 14 days apart and when cloacal swabs from each of the 20 sentinel poultry are negative by virus isolation testing.

(4) Positive sentinel poultry must be euthanized and replaced by negative poultry after 14 days.

(5) Slaughter withdrawal times must be followed in the marketing of poultry.

g. Housing facilities and manure. Before a new flock is placed in an infected house, manure must be removed and the housing facilities must be cleaned and disinfected. Manure shall not be removed from the premises for a minimum of 30 days after the last active detection of avian influenza virus in a house.

Manure from infected housing facilities must be carried in covered conveyances, and transportation routes must avoid other poultry operations. Manure handling and disposal will be at the direction of the state veterinarian.

h. Wild bird, insect, and rodent control. Wild bird, insect, and rodent control programs must be implemented on the premises before a facility is repopulated with poultry. Rodenticide must be set out before feed or birds are removed from the premises.

64.191(3) The plan must address flock management and be in compliance with all provisions of these rules. The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain a disease-free status.

21—64.192(163) Cleaning and disinfecting. The housing facilities must be cleaned and disinfected under state supervision within 15 days after affected poultry and manure have been removed.

21—64.193 to 64.199 Reserved.

These rules are intended to implement Iowa Code chapter 163.

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SCRAPIE DISEASE

21—64.200(163) Definitions. Definitions used in rules 21—64.200(163) through 21—64.211(163) are as follows:

“Accredited veterinarian” means a veterinarian approved by the administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1 of the Code of Federal Regulations (CFR), to perform functions required by cooperative state-federal animal disease control and eradication programs.

“Administrator” means the administrator of APHIS or any employee of USDA to whom the administrator has delegated authority to act on behalf of the administrator.

“Animal” means any sheep or goat.

“APHIS representative” means an individual employed by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) in animal health activities who is authorized by the administrator to perform the functions and duties involved.

“Approved laboratory” means a diagnostic laboratory approved by APHIS to conduct tests for scrapie or genotypes on one or more tissues.

“Area veterinarian-in-charge” or *“AVIC”* means the veterinary official of APHIS assigned by APHIS to supervise and perform the official animal health work of APHIS in Iowa.

“Breed associations and registries” means the organizations that maintain the permanent records of ancestry or pedigrees of animals (including each animal’s sire and dam), individual identification of animals, and ownership of animals.

“Certificate of Veterinary Inspection” or *“CVI”* means an official document approved by the department and issued by a licensed accredited veterinarian at the point of origin of movement of animals.

“Commingle” means to group animals together in a manner that allows them to have physical contact with each other, including contact through a fence, but not limited contact. Commingling includes sharing the same section in a transportation unit where physical contact can occur.

“Designated scrapie epidemiologist” or *“DSE”* means a state or federal veterinarian designated by the department and APHIS to make decisions about the use and interpretation of diagnostic tests and field investigation data and the management of flocks and animals of epidemiological significance to the scrapie program.

“Directly to slaughter” means movement from a farm to a place of business where animals are processed into meat, excluding movement through an auction market or livestock dealer’s place of business.

“Exposed animal” means any animal that has had contact with a scrapie-positive animal or had contact with a premises where a scrapie-positive animal has resided and for which a flock plan has not yet been completed. Exposed animals shall be evaluated by a state or federal veterinarian in concurrence with the DSE and state veterinarian and may be redesignated into a risk category according to genetic resistance and exposure and may be restricted or have restrictions removed in accordance with current USDA regulations.

“Exposed flock” means any flock in which:

1. A scrapie-positive animal was born or gave birth; or
2. A high-risk or suspect female animal currently resides; or
3. A high-risk or suspect animal once resided that gave birth or aborted in the flock and from which tissues were not submitted for official scrapie testing.

“Flock” means a group of sheep or goats, or a mixture of both species, residing on the same premises or under common ownership or supervision on two or more premises with animal interchange between the premises. Changes in ownership of part or all of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock.

“Flock identification number” or *“flock ID number”* means the unique alphanumeric premises identification number that appears on the official identification issued to a flock, that conforms with the standards for an epidemiologically distinct premises, as outlined in 9 CFR 79.1, and that is assigned by USDA and approved by the department.

“Flock of origin” means the flock of birth for male animals and, for female animals, means the flock in which the animal most recently resided in which it either was born, gave birth, or resided during lambing or kidding.

“Flock plan” means a written flock management agreement signed by the owner of a flock, the accredited veterinarian, if one is employed by the owner, and a department or APHIS representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or exposed animal. As part of a flock plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the flock plan. The flock plan must include the requirements in 9 CFR 54.8.

“Genetic susceptibility” means the animal’s likelihood, based upon the genotype of the animal, of developing scrapie following exposure to scrapie.

“High-risk animal” means:

1. Any exposed female animal designated as genetically susceptible under current USDA guidelines;
2. The female offspring of a scrapie-positive female animal; or
3. Any other exposed female animal determined by the DSE to be a potential risk.

“Infected flock” means any flock in which the DSE has determined that a scrapie-positive female animal has resided, unless an epidemiological investigation conducted by the DSE shows that the animal did not give birth or abort in the flock.

“Interstate commerce” means trade, traffic, transportation, or other commerce between a place in a state and any place outside that state, or between points within a state but through any place outside that state.

“Limited contact” means incidental contact between animals away from the flock’s premises, such as at fairs, shows, exhibitions, markets, and sales; between ewes being inseminated, flushed, or implanted; or between rams at ram test or collection stations. Embryo transfer and artificial insemination equipment

and surgical tools must be sterilized after each use in order for the contact to be considered limited contact. Limited contact does not include any contact with a female animal during or up to 30 days after she gave birth or aborted or when there is any visible vaginal discharge other than that associated with estrus. Limited contact does not include any activity in which uninhibited contact occurs, such as sharing an enclosure, sharing a section of a transport vehicle, or residing in other flocks for breeding or other purposes, except as allowed by scrapie flock certification program standards.

“Live-animal screening test” means any test used for the diagnosis of scrapie in a live animal, approved by APHIS, and conducted in a laboratory approved by APHIS.

“Noncompliant flock” means:

1. Any source or infected flock whose owner declines to enter into a flock plan or postexposure management and monitoring plan (PEMMP) agreement within 60 days of the flock’s being designated as a source or infected flock;
2. Any exposed flock whose owner fails to make animals available for testing within 60 days of notification, or as mutually agreed upon by the department and the owner, or whose owner fails to submit required postmortem samples;
3. Any flock whose owner or manager has misrepresented, or who employs a person who has misrepresented, the scrapie status of an animal or has misrepresented any other information on a certificate, permit, owner statement, or other official document within the last five years;
4. Any flock whose owner or manager has moved, or who employs a person who has moved, an animal in violation of this chapter within the last five years; or
5. Any flock which does not meet the requirements of a flock plan or PEMMP.

“Official genotype test” means any test used to determine the genotype of a live or dead animal and conducted at an approved laboratory provided that the animal is officially identified and the samples used for the test are collected and shipped to the laboratory by either an accredited veterinarian or a department or APHIS representative.

“Official identification” or *“official ID”* means identification approved by the department and APHIS for use in the scrapie eradication program in the state of Iowa. For sheep, official identification consists of (1) approved ear tags which include the flock ID number combined with an individual animal number; (2) approved unique, alphanumeric serial-numbered ear tags; or (3) ear tags approved for use with the scrapie flock certification program. For goats, official identification consists of any method of identification approved by the USDA, as outlined in 9 CFR 79.2.

“Official test” means any test used for the diagnosis of scrapie in a live or dead animal, approved by APHIS for that use, and conducted at an approved laboratory.

“Owner” means a person, partnership, company, corporation, or any other legal entity which has legal or rightful title to animals.

“Owner/seller statement form” means a written document to be completed by the owner or seller of animals that require official identification and includes the owner’s/seller’s name, address, and telephone number; date of transaction; the flock identification number; the number of animals involved; a statement indicating that the animals that require official identification have been officially identified and that the owner/seller will maintain records as to the origin of the individual animals for five years; and a signed owner statement.

“Owner statement” means a statement signed by the owner certifying that the sexually intact animals are not scrapie-positive, suspect, high-risk, or exposed and that they did not originate from an infected, source, exposed, or noncompliant flock.

“Permit” means an official document that has been issued by an APHIS or department representative or an authorized accredited veterinarian and allows the interstate movement of animals under quarantine. A seal may be required by the state veterinarian or AVIC.

“Postexposure management and monitoring plan” or *“PEMMP”* means a written agreement signed by the owner of a flock, an accredited veterinarian, if one is employed by the owner, and a department or APHIS representative in which each participant agrees to undertake actions specified in the agreement to reduce the risk of the occurrence of scrapie and to monitor for the occurrence of scrapie in the flock for at least five years after the last high-risk or scrapie-positive animal is removed from the flock or after the

last exposure of the flock to a scrapie-positive animal, unless the monitoring time is otherwise specified by a department or APHIS representative. As part of a postexposure management and monitoring plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the plan. The plan must include the requirements in 9 CFR 54.8.

“*Premises*” means the ground, area, buildings, and equipment occupied by one or more flocks of animals.

“*Quarantine*” means an imposed restriction prohibiting movement of animals to any location without specific written permits.

“*Scrapie*” means a nonfebrile, transmissible, insidious degenerative disease affecting the central nervous system of sheep and goats.

“*Scrapie eradication program*” or “*program*” means the cooperative state-federal-industry program administered by APHIS and states to control and eradicate scrapie.

“*Scrapie flock certification program*” or “*SFCP*” means a voluntary state-federal-industry cooperative program established and maintained to reduce the occurrence and spread of scrapie, to identify flocks that have been free of evidence of scrapie over specified time periods, and to contribute to the eventual eradication of scrapie. This program was formerly known as the voluntary scrapie flock certification program.

“*Scrapie-positive animal*” or “*positive animal*” means an animal for which a diagnosis of scrapie has been made by an approved laboratory through one of the following methods:

1. Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of scrapie;
2. The use of protease-resistant protein analysis methods, including but not limited to immunohistochemistry or western blotting, on CNS or peripheral tissue samples from a live or a dead animal for which a given method has been approved by the administrator for use on that tissue;
3. Bioassay;
4. Scrapie-associated fibrils (SAF) detected by electron microscopy; or
5. Any other test method approved by the administrator in accordance with 9 CFR 54.10.

“*Source flock*” means a flock in which a department or APHIS representative has determined that at least one animal was born that was diagnosed as a scrapie-positive animal at an age of 72 months or less.

“*State animal health official*” means an individual employed by the department in animal health activities and authorized by the department to perform the functions involved.

“*Suspect animal*” means:

1. A sheep or goat that exhibits any of the following possible signs of scrapie and that has been examined by an accredited veterinarian or a department or APHIS representative. Possible signs of scrapie include: weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high-stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor, star gazing, head pressing, recumbency, or other signs of neurological disease or chronic wasting;
2. A sheep or goat that has tested positive for scrapie or for the protease-resistant protein associated with scrapie on a live-animal screening test, or any other official test, unless the animal is designated as a scrapie-positive animal; or
3. A sheep or goat that has tested inconclusive or suggestive of scrapie on an official test for scrapie.

“*Trace*” means all actions required to identify the flock of origin or flock of destination of an animal.

“*Unofficial test*” means any test used for the diagnosis of scrapie or for the detection of the protease-resistant protein associated with scrapie in a live or dead animal but that either has not been approved by APHIS or was not conducted at an approved diagnostic laboratory.

“*Veterinary signature-stamped bill of sale*” means a document allowed in Iowa in lieu of a Certificate of Veterinary Inspection for use when animals are sold through a licensed auction market and will remain in Iowa. The bill of sale shall contain the following statement: “I certify, as an accredited veterinarian, that these animals have been inspected by me and that they are not showing any signs of infectious,

contagious, or communicable diseases (except where noted).” The signature of the veterinarian who inspected the animals at the sale must appear on the document.

21—64.201(163) Supervision of the scrapie eradication program. The scrapie eradication program is a cooperative program between the department and APHIS and is supervised by full-time animal health veterinarians employed by the state or federal government.

21—64.202(163) Identification. Animals required to be officially identified shall have official identification applied upon, or before, departure from the current flock of origin by the flock owner or the owner’s agent. An animal that already has identification recognized as official for Iowa does not need to have any additional official identification applied. If an animal was not identified prior to departing from its flock of birth or if its identification has been lost, then the animal must be identified upon, or before, departing from the current flock in which the animal resides and the flock of birth, or previous flock of origin, should be recorded, if known. No person shall apply a flock ID tag to an animal that has not resided in that flock. If a sexually intact animal that requires official identification is of uncertain origin or if the animal is identified with a blue metal “meat only” tag or a red or yellow tag denoting exposure or test status, then the animal may not be used for breeding and must be restricted until slaughter. Animals that require official identification and enter the state of Iowa from other states must be identified with an identification that complies with 9 CFR 79.2. For sheep originating from out of state, ear tags that comply with 9 CFR 79.2 will be considered official identification in Iowa. For goats, either ear tags or tattoos that comply with 9 CFR 79.2 will be considered official identification in Iowa.

64.202(1) Sheep—official identification required. Sheep required to be officially identified include:

- a. All sexually intact sheep, unless specifically excluded in these rules;
- b. All sexually intact sheep for exhibition;
- c. All sheep over 18 months of age;
- d. All sheep residing in noncompliant flocks;
- e. All exposed, suspect, positive and high-risk sheep; and
- f. Sexually intact sheep of any age imported into Iowa, except as noted in 64.202(2).

64.202(2) Sheep—official identification not required. Sheep that do not require official identification include:

- a. Sheep under 18 months of age originating from outside the state of Iowa moving into an approved terminal feedlot, and any sheep under 18 months of age moving directly to slaughter;
- b. Wether sheep for exhibition, unless over 18 months of age; and
- c. Sheep moved for grazing or similar management reasons provided that the sheep are moved from a premises owned or leased by the owner of the sheep to another premises owned or leased by the owner of the sheep.

64.202(3) Goats—official identification required. Goats that require official identification include:

- a. Sexually intact goats that are registered, are used for exhibition, or have resided on the same premises with or been commingled with sheep, excluding limited contact;
- b. All goats residing in noncompliant flocks; and
- c. All exposed, suspect, positive and high-risk goats.

64.202(4) Goats—official identification not required. Goats that do not require official identification include:

- a. Goats under 18 months of age originating from outside the state of Iowa moving into an approved terminal feedlot, and any goats under 18 months of age moving directly to slaughter;
 - b. Wether goats for exhibition;
 - c. Goats raised and maintained apart from sheep and used exclusively for meat and fiber production;
 - d. Pet goats raised and maintained apart from sheep and not registered or used for exhibition;
 - e. Dairy goats raised and maintained apart from sheep and not registered or used for exhibition;
- and

f. Goats moved for grazing or similar management reasons provided that the goats are moved from a premises owned or leased by the owner of the goats to another premises owned or leased by the owner of the goats.

NOTE: Official identification requirements for goats will become identical to those for sheep 90 days following the disclosure of a case of scrapie in Iowa goats that cannot be attributed to exposure to sheep.

21—64.203(163) Restrictions on the removal of official identification. No person may remove or tamper with any approved means of identification required to be on sheep or goats, unless the identification must be removed for medical reasons, in which case new official identification must be applied to the animal as soon as possible and prior to commingling that could result in the loss of identity of the animal. A record documenting the change of official identification must be made.

21—64.204(163) Records.

64.204(1) Record-keeping requirements for owners. Records on every animal that requires official ID shall be maintained for five years from the time the animal leaves the flock or dies. For animals not born in the flock, records must include the flock-of-origin number or the previous owner's name and address, date of acquisition, a description of the animal (sheep or goat, and breed or class), and flock of birth, if known. When official ID tags are applied, it is recommended that the owner correlate official ID with production records, such as lambing dates, for all breeding animals. The owner shall maintain a record of the name and address of the market or buyer, the date, the number of animals sold, and a description of the animals (sheep or goat, and breed or class) for all animals moved from the flock. The owner must supply the market or buyer with the owner's flock ID number. A Certificate of Veterinary Inspection (CVI), or a veterinary signature-stamped bill of sale for animals purchased through Iowa markets, is required for every change of ownership of animals in Iowa, other than for animals sold to slaughter. A copy of the CVI or veterinary signature-stamped bill of sale must be maintained for every animal purchased, and for every animal sold privately, other than to slaughter. For animals sold to slaughter, records must show the date of sale, number of animals sold, and where or to whom sold.

64.204(2) Record-keeping requirements for auction markets. Markets must collect a completed and signed owner/seller statement form from each seller presenting animals that require official identification or must post where animals are unloaded signs which state that "sexually intact sheep or goats that are known to be scrapie-positive, suspect, high-risk, or exposed, or that originated from a known infected, source, exposed, or noncompliant flock may not be unloaded or sold through this market." For animals identified by the market, the serial tag numbers applied to each seller's animals must be recorded. Animals that require official identification, but that cannot be identified to their flock of origin shall not be sold as breeding animals. Bill-of-sale records must indicate the seller or flock ID number(s) or serial tag numbers of the animals involved and will serve as documentation of the buyers of animals presented by any particular seller. The market must always record, either on the owner/seller statement form or separately, the following information on all sexually intact animals that require official identification: the seller's flock ID number or seller's name and address, the name or flock ID number of the owner of the flock of origin if different from the seller, and the buyer's name and address or buyer's flock ID number. All animals moving interstate must depart from the market with either a Certificate of Veterinary Inspection or slaughter affidavit; all animals remaining in Iowa must depart from the market with a Certificate of Veterinary Inspection, veterinary signature-stamped bill of sale, or slaughter affidavit. Certificates of Veterinary Inspection for animals moving interstate must contain the statement set forth in 21—64.208(163). All of these documents must be made available for inspection upon request and maintained as official records for five years.

64.204(3) Record-keeping requirements for licensed sheep dealers. The dealer must either collect a completed and signed owner/seller statement form from the person from whom the dealer takes possession of the animals or must post signs as described in 64.204(2) if there is any possibility that the animals will move interstate, other than through slaughter channels. The dealer must always record, either on the owner/seller statement form or separately, the following information on all sexually intact animals that require official identification: the seller's flock ID number or seller's name and address

and the name of the owner of the flock of origin, or flock-of-origin ID number, if different from the seller. For animals identified by the dealer, the serial tag number applied to each animal must be recorded. Animals that move interstate, other than to slaughter, must be inspected by a veterinarian and have a Certificate of Veterinary Inspection that includes the required statements as set forth in 21—64.208(163). All animals that do not go to slaughter must be inspected by a veterinarian and have a Certificate of Veterinary Inspection completed prior to sale, unless the animals are being sold at a licensed auction market where a veterinary inspection will occur. For animals that are taken to an auction market, the dealer must provide to the market for its records a list of all flock ID numbers or serial tag numbers in the group. For animals that are resorted and sold, records must identify all potential buyers of any animal acquired. Every effort should be made to maintain the identity of groups from the same flock, through separate penning or use of temporary ID, such as chalk marking, in order to simplify efforts to identify the final destination of individual animals. If animals are under 18 months of age and the dealer picks them up at the owner's premises and delivers them directly to slaughter, then the official identification requirement may be waived; however, a record of the transaction must be maintained. Records must document the buyer's name and address or buyer's flock-of-origin ID number, date of sale, and animals sold for all private sales or sales to slaughter, so that animals can be traced to their final destination. All records must be kept for five years and made available for inspection upon request.

21—64.205(163) Responsibility of persons handling animals in commerce to ensure the official identification of animals. Licensed sheep dealers and auction markets and those that provide transport must ensure that animals are properly identified upon taking possession of the animals. Animals lacking official ID must either be declined or be identified by the licensed dealer or market with official ID issued to the dealer or market immediately upon the dealer's or market's taking possession, and prior to commingling of the animals.

21—64.206(163) Veterinarian's responsibilities when identifying sheep or goats. Veterinarians may be called upon to officially identify animals and may be issued official identification for the animals in the form of the serial number ear tags for carrying out this duty. The veterinarian may apply the ID only if the flock-of-origin information is available. Sexually intact animals that require official identification and are of unknown origin shall not be used for breeding and must be restricted until slaughter. When animals are identified, the veterinarian applying the ID must record the serial tag number applied to each animal and the following information (this requirement may be accomplished by collecting a completed owner/seller statement form): the flock-of-origin ID number or name and address of the current owner, if different from the owner of the flock of origin, and the name and address of the buyer, if a change of ownership is occurring. The flock of birth should also be recorded, if known. These records must be kept for five years and made available for inspection upon request.

21—64.207(163) Flock plans. Infected and source flocks will be quarantined by the department upon the determination of their status. A written flock cleanup plan shall be signed by the owner of an infected or source flock, and the requirements set out in the plan shall be adhered to until its completion. The plan may consist of:

1. Whole flock depopulation;
2. The removal of genetically susceptible female animals, suspect animals, positive animals, and the female offspring of positive female animals; or
3. The removal of high-risk animals as defined in 9 CFR 79.4.

Indemnity may be paid for animals removed, if funds are available through USDA. All flock plans require cleaning and disinfecting procedures as part of the requirements. Upon completion of the flock plan, the quarantine may be released, with the approval of the DSE, and following an inspection of the premises by a state or federal animal health official. At that time, the owner is required to sign a post-exposure management and monitoring plan (PEMMP) and agree to the requirements set out in that

plan. Exposed flocks may also be quarantined, or have other movement restrictions placed on them, and may require a PEMMP plan which is consistent with current USDA regulations.

21—64.208(163) Certificates of Veterinary Inspection. Certificates of Veterinary Inspection (CVIs) issued by licensed accredited veterinarians shall be obtained whenever animals change ownership, other than when animals are sold for slaughter, except as provided in this rule. For animals that require official identification, the CVI must include the individual official ID numbers(s) or the flock-of-origin ID number(s), the total number of animals, the purpose of the movement, the name and address of the consignor and consignee, and the points of origin and destination. CVIs for animals that will move interstate must additionally have the following signed owner statement: “I certify that the sexually intact animals represented on this form are not known to be scrapie-positive, suspect, high-risk, or exposed, and did not originate from a known infected, source, exposed, or noncompliant flock.” The veterinarian may sign the statement (which may be applied in stamp form) on behalf of the owner if a properly executed owner/seller statement form has been collected from the owner or if the animals are at a licensed auction market or a licensed dealer’s place of business where signs, which have been posted where animals are unloaded, state that “sexually intact sheep or goats that are known to be scrapie-positive, suspect, high-risk, or exposed, or that originated from a known infected, source, exposed, or noncompliant flock may not be unloaded or sold through this market.” The veterinarian should check with the state of destination for additional requirements. Animals sold other than to slaughter through state-licensed livestock markets but that will remain in Iowa may be released on either a Certificate of Veterinary Inspection or a veterinary signature-stamped bill of sale. A Certificate of Veterinary Inspection may be completed for sexually intact animals from an exposed flock in some circumstances, with the approval of the state veterinarian.

21—64.209(163) Requirements for shows and sales. Official identification is required for any sexually intact sheep or goat to be exhibited. Positive, suspect, sexually intact exposed, and high-risk animals may not be exhibited. Exposed animals that have been redesignated and had restrictions removed by the DSE according to USDA guidelines may attend shows and sales. Feeder/market class animals from an exposed flock that are not positive, suspect, exposed, or high-risk may be exhibited with the approval of the state veterinarian, provided that they are moved only to slaughter or returned to the premises of origin following the show.

64.209(1) Female animals over 12 months of age should be penned separately from female animals from other flocks when practical.

64.209(2) Female animals within 30 days of parturition, postpartum female animals, or female animals that have aborted or are pregnant and have a vaginal discharge must be kept separate from animals from other flocks so as to prohibit any direct contact. Any enclosures used to contain the female animals must be cleaned and disinfected.

21—64.210(163) Movement restrictions for animals and flocks. A sexually intact animal shall not be moved from an infected or source flock, except under permit. Permitted animals may be moved to slaughter, to a research or diagnostic facility, or to another facility as specified in the flock plan. High-risk, suspect, and sexually intact exposed animals from other than infected or source flocks will be placed under movement restrictions in accordance with 9 CFR 79.3. The movement restrictions on the flock and the criteria for release of these restrictions shall be specified as part of either the flock plan or the postexposure management and monitoring plan. Animals from noncompliant flocks shall be placed under movement restrictions and shall be moved only by permit.

21—64.211(163) Approved terminal feedlots. Approved terminal feedlots allow purchasers of young sexually intact feeder animals from out of state to bring those animals into Iowa without official identification provided that the animals are restricted to an inspected and approved premises and all are delivered to slaughter by 18 months of age.

64.211(1) *Requirements for approved terminal feedlots.* All sexually intact animals of out-of-state origin that have arrived without official identification must be moved directly to slaughter by 18 months of age. Other sheep or goats that require official identification may be maintained on the premises provided that the requirements described herein are met. The approved terminal feedlot premises must be designated as either:

a. Feeder-only premises. Feeder-only premises may contain only feeder animals destined to slaughter by 18 months of age.

b. Breeding flock/slaughter-only premises. The breeding flock/slaughter-only premises allows a breeding flock to be maintained on the site. All offspring must be sent to slaughter by 18 months of age (except as noted below), and do not require official ID provided that the slaughter animals move directly to slaughter. Adult animals must be identified, and any of their offspring retained as replacement breeding stock must have official ID applied prior to weaning. Production, inventory, purchase, and sales records will be inspected on all breeding animals.

c. Separate operation premises. The separate operation premises allows animals other than the nonidentified feeder animals to be kept on site, and sold other than to slaughter, but these animals must be separated from the feeder animals by a distance of 30 feet or by a solid wall that prevents contact or the passage of fluids. Offspring must be identified prior to weaning. Records must account for the arrival and dispersal of each individual animal in the separate flock, and there shall be no identification exemption on these animals.

All three types of approved terminal feedlot premises require that all nonidentified feeder animals be moved directly to slaughter, or another approved terminal feedlot, prior to 18 months of age. These animals may only be sold through a licensed market or licensed dealer if the owner identifies sexually intact animals with official blue metal “meat only” tags, and the animals are sold to slaughter.

64.211(2) *Identification at approved terminal feedlots.* Out-of-state origin sexually intact feeder animals moved to an approved terminal feedlot will be exempted from identification requirements provided that the feedlot maintains compliance with all rules and regulations governing approved terminal feedlots.

64.211(3) *Registration of approved terminal feedlots.* All approved terminal feedlots must obtain a permit issued by the department. Approved terminal feedlots will be subject to periodic records and premises inspections. The department shall assign an approved terminal feedlot number for each approved terminal feedlot facility.

64.211(4) *Records for approved terminal feedlots.* All approved terminal feedlots must maintain appropriate records for a period of five years. Records will include Certificates of Veterinary Inspection for all animals of out-of-state origin received by the facility and slaughter records sufficient to conduct inventory reconciliation. If a breeding flock or any other sheep or goats that require official identification are maintained on the same premises, then records shall also include an inventory of animals, lambing and kidding records, bills of sale, slaughter receipts, and any Certificates of Veterinary Inspection sufficient to account for the acquisition and dispersal of all animals. Failure to maintain appropriate records shall be grounds for revocation of the feedlot permit. All animals without official identification must be moved directly to slaughter, and movement to slaughter must be completed before any of the animals reach the age of 18 months. If blue metal “meat only” tags are applied, then records on tags applied must be maintained and shall consist of serial tag numbers, origin of the group(s) (state, market, or individual), date of tagging, and destination (date sold and buyer).

These rules are intended to implement Iowa Code chapter 163.

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21—CHAPTER 64 CUMULATIVE HISTORY

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For additional history, see individual divisions in Chapter 64.

- ¹ Effective date of 7/20/88 delayed 70 days by the Administrative Rules Review Committee at its July 1988 meeting.
- ² Effective date of 3/15/89 delayed 70 days by the Administrative Rules Review Committee at its March 13, 1989, meeting.
- ³ Revised 21—subrule 64.158(2) effective April 1, 1995.

CHAPTER 76
MEAT AND POULTRY INSPECTION
[Prior to 7/27/88 see Agriculture Department 30—Ch 43]

21—76.1(189A) Federal Wholesome Meat Act regulations adopted. Part 301 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, 2020, is hereby adopted in its entirety by reference; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 301.2(a) therein defining the term “Act” shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.

2. Sec. 301.2(b) therein defining the term “department” shall include the Iowa department of agriculture and land stewardship.

3. Sec. 301.2(c) therein defining the term “secretary” shall include the secretary of agriculture of the state of Iowa.

4. Sec. 301.2(e) therein defining the term “administrator” shall include the supervisor of the Iowa meat and poultry inspection service or any officer or employee of the Iowa department of agriculture and land stewardship.

5. Sec. 301.2(t) therein defining the term “commerce” shall include intrastate commerce in the state of Iowa.

6. Sec. 301.2(u) therein defining the term “United States” shall include the state of Iowa.
[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 4261C, IAB 1/30/19, effective 3/6/19; ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.2(189A) Federal Wholesome Meat Act regulations adopted. Part 303, Part 304, Part 305, Part 306, Parts 308 through 315, Parts 317 through 320, Part 329, Part 332, Part 412, Part 416, Part 417, Part 418, Part 424, Part 430, Part 431, Part 441 and Part 442 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, 2020, are hereby adopted in their entirety by reference. Part 307 except Sections 307.5 and 307.6 and Part 325 except Sections 325.3 and 325.12 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of July 30, 2018, are hereby adopted in their entirety by reference. Part 500 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2016, is adopted by reference, except that references in Sections 500.5, 500.6, 500.7, and 500.8 to the federal Uniform Rules of Practice are not adopted.

This rule is intended to implement Iowa Code sections 189A.3 and 189A.7(8).
[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 1546C, IAB 7/23/14, effective 8/27/14; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 2880C, IAB 1/4/17, effective 2/8/17; ARC 4261C, IAB 1/30/19, effective 3/6/19; ARC 4790C, IAB 12/4/19, effective 1/8/20; ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.3(189A) Federal Poultry Products Inspection Act regulations adopted. Part 381, Title 9, Chapter III, of the Code of Federal Regulations, revised as of December 31, 2020, is hereby adopted in its entirety with the following exceptions: Sections 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, and 381.128, Subpart R, Subpart T, Subpart V, and Subpart W; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 381.1(b)(2) therein defining the term “Act” shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.

2. Sec. 381.1(b)(3) therein defining the term “administrator” shall include the supervisor of the Iowa meat and poultry inspection service, or any officer or employee of the Iowa department of agriculture and land stewardship.

3. Sec. 381.1(b)(10) therein defining the term “commerce” shall include intrastate commerce in the state of Iowa.

4. Sec. 381.1(b) therein defining the term “department” shall include the Iowa department of agriculture and land stewardship.

5. Sec. 381.1(b)(47) therein defining the term “secretary” shall include the secretary of agriculture of the state of Iowa.

6. Sec. 381.1(b)(53) therein defining the term “United States” shall include the state of Iowa. [ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 4261C, IAB 1/30/19, effective 3/6/19; ARC 5839C, IAB 8/11/21, effective 9/15/21]

These rules are intended to implement Iowa Code sections 189A.3 and 189A.7(8).

21—76.4(189A) Inspection required. Every establishment except as provided in Section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of July 30, 2018, in which slaughter of livestock or poultry, or the preparation of livestock products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of July 30, 2018, enumerated in rules 21—76.1(189A), 21—76.2(189A) and 21—76.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5. [ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16; ARC 4261C, IAB 1/30/19, effective 3/6/19]

21—76.5(189A) Custom/exempt facilities sanitation standard operating procedures. Iowa inspected custom/exempt facilities shall develop and implement a sanitation standard operating procedure (SSOP) in a manner consistent with Section 416.12, Title 9, Chapter III, Code of Federal Regulations.

21—76.6(189A) Forms and marks. Whenever an official form is designated by federal regulation, the appropriate Iowa form will be substituted, and whenever an official mark is designated, the following official Iowa marks will be substituted:

1. Iowa inspected and condemned brand:

**IOWA INSP'D AND
CONDEMNED**

2. Iowa product label mark of inspection for amenable species:



3. Iowa inspected carcass brand for amenable species (excluding poultry): Stamp (brand) must be 1¾ inch tall. The wording shall be all the same height and fill the space inside and centered within the outline of the state of Iowa.



4. Exotic carcass brand:



5. Exotic product label mark of inspection:



6. Notwithstanding any other provision of this rule, a red meat establishment that is a selected establishment under 9 CFR Part 332 shall use the official marks, devices, and certificates in 9 CFR Part 312 for products that are intended for interstate commerce with the modifications described in 9 CFR Sec. 332.5(c).

- a. Cooperative Interstate Shipment program product label mark of inspection:



- b. Cooperative Interstate Shipment program carcass brand. Sizing of brands shall be as described in 9 CFR Sec. 312.2(a), except that the 1¼" brand shall be utilized in lieu of the ¾" brand:



7. Notwithstanding any other provision of this rule, a poultry establishment that is a selected establishment under 9 CFR Part 381, Subpart Z, shall use the official marks, devices, and certificates in 9 CFR Part 381, Subpart M, for products that are intended for interstate commerce with the modifications described in 9 CFR Sec. 381.515(c). Cooperative Interstate Shipment program poultry product label mark of inspection:



This rule is intended to implement Iowa Code section 189A.5(2).
[ARC 4790C, IAB 12/4/19, effective 1/8/20; ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.7(189A) Products to be marked with official marks.

76.7(1) Each carcass which has been inspected and passed in an official establishment shall be marked at the time of inspection with the official inspection legend containing the number of the official establishment.

76.7(2) Except as provided otherwise in 9 CFR Part 316.8, each primal part of a carcass and each liver, beef tongue, and beef heart which has been inspected and passed shall be marked with the official inspection legend containing the number of the official establishment before it leaves the establishment in which it is first inspected and passed, and each such inspected and passed product shall be marked with the official inspection legend containing the number of the official establishment where it was last prepared. Additional official marks of inspection may be applied to products as desired to meet local conditions. Primal parts are the wholesale cuts of carcasses as customarily distributed to retailers. The round, flank, loin, rib, plate, brisket, chuck, and shank are primal parts of beef carcasses. Veal, mutton, and goat primal parts are the leg, flank, loin, rack, breast, and shoulder. The ham, belly, loin, shoulder, and jowl are pork primal parts. Equine primal parts are the round, flank, loin, rib, plate, brisket, chuck, and shank.

76.7(3) Beef livers shall be marked with the official inspection legend containing the number of the official establishment at which the cattle involved were slaughtered. Beef livers shall be marked on the convex surface of the thickest portion of the organ.

76.7(4) Inspected and passed parts of carcasses which are not marked with the official inspection legend under this rule shall not enter any official establishment or be sold, transported, or offered for sale or transportation in commerce except as provided in 9 CFR Part 316.8.

This rule is intended to implement Iowa Code section 189A.5(2).
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.8(189A,167) Registration. Every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouse of livestock or poultry products, or engaged in the business of buying, selling or transporting in intrastate commerce any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of such animals, including poultry, that died otherwise than by slaughter, shall register with the meat and poultry section, department of agriculture and land stewardship, indicating the name and address of each place of business and all trade names.

This rule is intended to implement Iowa Code section 189A.7(7).
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.9(189A,167) Dead, dying, disabled or diseased animals. Persons shall not engage in the business of buying, selling, transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animal, unless they have been licensed for the purpose of disposing of the bodies of dead animals pursuant to Iowa Code section 167.2. All persons so engaged are subject to the provisions of Iowa Code chapter 167 and regulations of 21—Chapter 61, “Dead Animal Disposal,” Iowa Administrative Code.

76.9(1) All rendering plants engaged in processing fallen or dead animals into pet food and pet food processing plants shall be inspected by the meat and poultry section in accordance with Iowa Code chapter 167 before registration is approved.

76.9(2) The plant shall engage the services of a licensed veterinarian, approved by the department, to inspect carcasses for the presence of communicable disease or harmful contamination or adulteration and evidence of decomposition. Any of these conditions shall be cause for the carcass to be condemned as unfit for processing into pet animal food.

All compensation for the veterinarian employed by the rendering plant and pet animal food processing plants processing inedible meat and carcass parts for pet food shall be paid by the plant.

76.9(3) Fallen or dead animals which are recovered and transported to the processing plant shall be immediately skinned and eviscerated, except the lungs, heart, kidneys and liver, which shall be left attached to the carcass, and the carcasses shall be stored in a chill room with attached viscera until inspected and approved by a veterinary inspector. The stomach or stomachs, together with the entire intestinal tract, shall be tagged immediately with serially numbered tags and stamped with the word “inedible.” The word “inedible” shall be not less than one-half inch high. Condemned carcasses shall be deeply slashed on the round, rump, loin and shoulder, denatured with a ten percent solution of cresylic acid or other decharacterizing agent approved by the department of agriculture and land stewardship and removed to a rendering plant prior to the close of the working day.

76.9(4) The department shall inspect each place registered under Iowa Code chapter 189A or licensed under Iowa Code chapter 167 at least once a year, and as often as it deems necessary and shall see that the registrant conducts the business in conformity to both chapters and these rules.

76.9(5) Rendering plants and pet animal food processing plants may process fallen or dead animals into pet food where the animals are recovered and transported to a processing plant within a reasonable time following the death of an animal and before decomposition occurs.

76.9(6) Processing facilities, when located in or operated in conjunction with a rendering plant, shall be in a separate area equipped and used only for skinning, eviscerating, deboning, grinding, decharacterizing, packaging and labeling of inedible meat and carcass parts to be used in pet animal food. Rendering facilities approved by the department shall be available to process materials not suitable for pet animal food.

76.9(7) These rules shall also govern the collection, transportation and processing of other inedible material such as lungs, livers, hearts, spleens, poultry and poultry parts obtained from slaughterhouses, packing plants or other sources, to be used in the processing and manufacture of pet animal food.

This rule is intended to implement Iowa Code sections 189A.8, 167.5 and 167.14.
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.10(189A) Denaturing and identification of livestock or poultry products not intended for use as human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified.

76.10(1) All inedible meat and carcass parts shall be adequately decharacterized with charcoal or with other suitable agent acceptable to the Iowa department of agriculture and land stewardship. Inedible material shall be cut into pieces or chunks no more than four inches in any dimension. Following decharacterization, inedible meat and carcass parts shall be packed in suitable containers approved by the department.

76.10(2) Decharacterizing shall be done to an extent acceptable to the department. Decharacterization shall be done in such a manner that each piece of material shall be decharacterized so as to preclude its being used for, or mistaken for, product for human consumption.

76.10(3) All containers for decharacterized inedible meat or carcass parts shall be plainly marked with the word “inedible” in letters no less than two inches high.

76.10(4) Decharacterized inedible meat and carcass parts shall be frozen or held at a temperature of 40°F or less in the processing plant or during transportation to the final processor.

This rule is intended to implement Iowa Code section 189A.8.
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.11(189A,167) Transportation of decharacterized inedible meat or carcass parts. No person engaged in the business of buying, selling or transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, shall buy, sell, transport, offer for sale or transportation or receive for transportation in such commerce, any dead, dying, disabled or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, unless such transaction or transportation is made in accordance with Iowa Code chapters 167 and 189A and 21—Chapters 61 and 76.

76.11(1) All carcasses and other inedible material received for processing, and all decharacterized inedible material shipped from the plant, shall be transported and delivered in closed conveyances. The conveyance shall be constructed in such a manner as to prevent the spillage of liquids and material and in accordance with rules 21—61.15(167) and 21—61.16(167), Iowa Administrative Code.

76.11(2) Rendering plants and pet animal food processing plants outside the state of Iowa, from which decharacterized inedible meat or carcass parts are shipped into the state of Iowa, shall be certified by the proper public officials of the state of origin that the processing plants meet at least the minimum standards as set forth in these rules.

This rule is intended to implement Iowa Code sections 189A.8 and 167.15.
[ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.12(189A) Records. Records which fully and correctly disclose all transactions involved in their business shall be kept and retained for a period of no less than two years by the following classes of persons:

Any person that engages in intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, transporting or storing any livestock or poultry products for human or animal food;

Any person that engages in intrastate commerce in business as a renderer or in the business of buying, selling or transporting any dead, dying, disabled or diseased carcasses of such animals or parts of carcasses of any such animals, including poultry, that died otherwise than by slaughter.

76.12(1) All such persons shall afford the secretary and authorized representatives access to such business and opportunity at all reasonable times to examine the facilities, inventory and records thereof, to copy the records and to take reasonable samples of the inventory, upon payment of the reasonable value therefor.

76.12(2) Records shall include the following:

a. The name and address of the owner, the approximate time of death of the animal and the date the animal was received for processing shall be recorded for all animals to be inspected for processing into pet animal food.

b. The number of cartons or containers and the approximate weight of other material received from slaughterhouses, packing plants and other sources to be used in the processing of pet animal food.

c. The number of cartons, packages or containers of processed inedible meat and carcass parts and the weight of each carton stored.

d. Date of shipment, number of containers or boxes, weight of each shipment and name and address of the consignee of all inedible and decharacterized material shipped from the plant.

This rule is intended to implement Iowa Code section 189A.5(2) "g."

[ARC 5839C, IAB 8/11/21, effective 9/15/21]

21—76.13(189A) Voluntary inspections of exotic animals. Every person wishing to obtain voluntary inspection of exotic animals shall comply with the regulations adopted in this rule.

Part 352 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2016, is hereby adopted in its entirety by reference.

This rule is intended to implement Iowa Code chapter 189A.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16]

21—76.14(189A) Federal Wholesome Meat Act regulations adopted for the regulation of farm deer.

1. All federal regulations adopted in 21—76.1(189A).

2. All federal regulations adopted in 21—76.2(189A), except Part 303 and Part 307.4(c) of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2016.

This rule is intended to implement Iowa Code chapters 170 and 189A.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13; ARC 2439C, IAB 3/16/16, effective 4/20/16]

21—76.15(189A) Fees. Rescinded IAB 7/21/04, effective 7/2/04.

[Filed 7/12/66; amended 11/14/66, 9/26/67, 2/20/71, 4/20/72, 7/30/73]

[Filed 4/13/76, Notice 2/9/76—published 5/3/76, effective 6/7/76]

[Filed 6/29/76, Notice 5/17/76—published 7/12/76, effective 8/17/76]

[Filed without Notice 8/19/76—published 9/8/76, effective 10/13/76]

[Filed 2/15/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]

[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]

[Filed emergency 5/22/85—published 6/19/85, effective 5/22/85]

[Filed 7/25/85, Notice 6/19/85—published 8/14/85, effective 9/18/85]

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

[Filed emergency 10/9/91—published 10/30/91, effective 10/9/91]

[Filed 11/8/91, Notice 9/18/91—published 11/27/91, effective 1/1/92]

[Filed 11/3/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]

[Filed 2/7/97, Notice 12/4/96—published 2/26/97, effective 4/2/97]

[Filed 12/24/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]

[Filed 3/30/01, Notice 1/24/01—published 4/18/01, effective 5/23/01]

[Filed emergency 9/5/03—published 10/1/03, effective 9/5/03]

[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]

[Filed emergency 7/2/04—published 7/21/04, effective 7/2/04]

[Filed 8/11/04, Notice 5/26/04—published 9/1/04, effective 10/6/04]

[Filed 10/2/08, Notice 8/13/08—published 10/22/08, effective 11/26/08]

[Filed ARC 9012B (Notice ARC 8842B, IAB 6/16/10), IAB 8/25/10, effective 9/29/10]
[Filed ARC 0733C (Notice ARC 0634C, IAB 3/6/13), IAB 5/15/13, effective 6/19/13]
[Filed ARC 1546C (Notice ARC 1468C, IAB 5/28/14), IAB 7/23/14, effective 8/27/14]
[Filed ARC 2439C (Notice ARC 2369C, IAB 1/20/16), IAB 3/16/16, effective 4/20/16]
[Filed ARC 2880C (Notice ARC 2803C, IAB 11/9/16), IAB 1/4/17, effective 2/8/17]
[Filed ARC 4261C (Notice ARC 4150C, IAB 12/5/18), IAB 1/30/19, effective 3/6/19]
[Filed ARC 4790C (Notice ARC 4697C, IAB 10/9/19), IAB 12/4/19, effective 1/8/20]
[Filed ARC 5839C (Notice ARC 5652C, IAB 6/2/21), IAB 8/11/21, effective 9/15/21]

CHAPTER 15
MISCELLANEOUS PROVISIONS
[Prior to 1/13/88, see Civil Rights 240—Ch 11]

161—15.1(216) Partial invalidity. If any provision of commission rules shall be held invalid, the remainder of the rules shall not be affected thereby. The invalidity of any of the rules with respect to a particular person or under particular circumstances shall not affect their application to other persons or different circumstances.

161—15.2(216) Availability of rules. Copies of commission rules shall be available to the public on request.

161—15.3(17A,ExecOrd11) Waiver of requirements imposed by commission rule.

15.3(1) Filing of a request for waiver. Any person may file a request for waiver of an administrative rule of the civil rights commission by writing a proper request which is received by Executive Director, Iowa Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-1004. All requests for waiver of an administrative rule must be in writing and meet all requirements set out in paragraph 15.3(2)“a.” A request for a waiver is filed by any of the methods listed in rule 161—3.5(216). The date a request for waiver is filed is governed by 161—subrule 3.5(4). The commission shall provide the requester with a file-stamped copy of the request if the requester provides an extra copy for this purpose.

15.3(2) Form of request.

a. Required contents. A request for waiver of a rule must:

- (1) Prominently state on its face that it is a request for a waiver of an administrative rule; and
- (2) State the name and address of the entity or person for whom a waiver is requested; and
- (3) Describe or give the citation of the specific rule for which a waiver is requested; and
- (4) State the specific waiver requested.

The commission shall not process a filing as a request for a waiver if that filing does not conform to the requirements of this paragraph.

b. Suggested contents. In addition, a request for waiver of a rule should also:

- (1) State all relevant facts that the requester believes would justify a waiver.
- (2) State the reasons the requester believes will justify a waiver.
- (3) State the history of the commission’s action relative to the requester. If the request is in connection with a complaint of discrimination on file with the commission, the requester should identify the complaint at issue including, if possible, the complaint number.
- (4) State any information regarding the commission’s treatment of similar cases, if known.
- (5) State the name, address and telephone number of any person inside or outside state government who would be adversely affected by the grant of the request or who otherwise possesses knowledge of the matter with respect to the waiver request.

15.3(3) Procedure for evaluating requests for waiver.

a. Service of request. Within 30 days after the receipt of a request for waiver of an administrative rule, the commission shall provide a copy to all persons who are required to receive one by a provision of law. The commission may also provide a copy of the request to those individuals whom the requester has identified as being adversely affected by a grant of the request. In the case of a request made in connection with a complaint of discrimination on file with the commission, the commission shall provide a copy of the request to all other parties in the case. Service may occur by regular mail. If necessary for maintenance of the confidentiality of a commission investigation, information may be redacted from a request for waiver before the request is provided to persons other than the requester.

b. Decision maker for request. The decision whether to grant a request for waiver shall be made either by the executive director or upon a vote of the commissioners. If the request is made in connection with a complaint of discrimination on file with the commission, any discussion by the commissioners of the request for waiver may be in closed session.

c. Investigation of allegations. The decision maker or a designated member of the commission staff may conduct an investigation into any factual issue which is relevant to the request for a waiver. A refusal by the requester to cooperate in this investigation may be grounds to deny the request for waiver. In the case of a request made in connection with a complaint of discrimination, if any party to the complaint refuses to cooperate in the investigation, the decision maker may infer that the requested information would be adverse to the uncooperative party.

d. Time frame for decision on request. The commission shall render a decision on a request for waiver of a rule within 120 days of receipt of the request. During this period the commission may extend the time for rendering a decision by notifying all persons who were notified of the request pursuant to paragraph 15.3(3) "a" that the time for rendering a decision has been extended. This notice shall include a new time frame for rendering the decision. Failure to render a decision or extend the time for rendering a decision within the required period shall be deemed a denial of the request.

e. Notification of decision. The commission shall send any decision rendered concerning the request for waiver to all persons who were notified of the request pursuant to paragraph 15.3(3) "a."

f. Form of grant of request. Any waiver shall be the narrowest exception possible to the provisions of the rule. A waiver shall not be permanent unless the requester has shown that a temporary waiver is impracticable. The commission may renew a temporary waiver without a request if the commission finds that the factors of paragraph 15.3(4) "b" remain valid.

15.3(4) Standard for evaluating request for waiver.

a. Burden of persuasion. The burden of persuasion rests with the person who requests from the commission a waiver of a rule.

b. Standard. A request for a waiver shall be evaluated based on the unique, individual circumstances set out in the request. A waiver may be granted only if the decision maker finds clear and convincing evidence that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested; and

(2) The waiver from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person; and

(3) The provisions of a rule subject to a request for a waiver are not specifically mandated by statute or another provision of law; and

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

(5) Granting the request would not waive any requirement created or duty imposed by statute.

15.3(5) Exceptions to waiver.

a. Waiver in contested cases. This rule does not apply to any request for a waiver of a rule which is made in connection with a contested case before the commission. Waiver requests made in connection with a contested case are governed by rule 161—4.29(17A).

b. Not applicable to this rule. No person may request a waiver from the requirements of this rule.

c. Requests by commission officials. No commissioner, commission staff member or other commission official may file a request for a waiver of a requirement placed upon that individual as part of that individual's official duties.

d. Time requirements. This rule does not authorize the commission to waive any time requirement of an administrative rule.

e. No effect on case status. In the case of a request made in connection with a complaint of discrimination on file with the commission, the commission may not grant a request for waiver if this would either close a case which was open at the time of the request or reopen a case which was closed at the time of the request. The reopening provisions of rule 161—3.16(216), however, shall apply.

15.3(6) Public inspection of waiver requests. All waiver requests and responses shall be indexed by administrative rule number and available to members of the public for inspection at the offices of the Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. Identifying information concerning any person, including parties to complaints on file, may be withheld

by the commission in order to protect the confidentiality of case-related information as required by Iowa Code section 216.15(5).

[ARC 8733B, IAB 5/5/10, effective 6/9/10; ARC 5824C, IAB 8/11/21, effective 9/15/21]

These rules are intended to implement Iowa Code chapter 216.

[Filed 2/20/78, Notices 12/14/77, 1/11/78—published 3/22/78, effective 4/26/78]

[Filed 4/4/80, Notice 9/5/79—published 4/30/80, effective 6/4/80]

[Filed 12/15/87, Notice 8/12/87—published 1/13/88, effective 2/17/88]

[Filed 1/29/93, Notice 11/25/92—published 2/17/93, effective 3/24/93]

[Filed 6/21/01, Notice 5/2/01—published 7/11/01, effective 8/15/01]

[Filed ARC 8733B (Notice ARC 8560B, IAB 3/10/10), IAB 5/5/10, effective 6/9/10]

[Filed ARC 5824C (Notice ARC 5565C, IAB 4/21/21), IAB 8/11/21, effective 9/15/21]

CITY DEVELOPMENT BOARD[263]

[Chapters 1 and 2, IAC 7/27/77, superseded by Chapters 1 to 4, effective 4/12/78]
[Prior to 1/9/91, City Development Board[220]]

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CHAPTER 6
WAIVER RULES

263—6.1(17A) Definition. For purposes of this chapter, “waiver” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person or entity on the basis of the particular circumstances of that person or entity.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

263—6.2(17A) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

263—6.3(17A) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

263—6.4(17A) Criteria for waiver. In response to a petition completed pursuant to rule 6.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

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

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

263—6.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

6.5(1) Pending matters. If the petition relates to a pending petition or application for city development action, the petition requesting a waiver shall be filed in the pending proceeding, using the caption of that matter.

6.5(2) Other. If the petition does not relate to a pending matter, the petition may be submitted to the board chairperson.

263—6.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested, and the case number of any related city development proceeding.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 6.4(17A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the activity affected by the proposed waiver, including a description of each related city development action by the requester within the past five years.
6. Any information known to the requester regarding the board’s treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, including all parties to the proceeding if the petition relates to a matter pending before the board.

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

263—6.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

263—6.8(17A) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver and provide a written statement to the board attesting that notice has been provided.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

263—6.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a pending city development action, and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

263—6.10(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

6.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

6.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

6.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

6.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

6.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable under the existing circumstances.

6.10(6) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 90 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a pending city development action, the board shall grant or deny the petition no later than the time at which the final decision in that matter is issued.

6.10(7) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

6.10(8) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

263—6.11(17A) Submission of waiver information. Within 60 days of granting or denying a waiver, the board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rule(s) for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

263—6.12(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

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

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

263—6.13(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

263—6.14(17A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

263—6.15(17A) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

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

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Filed ARC 5823C (Notice ARC 5620C, IAB 5/19/21), IAB 8/11/21, effective 9/15/21]

INSPECTIONS DIVISION

CHAPTER 30

FOOD AND CONSUMER SAFETY

481—30.1(10A,137C,137D,137F) Food and consumer safety bureau. The food and consumer safety bureau inspects food establishments and food processing plants including food storage facilities (warehouses), home bakeries, food and beverage vending machines, and hotels and motels. The food and consumer safety bureau is also responsible for social and charitable gambling and amusement devices. Separate chapters have been established for the administration of social and charitable gambling (481—Chapters 100 to 103, 106, and 107) and amusement devices (481—Chapters 104 and 105).

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 3768C, IAB 4/25/18, effective 5/30/18]

481—30.2(10A,137C,137D,137F) Definitions. If both the 2017 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137D,137F) define a term, the definition in rule 481—30.2(10A,137C,137D,137F) shall apply.

“*Baked goods*” means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

“*Bed and breakfast home*” means a private residence which provides lodging and meals for guests, in which the host or hostess resides, and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

“*Bed and breakfast inn*” means a hotel which has nine or fewer guest rooms.

“*Catering*” means the preparation of food for distribution to an individual, business or organization for exclusive service to the individual’s, business’s or organization’s nonpaying guests, employees or members.

“*Certified wild-harvested mushroom identification expert*” means an individual who has within the last three years successfully completed a wild-harvested mushroom identification training program provided by an accredited college, university, or state mycological society. The training program must include a component of actual identification of physical specimens or simulations of mushroom species. A document must be issued by an accredited college, accredited university, or state mycological society certifying the individual’s successful completion of the wild-harvested mushroom identification training program and specifying the species of wild mushrooms the individual is qualified to identify.

“*Commissary*” means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment’s own outlets.

“*Contractor*” means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F. A list of contractors is maintained on the department’s website.

“*Criminal offense*” means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

“*Critical violation*” means a foodborne illness risk factor and public health intervention and the violations defined as such by the Food Code adopted in rule 481—31.1(137F) and pursuant to Iowa Code section 137F.2.

“*Cultivated mushroom*” means a mushroom grown through a process in which the grower inoculates a substrate (logs, beds, straw, etc.) with a known strain or species of mushroom spawn in a dedicated space, whether outdoors or indoors, that is under the control of the grower, for the purpose of fruiting mushrooms.

“*Department*” means the department of inspections and appeals.

“*Event*” means a significant occurrence or happening sponsored by a civic, business, governmental, community, or veterans organization and may include an athletic contest. For example, an event does not include a single store’s grand opening or sale.

“*Farmers market*” means a marketplace which operates seasonally, principally as a common market for Iowa-produced farm products on a retail basis for consumption elsewhere.

“*Farmers market time/temperature control for safety food license*” means a license for a temporary food establishment that sells time/temperature control for safety foods at farmers markets. A separate annual farmers market time/temperature control for safety food license is required for each county in which the licensee sells time/temperature control for safety foods at farmers markets. The license is only applicable at farmers markets and is not required in order to sell wholesome, fresh shell eggs to consumer customers.

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, or the state training school. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). “Food establishment” does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not time/temperature control for safety foods.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home bakery pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market if time/temperature control for safety foods are not sold or distributed from the premises.
6. Premises of a residence in which food that is not a time/temperature control for safety food is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.
7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home or private party where a personal chef or hired cook is providing food preparation services to a client and the client’s nonpaying guests.
9. A private home that receives catered or home-delivered food.
10. Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.
11. Supply vehicles or vending machine locations.
12. Establishments that are exclusively engaged in the processing of meat and poultry and are licensed pursuant to Iowa Code section 189A.3.
13. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:
 - Premises covered by a current Class “A” beer permit, including a Class “A” native beer permit as provided in Iowa Code chapter 123;
 - Premises covered by a current Class “A” wine permit, including a Class “A” native wine permit as provided in Iowa Code chapter 123; and
 - Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.
14. Premises or operations that are exclusively engaged in the processing of milk and milk products, are regulated by Iowa Code section 192.107, and have a milk or milk products permit issued by the department of agriculture and land stewardship.

15. Premises or operations that are exclusively engaged in the production of shell eggs, are regulated by Iowa Code section 196.3, and have an egg handler's license.

16. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

17. Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:

- The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;
- Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and
- The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

18. A stand operated by a minor.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include any of the following:

1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in Iowa Code chapter 123;
- Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in Iowa Code chapter 123; and
- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

2. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

3. Premises or operations that are exclusively engaged in the processing of meat and poultry and are licensed pursuant to Iowa Code section 189A.3.

4. Premises or operations that are exclusively engaged in the processing of milk or milk products, are regulated by Iowa Code section 192.107, and have a milk or milk products permit issued by the department of agriculture and land stewardship.

5. Premises or operations that are exclusively engaged in the production of shell eggs, are regulated by Iowa Code section 196.3, and have an egg handler's license.

6. Premises or operations that are exclusively engaged in the preparation or processing of Siluriformes, including catfish, and are regulated and inspected by the United States Department of Agriculture under a federal grant of inspection.

"Food service establishment" means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or is subject to Iowa sales tax as provided in Iowa Code section 423.3.

"Home bakery" means a business on the premises of a residence that is operating as a home-based bakery where baked goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$35,000. "Home bakery" does not include:

1. A food establishment;
2. A food processing plant;
3. A residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations;
4. A residence that prepares or distributes honey;
5. A residence that distributes shell eggs;
6. A residence that prepares foods that are not time/temperature control for safety foods for sale at a farmers market; or
7. A residence that prepares baked goods that are not time/temperature control for safety foods sold directly from the residence. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.

“Hotel” means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

“License holder” means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.

“Mobile food unit” means a food establishment that is self-contained, with the exception of grills and smokers, and readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

“Patrol dog” means a dog that is accompanying a law enforcement officer or security officer.

“Personal chef” or *“hired cook”* means a person who provides food preparation services in a private home or at a private party for a client and the client’s nonpaying guests. *“Personal chef”* or *“hired cook”* does not include a person who provides the ingredients intended to be used in food preparation.

“Pet dog” means a dog that does not meet the definition of a *“patrol dog”* or a *“service animal”* as defined in the Code of Federal Regulations, Title 28, Part 36.

“Pushcart” means a non-self-propelled vehicle food establishment limited to serving foods that are not time/temperature control for safety foods or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.

“Retail food establishment” means a food establishment that sells to consumer customers food or food products intended for preparation or consumption off the premises.

“Revoke” means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

“Stand operated by a minor” means a stand or other facility operated by a person or persons under the age of 18 at which food is sold directly to consumers that is not time/temperature control for safety food or an alcoholic beverage and that operates on a temporary and occasional basis on private property with the permission of the owner of the property.

“Suspend” means to render a license issued under Iowa Code chapter 137C, 137D, or 137F invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

“Temporary food establishment” means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event.

“Time/temperature control for safety food” means a food that requires time and temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

“Transient guest” means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

“Unattended food establishment” means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public. *“Controlled entry,”* for the purposes of the definition of *“unattended food establishment,”* means selective restriction or limitation of access to a place or location.

“Vending machine” means a self-service device which, upon insertion of a coin, paper currency, token, card or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged foods that are not time/temperature control for safety foods, panned candies, gumballs or nuts are exempt from licensing but may be inspected by the department upon receipt of a written complaint. *“Panned candies”* are those with a fine, hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

“Vending machine location” means the room, enclosure, space, or area where one or more vending machines are installed and operated, including the storage areas on the premises that are used to service and maintain the vending machine.

“Wild-harvested mushroom” means a fresh mushroom that has been found or foraged in the natural environment and has not been processed (e.g., dried or frozen). *“Wild-harvested mushroom”* does not

include cultivated mushrooms or mushrooms that have been packaged in an approved food processing plant.

This rule is intended to implement Iowa Code sections 10A.104, 137C.8, and 137D.2 and chapter 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 4139C, IAB 11/21/18, effective 1/1/19; ARC 4731C, IAB 10/23/19, effective 11/27/19; ARC 5119C, IAB 7/29/20, effective 9/2/20; ARC 5353C, IAB 12/30/20, effective 2/3/21; ARC 5354C, IAB 12/30/20, effective 2/3/21; ARC 5843C, IAB 8/11/21, effective 9/15/21; ARC 5845C, IAB 8/11/21, effective 9/15/21]

481—30.3(137C,137D,137F) Licensing and postings. A license to operate any food establishment or food processing plant defined in rule 481—30.2(10A,137C,137D,137F) must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; locations of buildings; and other data relative to the license requested. Applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from contractors. An application for licensure shall be submitted 30 days in advance of the opening of the food establishment or food processing plant. Temporary food establishment license applications shall be submitted a minimum of 3 business days prior to opening.

30.3(1) Transferability. A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market time/temperature control for safety food license may be used in the same county at different individual locations without obtaining a new license. However, if the different individual locations are operated simultaneously, a separate license is required for each location. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

30.3(2) Refunds. License fees are refundable only if the license is surrendered to the department prior to the effective date of the license and only as follows:

- a. License fees of \$67.50 or less are an application processing fee and are not refundable.
- b. If an on-site visit has not occurred, license fees of more than \$67.50 will be refunded less the \$67.50.
- c. If an on-site visit has occurred, the entire license fee is nonrefundable.

30.3(3) License expiration. A license is renewable and expires after one year, with the exception of a temporary food establishment license issued in conjunction with a single event at a specific location, which is valid for a period not to exceed 14 consecutive days.

30.3(4) Posting of inspection reports, licenses, and registration tags. 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. The report shall not be posted in such a manner that the public cannot reasonably read the report. For example, the posting of a report behind a service area where the report can be seen but not easily read is not allowed. Vending machines shall bear a tag to affirm the license. For the purpose of this subrule, only founded complaint reports shall be considered complaints. 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.

30.3(5) Documentation of gross sales. The regulatory authority shall require from a license holder documentation of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing plant unless the establishment is paying the highest license fee required by rule 481—30.4(137C,137D,137F). The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. For food processing plants that are food storage facilities and food establishments whose sales are included in a single rate with lodging or other services, the value of the food handled should be used. Documentation shall include at least one of the following:

- a. A copy of the firm's business tax return;
- b. Quarterly sales tax data;

- c. A letter from an independent tax preparer;
- d. Other appropriate records.

30.3(6) License eligibility for renewal limited to 60 days after expiration. A delinquent license shall only be renewed if application for renewal is made within 60 days of expiration of the license. 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.

This rule is intended to implement Iowa Code sections 10A.104, 137C.8, and 137D.2 and chapter 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 4139C, IAB 11/21/18, effective 1/1/19]

481—30.4(137C,137D,137F) License fees. The license fee is the same for an initial license and a renewal license. License applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from a contractor. License fees are set by the Iowa Code sections listed below and are charged as follows:

30.4(1) Retail food establishments. License fees for retail food establishments are based on annual gross sales of food or food products to consumer customers and intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

- a. For annual gross sales of less than \$250,000—\$150.
- b. For annual gross sales of \$250,000 to \$750,000—\$300.
- c. For annual gross sales of more than \$750,000—\$400.

30.4(2) Food service establishments. License fees for food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) or subject to Iowa sales tax as provided in Iowa Code section 423.3 as follows:

- a. For annual gross sales of less than \$100,000—\$150.
- b. For annual gross sales of \$100,000 to \$500,000—\$300.
- c. For annual gross sales of more than \$500,000—\$400.

30.4(3) Vending machines. License fees for food and beverage vending machines are \$50 for the first machine and \$10 for each additional machine (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

30.4(4) Home bakery. The license fee for a home bakery is \$50 (Iowa Code section 137D.2(1) as amended by 2018 Iowa Acts, Senate File 2390).

30.4(5) Hotels. License fees for hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

- a. For 1 to 30 guest rooms—\$50.
- b. For 31 to 100 guest rooms—\$100.
- c. For 101 or more guest rooms—\$150.

30.4(6) Mobile food units or pushcarts. The license fee for a mobile food unit or a pushcart is \$250 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

30.4(7) Temporary food establishments.

a. The fee for a temporary food establishment license issued for up to 14 consecutive days in conjunction with a single event is \$50 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

b. The annual fee for a temporary food establishment license issued for multiple nonconcurrent events on a countywide basis during a calendar year is \$200 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390). Temporary food establishments that operate simultaneously at more than one location within a county are required to have a separate license for each location.

30.4(8) Food processing plants including food storage facilities (warehouses). For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that

plant or food storage facility (warehouse) (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

- a. For annual gross sales of less than \$200,000—\$150.
- b. For annual gross sales of \$200,000 to \$2 million—\$300.
- c. For annual gross sales of more than \$2 million—\$500.

30.4(9) *Farmers market.* A person selling time/temperature control for safety food at a farmers market must pay an annual license fee of \$150 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

30.4(10) *Certificate of free sale or sanitation.* The fee for a certificate of free sale or sanitation is \$35 for the first certificate and \$10 for each additional identical certificate requested at the same time.

30.4(11) *Unattended food establishment.* The annual license fee for an unattended food establishment is based on the annual gross food and beverage sales (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

- a. Annual gross sales of less than \$100,000—\$75.
- b. Annual gross sales of \$100,000 or more—\$150.

30.4(12) *Events.* The license fee for an event is \$50, which shall be submitted with a license application to the appropriate regulatory authority at least 60 days in advance of the event. An “event” for purposes of this subrule does not include a function with ten or fewer temporary food establishments, a fair as defined in Iowa Code section 174.1, or a farmers market.

30.4(13) *Voluntary inspection fee.* The department shall charge a voluntary inspection fee of \$100 when a premises that is not a food establishment requests a voluntary inspection.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6 and 2018 Iowa Acts, Senate File 2390.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 4139C, IAB 11/21/18, effective 1/1/19]

481—30.5(137F) Penalty and delinquent fees.

30.5(1) *Late penalty.* Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month. A license shall be renewed only if the license holder has provided documentation pursuant to subrule 30.3(5).

30.5(2) *Penalty for opening or operating without a license.* A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

30.5(3) *Civil penalty for violations.* A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of \$100 for each violation. Prior to assessment of the penalty, the license holder shall have an opportunity for a hearing using the process outlined in rule 481—30.11(10A,137C,137D,137F).

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

481—30.6(137C,137D,137F) Returned checks. If a check intended to pay for any license provided for under Iowa Code chapter 137C, 137D, or 137F is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license. Furthermore, any late penalties assessed pursuant to rule 481—30.5(137F) will accrue and must be paid.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

481—30.7(137F) Double licenses.

30.7(1) Any establishment that holds a food service establishment license and has gross sales over \$20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license. The license holder shall keep a record of these food sales and make it available to the department upon request.

30.7(2) Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

30.7(3) A food establishment that holds both a food service establishment license and a retail food establishment license shall pay a license fee based on the annual gross sales for the dominant form of business plus \$150.

EXAMPLE: A food establishment holds a food service establishment license and a retail food establishment license. It has annual gross sales of more than \$750,000 for its retail food establishment and \$120,000 for its food service establishment. The food establishment pays a license fee of \$400 for its retail food establishment license (paragraph 30.4(1)“c”) and \$150 for its food service establishment license (rule 481—30.7(137F)).

30.7(4) The dominant form of business shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and of a food processing plant. The dominant form of business shall be deemed to be the business with higher annual gross sales. Food establishments that also process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license in addition to the food establishment license. Regardless of the type of license, food processing plants shall be inspected pursuant to food processing inspection standards and food establishments shall be inspected pursuant to the Food Code.

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 4139C, IAB 11/21/18, effective 1/1/19; ARC 4731C, IAB 10/23/19, effective 11/27/19]

481—30.8(137C,137D,137F) Inspection frequency.

30.8(1) *Food establishments.* Food establishments shall be inspected based upon risk assessment and shall have routine inspections at least once every 36 months.

30.8(2) *Food processing plants.* Food processing plants that process foods shall be inspected based upon risk assessment and shall have routine inspections at least once every 60 months. If the United States Food and Drug Administration completes an inspection in a facility, the inspection shall count as a state inspection for frequency purposes.

30.8(3) *Food processing plants that store foods.* Food processing plants that store foods shall be inspected based upon risk assessment and shall be inspected at least once every 84 months. If the United States Food and Drug Administration completes an inspection in a facility, the inspection shall count as a state inspection for frequency purposes.

30.8(4) *Hotels.* Hotels shall be inspected at least once biennially.

30.8(5) *Home bakeries and vending machines.* Home bakeries and vending machines shall have a pre-opening inspection and then shall not have a specific inspection frequency. An inspection may be triggered, for example, by complaints, potential foodborne illness, or information about potential violations of law or rules.

30.8(6) *Farmers market time/temperature control for safety food.* Farmers market time/temperature control for safety food licensees shall be inspected at least once annually.

30.8(7) *Temporary food establishments.* Temporary food establishments issued an annual license pursuant to paragraph 30.4(7)“b” shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, and 137F.10.

[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17; ARC 4139C, IAB 11/21/18, effective 1/1/19]

481—30.9(22) Examination of records.

30.9(1) *Public information.* Generally, information collected by the food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided

when requested from the office of the director. Inspection reports are available for public viewing at www.food.dia.iowa.gov.

30.9(2) Confidential records. The following are examples of confidential records:

- a. Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;
- b. Health information related to foodborne illness complaints and outbreaks;
- c. The name or any identifying information of a person who files a complaint with the department; and
- d. Other state or federal agencies' records.

For records of other federal or state agencies, the department shall refer the requester of such information to the appropriate agency.

This rule is intended to implement Iowa Code chapters 137C, 137D, 137F and 22.
[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 4731C, IAB 10/23/19, effective 11/27/19]

481—30.10(17A,137C,137D,137F) Denial, suspension, or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

30.10(1) Immediate suspension of license. To the extent not inconsistent with Iowa Code chapters 17A, 137C, 137D, and 137F and rules adopted pursuant to those chapters, chapter 8 of the Food Code shall be adopted for food establishments and home bakeries. The department or contractor may immediately suspend a license in cases of an imminent health hazard. The procedures of Iowa Code section 17A.18A and Food Code chapter 8 shall be followed in cases of an imminent health hazard. The appeal process in rule 481—30.11(10A,137C,137D,137F) is available following an immediate suspension. The department may immediately suspend the license of a food processing plant or hotel if an imminent health hazard finding is made and the procedures of Iowa Code section 17A.18A are followed.

30.10(2) Criminal offense—conviction of license holder.

- a. The department may revoke the license of a license holder who:
 - (1) Conducts an activity constituting a criminal offense in the licensed food establishment; and
 - (2) Is convicted of a felony as a result.
- b. The department may suspend or revoke the license of a license holder who:
 - (1) Conducts an activity constituting a criminal offense in the licensed food establishment; and
 - (2) Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.
- c. A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.
- d. The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of rule 481—30.11(10A,137C,137D,137F).

This rule is intended to implement Iowa Code chapters 17A, 137C, 137D and 137F.
[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3187C, IAB 7/5/17, effective 8/9/17]

481—30.11(10A,137C,137D,137F) Formal hearing. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 9, "Contested Cases."

For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule 481—9.3(10A,17A).

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C, 137D, and 137F.
[ARC 1190C, IAB 11/27/13, effective 1/1/14; ARC 3523C, IAB 12/20/17, effective 1/24/18]

481—30.12(137F) Primary servicing laboratory. The primary servicing laboratory for the food and consumer safety bureau is the State Hygienic Laboratory at the University of Iowa created under Iowa Code section 263.7. If the laboratory is unable to perform laboratory services, the laboratory will assist in finding another laboratory with a preference toward laboratories that are in the FERN (Food Emergency Response Network) and have achieved ISO 17025 accreditation.

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D, and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

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CHAPTER 31
FOOD ESTABLISHMENT AND FOOD
PROCESSING PLANT INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Chs 21 and 22]

481—31.1(137F) Inspection standards for food establishments. The department adopts, with the following exceptions, the 2017 Food Code with Supplement of the Food and Drug Administration as the state’s “food code,” which is the inspection standard for food establishments other than food processing plants.

31.1(1) Unattended food establishments—assignment of responsibility. For the purposes of section 2-101.11(C) of the 2017 Food Code with Supplement, unattended food establishments are not required to have a designated person in charge present during all hours of operation provided that the permit holder ensures the following requirements are met.

a. Unattended food establishment location. The unattended food establishment shall be located in the interior of a building that is not accessible by the general public. Access to the unattended food establishment shall be limited to a defined population (e.g., employees or occupants of the building where the establishment is located).

b. Nature and source of food and beverages offered for sale.

(1) Only commercially packaged foods properly labeled for individual retail sale, pursuant to Food Code section 3-201.11(C), shall be offered.

(2) No unpackaged food is permitted except as provided by section 3-302.11(B)(1) of the Food Code.

(3) Food preparation by consumers is limited to heating/reheating food in a microwave oven.

(4) No dispensing of bulk food is permitted.

c. Refrigerated display equipment. An unattended food establishment shall be equipped with refrigeration or freezer units that have the following features:

(1) Self-closing doors that allow food to be viewed without opening the door to the refrigerated cooler or freezer; and

(2) An automatic self-locking mechanism that prevents the consumer from accessing the food upon the occurrence of any condition that results in the failure of the refrigeration unit to maintain the internal product temperature specified under section 3-501.16(A)(2) or of the freezer unit to maintain the product as frozen.

d. Food service equipment limitations.

(1) Beverages are dispensed by individual serving only. Beverage dispensers connected to the building water supply must be properly equipped with backflow prevention pursuant to section 5-203.14 of the Food Code.

(2) Food-contact surfaces.

1. Multiuse food-contact surfaces shall be cleaned on a frequency consistent with the service pursuant to section 4-202.11 of the Food Code or can be and are easily removed and replaced with cleaned surfaces.

2. No multiuse food-contact surfaces intended for use with time/temperature control for safety foods are permitted.

e. Security.

(1) An unattended food establishment shall provide continuous video surveillance of areas where consumers view, select, handle and purchase products. The continuous video surveillance shall provide sufficient resolution to identify situations that may compromise food safety or food defense.

1. Video surveillance recordings shall be maintained and, upon request by a representative of a regulatory agency, made available for inspection within 24 hours of the request.

2. Video surveillance recordings shall be held by the establishment for a minimum of 14 days after the date of the surveillance.

(2) The permit holder shall take reasonable steps necessary to discourage individuals from returning food, beverages, or both that have not been selected for purchase.

f. Routine maintenance at an unattended food establishment.

(1) The permit holder shall service the unattended food establishment at least weekly. Service may include, but is not limited to, the following:

1. Checking food supplies and equipment for signs of product damage, tampering, or both.
2. Verifying that refrigeration equipment is operating properly, including the temperature display and self-locking mechanism.
3. Rotating foods to better ensure first in/first out of food items.
4. Cleaning food service equipment and food display areas.
5. Stocking food and disposable single-use and single-service supplies.
6. Checking inventory for recalled foods.

(2) The permit holder shall ensure that:

1. Food is from an approved source.
2. Packaged food is provided in tamper-evident packaging.
3. Food is protected from potential sources of cross contamination.
4. Food is maintained at safe temperatures during transport and display.

g. Unattended food establishment oversight. Each unattended food establishment shall have a sign readily visible at the automated payment station stating:

(1) The name and mailing address of the business entity responsible for the establishment and to whom complaints and comments should be addressed.

(2) The telephone number, email address or web information for the responsible business entity, when applicable.

h. Designation of responsibilities. The permit holder bears all responsibilities for the operation of the food establishment. When the permit holder is not the owner or operator of the building where the food establishment is located, a mutual agreement that outlines the responsibilities for cleaning and maintenance of all surfaces and equipment and for provision of supportive facilities/services, such as janitorial services and restroom facilities, pest control and removal of solid waste, may be approved by the regulatory agency. This agreement should also outline actions that must be taken by both parties to maintain the establishment in compliance with all requirements including responding to imminent health hazards.

i. Inspections—on-site person in charge. When requested by the regulatory authority for the purposes of conducting an inspection, the permit holder shall provide an on-site person in charge within a reasonable time frame not to exceed four hours.

31.1(2) *Certified food protection manager requirements, exceptions, and time frames for compliance.*

a. For the purposes of section 2-102.12(A) of the 2017 Food Code with Supplement, the food establishment may employ a single certified food protection manager who is not present at the food establishment during all hours of operation, as long as the following requirements are met:

(1) The individual who is a certified food protection manager has supervisory and management responsibility and the authority to direct and control food preparation and service at the food establishment;

(2) The person in charge demonstrates knowledge as prescribed in section 2-102.11 of the 2017 Food Code with Supplement; and

(3) The person in charge demonstrates active managerial control of food safety by complying with section 2-103.11 of the 2017 Food Code with Supplement.

b. A food establishment that, upon inspection, is found to be in violation of section 2-102.11 or 2-103.11 of the 2017 Food Code with Supplement will have six months to ensure that any individual designated as the person in charge is a certified food protection manager.

c. For the purposes of section 2-102.12(B), the following food establishments are not required to employ a certified food protection manager:

- (1) Food establishments that sell only prepackaged food.
- (2) Temporary or farmers market food establishments.

(3) Food establishments at which food is not prepared, where customers may purchase beverages and where the service of food is limited to the service of ice, beverages, prepackaged snack foods, popcorn or peanuts and to the reheating of commercially prepared foods for immediate service that do not require assembly, such as frozen pizza or prepackaged sandwiches.

(4) Food establishments at which food is not prepared, where customers may purchase only commercially prepared non-time/temperature control for safety foods that are dispensed either unpackaged or packaged and that are intended for off-premises consumption.

d. Time frames for compliance with section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2) “*a*” and “*b*,” are as follows:

(1) Newly licensed facilities must comply with section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2) “*a*” and “*b*,” within six months of licensure.

(2) If an individual meeting the requirement of paragraph 31.1(2) “*a*” leaves employment, the establishment shall meet the requirement of section 2-102.12 of the 2017 Food Code with Supplement, as amended by paragraphs 31.1(2) “*a*” and “*b*,” within six months of the individual’s departure.

31.1(3) Honey prepared in a residence. Section 3-201.11 is amended to allow honey which is stored; prepared, including by placement in a container; or labeled at or distributed from the premises of a residence to be sold in a food establishment.

31.1(4) Wild-harvested mushrooms. Section 3-201.16, paragraph (A), is amended by adding the following:

“A food establishment or farmers market time/temperature control for safety food licensee may sell or serve wild-harvested mushrooms provided:

“a. All wild-harvested mushrooms sold or served are varieties classified as one of the following:

Common name	Scientific name
Morel	<i>Morchella</i> spp. (<i>M. americana</i> , <i>M. angusticeps</i> , <i>M. punctipes</i>)
Oyster	<i>Pleurotus citrinopileatus</i> , <i>Pleurotus ostreatus</i> , <i>Pleurotus populinus</i> , or <i>Pleurotus pulmonarius</i>
Chicken of the woods	<i>Laetiporus</i> (<i>L. cincinnatus</i> , <i>L. sulphureus</i>)
Hen of the woods	<i>Grifola frondosa</i>
Chanterelle	<i>Cantharellus cibarius</i> group
Bear’s head tooth, Lion’s mane	<i>Hericium</i> spp. (<i>H. erinaceus</i> , <i>H. americanum</i>)
Pheasant back	<i>Polyporus squamosus</i>
Black trumpet	<i>Craterellus cornucopoides</i>

“b. All wild-harvested mushrooms sold or served in a food establishment must be obtained from sources where each mushroom is individually inspected and found to be safe by a certified wild-harvested mushroom identification expert.

“c. All wild-harvested mushroom species sold or served in a food establishment must have a written buyer specification. The buyer shall retain the written buyer specification for 90 days from the date of sale or service. The written buyer specification must include all of the following information:

“1. Identification of each mushroom species by the scientific and common name;

“2. Date of purchase;

“3. Quantity by weight of each species received;

“4. A statement indicating that each mushroom was identified in its fresh state and was not mixed or in contact with other mushroom species;

“5. The name, address, and telephone number of the certified wild-harvested mushroom identification expert; and

“6. A copy of the certified wild-harvested mushroom identification expert’s certificate of successful completion of the program, including the date of completion.

“d. A consumer advisory shall inform consumers by brochures, deli case, menu advisories, label statements, table tents, placards, or other effective written means that ‘wild-harvested mushrooms should be thoroughly cooked and may cause allergic reactions or other effects.’

“e. This section does not apply to cultivated mushrooms or mushrooms that have been packaged in an approved food processing plant.”

31.1(5) *Field-dressed wild game prohibition.* Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments unless:

a. The food establishment is also licensed and inspected by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau, pursuant to Iowa Code section 189A.3;

b. All field-dressed wild game is adequately separated from food, equipment, utensils, clean linens, and single-service and single-use articles; and

c. Any equipment used in the processing of field-dressed wild game is adequately cleaned and sanitized before use with other foods.

31.1(6) *Reduced oxygen packaging in meat and poultry processing plants.* Meat and poultry processing plants that are licensed and inspected by the Iowa department of agriculture and land stewardship (IDALS) meat and poultry inspection bureau pursuant to Iowa Code section 189A.3 and that are also licensed as a food establishment are exempt from section 3-502.11, paragraphs (A), (B), (D) and (F), and section 3-502.12 if all of the following criteria are met:

a. Each food product formulation has been approved by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau;

b. A copy of the approved formulation (T40/45) is maintained on file at the establishment and made available to the regulatory authority upon request;

c. Cooked products that do not include a curing agent or an antimicrobial agent that will control *Clostridium botulinum* and *Listeria monocytogenes* that are in a reduced oxygen package are stored and sold frozen and are labeled “Keep Frozen”; and

d. The food products are properly labeled.

31.1(7) *Reduced oxygen packaging.* Section 3-502.12 is amended to include the following:

“A HACCP PLAN is not required when a FOOD ESTABLISHMENT packages raw meat and poultry using a REDUCED OXYGEN PACKAGING method and includes on the package a 30-day “sell by” date from the date the raw meat or poultry was packaged.”

31.1(8) *Warewashing sinks in establishments serving alcoholic beverages.* Section 4-301.12 is amended by adding the following: “When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils.”

31.1(9) *Allowance for two-compartment sinks in certain circumstances.* Paragraph 4-301.12(C) is amended by adding the following: “Establishments need not have a three-compartment sink when each of the following conditions is met:

“1. Three or fewer utensils are used for food preparation;

“2. Utensils are limited to tongs, spatulas, and scoops; and

“3. The department has approved after verification that the establishment can adequately wash and sanitize these utensils.”

31.1(10) *Service sink.* For existing establishments, if waste water is being appropriately disposed of, section 5-203.13 for existing establishments shall go into effect upon the establishment’s renovation or sale.

31.1(11) *Backflow protection.* Section 5-203.14 is amended by adding the following: “Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve.”

31.1(12) *Backflow prevention.* Paragraph 5-402.11(D) is amended by adding the following: “A culinary sink or sink used for food preparation shall not have a direct connection between the sewage

system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air break.”

31.1(13) Prohibiting animals. Section 6-501.115, paragraph (B), is amended by adding the following:

“(6) Pet dogs may be allowed on exterior premises of a food establishment, including outdoor patio and outdoor dining areas, provided the food establishment meets all of the following requirements:

“a. A separate entrance is present so that pet dogs do not enter the food establishment to access the outdoor area;

“b. No food preparation is allowed in the outdoor area, including mixing or dispensing drinks and ice;

“c. Customer multi-service or reusable utensils such as plates, silverware, glasses, and bowls are not stored, displayed, or pre-set in the outdoor area;

“d. Food or water provided to pet dogs shall only be in single-use disposable containers provided by the food establishment or a container provided by the pet owner that is filled without any contact between the container and any dispensing item of the food establishment;

“e. Employees are prohibited from direct contact with pet dogs while on duty;

“f. The outdoor area is maintained clean;

“g. In cases where excrement or bodily fluids (urine, saliva, vomit, or the like) are deposited, an employee shall immediately ensure the area is cleaned and sanitized;

“h. The outdoor area shall not be fully enclosed (an enclosed area is considered part of the interior of the facility);

“i. Disruptive pet dogs must be controlled or removed from the premises;

“j. Rules governing pet dogs shall be posted at each entrance of the food establishment and shall, at a minimum, contain the following:

“i. Pet dogs shall be leashed at all times;

“ii. Pet dogs shall not enter any interior area of the food establishment at any time;

“iii. Pet dogs must be controlled at all times by the dog’s owner or designee;

“iv. Pet dogs are not permitted on chairs, tables, benches or seats; and

“v. Pet dog owners must immediately notify the food establishment’s staff in the event that excrement or bodily fluids (urine, saliva, vomit, or the like) are deposited.”

31.1(14) Inspection standards for elder group homes. Elder group homes as defined by Iowa Code section 231B.1 shall be inspected by the department, but chapters 4 and 6 of the Food Code shall not apply. Elder group homes shall pay the lowest license fee set forth in 481—subrule 30.4(2).

31.1(15) Nonprofit exception for temporary events. Nonprofit organizations that are licensed as temporary food establishments may serve non-time/temperature control for safety food from an unapproved source for the duration of the event.

31.1(16) Variance approval by department and submission of HACCP plans. Any variances or HACCP plans that require approval by the “regulatory authority” must be approved by the department. HACCP plans pursuant to paragraphs 3-502.12(B) and 8-201.13(B) shall be filed with the department prior to implementation, regardless of whether or not the plan requires approval.

31.1(17) Trichinae control for pork products prepared at retail. Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 2015, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of “certified pork” as authorized by the Iowa department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service, shall meet the requirements of this subrule.

This rule is intended to implement Iowa Code section 137F.2.

[ARC 1191C, IAB 11/27/13, effective 1/1/14; ARC 1928C, IAB 4/1/15, effective 5/6/15; ARC 2257C, IAB 11/25/15, effective 12/30/15; ARC 3188C, IAB 7/5/17, effective 8/9/17 (see footnote 2 at end of chapter); ARC 4140C, IAB 11/21/18, effective 1/1/19; ARC 4731C, IAB 10/23/19, effective 11/27/19; ARC 5119C, IAB 7/29/20, effective 9/2/20; ARC 5353C, IAB 12/30/20, effective 2/3/21; ARC 5843C, IAB 8/11/21, effective 9/15/21; ARC 5844C, IAB 8/11/21, effective 9/15/21]

481—31.2(137F) Inspection standards for food processing plants. The following are the inspection standards for food processing plants including food storage facilities.

31.2(1) Definitions. For the purposes of this rule, the following definitions shall apply. The definitions of “food,” “label,” “labeling,” and “dietary supplement” are as defined in 21 U.S.C. Section 321.

31.2(2) Prohibited acts. The prohibited acts identified in 21 U.S.C. Section 331(a) to (f), (k), and (v) shall also be prohibited acts in Iowa.

31.2(3) Stop sale. Any article of food that is adulterated or misbranded when introduced into commerce may be embargoed until such a time as the adulteration of misbranding is remedied or the product is destroyed. The action is immediate, but the licensee may appeal the decision following the process outlined in rule 481—30.11(10A,137C,137D,137F).

31.2(4) Standards for food. If a standard that has been adopted for a food is adopted pursuant to 21 U.S.C. Section 341 (2012), the standard shall be met.

31.2(5) Adulterated food. See rule 481—31.3(137D,137F).

31.2(6) Misbranded food. A food shall be misbranded if it is found in violation of 21 U.S.C. Section 343 (2012).

31.2(7) New dietary ingredients. New dietary ingredients shall comply with the process in 21 U.S.C. Section 350(b) (2012) or shall be deemed adulterated.

31.2(8) Records. Records shall be made available at minimum to the extent required under 21 U.S.C. Section 373 (2012) for all interstate and intrastate food.

31.2(9) Adoption of Code of Federal Regulations. The following parts of the Code of Federal Regulations (April 1, 2021) are adopted:

- a. 21 CFR Part 1, Sections 1.20 to 1.24 and Subpart O, Sections 1.900 to 1.934 (labeling).
- b. 21 CFR Part 7, Sections 7.1 to 7.13 and 7.40 to 7.59 (guaranty and recalls).
- c. 21 CFR Part 70, Sections 70.20 to 70.25 (labeling requirements for colors).
- d. 21 CFR Part 73, Sections 73.1 to 73.615 (color additives exempt from certification).
- e. 21 CFR Part 74.101 to 74.706 (listing of color additives subject to certification).
- f. 21 CFR Part 81, general specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics.
- g. 21 CFR Part 82, Sections 82.3 to 82.706 (certified provisionally listed colors and specifications).
- h. 21 CFR Part 100, Section 100.155 (specific provisions for salt and iodized salt).
- i. 21 CFR Part 101, except Sections 101.69 and 101.108 (food labeling).
- j. 21 CFR Part 102, except Section 102.19 (common or usual name for nonstandard food).
- k. 21 CFR Part 104, nutritional quality guidelines for foods.
- l. 21 CFR Part 105, food for special dietary use.
- m. 21 CFR Part 106, except Section 106.120 (infant formula quality control procedures).
- n. 21 CFR Part 107, except Sections 107.200 to 107.280 (infant formula labeling).
- o. 21 CFR Part 108, Sections 108.25 to 108.35 (exceptions for when a permit is not required, acidified and thermal processing of low-acid foods packaged in hermetically sealed containers).
- p. 21 CFR Part 109, unavoidable contaminants in food for human consumption and food-packaging material.
- q. 21 CFR Part 110, current good manufacturing practice in manufacturing, packing or holding human food.
- r. 21 CFR Part 111, current good manufacturing practice in manufacturing, packaging, labeling, or holding operations for dietary supplements.
- s. 21 CFR Part 113, thermally processed low-acid food packaged in hermetically sealed containers.
- t. 21 CFR Part 114, acidified foods.
- u. 21 CFR Part 115, shell eggs.
- v. 21 CFR Part 117, current good manufacturing practice and hazard analysis and risk-based preventive controls for human food shall apply, with the following exceptions:

(1) Qualified facilities, as defined in 21 CFR 117, shall not include food processing plants manufacturing foods for interstate commerce or for use as an ingredient to other foods.

(2) Warehousing operations located on the premises of residences that store food for sale directly to a consumer customer or at a farmers market shall comply with subparts A, B, and F of 21 CFR 117.

- w. 21 CFR Part 118, production, storage and transportation of shell eggs.
- x. 21 CFR Part 120, hazard analysis and critical control point (HACCP) systems (juice).
- y. 21 CFR Part 123, fish and fisheries products (seafood).
- z. 21 CFR Part 129, processing and bottling of bottled drinking water.
- aa. 21 CFR Part 130, except Sections 130.5, 130.6 and 130.17, food standards: general.
- ab. 21 CFR Part 131, milk and cream.
- ac. 21 CFR Part 133, cheeses and related cheese products.
- ad. 21 CFR Part 135, frozen desserts.
- ae. 21 CFR Part 136, bakery products.
- af. 21 CFR Part 137, cereal flours and related products.
- ag. 21 CFR Part 139, macaroni and noodle products.
- ah. 21 CFR Part 145, canned fruits.
- ai. 21 CFR Part 146, canned fruit juices.
- aj. 21 CFR Part 150, fruit butters, jellies, preserves, and related products.
- ak. 21 CFR Part 152, fruit pies.
- al. 21 CFR Part 155 (canned vegetables).
- am. 21 CFR Part 156, vegetable juices.
- an. 21 CFR Part 158, frozen vegetables.
- ao. 21 CFR Part 160, egg and egg products.
- ap. 21 CFR Part 161, fish and shellfish.
- aq. 21 CFR Part 163, cacao products.
- ar. 21 CFR Part 164, tree nut and peanut products.
- as. 21 CFR Part 165, beverages.
- at. 21 CFR Part 166, margarine.
- au. 21 CFR Part 168, sweeteners and table syrups.
- av. 21 CFR Part 169, food dressings and flavorings.
- aw. 21 CFR Part 170, except Sections 170.6, 170.15, and 170.17, food additives.
- ax. 21 CFR Part 172, food additives permitted for direct addition to food for human consumption.
- ay. 21 CFR Part 173, secondary direct food additives permitted in food for human consumption.
- az. 21 CFR Part 174, indirect food additives: general.
- ba. 21 CFR Part 175, indirect food additives: adhesives and components of coatings.
- bb. 21 CFR Part 176, indirect food additives: paper and paperboard components.
- bc. 21 CFR Part 177, indirect food additives: polymers.
- bd. 21 CFR Part 178, indirect food additives: adjuvants, production aids, and sanitizers.
- be. 21 CFR Part 180, food additives permitted in food or in contact with food on an interim basis pending additional study.
- bf. 21 CFR Part 181, prior-sanctioned food ingredients.
- bg. 21 CFR Part 182, substances generally recognized as safe.
- bh. 21 CFR Part 184, direct food substances affirmed as generally recognized as safe.
- bi. 21 CFR Part 186, indirect food substances affirmed as generally recognized as safe.
- bj. 21 CFR Part 189, substances prohibited from use in human food.
- bk. 21 CFR Part 190, dietary supplements.

31.2(10) Egg products processing plants. The department shall generally use the good manufacturing practices adopted in paragraph 31.2(9) "b," unless such practices are inconsistent with standards set by the United States Department of Agriculture, Food Safety and Inspection Service, in 9 CFR Parts 590-592, January 1, 2018. If the standards are inconsistent, the standards adopted in 9 CFR Parts 590-592, January 1, 2018, apply.

31.2(11) *Specific requirements for the manufacture of packaged ice.* In addition to compliance with subrules 31.2(1) through 31.2(9), manufacturers of packaged ice must comply with the following:

- a. Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which include the use of sanitizers to eliminate microorganisms must be developed and used.
- b. Packaged ice must be tested every 120 days for the presence of bacteria.
- c. Plants that use a nonpublic water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination as required by law.

This rule is intended to implement Iowa Code section 137F.2.

[ARC 1191C, IAB 11/27/13, effective 1/1/14; ARC 1928C, IAB 4/1/15, effective 5/6/15; ARC 2257C, IAB 11/25/15, effective 12/30/15; ARC 3188C, IAB 7/5/17, effective 8/9/17; ARC 4140C, IAB 11/21/18, effective 1/1/19; ARC 5119C, IAB 7/29/20, effective 9/2/20; ARC 5845C, IAB 8/11/21, effective 9/15/21]

481—31.3(137D,137F) Adulterated food and disposal. No one may produce, distribute, offer for sale or sell adulterated food. “Adulterated” is defined in the federal Food, Drug, and Cosmetic Act, Section 402. Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

This rule is intended to implement Iowa Code section 137F.2.

[ARC 1191C, IAB 11/27/13, effective 1/1/14]

481—31.4(137D,137F) False label or defacement. No person shall use any label required by Iowa Code chapter 137D or 137F 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.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.

[ARC 1191C, IAB 11/27/13, effective 1/1/14; ARC 5353C, IAB 12/30/20, effective 2/3/21]

481—31.5(137F) Temporary food establishments and farmers market time/temperature control for safety food licensees. While the retail food code adopted in rule 481—31.1(137F) applies to temporary food establishments, the following subrules provide a simplified version of requirements for temporary food establishments. If the two rules are inconsistent, the standards in this rule apply.

31.5(1) *Personnel.* For the purposes of this rule, employees include volunteers.

- a. Employees shall keep their hands and exposed portions of their arms clean.
- b. Employees shall have clean garments and aprons and effective hair restraints. Smoking, eating or drinking in food booths is not allowed. All nonworking, unauthorized persons are to be kept out of the food booth.
- c. All employees, including volunteers, shall be under the direction of the person in charge. The person in charge shall ensure that the workers are effectively cleaning their hands, that time/temperature control for safety food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.
- d. Employees and volunteers shall not work at a temporary food establishment or farmers market time/temperature control for safety food establishment if the employees and volunteers have open cuts, sores or communicable diseases. The person in charge shall take appropriate action to ensure that employees and volunteers who have a disease or medical condition transmissible by food are excluded from the food operation.
- e. Every employee and volunteer must sign a logbook with the employee’s or volunteer’s name, address, and telephone number and the date and hours worked. The logbook must be maintained for 30 days by the person in charge and be made available to the department upon request.

31.5(2) *Food handling and service.*

- a. *Dry storage.* All food, equipment, utensils and single-service items shall be stored off the ground and above the floor on pallets, tables or shelving.
- b. *Cold storage.* Refrigeration units shall be provided to keep time/temperature control for safety foods at 41°F or below. The inspector may approve an effectively insulated, hard-sided container with

sufficient coolant for storage of time/temperature control for safety food at events of short duration if the container maintains the temperature at 41°F or below.

c. Hot storage. Hot food storage units shall be used to keep time/temperature control for safety food at 135°F or above. Electrical equipment is required for hot holding, unless the use of propane stoves and grills capable of holding the temperature at 135°F or above is approved by the department. Sterno cans are allowed for hot holding if adequate temperatures can be maintained. Steam tables or other hot holding devices are not allowed to heat foods and are to be used only for hot holding after foods have been adequately cooked.

d. Cooking temperatures. As specified in the following chart, the minimum cooking temperatures for food products are:

165°F	<ul style="list-style-type: none"> ● Poultry and game animals that are not commercially raised ● Products stuffed or in a stuffing that contains fish, meat, pasta, poultry or ratite ● All products cooked in a microwave oven
155°F	<ul style="list-style-type: none"> ● Rabbits, ratite and game meats that are commercially raised ● Ground or comminuted (such as hamburgers) meat/fish products ● Raw shell eggs not prepared for immediate consumption
145°F	<ul style="list-style-type: none"> ● Pork and raw shell eggs prepared for immediate consumption ● Fish and other meat products not requiring a 155°F or 165°F cooking temperature as listed above

e. Consumer advisory requirement. If raw or undercooked animal food such as beef, eggs, fish, lamb, poultry or shellfish is offered in ready-to-eat form, the license holder (person in charge) shall post the consumer advisory as required by the food code.

f. Thermometers. Each refrigeration unit shall have a numerically scaled thermometer to measure the air temperature of the unit accurately. An appropriate thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

g. Food display. Foods on display must be covered. The public is not allowed to serve itself from opened containers of food or uncovered food items. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. All fruits and vegetables must be washed before being used or sold. Food must be stored at least six inches off the ground. All cooking and serving areas shall be adequately protected from contamination. Barbeque areas shall be roped off or otherwise protected from the public. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means.

h. Food preparation. Unless otherwise approved by a variance from the department, no bare-hand contact of ready-to-eat food shall occur.

i. Approved food source. All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination.

j. Leftovers. Hot-held foods that are not used by the end of the day must be discarded.

31.5(3) Utensil storage and warewashing.

a. Single-service utensils. The use of single-service plates, cups and tableware is required.

b. Dishwashing. If approved, an adequate means to heat the water and a minimum of three basins large enough for complete immersion of the utensils are required to wash, rinse and sanitize utensils or food-contact equipment.

c. Sanitizers. Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the correct concentration of sanitizer to be used.

d. Wiping cloths. Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizing solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

31.5(4) Water.

a. Water supply. An adequate supply of clean water shall be provided from an approved source. Water storage units and hoses shall be food grade and approved for use in storage of water. If not permanently attached, hoses used to convey drinking water shall be clearly and indelibly identified as to their use. Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

b. Wastewater disposal. Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

31.5(5) Premises.

a. Hand-washing container. An insulated container with at least a two-gallon capacity with a spigot, basin, soap and dispensed paper towels shall be provided for hand washing. The container shall be filled with hot water.

b. Floors, walls and ceilings. If required, walls and ceilings shall be of tight design and weather-resistant materials to protect against the elements and flying insects. If required, floors shall be constructed of tight wood, asphalt, rubber or plastic matting or other cleanable material to control dust or mud.

c. Lighting. Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

d. Food preparation surfaces. All food preparation or food contact surfaces shall be of a safe design, smooth, easily cleanable and durable.

e. Garbage containers. An adequate number of cleanable containers with tight-fitting covers shall be provided both inside and outside the establishment.

f. Toilet rooms. An adequate number of approved toilet and hand-washing facilities shall be provided at each event.

g. Clothing. Personal clothing and belongings shall be stored at a designated place in the establishment, adequately separated from food preparation, food service and dishwashing areas.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.

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¹ Rules 30—33.1(159) to 30—33.4(159) and 30—34.1(159) to 30—34.4(159) transferred to Inspections and Appeals Department[481] and rescinded.

² Rule 481—31.1(137F) published in the July 5, 2017, IAB as ARC 3188C has a January 1, 2018, effective date. For the rule in effect immediately prior to January 1, 2018, see 481—Chapter 31 as of June 21, 2017.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

[Created by Iowa Code chapter 455G]

CHAPTER 1

GENERAL

- 1.1(455G) Description of Iowa comprehensive petroleum underground storage tank fund board
- 1.2(455G) Mission of the board
- 1.3(455G) General course and method of operations
- 1.4(455G) Location where public may submit requests for assistance or information
- 1.5(455G) Potential conflicts of interest

CHAPTER 2

PETITIONS FOR RULE MAKING

- 2.1(17A) Petition for rule making
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CHAPTER 16 WAIVERS

591—16.1(17A) Definition. The term “waiver” as used in this chapter means a described waiver from a specific rule or set of rules of this board applicable only to an identified person on the basis of the particular circumstances of that person.

[ARC 5827C, IAB 8/11/21, effective 9/15/21]

591—16.2(17A) Scope of chapter. This chapter creates standards and a process for granting individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

591—16.3(17A) Applicability. This chapter applies only to waivers of those board rules that are within the exclusive rule-making authority of the board.

591—16.4(17A) Compliance with law. The board may not issue a waiver under this chapter unless the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

591—16.5(17A) Criteria for a waiver. The board may issue an order, in response to a completed petition, granting a waiver from a rule adopted by the board, in whole or in part, as applied to the circumstances of a specified person, if the board finds that the granting of such a waiver would not exceed the authority for granting waivers contained in Iowa Code section 17A.9A, that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. All of the following criteria have been met:
 - The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
 - The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest; and
 - The waiver, if related to administrative deadlines, would not jeopardize the overall goals of the deadline as established.

In determining whether a waiver would be consistent with the public interest, the board shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

[ARC 5827C, IAB 8/11/21, effective 9/15/21]

591—16.6(17A) Board discretion. The final decision to grant or deny a waiver shall be vested in the board. This decision shall be made at the discretion of the board upon consideration of relevant facts.

591—16.7(17A) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant the petitioner a waiver based upon the criteria contained in this chapter.

591—16.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested. To the extent applicable, the petition should also include the site registration number(s) and LUST number(s) and the case number of any related contested case.
2. A description and citation of the specific rule or set of rules from which a waiver is being requested.

3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend.

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the petitioner and the board relating to the activity affected by the proposed waiver, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.

6. Any information known to the requester relating to the board's treatment of similar cases.

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

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

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

10. Signed releases of information authorizing persons with knowledge of the waiver request to furnish the board with information relevant to the waiver.

11. If there is a contested case concerning the person, site or matter for which the petition for waiver is being made, such petition must include a signed statement consenting to ex parte communications between the board and its counsel concerning the facts and issues of the petition. If there is a contested case filed subsequent to this petition for waiver, such a statement must be provided at that time.

[ARC 5827C, IAB 8/11/21, effective 9/15/21]

591—16.9(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative from the board to discuss the petition and surrounding circumstances.

591—16.10(17A) Notice. The board shall acknowledge the petition upon receipt. The petitioner shall ensure that notice of the pendency of the petition, and a concise summary of its contents, have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. The petitioner shall provide to the board a written statement attesting to the fact that proper notice has been provided and to whom that notice has been provided. In addition, the board may give notice to other persons.

591—16.11(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver of a rule or set of rules filed within a contested case, and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order, or is required to do so by statute or other binding law.

591—16.12(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative time period of a waiver if one is issued.

591—16.13(17A) Conditions. The board may condition the granting of the waiver on such conditions that the board deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

591—16.14(17A) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a

later date. However, if a petition is filed in a contested case, then the board may grant or deny the petition at the time the final decision in that contested case is issued.

591—16.15(17A) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver as required by this rule.

591—16.16(17A) Service of orders. Within 30 days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law. The petitioner shall ensure that notice of the order and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the order. The petitioner shall provide a written statement attesting to the fact that proper notice has been provided and to whom that notice has been provided. In addition, the board may give notice to other persons.

591—16.17(17A) Submission of waiver information. The board shall submit information about granted and denied waivers to the Internet site pursuant to Iowa Code section 17A.9A(4) within 60 days. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule and a citation to the statutory provisions implemented by the rules. The report submission shall include a general summary of the reasons justifying the board's actions on waiver requests and, if practicable, shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself and the extent to which the granting of the waiver has established a precedent for additional waivers.

[ARC 5827C, IAB 8/11/21, effective 9/15/21]

591—16.18(17A) Term and renewals of waivers. Waivers issued pursuant to this chapter will not be on a permanent basis, unless specified as permanent. If a waiver is issued without either a specified time frame or a statement clearly identifying the specified waiver as permanent, the waiver will be deemed to be for a duration of 120 days. A waiver will automatically expire if no action is taken by the board to renew the waiver. Any action to renew the waiver must be in writing and specify terms and conditions of the renewal.

591—16.19(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld from the board or knowingly misrepresented to the board material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient and no other means exists to protect the substantial legal rights of any person; or
3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

591—16.20(17A) Violations. A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

591—16.21(17A) Defense. After the board issues an order granting a waiver, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

591—16.22(17A) Appeals. Appeals within the board from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and board rules. These appeals shall be taken within ten days of the issuance of the ruling granting or denying the waiver request unless a different time is provided by rule or statute.

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

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NURSING BOARD[655]

[Prior to 8/26/87, see Nursing, Board of[590], renamed Nursing Board[655] under the "umbrella" of Public Health Department by 1986 Iowa Acts, ch 1245]

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CHAPTER 2
NURSING EDUCATION PROGRAMS
[Prior to 8/26/87, Nursing Board[590] Ch 2]

655—2.1(152) Definitions.

“Approval” means recognition status given to nursing education programs based on the programs’ compliance with the criteria specified in this chapter. Approval may be granted or continued for any time period determined by the board for up to six years.

“Clinical facilities” means locations where students directly care for patients/clients under the supervision of a qualified faculty member.

“Clinical instruction” means hands-on learning situations in which students directly care for patients/clients within a relevant setting, under the supervision of a qualified faculty member.

“Content” means the subject matter in a given area of study.

“Controlling institution” means the institution that has authority over and administrative accountability for the program(s).

“Curriculum” means content, lab/simulation, observation and clinical experiences developed, implemented and evaluated by faculty to facilitate achievement of program outcomes and to meet the learning needs of students.

“Debriefing” means an activity that follows a simulation experience and that is led by a faculty member, encourages a participant’s reflective thinking, and provides feedback regarding the participant’s performance.

“Faculty” means the teaching staff in a nursing education program. This definition includes anyone who provides didactic, simulation, laboratory, or clinical instruction in nursing when assigned by the program to provide this instruction for courses included in the nursing curriculum. The definition applies regardless of the amount of time spent teaching, the level of payment, the type of contract, the temporary nature of the position, or the location of the learner.

“Head of program” means the dean, chairperson, director, or coordinator of the nursing education program(s) who is responsible for the administration of the program(s).

“Improvement status” means the status on which a program is placed after three consecutive years of NCLEX® results below the 95 percent of the national NCLEX® passing percentage.

“Interim approval” means approval granted to a new nursing program, at which time students may be admitted into the program.

“Lab/simulation” means activities that mimic the reality of a clinical environment and that are designed to demonstrate procedures, decision making and critical thinking through interactive experiences.

“Learning experiences” means experiences that shall include content and clinical instruction and that may include components of lab/simulation, practicum, and observation.

“Located in Iowa” means a college or university that is accredited by the Higher Learning Commission, that has made a substantial investment in a permanent Iowa campus and staff, and that offers a full range of courses leading to the degrees offered by the institution as well as a full range of student services.

“Master’s degree” means the title conferred by a college or university upon completion of a program of graduate study that requires a level of academic accomplishment and subject mastery substantially beyond that required for a baccalaureate degree.

“National NCLEX® passing percentage” means the percentage of first-time testers who achieve a passing score on the NCLEX® examination for licensed practical nurse or registered nurse licensure, calculated on a calendar year basis.

“NCLEX®” means the National Council Licensure Examination, the examination currently used for initial licensure as a registered nurse or licensed practical nurse.

“NCLEX® passing percentage” means the percentage of first-time testers who achieve a passing score on the NCLEX® examination for licensed practical nurse or registered nurse licensure within six months of graduation from a nursing program, calculated on a calendar year basis.

“*Observation*” means learning experiences in a relevant setting that meet program outcomes but do not require on-site faculty supervision and where the student does not directly care for patients/clients.

“*Out-of-state program*” means an approved nursing program within United States jurisdiction that provides clinical experiences in Iowa.

“*Practicum*” means a course of study designed especially for the preparation of nurses that involves the supervised practical application of previously studied theory.

“*Preceptor*” means a licensed individual who meets Iowa board of nursing qualifications as specified in this chapter, is on staff at the facility where the experience occurs, is selected by the nursing program in collaboration with the clinical facility, and is responsible for the on-site direction of the student over a period of time.

“*Preceptorship*” means an experience between a preceptor and a nursing student over a period of time that is congruent with program outcomes.

“*Program*” means a course of study by any method of instruction or delivery that leads to a nursing diploma, degree or certificate. Multiple-site programs offered by one controlling institution shall be considered one program if the philosophy and curriculum of all the sites are the same.

“*Qualified nursing faculty*” means individuals who meet board faculty qualifications as specified in this chapter and the qualifications of the parent institution.

[ARC 3497C, IAB 12/6/17, effective 1/10/18; ARC 5286C, IAB 11/18/20, effective 12/23/20]

655—2.2(152) Programs eligible for board approval. Programs eligible for board approval shall include all of the following:

1. At least a one-academic-year course of study or its equivalent in theory and practice as described by the board that leads to a diploma in practical nursing and to eligibility to apply for practical nurse licensure by examination as described in 655—Chapter 3.

2. At least a two-academic-year course of study or its equivalent in theory and practice as described by the board that leads to a degree in nursing and to eligibility to apply for registered nurse licensure by examination as described in 655—Chapter 3.

3. A course of study designed for registered nurses that leads to a baccalaureate degree with a major in nursing.

4. A course of study designed for registered nurses that leads to a master’s degree with a major in nursing.

5. A course of study designed for registered nurses who hold a master’s degree in nursing that leads to a certificate in advanced practice nursing and eligibility for licensure as an advanced registered nurse practitioner as described in 655—Chapter 7. When the certificate is in a population focus, the course of study shall lead to eligibility to apply for certification in the population focus by a national professional nursing organization recognized by the board.

6. A post-master’s course of study that leads to a doctoral degree with a major in nursing.

7. A course of study that leads to a doctorate in nursing practice.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.3(152) Application for interim approval of a nursing program.

2.3(1) Before establishing a nursing program, a controlling institution shall submit a program application to the board that includes the following information and documentation:

- a. Name and address of the controlling institution and accreditation status of the controlling institution.

- b. A written statement explaining how the college or university meets the definition of “located in Iowa.”

- c. A written statement of intent to establish a nursing program, including the academic and licensure levels of the program and the primary method of instruction.

- d. The establishment of an advisory committee composed of representatives of the community and nurses. Minutes of advisory committee meetings shall be kept on file.

- e. Completion of a needs assessment which includes:

- (1) Documentation of the present and future need for the program in the state, including availability of potential students and need for entry-level nurses.
- (2) Potential effect on existing nursing programs.
- (3) Availability of qualified head of the program and faculty.
- (4) Source and description of clinical resources for the program.
- (5) Evidence of potential students and anticipated enrollment.
- (6) Documentation of adequate academic facilities and staff to support the nursing program.
- (7) Evidence of financial resources adequate for the planning, implementation and continuation of the nursing program.
- (8) Tentative time schedule for planning and implementing the nursing program and the intended date for entry of the first class into the program.

2.3(2) The board shall approve or deny the program application to establish a nursing program. If the board approves the program application, the controlling institution shall then submit to the board a program proposal within one year of the application that includes, but is not limited to, the following:

- a. Evidence of employment of the head of the program, including the individual's qualifications, at least six months prior to the beginning of the first nursing course.
- b. Program philosophy, objectives and outcomes that reflect the proposed level of education.
- c. Organizational chart of the educational institution documenting the relationship of the nursing program within the institution.
- d. Curriculum plan that meets the criteria in rule 655—2.10(152).
- e. Letter of intent from clinical facilities securing clinical opportunities and documentation of the facility type, size, number of beds, and type of patients.
- f. Evidence of provision of qualified faculty. Faculty shall be employed by the controlling institution prior to the beginning of teaching assignments. Faculty members who teach nursing shall meet the qualifications outlined in subrule 2.11(2).
- g. Updated time schedule.
- h. Proposed five-year budget for the nursing education program.

2.3(3) The board may conduct a site visit to the controlling institution and clinical facilities to validate information submitted in the program proposal prior to determining interim approval status.

2.3(4) Interim approval may be granted to the program based on the program proposal and a site visit.

- a. The controlling institution shall publish the interim approval status of the program.
- b. The head of the program shall submit one electronic copy and one hard copy of a program progress report four weeks prior to each regularly scheduled board meeting until full approval as described in rule 655—2.4(152) is granted by the board. The progress report shall include the following:
 - (1) Updated information in all areas identified in the initial proposal.
 - (2) Current number of admissions and enrollments.
 - (3) Current number of qualified faculty.
 - (4) New course offerings, including descriptions, credit hours, outcomes/objectives, placement of course and curriculum submitted six months prior to the offering of courses.
 - (5) Changes requiring board notification and approval as outlined in subrule 2.17(3).
- c. Interim approval shall continue until the board conducts a review of program materials, completes a site visit, and grants approval to the program following graduation of the first class and submission of results of the national examination for licensure or advanced practice certification, if applicable.
- d. The board may at any time seek additional program information from the controlling institution and head of the program.

2.3(5) The board may deny interim approval based on the program proposal and a site visit.

- a. In order to be reconsidered, the controlling institution shall resubmit a program proposal within six months from the time of program application.

b. One year from the initial application, the controlling institution may resubmit a program application to the board in order to be reconsidered.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.4(152) Approval and reapproval procedures. The full approval procedure for programs with interim approval and the reapproval procedure of programs for colleges or universities located in Iowa are as follows.

2.4(1) The board shall provide the program with the schedule and the criteria for approval or reapproval.

2.4(2) The program shall provide to the board the nursing education program report and requested materials addressing all aspects of the program outlined in rules 655—2.8(152) to 655—2.18(152) and documenting how the criteria for approval are met. Documentation may include current information submitted by the program to other approving and accrediting entities.

2.4(3) A representative of the board shall make a site visit to the program:

- a.* To grant full approval to programs with interim approval.
- b.* With the purpose of determining if the program continues to meet the criteria for approval.
- c.* If there is at any time evidence that the program does not meet the criteria for approval.

2.4(4) The board shall provide to the head of the program a report addressing any recommendations as a result of the site visit and nursing education program report. The head of the program shall be provided an opportunity to respond in writing to the recommendations.

2.4(5) The nursing education program report and the program response shall be submitted to the board for board review.

2.4(6) The board shall determine the approval status of the program.

a. Full approval may be granted or continued, within any time frame determined by the board, up to six years.

b. Provisional approval may be granted as determined by the board.

[ARC 3497C, IAB 12/6/17, effective 1/10/18; ARC 5286C, IAB 11/18/20, effective 12/23/20]

655—2.5(152) Provisional approval.

2.5(1) Provisional approval may be granted at the board's discretion to a program if the board determines that the program does not meet the criteria for approval during the full approval procedure or at any time during the progression of the program.

2.5(2) At the time of provisional approval, the board:

- a.* Shall notify the president of the academic institution and head of the nursing program, in writing, of the program's provisional approval status;
- b.* Shall meet with representatives of the program and controlling institution to discuss the length of provisional approval, set conditions for achieving full approval, and identify expected outcomes; and
- c.* May require progress reports and a site visit.

2.5(3) Throughout provisional approval:

a. The program shall notify all students and prospective students of the program's provisional approval status; and

b. The board may require progress reports, conduct site visits, and request board appearances.

2.5(4) Prior to the expiration of a program's provisional approval, the board shall meet with representatives of the program and controlling institution to determine if the outcomes are met. The board shall determine whether to grant the program full approval, extend provisional approval, or initiate proceedings to deny or withdraw approval.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.6(152) Denial or withdrawal of board approval.

2.6(1) If a program does not meet the conditions imposed during provisional approval to return to full approval within the time period specified, the board may initiate proceedings to deny or withdraw approval of the program. To initiate proceedings, the board shall issue to the program a notice of intent to deny or withdraw approval. The notice of intent shall set forth the basis for the denial or withdrawal

and describe the process for appealing the notice. If a program appeals, a contested case hearing shall be scheduled. The hearing shall be governed by the rules found in 655—Chapter 20.

2.6(2) If, after a contested case proceeding, the board denies or withdraws approval of a program, the program shall immediately notify all enrolled students of the denial or withdrawal of approval. Such notification must include the date of denial or withdrawal of approval and a statement that students must graduate from an approved program to be eligible for licensure. The program shall assist all enrolled students with transferring to an approved program.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.7(152) Closure of an approved program.

2.7(1) Prior to program closure, the controlling institution shall submit a written plan for board approval. The plan shall include reasons for closure and the date of closure, which is defined as the date when the last student graduates. The plan shall also address a provision for the graduation of enrolled students, retention of adequate numbers of qualified faculty, retention of approved curriculum, maintenance of educational resources and student services, and a provision for student and graduate transcripts. When a program intends to close prior to the graduation of enrolled students who are actively taking nursing courses, the plan shall be submitted to the board at least 12 months prior to closure, except when closure is occurring as a result of an emergency or unforeseen circumstances. The board may shorten the 12-month time period if the board determines that the controlling institution has made adequate provisions for enrolled students.

2.7(2) The program shall continue to meet the criteria for board approval until all enrolled students have graduated or the board has approved a plan for closure prior to graduation of the students. The board may require progress reports during the closure process. Prior to closure, the controlling institution shall notify the board regarding the location and maintenance of student and graduate transcripts and records to enable retrieval after the program closes.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.8(152) Organization and administration of the program.

2.8(1) The program shall meet the following criteria:

a. Authorization. Authorization for conducting a program is granted in accordance with Iowa Code chapter 261B.

b. Authority and administrative responsibility. The authority and administrative responsibility of the program shall be vested in the head of the program, who is responsible to the controlling institution.

c. Organizational chart. The organizational chart(s) shall clearly indicate the lines of authority and communication within the program and with the central administration, other units within the controlling institution, cooperating agencies, and advisory committees.

d. Finances.

(1) The controlling institution shall allocate adequate funds to carry out the purposes of the program.

(2) The head of the program shall prepare the budget with the assistance of the faculty.

e. Ethical practices. Ethical practices and standards, including those for recruitment and advertising, shall be consistent with those of the controlling institution and shall be made available to students and prospective students.

f. Contractual agreements. Written contractual agreements shall exist between the program and the clinical facilities. The agreements shall include:

(1) Identification of responsibilities of both parties related to patient or client services.

(2) Provision for faculty control, selection and guidance of student learning experiences.

(3) Provision for termination of the agreement.

(4) Provision for annual review.

(5) Provision that the facility is in good standing with its regulatory agency.

g. Accrediting and approving agencies.

(1) The controlling institution or program shall be accredited by the Higher Learning Commission.

(2) When the program is located at a community college, the controlling institution shall be approved by the Iowa department of education.

(3) When the program is offered under the auspices of the United States armed forces, it shall be accredited by the U.S. Department of the Army.

h. Philosophy/mission and program outcomes. The faculty shall develop a philosophy or mission statement and program outcomes that shall be:

- (1) Consistent with the philosophy or mission of the controlling institution.
- (2) Reflective of faculty beliefs about nursing, education and professional standards.
- (3) A guide in the development, implementation and evaluation of the program.
- (4) Available to students and prospective students.

i. Program evaluation. A written plan shall outline the evaluation process for all aspects of the program and shall identify the methodology, tools, responsible parties and time frame. Evidence of implementation shall reflect achievement of program outcomes.

2.8(2) The head of a program shall meet the following requirements:

a. Current licensure as a registered nurse in Iowa. An individual is currently licensed when licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in Iowa Code chapter 152E.

b. Two years of experience in clinical nursing.

c. Two years of teaching experience in a nursing education program.

d. Academic qualifications:

(1) The head of a program who was employed on or before July 1, 1992, shall be considered adequately prepared as long as that person remains in that position.

(2) The head of a program hired after July 1, 1992, shall have a master's or doctoral degree with a major in nursing at either level at the time of hire. The date of hire is the first day of employment as head of the program with compensation at a particular nursing education program.

(3) If a program offers a baccalaureate or higher degree in nursing, the head of the program shall have a doctoral degree at the time of hire.

e. Submission of qualifications to the board office within one month of appointment.

2.8(3) A nursing education program shall have one head of the program.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.9(152) Resources of the controlling institution. The controlling institution is responsible for provision of resources adequate to meet program needs and outcomes.

2.9(1) *Human resources.* Human resources shall include the following:

a. Head of program.

b. Faculty.

c. Secretarial and other support and staff services to ensure appropriate use of faculty time and expertise.

d. Support staff for online or distance education or both.

2.9(2) *Physical resources.* Physical resources may include the following:

a. Classrooms, conference rooms, laboratories, simulation laboratories, offices, and equipment.

b. Student facilities.

2.9(3) *Learning resources.* Learning resources shall include the following:

a. Library.

b. Print media.

c. Computer-mediated resources.

d. Laboratory/simulation laboratory equipment.

2.9(4) *Financial resources.* Financial resources shall be adequate to support and carry out the mission of the controlling institution.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.10(152) Curriculum.

2.10(1) The curriculum of a program shall:

- a. Reflect the philosophy/mission and program outcomes supported by the nursing faculty.
- b. Identify program outcomes and define how learning experiences support outcomes.
- c. Reflect current standards of nursing practice and education.
- d. Be consistent with laws governing the practice of nursing.
- e. Ensure sufficient preparation for the safe and effective practice of nursing.
- f. Include planned learning experiences and strategies that demonstrate integration of knowledge and attainment of the program outcomes.
- g. Reflect the roles for which the student is being prepared.
- h. Be evaluated on a regular basis by the faculty and reflect achievement of student outcomes as demonstrated in the program evaluation plan.
- i. When offered within a college or university:
 - (1) Be comparable in quality and requirements to other degree programs within the college or university.
 - (2) Be planned in accordance with the college or university calendar.
 - (3) Assign credit hours for learning experiences that are consistent with the college or university pattern.
 - (4) Provide a teaching/learning environment (classroom, clinical, laboratory, or simulation) that supports achievement of expected outcomes.

2.10(2) Standardized examinations may be used to supplement a program's curriculum but shall not prevent a student's academic progression or graduation. At the time of enrollment, students shall be informed of the schedule and procedure for any standardized examinations utilized in the curriculum. The program shall have a process and procedure for remediation of students who do not pass the standardized examinations.

2.10(3) Prelicensure programs.

a. The curriculum of a program leading to eligibility for initial licensure as a licensed practical nurse or registered nurse shall include:

- (1) Content that is consistent with the practice of nursing as defined in Iowa Code section 152.1.
- (2) Content in medical, surgical, gerontological, mental health, and nursing of childbearing families and children that reflects current nursing practice and that encompasses health needs throughout the life span.
- (3) Opportunities to participate in the nursing process and to develop competencies in direct patient care, problem-solving methodologies, clinical judgment, communication, and the use of current equipment and technology.
- (4) Content in nursing history and trends, including professional, legal, and ethical aspects.
- (5) Supporting content from the natural and social sciences.

b. In addition to the requirements identified in paragraph 2.10(3) "a," the curriculum of a program leading to a diploma in practical nursing and to eligibility to apply for practical nurse licensure by examination shall:

- (1) Be consistent with the scope of practice of a licensed practical nurse as outlined in rules 655—6.3(152) and 655—6.6(152).
- (2) Focus on supportive or restorative care provided under the supervision of a registered nurse or physician pursuant to Iowa Code section 152.1(4).
- (3) Provide learning experiences in medical, surgical and gerontological nursing.
- (4) Provide content in nursing of childbearing families and children and mental health that is supported by one or more of the following: clinical instruction, lab/simulation, or observation experiences adequate to meet program outcomes.

c. In addition to the requirements identified in paragraph 2.10(3) "a," the curriculum of a program leading to a degree in nursing and to eligibility to apply for registered nurse licensure by examination shall:

- (1) Be consistent with the scope of practice of a registered nurse as outlined in rules 655—6.2(152) and 655—6.7(152).

(2) Focus on attaining, maintaining and regaining health and safety for individuals and groups by utilizing the principles of leadership, management, nursing informatics, and client education.

(3) Provide learning experiences in medical, surgical, mental health and gerontological nursing.

(4) Provide content in nursing of childbearing families and children that is supported by one or more of the following: clinical instruction, lab/simulation, or observation experiences adequate to meet program outcomes.

(5) Provide content in nursing research when the program leads to a baccalaureate, master's or doctoral degree.

(6) Provide learning experiences in community health nursing when the program leads to a baccalaureate, master's or doctoral degree.

2.10(4) Postlicensure programs for registered nurses who do not hold a baccalaureate degree in nursing.

a. The curriculum of a program that leads to a baccalaureate degree in nursing shall include learning experiences in nursing that will enable the student to achieve competencies comparable to outcomes of the prelicensure baccalaureate education, including content in nursing research and learning experiences in community health nursing.

b. The curriculum of a program that leads to a master's degree in nursing shall include content and learning experiences in nursing that will enable the student to achieve competencies comparable to outcomes of the prelicensure baccalaureate education and master's education, including content in nursing research and learning experiences in community health nursing.

2.10(5) Master's, post-master's, and doctoral programs for registered nurses who hold a baccalaureate degree in nursing.

a. The curriculum of a program leading to a master's or doctoral degree in nursing shall include in-depth study of:

(1) Nursing science, which includes content, practicum experiences and research.

(2) Advanced role areas in nursing.

b. The curriculum of a program leading to a master's degree or post-master's certificate in a nursing population focus, eligibility to apply for certification in the population focus by a national professional nursing organization approved by the board, and licensure as an advanced registered nurse practitioner shall:

(1) Be consistent with the scope of practice of the advanced registered nurse practitioner as described in 655—Chapter 7.

(2) Include advanced learning experiences in a specialty area of nursing.

2.10(6) Nursing courses with a clinical or practicum component or both. The nursing program shall notify students and prospective students in writing that nursing courses with a clinical or practicum component may not be taken by a person:

a. Who has been denied licensure by the board.

b. Whose license is currently suspended, surrendered or revoked in any United States jurisdiction.

c. Whose license is currently suspended, surrendered or revoked in another country due to disciplinary action.

2.10(7) Nursing programs with a simulation component shall:

a. Ensure that the simulation component does not exceed 50 percent of total clinical hours in a course.

b. Demonstrate that the simulation activities are linked to program outcomes.

c. Demonstrate that simulation activities are based on evidence-based practices.

d. Have written policies and procedures regarding the method of debriefing each simulated activity and a plan for orienting faculty to simulation.

e. Have short-term and long-term plans for integration and maintenance of simulation in the curriculum.

f. Have faculty educated in the use of simulation and who demonstrate ongoing expertise and competence.

g. Evaluate simulation activities based on faculty and student feedback.
[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.11(152) Faculty.

2.11(1) Program requirements. The program shall provide:

- a. A sufficient number of faculty who satisfy the requirements in subrule 2.11(2).
- b. Written personnel policies and position descriptions.
- c. A faculty development program that furthers the competence of individual faculty members and the faculty as a whole.
- d. A written teaching-load policy.
- e. A nursing faculty organization that operates according to written bylaws and that meets on a regular basis. Minutes shall be available for reference.
- f. In a prelicensure program, a ratio of one faculty member to a maximum of eight students for hands-on learning situations in which students directly care for clients in a relevant setting.

2.11(2) Faculty member requirements. A faculty member who teaches nursing shall meet the following requirements:

a. Current licensure as a registered nurse in Iowa prior to teaching. An individual is currently licensed when licensed in another state and recognized for licensure in Iowa pursuant to the nurse licensure compact contained in Iowa Code chapter 152E.

b. Two years of experience in clinical nursing.

c. Academic qualifications:

(1) A faculty member who was employed on or before July 1, 1992, shall be considered adequately prepared as long as that faculty member remains in that position. A faculty member who was hired to teach in a prelicensure registered nurse program after July 1, 1992, shall have at least a baccalaureate degree with a major in nursing or an applicable field at the time of hire. This person shall make annual progress toward the attainment of a master's or doctoral degree with a major in nursing or an applicable field. At least one degree shall be in nursing.

1. Applicable fields include but are not limited to education, anthropology, gerontology, counseling, psychology, sociology, health education, health administration, and public health. A person who wishes to fulfill this requirement with education in an applicable field not listed may petition the board for a determination of applicability.

2. The date of hire is the first day of employment with compensation at a particular nursing education program.

3. "Annual progress" means a minimum of one course per year taken as part of an organized plan of study. A written plan of study shall be kept in the employee's file.

(2) A faculty member who was hired to teach after July 1, 1992, in a practical nursing program or at the first level of an associate degree nursing program with a ladder concept shall have a baccalaureate or higher degree in nursing or an applicable field at the time of hire.

(3) A registered nurse hired to teach in a master's program shall hold a master's or doctoral degree with a major in nursing at the time of hire. A registered nurse teaching in a population focus shall hold a master's degree with a major in nursing, advanced level certification by a national professional nursing organization approved by the board in the population focus area in which the individual teaches, and current licensure as an advanced registered nurse practitioner according to the laws of the state(s) in which the individual teaches. Faculty preparation at the doctoral or terminal degree level shall be consistent with the mission of the program.

(4) A faculty member hired only to teach in the clinical setting shall be exempt from subparagraphs (1) and (2) if the faculty member is closely supervised to ensure proper integration of didactic content into the clinical setting. If hired after July 1, 1992, a faculty member hired to teach only in the clinical setting shall have a baccalaureate degree in nursing or an applicable field or shall make annual progress toward the attainment of such a degree.

2.11(3) Functions of faculty. Faculty members shall:

- a. Develop, implement, and evaluate the purpose, philosophy/mission, and outcomes of the program.
- b. Design, implement, evaluate, and revise the curriculum as demonstrated in the program evaluation plan.
- c. Provide students with written policies as specified in subrule 2.12(1).
- d. Participate in academic advisement and guidance of students.
- e. Provide for admission, progression, and graduation of students.
- f. Provide for student evaluation, self-evaluation, and peer evaluation of teaching effectiveness.
- g. Participate in activities to ensure competency in area(s) of responsibility.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.12(152) Program responsibilities.

2.12(1) Policies affecting students. Programs shall provide for the development, implementation and communication of the following student policies on an annual basis:

- a. Admission/enrollment. Licensure if applicable according to 655—subrule 3.2(1).
- b. Transfer or readmission.
- c. Withdrawal.
- d. Progression.
- e. Grading system.
- f. Suspension or dismissal.
- g. Graduation.
- h. Health.
- i. Counseling.
- j. Grievance procedure.

2.12(2) Information about the program and controlling institution. The following information shall be published and provided to prospective and current students on an annual basis:

- a. Philosophy/mission and outcomes of the program.
- b. General description of the program.
- c. Curriculum plan.
- d. Course descriptions.
- e. Resources.
- f. Faculty.
- g. Tuition, fees and refund policies.
- h. Ethical practices, including recruitment and advertising.
- i. Official dates.
- j. The program's NCLEX® passing percentage for the prior calendar year, as published by the board of nursing.

2.12(3) Changes to program. A nursing program may not make a change to a program during a student's academic plan of study unless the change confers the benefit to the student.

2.12(4) Program records. The following records shall be dated and maintained according to the policies of the controlling institution:

- a. Course syllabi.
- b. Minutes.
- c. Faculty personnel records.
- d. Catalogs and program bulletins.
- e. Curriculum revisions and reports to the board.
- f. Graduate nursing file excluding the final transcript and summative performance statements.

2.12(5) Student and graduate records.

a. Policies shall specify methods for permanent maintenance and protection of records against loss, destruction and unauthorized use.

b. The final record shall include the official transcript and summative performance statement.

(1) The final official transcript shall include:

1. Legal name of student.
2. Dates of admission, completion of the program and graduation.
3. Courses that were accepted for transfer.
4. Evidence of authenticity.
5. Degree granted.

(2) The final official transcript shall be maintained permanently.

(3) The summative performance statement shall relate the performance of the student at the time of graduation to the program outcomes and shall be maintained for three years.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.13(152) Student criminal history checks.

2.13(1) The program shall initiate criminal history and child and dependent adult abuse record checks of students and prospective students to ensure a student's ability to complete the clinical education component of the program in accordance with Iowa Code sections 152.5A and 135C.33.

2.13(2) The program shall:

a. Notify all students and prospective students of the nursing program's written policy and procedure concerning criminal history and child and dependent adult abuse record checks.

b. Conduct record checks in accordance with Iowa Code sections 152.5A and 135C.33 on all students:

(1) Applying for the nursing program.

(2) Returning to the clinical education component of the nursing program. Time frames between record checks may be determined by the program.

(3) Anytime during the student's enrollment in the nursing program pursuant to the program's policy and procedure.

c. Abide by the results of the evaluation performed by the department of human services when determining a student's ability to complete the clinical education component of a nursing program.

[ARC 3497C, IAB 12/6/17, effective 1/10/18; ARC 5825C, IAB 8/11/21, effective 9/15/21]

655—2.14(152) Clinical facilities.

2.14(1) The clinical facilities shall provide learning experiences that meet curriculum objectives and outcomes.

2.14(2) The program shall provide information to the board about clinical facilities used for learning experiences.

a. The clinical facilities shall be accredited/approved by the appropriate agencies and shall have evidence of good standing by their regulatory body.

b. There shall be evidence that student experiences are coordinated when more than one program uses the same facility.

[ARC 3497C, IAB 12/6/17, effective 1/10/18]

655—2.15(152) Undergraduate and non-ARNP graduate program preceptorship.

2.15(1) A preceptor shall be selected by the nursing program in collaboration with a clinical facility to provide supportive learning experiences consistent with program outcomes.

a. A nursing education program shall not require students to find their own preceptors. The nursing education program and student shall work together to find an appropriate preceptor.

b. The student shall have the preceptorship learning experience with a preceptor who has equivalent licensure as the student or practices in the same role for which the student is preparing.

2.15(2) The qualifications of a preceptor shall be appropriate to support the philosophy, mission, and outcomes of the program.

a. The preceptor shall be employed by or maintain a current written agreement with the clinical facility in which a preceptorship experience occurs.

b. The preceptor shall be currently licensed as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner according to the laws of the state in which the preceptor practices.

c. The preceptor shall function according to written policies for selection, evaluation and reappointment developed by the program. Written qualifications, developed by the program, shall address educational preparation, experience, and clinical competence.

d. The program shall be responsible for informing the preceptor of the responsibilities of the preceptor, faculty and students.

e. The program shall retain ultimate responsibility for student learning and evaluation.

2.15(3) The program shall inform the board about the preceptorship learning experience process.

a. Written preceptorship agreements shall be reviewed annually by the program.

b. The board may conduct a site visit to settings in which preceptorship experiences occur.

c. The rationale for the ratio of students to preceptors shall be documented by the program.

2.15(4) An individual who is not a registered nurse or a licensed practical nurse may serve as a preceptor when appropriate to the philosophy, mission, and outcomes of the program.

[ARC 3497C, IAB 12/6/17, effective 1/10/18; ARC 5286C, IAB 11/18/20, effective 12/23/20]

655—2.16(152) ARNP program preceptorship.

2.16(1) A preceptor shall be selected by the nursing program in collaboration with a clinical facility to provide supportive learning experiences consistent with program outcomes.

a. A nursing education program shall not require students to find their own preceptors. The nursing education program and student shall work together to find an appropriate preceptor.

b. The student shall have the majority of preceptorship learning experiences with a preceptor who is an ARNP or physician with the same role and population focus for which the student is preparing.

2.16(2) The qualifications of a preceptor shall be appropriate to support the philosophy, mission, and outcomes of the program.

a. The preceptor shall be employed by or maintain a current written agreement with the clinical facility in which a preceptorship experience occurs.

b. The preceptor shall be currently licensed as an advanced registered nurse practitioner or physician according to the laws of the state in which the preceptor practices.

c. The preceptor shall function according to written policies for selection, evaluation and reappointment developed by the program. Written qualifications, developed by the program, shall address educational preparation, experience, and clinical competence.

d. The program shall be responsible for informing the preceptor of the responsibilities of the preceptor, faculty and students.

e. The program shall retain ultimate responsibility for student learning and evaluation.

2.16(3) The program shall inform the board about the preceptorship learning experience process.

a. Written preceptorship agreements shall be reviewed annually by the program.

b. The board may conduct a site visit to settings in which preceptorship experiences occur.

c. The rationale for the ratio of students to preceptors shall be documented by the program.

[ARC 5286C, IAB 11/18/20, effective 12/23/20]

655—2.17(152) Results of graduates who take the licensure examination for the first time. The program shall notify the board when the program's NCLEX® passing percentage is lower than 95 percent of the national NCLEX® passing percentage for one calendar year.

2.17(1) A program whose NCLEX® passing percentage is lower than 95 percent of the national NCLEX® passing percentage shall submit an institutional plan using the board's template and appear before the board as directed.

2.17(2) After submission of the institutional plan, for each consecutive calendar year that a program's NCLEX® passing percentage is lower than 95 percent of the national NCLEX® passing percentage, the program shall submit an institutional plan evaluation using the board's template and appear before the board as directed.

2.17(3) Programs with a NCLEX® passing percentage that falls below 95 percent of the national NCLEX® passing percentage for three consecutive calendar years shall be placed on improvement status after the third year.

2.17(4) A program on improvement status shall:

- a. Notify all current and prospective students of the program's improvement status.
- b. Submit quarterly reports using the board's template and present the reports to the board as directed.

2.17(5) Board staff may conduct a site visit to the program at any time while the program is on improvement status.

2.17(6) Programs that remain on improvement status for two consecutive calendar years shall submit a revised institutional plan and appear before the board as directed. The board shall:

- a. Review the revised institutional plan and formulate an action plan for the program on improvement status.
- b. Individualize the action plan for each program.

2.17(7) A program shall be removed from improvement status when the program's NCLEX® passing percentage is above 95 percent of the national NCLEX® passing percentage for one calendar year. [ARC 3497C, IAB 12/6/17, effective 1/10/18; ARC 5286C, IAB 11/18/20, effective 12/23/20]

655—2.18(152) Reports to the board.

2.18(1) *Annual reports.* The head of the program shall submit an annual report that includes:

- a. Progress toward achievement of goals identified by the program for the previous academic year.
- b. Qualifications and major responsibilities of the head of the program and each faculty member.
- c. Policies for admission, enrollment, progression and graduation of students.
- d. Policies for student health and welfare.
- e. Current enrollment by class/cohort.
- f. Number of admissions and graduations per year for the past five years.
- g. Attrition and retention data by class/cohort.
- h. Passing percentages of graduates on the national licensure examinations for the past five years.
- i. Passing percentages of graduates on the advanced registered nurse practitioner certification examinations for the past five years.
- j. Employment data for graduates.
- k. Curriculum plan.
- l. Descriptions of resources, clinical facilities, preceptorship experiences and contractual arrangements.
- m. Audited statement of income and expenditures of the nursing program.
- n. Goals for the current academic year.
- o. Catalog or equivalent of the controlling institution or program.

2.18(2) *Special reports.* The program shall notify the board of the following:

- a. Change of controlling institution. Information shall include official name of the program(s) and controlling institution, organizational chart of the controlling institution, and names of administrative officials.

- b. Changes in administrative personnel in the program or controlling institution.

- c. Opening of a new site or campus.

2.18(3) *Changes requiring board notification and approval.* The program shall submit one electronic copy and one hard copy of a proposed change for board approval at least four weeks prior to the next scheduled board meeting when the outcome will:

- a. Lengthen or shorten the plan of study.
- b. Add or delete academic credit in a course required for graduation.
- c. Delete a course required for graduation.
- d. Add a new course. A program shall submit the following to be implemented within six months of an offering of a course:
 - (1) Course description.
 - (2) Outcomes/objectives.
 - (3) Placement of course.
 - (4) Curriculum plan.
- e. Alter graduation requirements.

- f.* Reduce the human, physical or learning resources provided by the controlling institution to meet program needs as described in rule 655—2.9(152).
- g.* Substantively alter the philosophy/mission of the program.
- h.* Revise the predominant method of instruction or delivery, including transition from on-site to self-study or distance learning.
- i.* Entail delivery of a cooperative program of study with an institution that does not provide a degree in nursing.
- j.* Increase the number of student admissions by 20 percent or more.

2.18(4) If a program makes changes as part of a plan to improve the program's NCLEX® passing percentage, pursuant to rule 655—2.17(152), such changes must also be separately submitted to the board for approval pursuant to this rule.

[ARC 3497C, IAB 12/6/17, effective 1/10/18; ARC 5286C, IAB 11/18/20, effective 12/23/20]

These rules are intended to implement Iowa Code section 152.5 and chapter 152E.

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[Filed ARC 5825C (Notice ARC 5615C, IAB 5/5/21), IAB 8/11/21, effective 9/15/21]

¹ Effective date of Ch 2 delayed 70 days by the Administrative Rules Review Committee at its 4/14/87 meeting. Effective date delayed until the adjournment of the 1988 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its 5/20/87 and 1/6/88 meetings.

CHAPTER 15
WAIVER RULES

655—15.1(17A,147) Definition. For purposes of this chapter, a “waiver” means action by a division board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

[ARC 5482C, IAB 2/24/21, effective 3/31/21; ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.2(17A,147) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by division boards in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.3(17A,147) Applicability of chapter. A division board may only grant a waiver from a rule if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. A division board may not waive requirements created or duties imposed by statute.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.4(17A,147) Criteria for waiver. In response to a petition completed pursuant to rule 655—15.6(147,ExecOrd8,78GA,ch1176), a division board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

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

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

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

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

[ARC 5482C, IAB 2/24/21, effective 3/31/21; ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.5(17A,147) Filing of petition. A petition for a waiver must be submitted in writing to the board, as follows:

15.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

15.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

15.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board’s executive secretary.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.6(17A,147) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

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

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

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

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 655—15.4(147,ExecOrd8,78GA,ch1176). This statement shall include a signed

statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

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

6. Any information known to the requester regarding the board's treatment of similar cases.

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

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

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

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

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.7(17A,147) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive secretary, a committee of the board, or a quorum of the board.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.8(17A,147) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the board attesting that notice has been provided.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.9(17A,147) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.10(17A,147) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

15.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

15.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

15.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

15.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

15.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

15.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

15.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

15.10(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

15.10(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.11(17A,147) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.12(17A,147) Submission of waiver information. Within 60 days of granting or denying a waiver, the board shall submit the following information to the Internet site created pursuant to Iowa Code section 17A.9A(4): the rule(s) for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rule(s), and a general summary of the reasons justifying the board's actions on the waiver request. If practicable, the submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.13(17A,147) Cancellation of a waiver. A waiver issued by a division board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

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

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.14(17A,147) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.15(17A,147) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.
[ARC 5826C, IAB 8/11/21, effective 9/15/21]

655—15.16(17A,147) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.
[ARC 5826C, IAB 8/11/21, effective 9/15/21]

These rules are intended to implement Iowa Code chapters 17A and 147.

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[Filed ARC 5826C (Notice ARC 5616C, IAB 5/5/21), IAB 8/11/21, effective 9/15/21]

CHAPTER 3
PHARMACY TECHNICIANS

[Prior to 9/4/02, see 657—Ch 22]

657—3.1(155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

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

“*Cashier*” means a person whose duties within the pharmacy are limited to accessing finished, packaged prescription orders and processing payments for and delivering such orders to the patient or the patient’s representative.

“*Certified pharmacy technician*” or “*certified technician*” means an individual who holds a valid current national certification and who has registered with the board as a certified pharmacy technician.

“*Delivery*” means the transport and conveyance of a finished, securely packaged prescription order to the patient or the patient’s caregiver.

“*Nationally accredited program*” means a program and examination for the certification of pharmacy technicians that is accredited by the NCCA.

“*NCCA*” means the National Commission for Certifying Agencies.

“*Pharmacy support person*” means a person, other than a licensed pharmacist, a registered pharmacist-intern, or a registered pharmacy technician, who may perform nontechnical duties assigned by the pharmacist under the pharmacist’s responsibility and supervision pursuant to 657—Chapter 5.

“*Pharmacy technician*” or “*technician*” means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, as provided in rule 657—3.21(155A), and includes a certified pharmacy technician and a pharmacy technician trainee.

“*Pharmacy technician certification*” or “*national certification*” means a certificate issued by a national pharmacy technician certification authority accredited by the NCCA attesting that the technician has successfully completed the requirements of the certification program. The term includes evidence of renewal of the national certification.

“*Pharmacy technician trainee*” or “*technician trainee*” means an individual who is in training to become a pharmacy technician and who is in the process of acquiring national certification as a pharmacy technician as provided in rule 657—3.5(155A).

“*Pharmacy technician training*” or “*technician training*” means education or experience acquired for the purpose of qualifying for and preparing for national certification.

“*Supervising pharmacist*” means an Iowa-licensed pharmacist who is on duty in a licensed pharmacy in Iowa and who is responsible for the actions of a pharmacy technician or other supportive personnel. [ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 1785C, IAB 12/10/14, effective 1/14/15; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.2(155A) Purpose of registration. A registration program for pharmacy technicians is established for the purposes of determining the competency of a pharmacy technician or of an applicant for registration as a certified pharmacy technician or pharmacy technician trainee and for the purposes of identification, tracking, and disciplinary action for violations of federal or state pharmacy or drug laws or regulations.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 1785C, IAB 12/10/14, effective 1/14/15]

657—3.3(155A) Registration required. Any person employed in Iowa as a pharmacy technician shall obtain and maintain during such employment a current registration as a certified pharmacy technician or pharmacy technician trainee pursuant to these rules. An individual commencing employment as a pharmacy technician in Iowa who fails to register as a certified pharmacy technician or pharmacy technician trainee as provided by these rules may be subject to disciplinary sanctions. A certified pharmacy technician commencing employment as a certified pharmacy technician in Iowa who fails to register as a certified pharmacy technician or who fails to maintain national certification may be subject to disciplinary sanctions. A pharmacist-intern with a current registration or a pharmacist with a current license is not required to obtain a pharmacy technician registration to work as a pharmacy technician.

3.3(1) Licensed health care provider. Except as provided in this rule, a licensed health care provider whose registration or license is in good standing with and not subject to current disciplinary sanctions or practice restrictions imposed by the licensee's professional licensing board and who assists in the technical functions of the practice of pharmacy shall be required to register as a certified pharmacy technician or pharmacy technician trainee pursuant to these rules.

3.3(2) Registration required. Beginning July 1, 2021, any person not currently registered with the board as a pharmacy technician shall obtain registration prior to commencement of employment in an Iowa pharmacy as a pharmacy technician. Through June 30, 2021, any person not currently registered with the board as a pharmacy technician shall submit a completed application for registration within 30 days of accepting employment in an Iowa pharmacy as a pharmacy technician.

3.3(3) Technician training. A person who is enrolled in a college-based or American Society of Health-System Pharmacists (ASHP)-accredited technician training program shall obtain a pharmacy technician trainee registration prior to beginning on-site practical experience. A person who is employed in a pharmacy and who is receiving pharmacy technician training through work experience shall obtain a pharmacy technician trainee registration prior to the commencement of pharmacy technician training.

3.3(4) Registration number. Each pharmacy technician registered with the board will be assigned a unique registration number.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 9407B, IAB 3/9/11, effective 4/13/11; ARC 1785C, IAB 12/10/14, effective 1/14/15; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.4 Reserved.

657—3.5(155A) Certification of pharmacy technicians. Except as provided in subrule 3.5(1), all pharmacy technicians shall be required to be nationally certified as provided by this rule. National certification acquired through successful completion of any NCCA-accredited pharmacy technician certification program and examination fulfills the requirement for national certification. National certification does not replace the need for licensed pharmacist control over the performance of delegated functions, nor does national certification exempt the pharmacy technician from registration pursuant to these rules. A certified pharmacy technician shall maintain the technician's national certification, in addition to the technician's Iowa registration, during any period of employment in an Iowa pharmacy as a certified pharmacy technician.

3.5(1) Pharmacy technician trainee. A person who is in the process of acquiring national certification as a pharmacy technician shall register with the board as a pharmacy technician trainee. The registration shall be issued for a period of one year and shall not be renewed.

3.5(2) Certified pharmacy technician. All applicants for a new pharmacy technician registration except as provided by subrule 3.5(1), and all applicants for renewal of a pharmacy technician registration, shall provide proof of current national pharmacy technician certification and shall complete the application for certified pharmacy technician registration.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 9407B, IAB 3/9/11, effective 4/13/11; ARC 1785C, IAB 12/10/14, effective 1/14/15]

657—3.6(155A) Extension of deadline for national certification. Rescinded ARC 1785C, IAB 12/10/14, effective 1/14/15.

657—3.7 Reserved.

657—3.8(155A) Application.

3.8(1) An applicant shall submit a completed application along with the appropriate nonrefundable application fee pursuant to rule 657—3.9(155A) or 657—3.10(155A).

3.8(2) The application shall include:

- a. Information sufficient to identify the applicant including, but not limited to, name, address, date of birth, gender, and social security number;
- b. Current place or places of employment;
- c. Criminal or disciplinary action history;

d. If the application is for certified pharmacy technician registration, documentation of current national pharmacy technician certification; and

e. Any other information deemed necessary by the board.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 1785C, IAB 12/10/14, effective 1/14/15; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.9(155A) Registration fee and term—technician trainee.

3.9(1) Fee. The nonrefundable application fee for a pharmacy technician trainee registration shall be \$20. The nonrefundable application fee for a pharmacy technician trainee registration shall be submitted in the form of a personal check, certified check, cashier's check, or money order made payable to the Iowa Board of Pharmacy when submitted with a written application or by acceptable debit or credit card when submitted with an online application.

3.9(2) Term. A pharmacy technician trainee registration shall expire on the last day of the registration month 12 months following the date of registration. A pharmacy technician trainee registration shall not be renewed.

a. National certification completed. When the registered pharmacy technician trainee completes national certification, and no later than the expiration of the pharmacy technician trainee registration, the technician shall submit a completed application and nonrefundable application fee for certified pharmacy technician registration.

b. Expiration of registration. The registration of a pharmacy technician trainee who fails to complete national certification prior to the expiration of the registration shall expire and the technician shall cease practice as a pharmacy technician.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 1785C, IAB 12/10/14, effective 1/14/15; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.10(155A) Registration fee, term, and renewal—certified pharmacy technician.

3.10(1) Fee. The nonrefundable application fee for a certified pharmacy technician registration shall be \$40 per biennium. The nonrefundable application fee for a certified pharmacy technician registration shall be submitted in the form of a personal check, certified check, cashier's check, or money order made payable to the Iowa Board of Pharmacy when submitted with a written application or by acceptable debit or credit card when submitted with an online application.

3.10(2) Term. A certified pharmacy technician registration shall expire on the date that the technician's national certification expires.

3.10(3) Renewal. A certified pharmacy technician registration shall be renewed prior to the expiration of the registration.

a. Delinquent registration grace period. A certified pharmacy technician registration which is not renewed prior to the expiration of the registration shall be considered delinquent. Renewal during the month following the expiration date of the registration shall include the nonrefundable registration fee pursuant to subrule 3.10(1) and a nonrefundable late penalty fee of \$40. A registered certified pharmacy technician who renews during the month following the expiration date of the registration shall not be subject to disciplinary action for continuing to practice as a pharmacy technician during the delinquency of the registration.

b. Registration reactivation beyond grace period. If the registration is not renewed prior to the expiration of the one-month grace period identified in paragraph 3.10(3) "a," the technician shall cease the practice as a pharmacy technician until the registration is reactivated. A certified pharmacy technician without a current registration may apply for registration reactivation by submitting a completed application for reactivation and a nonrefundable reactivation fee of \$160. An individual who continues employment as a pharmacy technician without a current registration, in addition to the pharmacy and the pharmacist in charge that allow the individual to continue practice as a pharmacy technician, may be subject to disciplinary sanctions.

c. Voluntary cancellation. A registered certified pharmacy technician who ceases practice as a pharmacy technician and does not intend to renew the registration prior to its expiration may request that the board cancel the registration. If the certified pharmacy technician later seeks registration as a

certified pharmacy technician, the technician shall not be assessed a late penalty fee or reactivation fee for renewal of the registration.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 0504C, IAB 12/12/12, effective 1/16/13; ARC 1785C, IAB 12/10/14, effective 1/14/15; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.11(155A) Verification fee. The board may require the submission of a nonrefundable fee of \$15 for written verification of a registration.

[ARC 0504C, IAB 12/12/12, effective 1/16/13; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.12(155A) Registration certificates. Rescinded ARC 5542C, IAB 4/7/21, effective 5/12/21.

657—3.13(155A) Notifications to the board. A pharmacy technician shall report to the board within ten days a change of the technician's name, address, or pharmacy employment status.

[ARC 9009B, IAB 8/11/10, effective 7/23/10]

657—3.14 to 3.16 Reserved.

657—3.17(155A) Training and utilization of pharmacy technicians.

3.17(1) Policies and procedures. All licensed pharmacies located in Iowa that utilize pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians appropriate to the practice of pharmacy. Pharmacy policies shall specify the frequency of review.

3.17(2) Documented training. Pharmacy technician training shall be documented and maintained by the pharmacy for the duration of employment.

3.17(3) Vaccine administration training and continuing education. A pharmacy technician who administers a vaccine or immunization under the supervision of a pharmacist shall document successful completion of the requirements in paragraph 3.17(3) "a" or "b" and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 3.17(3) "c."

a. Initial qualification. Except as provided in paragraph 3.17(3) "b," a technician shall have successfully completed an Accreditation Council for Pharmacy Education (ACPE)-accredited program on vaccine administration that is an evidence-based program that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current Centers for Disease Control and Prevention (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) Immunization record management; and
- (9) Identification of adverse events.

b. Previous qualification. A technician who is currently licensed as a registered nurse shall be deemed to have met the training requirement.

c. Continuing education. During any technician registration renewal period, a technician who engages in the administration of vaccines shall complete and document at least one hour of ACPE-approved continuing education with the ACPE topic designator "06" followed by the letter "T" or "P."

d. Certification maintained. During any period within which a technician may engage in the administration of vaccines, the technician shall maintain current certification in basic cardiac life support through a training program designated for health care providers that includes hands-on training.

[ARC 1785C, IAB 12/10/14, effective 1/14/15; ARC 5820C, IAB 8/11/21, effective 7/15/21]

657—3.18(147,155A) Identification of pharmacy technician.

3.18(1) Identification badge. A pharmacy technician shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacy technician and that includes at least the technician's first name.

3.18(2) Misrepresentation prohibited. A pharmacy technician shall not represent himself or herself in any manner as a pharmacist or pharmacist-intern. A pharmacy technician shall not represent himself or herself in any manner as a certified pharmacy technician unless the technician has attained national pharmacy technician certification.

[ARC 9009B, IAB 8/11/10, effective 7/23/10]

657—3.19 Reserved.

657—3.20(155A) Responsibility of supervising pharmacist. The ultimate responsibility for the actions of a pharmacy technician shall remain with the supervising pharmacist. A pharmacy license holder shall not infringe on the authority of a supervising pharmacist to delegate or decline to delegate specific functions to a pharmacy technician based on the supervising pharmacist's professional judgment regarding the knowledge and training of the technician.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.21(155A) Delegation of functions.

Pursuant to established policies and procedures and the supervising pharmacist's professional judgment, a supervising pharmacist may delegate any technical or nontechnical functions in the operation of the pharmacy, except those which are prohibited pursuant to rule 657—3.23(155A), to an appropriately trained and registered pharmacy technician, but only if the pharmacist is on site and available to supervise the pharmacy technician when delegated functions are performed, except as provided in rule 657—6.7(124,155A) or 657—7.6(155A), as appropriate, or as provided for telepharmacy in 657—Chapter 13. Except as provided for an approved technician product verification program pursuant to 657—Chapter 40, the pharmacist shall provide and document 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. A pharmacy technician shall not delegate technical functions to a pharmacy support person.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9783B, IAB 10/5/11, effective 11/9/11; ARC 4189C, IAB 12/19/18, effective 1/23/19; ARC 5007C, IAB 3/25/20, effective 4/29/20; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.22(155A) Technical functions. Rescinded ARC 5542C, IAB 4/7/21, effective 5/12/21.

657—3.23(155A) Functions a pharmacy technician shall not perform.

3.23(1) Prohibited functions for all pharmacy technicians. A pharmacy technician shall not be authorized to perform any of the following functions:

a. Except for a certified pharmacy technician participating in an approved technician product verification program pursuant to 657—Chapter 40, provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order;

b. Conduct prospective drug use review or evaluate a patient's medication record for purposes identified in rule 657—8.21(155A);

c. Provide patient counseling, consultation, or patient-specific drug information, tender an offer of patient counseling on behalf of a pharmacist, or accept a refusal of patient counseling from a patient or patient's agent;

d. Make decisions that require a pharmacist's professional judgment, such as interpreting prescription drug orders or applying information;

e. Transfer a prescription drug order for a controlled substance to another pharmacy or receive the transfer of a prescription drug order for a controlled substance from another pharmacy;

f. Delegate technical functions to a pharmacy support person.

3.23(2) Prohibited functions for technician trainees. In addition to the prohibited functions in subrule 3.23(1), a technician trainee shall not be authorized to perform any of the following functions:

a. Accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or the prescriber's agent.

b. Transfer or receive by transfer by any means the original prescription drug order information or prescription refill information of a prescription for any substance.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 9783B, IAB 10/5/11, effective 11/9/11; ARC 4189C, IAB 12/19/18, effective 1/23/19; ARC 5007C, IAB 3/25/20, effective 4/29/20; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.24(155A) New prescription drug orders or medication orders. Rescinded ARC 5542C, IAB 4/7/21, effective 5/12/21.

657—3.25(155A) Delegation of nontechnical functions. Rescinded IAB 4/7/10, effective 6/1/10.

657—3.26 and 3.27 Reserved.

657—3.28(147,155A) Unethical conduct or practice. Violation by a pharmacy technician of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 657—3.31(155A).

3.28(1) Misrepresentative deeds. A pharmacy technician shall not make any statement tending 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.

3.28(2) Confidentiality. In the absence of express written authorization from the patient or written order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, a person duly authorized by law to receive such information, or as otherwise provided in rule 657—8.16(124,155A), any of the following:

a. A patient's name, address, social security number, or any information that could be used to identify a patient;

b. The contents of any prescription drug order or medication order or the therapeutic effect thereof, or the nature of professional pharmaceutical services rendered to a patient;

c. The nature, extent, or degree of illness suffered by any patient; or

d. Any medical information furnished by the prescriber or the patient.

3.28(3) 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.

3.28(4) Unethical conduct or behavior. A pharmacy technician shall not exhibit unethical behavior in connection with the technician's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal or physical abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.29(155A) Denial of registration. The executive director or designee may deny an application for registration as a certified pharmacy technician or pharmacy technician trainee for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124B, 126, 147, 155A, or 205 or any rule of the board.

An individual whose application for registration as a certified pharmacy technician or pharmacy technician trainee is denied pursuant to this rule may, within 30 days after issuance of the notice of denial, appeal to the board for reconsideration of the application.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 1785C, IAB 12/10/14, effective 1/14/15; ARC 3857C, IAB 6/20/18, effective 7/25/18]

657—3.30(155A) Reporting discipline and criminal convictions. A registered pharmacy technician shall provide to the board written notice of and unredacted documents related to any disciplinary or enforcement action imposed by any licensing agency or regulatory authority on any license or registration held by the registered pharmacy technician 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 registered pharmacy technician shall provide written notice to the board of any criminal conviction that is related to the practice of pharmacy or controlled substances no later than 30 days after the conviction. The term “criminal conviction” includes instances when the judgment of conviction or sentence is deferred.

[ARC 5542C, IAB 4/7/21, effective 5/12/21]

657—3.31(155A) Discipline of pharmacy technicians.

3.31(1) Violations. The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124B, 126, 147, 155A, or 205 or any rule of the board.

3.31(2) Sanctions. The board may impose the following disciplinary sanctions:

- a. Revocation of a certified pharmacy technician or pharmacy technician trainee registration.
- b. Suspension of a certified pharmacy technician or pharmacy technician trainee registration until further order of the board or for a specified period.
- c. Nonrenewal of a certified pharmacy technician registration.
- d. Prohibition, permanently, until further order of the board, or for a specified period, from engaging in specified procedures, methods, or acts.
- e. Probation.
- f. The ordering of a physical or mental examination.
- g. The imposition of civil penalties not to exceed \$25,000.
- h. Issuance of a citation and warning.
- i. Such other sanctions allowed by law as may be appropriate.

[ARC 9009B, IAB 8/11/10, effective 7/23/10; ARC 1785C, IAB 12/10/14, effective 1/14/15; ARC 3857C, IAB 6/20/18, effective 7/25/18; ARC 5542C, IAB 4/7/21, effective 5/12/21]

These rules are intended to implement Iowa Code sections 147.72, 147.80, 147.107, 155A.6A, 155A.23, 155A.33, 155A.34, and 155A.39.

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REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, chapter 1245.

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VOLUNTARY DISCLOSURE PROGRAM

701—3.1(421,422,423) Voluntary disclosure program.

3.1(1) *Scope of the voluntary disclosure program.* Any person who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income or has representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income, as defined in subrule 3.1(3), not previously reported. In addition, activities may also result in tax liabilities that are past due and owing.

3.1(2) *Purpose of the voluntary disclosure program.* The purpose of the voluntary disclosure program is to encourage unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income. The person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department. The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

3.1(3) *Type of taxes eligible.* Only taxes, penalties and interest related to Iowa source income are eligible for settlement under the voluntary disclosure program. For purposes of this rule, "Iowa source income" means the tax base and the tax collection responsibility for the following enumerated taxes: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, local option school district income surtax, state sales tax, state use tax, motor fuel taxes, cigarette and tobacco taxes, local option taxes, state and local hotel and motel taxes, automobile rental excise tax, equipment excise tax, water service excise tax, and the prepaid wireless 911 surcharge.

3.1(4) *Eligibility of the taxpayer.* The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

- a. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities and must have tax due;
- b. The person must not currently be under audit or examination by the department or under criminal investigation by the department;
- c. The person must not have had any prior contact with the department or a representative of the department which could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;
- d. The type and extent of activities resulting in Iowa source income;
- e. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and
- f. Any other factors which are relevant to the particular situation.

3.1(5) *Application to participate in the voluntary disclosure program.*

a. To apply for the voluntary disclosure program, the person or the person's representative must submit a written application to the Nonfiler Unit, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306-0456. To be valid, an application must include the following:

- (1) The types of taxes involved;
- (2) Separate statements evidencing compliance with each of the eligibility requirements set forth in subrule 3.1(4);
- (3) A complete and accurate description of the person's activities resulting in Iowa source income, the source of the Iowa source income or Iowa tax collection responsibilities, the type and dates, if available, of the activities in Iowa, a description of the product or service sold in Iowa, and the number of activity occurrences in Iowa per year or whether the activities in Iowa per year were continuous;
- (4) The reason for noncompliance with Iowa tax law;

(5) An estimation of the amount of unpaid Iowa tax by the tax type and applicable tax period(s); and

(6) Any other matters which are relevant to the particular situation.

b. The department reserves the right to request additional information that the department determines is necessary to determine or approximate the liability due, and to determine the applicant's eligibility, the accuracy of information presented and statements asserted by the applicant, and the terms of the voluntary disclosure agreement.

3.1(6) *Acceptance or rejection of an application for the voluntary disclosure program.* The department has the discretion to determine if an applicant meets all of the requirements for the voluntary disclosure program. The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected. Rejection of an application prior to the execution of an agreement may be based on the applicant's ineligibility; the applicant's noncompliance in submitting information, documents, evidence, or returns within the time period as requested by the department; misrepresentation of a material fact by the applicant or the applicant's representative; or the department's determination that the matter may be best handled by using other means of administration.

3.1(7) *Terms of the voluntary disclosure agreement.*

a. Discretion. The department has the discretion to settle all outstanding Iowa source income tax, penalty and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. The existence of the voluntary disclosure agreement and the terms of the agreement are to be held confidential by all parties to the agreement. Items considered by the department in determining the settlement terms include: the type of tax; the tax periods at issue; the reason for noncompliance; whether the tax is a trust fund tax; the types of activities resulting in the Iowa source income; the frequency of the activities that resulted in the Iowa source income; and any other matters which are relevant to the particular situation.

b. Maximum scope of audit. If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

c. Future filing requirements. All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases which dictate a different result.

d. Audit and assessment rights. The department reserves the right to audit all returns, spreadsheets or other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

3.1(8) *Commencement of the voluntary disclosure agreement.* The voluntary agreement commences on the date of the execution of the voluntary disclosure agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer and the department's authorized personnel. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. However, if a voluntary disclosure agreement is not reached, the department may assess tax, penalty and interest as provided by law at the time the identity of the applicant becomes known to the department.

3.1(9) *Voiding a voluntary disclosure agreement.*

a. Authority. The department also has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person

or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

- (1) The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;
- (2) The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;
- (3) The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;
- (4) The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;
- (5) The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;
- (6) The person, based on a determination by the department, materially understates the person's tax liability; or
- (7) The person has made a material breach of the terms of the voluntary disclosure agreement.

b. Audit rights. Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty and interest for that person's Iowa source income or tax collection responsibilities for all periods within the statute of limitations. The department reserves the right to audit all returns, spreadsheets or other documents submitted by the applicant or a third party and to make an assessment for all tax, penalty and interest owed, if the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void. If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may protest the assessment pursuant to 701—Chapter 7 and raise the issue of the propriety of voiding the voluntary disclosure agreement or rejecting the application. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7, but is considered to be "other agency action" as set forth in Iowa Code section 17A.19(3). See *Purethane Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993).

3.1(10) Partnerships, partners, "S" corporations, shareholders in "S" corporations, trusts, and trust beneficiaries. Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, "S" corporations, a shareholder in an "S" corporation, a trust, or trust beneficiaries, the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility under subrule 3.1(4) for participation in the voluntary disclosure program.

3.1(11) Transfer or assignment. The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

3.1(12) Confidentiality. The terms of each voluntary disclosure contract are determined on a case-by-case basis. Except as may be specifically required by law or preexisting written agreement, the existence of a voluntary disclosure agreement and the terms of the voluntary disclosure agreement are to be held confidential by the parties to the voluntary disclosure agreement, their representatives, transferees, and assignees. Disclosure of the existence of a voluntary disclosure agreement or the terms of such an agreement in a manner contrary to this rule may result in the agreement being declared null and void at the discretion of the nondisclosing party.

This rule is intended to implement Iowa Code section 421.17.

[ARC 0036C, IAB 3/7/12, effective 4/11/12; ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 5841C, IAB 8/11/21, effective 9/15/21]

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CHAPTER 40
DETERMINATION OF NET INCOME
[Prior to 12/17/86, Revenue Department[730]]

701—40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 701—40.2(422) to 701—40.9(422). The remaining provisions of this rule and 701—40.12(422) to 701—40.79(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

701—40.2(422) Interest and dividends from federal securities. For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made by deducting the amount of the dividend or interest. If the inclusion of an amount of income or the amount of a deduction is based upon federal adjusted gross income and federal adjusted gross income includes dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, a recomputation of the amount of income or deduction must be made excluding dividends or interest of this type from the calculations.

A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligations, from state income taxation (see 31 USCS Section 3124(a)).

“Obligations of the United States” are those obligations issued “to secure credit to carry on the necessary functions of government.” *Smith v. Davis* (1944) 323 U.S. 111, 119, 89 L.Ed. 107, 113, 65 S.Ct. 157, 161. The exemption is aimed at protecting the “borrowing” and “supremacy” clauses of the United States Constitution. *Society for Savings v. Bowers* (1955) 349 U.S. 143, 144, 99 L.Ed.2d 950, 955, 75 S.Ct. 607, 608; *Hibernia v. City and County of San Francisco* (1906) 200 U.S. 310, 313, 50 L.Ed. 495, 496, 26 S.Ct. 265, 266.

Tax-exempt credit instruments possess the following characteristics:

1. They are written documents,
2. They bear interest,
3. They are binding promises by the United States to pay specified sums at specified dates, and
4. They have Congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. *Smith v. Davis*, supra.

A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor’s primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USCS Section 3124(1). *Rockford Life Ins. Co. v. Department of Revenue*, 107 S.Ct. 2312 (1987).

The following list contains widely held United States Government obligations, but is not intended to be all-inclusive.

This noninclusive listing indicates the position of the department with respect to the income tax status of the listed securities. It is based on current federal law and the interpretation thereof by the department. Federal law or the department’s interpretation is subject to change. Federal law precludes all states from imposing an income tax on the interest income from direct obligations of the United States Government. Also, preemptive federal law may preclude state taxation of interest income from the securities of federal government-sponsored enterprises and agencies and from the obligations of U.S. territories. Any profit or gain on the sale or exchange of these securities is taxable.

40.2(1) Federal obligations and obligations of federal instrumentalities the interest on which is exempt from Iowa income tax.

a. *United States Government obligations:* United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes
6. Original issue discount (OID) on a United States Treasury obligation
- b. Territorial obligations:*
 1. Guam—Principal and interest from bonds issued by the Government of Guam (48 USCS Section 1423[a]).
 2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 USCS Section 745).
 3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 USCS Section 1403).
 4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 USCS Section 1681(c)).
- c. Federal agency obligations:*
 1. Commodity Credit Corporation—Principal and interest from bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation (15 USCS Section 713a-5).
 2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCS Section 2134).
 3. Farm Credit Banks—Principal and interest from systemwide bonds, notes, debentures, and other obligations issued jointly and severally by Banks of the Federal Farm Credit System (12 USCS Section 2023).
 4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 USCS Section 2079).
 5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 USCS Section 2055).
 6. Federal Land Bank Association—Principal and interest from bonds, notes, debentures, and other obligations issued by the Federal Land Bank Association (12 USCS Section 2098).
 7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCS Section 2278b-10[b]).
 8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 USCS Section 2077).
 9. Federal Deposit Insurance Corporation (FDIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Deposit Insurance Corporation (12 USCS Section 1825).
 10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 USCS Section 2288, 31 USCS Section 3124[a]).
 11. Federal Home Loan Bank—Principal and interest from notes, bonds, debentures, and other such obligations issued by any Federal Home Loan Bank and consolidated Federal Home Loan Bank bonds and debentures (12 USCS Section 1433).
 12. Federal Savings and Loan Insurance Corporation (FSLIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Savings and Loan Insurance Corporation (12 USCS Section 1725[e]).
 13. Federal Financing Corporation—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Financing Corporation (12 USCS Section 2288(b)).
 14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 USCS Sections 1441[e][7] and 1433).
 15. General Services Administration (GSA)—Principal and interest from General Services Administration participation certificates. Considered to be United States Government obligations (31 USCS Section 3124[a]).

16. Housing and Urban Development (HUD).
 - Principal and interest from War Housing Insurance debentures (12 USCS Section 1739[d]).
 - Principal and interest from Rental Housing Insurance debentures (12 USCS Section 1747g[g]).
 - Principal and interest from Armed Services Mortgage Insurance debentures (12 USCS Section 1748b[f]).
 - Principal and interest from National Defense Housing Insurance debentures (12 USCS Section 1750c[d]).
 - Principal and interest from Mutual Mortgage Insurance Fund debentures (12 USCS Section 1710[d]).
17. National Credit Union Administration Central Liquidity Facility—Income from notes, bonds, debentures, and other obligations issued on behalf of the National Credit Union Administration Central Liquidity Facility (12 USCS Section 1795k[b]).
18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 USCS Sections 1441[f][7] and 1433).
19. Student Loan Marketing Association (Sallie Mae)—Principal and interest from obligations issued by the Student Loan Marketing Association. Considered to be United States Government obligations (20 USCS Section 1087-2[1], 31 USCS Section 3124[a]).
20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 USCS Section 831n-4[d]).
21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 USCS Section 2005[d][4]).
22. Treasury Investment Growth Receipts.
23. Certificates on Government Receipts.

40.2(2) Taxable securities. There are a number of securities issued under the authority of an Act of Congress which are subject to the Iowa income tax. These securities may be guaranteed by the United States Treasury or supported by the issuing agency's right to borrow from the Treasury. Some may be backed by the pledge of full faith and credit of the United States Government. However, it has been determined that these securities are not direct obligations of the United States Government to pay a specified sum at a specified date, nor are the principal and interest from these securities specifically exempted from taxation by the respective authorizing Acts. Therefore, income from such securities is subject to the Iowa income tax. Examples of securities which fall into this category are those issued by the following agencies and institutions:

- a. *Federal agency obligations:*
 1. Federal or State Savings and Loan Associations
 2. Export-Import Bank of the United States
 3. Building and Loan Associations
 4. Interest on federal income tax refunds
 5. Postal Savings Account
 6. Farmers Home Administration
 7. Small Business Administration
 8. Federal or State Credit Unions
 9. Mortgage Participation Certificates
 10. Federal National Mortgage Association
 11. Federal Home Loan Mortgage Corporation (Freddie Mac)
 12. Federal Housing Administration
 13. Federal National Mortgage Association (Fannie Mae)
 14. Government National Mortgage Association (Ginnie Mae)
 15. Merchant Marine (Maritime Administration)
 16. Federal Agricultural Mortgage Corporation (Farmer Mac)
- b. *Obligations of international institutions:*
 1. Asian Development Bank
 2. Inter-American Development Bank

3. International Bank for Reconstruction and Development (World Bank)

c. *Other obligations:*

Washington D.C. Metro Area Transit Authority

Interest from repurchase agreements involving federal securities is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For tax years beginning on or after January 1, 1987, interest from Mortgage Backed Certificate Guaranteed by Government National Mortgage Association (“Ginnie Maes”) is subject to Iowa income tax. See *Rockford Life Insurance Company v. Illinois Department of Revenue*, 96 L.Ed.2d 152.

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 1101C, IAB 10/16/13, effective 11/20/13]

701—40.3(422) Interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. Board of regents: Bonds issued under Iowa Code sections 262.41, 262.51, 262.60, 262A.8, and 263A.6.
2. Urban renewal: Bonds issued under Iowa Code section 403.9(2).
3. Municipal housing law - low-income housing: Bonds issued under Iowa Code section 403A.12.
4. Subdistricts of soil conservation districts, revenue bonds: Bonds issued under Iowa Code section 161A.22.
5. Aviation authorities, revenue bonds: Bonds issued under Iowa Code section 330A.16.
6. Rural water districts: Bonds and notes issued under Iowa Code section 357A.15.
7. County health center: Bonds issued under Iowa Code section 331.441(2) “c”(7).
8. Iowa finance authority, water pollution control works and drinking water facilities financing: Bonds issued under Iowa Code section 16.131(5).
9. Iowa finance authority, beginning farmer loan program: Bonds issued under Iowa Code section 16.64.
10. Iowa finance authority, Iowa comprehensive petroleum underground storage tank fund: Bonds issued under Iowa Code section 455G.6(14).
11. Iowa finance authority, 911 program notes and bonds: Bonds issued under Iowa Code section 34A.20(6).
12. Quad Cities interstate metropolitan authority bonds: Bonds issued under Iowa Code section 28A.24.
13. Prison infrastructure revenue bonds: Bonds issued under Iowa Code sections 12.80(3) and 16.177(8).
14. Community college residence halls and dormitories bonds: Bonds issued under Iowa Code section 260C.61.
15. Community college bond program bonds: Bonds issued under Iowa Code section 260C.71(6).
16. Interstate bridges bonds: Bonds issued under Iowa Code section 313A.36.
17. Iowa higher education loan authority: Obligations issued by the authority pursuant to Iowa Code section 261A.27.
18. Vision Iowa program: Bonds issued pursuant to Iowa Code section 12.71(8).
19. School infrastructure program bonds: Bonds issued under Iowa Code section 12.81(8).

20. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under Iowa Code section 12.91(9).

21. Iowa jobs program revenue bonds: Bonds issued under Iowa Code section 12.87(8).

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 4309C, IAB 2/13/19, effective 3/20/19; ARC 5673C, IAB 6/2/21, effective 7/7/21]

701—40.4(422) Certain pensions, annuities and retirement allowances. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.5(422) Military pay.

40.5(1) Rescinded IAB 6/3/98, effective 7/8/98.

40.5(2) For income received for services performed prior to January 1, 1969, and for services performed for tax periods beginning on or after January 1, 1977, but before January 1, 2011. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, Section 101, shall include all income received for such service performed prior to January 1, 1969, and for services performed during tax periods beginning on or after January 1, 1977, but before January 1, 2011. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422). However, the taxability of this active duty military income shall be terminated for any income received for services performed effective the day after either of the two following conditions:

a. When universal compulsory military service is reinstated by the United States Congress. “Compulsory military service” is defined to be the actual act of drafting individuals into the military service and not just the registration of individuals under the Military Selective Service Act (50 App. U.S.C. 453); or

b. When a state of war is declared to exist by the United States Congress.

Federal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general. These members are in the service of the state and not on active duty of the United States. Federal active duty also does not include members of the various military reserve programs. A taxpayer must be on active federal duty to qualify for exemption. National guard and reservists who undergo voluntary training are not on active duty in a federal status. National guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa.

Compensation received from the United States Government by nonresident members of the armed forces who are temporarily present in the state of Iowa pursuant to military orders is exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.5.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

701—40.6(422) Interest and dividend income. This rule applies to interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not included in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the term of income is specifically exempted from state taxation by the laws or constitutions of Iowa or of the United States, it must be added to Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

701—40.7(422) Current year capital gains and losses. In determining short-term or long-term capital gain or loss the provisions of the Internal Revenue Code are to be followed.

This rule is intended to implement Iowa Code section 422.7.

701—40.8(422) Gains and losses on property acquired before January 1, 1934. When property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If, as a result of this provision, a basis is to be used for purposes of Iowa individual income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

701—40.9(422) Work opportunity tax credit and alcohol and cellulosic biofuel fuels credit. Where an individual claims the work opportunity tax credit under Section 51 of the Internal Revenue Code or the alcohol and cellulosic biofuel fuels credit under Section 40 of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The work opportunity tax credit applies to eligible individuals who begin work before January 1, 2012. The adjustment for the alcohol and cellulosic biofuel fuels credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2328.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

701—40.10(422) Exclusion of interest or dividends. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.11(422) Two-earner married couple deduction. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.12(422) Income from partnerships or limited liability companies. Residents engaged in a partnership or limited liability company, even if located or doing business outside the state of Iowa, are taxable upon their distributive share of net income of such partnership or limited liability company, whether distributed or not, and are required to include such distributive share in their return. A nonresident individual who is a member of a partnership or limited liability company doing business in Iowa is taxable on that portion of net income which is applicable to the Iowa business activity whether distributed or not. See 701—Chapter 45.

This rule is intended to implement Iowa Code sections 422.7, 422.8, and 422.15.

701—40.13(422) Subchapter “S” income. Where a corporation elects, under Sections 1371-1379 of the Internal Revenue Code, to distribute the corporation’s income to the shareholders, the corporation’s income, in its entirety, is subject to individual reporting whether or not actually distributed. Both resident and nonresident shareholders shall report their share of the corporation’s net taxable income on their respective Iowa returns. *Isaacson v. Iowa State Tax Commission*, 183 N.W.2d 693, Iowa Supreme Court, February 9, 1971. Residents shall report their distributable share in total while nonresidents shall report only their portion of their distributable share which was earned in Iowa. For tax years beginning on or after January 1, 1996, residents should refer to 701—Chapter 50 to determine if they qualify to compute Iowa taxable income by allocation and apportionment. See 701—Chapter 54 for allocation and apportionment of corporate income.

This rule is intended to implement Iowa Code sections 422.7, 422.8, 422.15, and 422.36.

701—40.14(422) Contract sales. Interest derived as income from a land contract is intangible personal property and is assignable to the recipient’s domicile. Gains received from the sale or assignment of land

contracts are considered to be gains from real property in this state and are assignable to this state. As to nonresidents, see 701—40.16(422).

This rule is intended to implement Iowa Code sections 422.7 and 422.8.

701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes. Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. Where married persons file separately, both must use the optional standard deduction if either elects to use it, or both must claim itemized deductions if either elects to claim itemized deductions. The provisions of Treasury Regulation § 1.63-1 are equally applicable regarding the election to use the standard deduction or itemized deductions for Iowa income tax purposes. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

However, the fact that the taxpayers file separately for Iowa income tax purposes does not mean that the spouses will be subject to limitations that would apply if the taxpayers had filed separate federal returns. Instead, tax provisions that are applicable for taxpayers filing joint federal returns are also applicable to the taxpayers when they file separate Iowa returns unless the tax provisions are superseded by specific provisions in Iowa income tax law.

For example, married taxpayers that file separate federal returns cannot take the child and dependent care credit (in most instances) and cannot take the earned income credit. Taxpayers that file a joint federal return and elect to file separately for Iowa income tax purposes can take the child and dependent care credit and the earned income credit on their Iowa returns assuming they meet the qualifications for claiming these credits on the joint federal return.

The following paragraphs and examples are provided to clarify some issues and provide some guidance for taxpayers who filed a joint federal income tax return and elect to file separate Iowa returns or separately on the combined Iowa return form.

1. Election to expense certain depreciable business assets. When married taxpayers who have filed a joint federal return elect to file separate Iowa returns or separately on the combined Iowa return form, the taxpayers may claim the same deduction for the expensing of depreciable business assets as they were allowed on their joint federal return of up to \$100,000 (for the tax year beginning on or after January 1, 2003, and which is adjusted annually for inflation for subsequent tax years) as authorized under Section 179 of the Internal Revenue Code. In a situation where one spouse is a wage earner and the second spouse has a small business, the second spouse may claim the same deduction for expensing depreciable assets of up to \$100,000 (for the tax year beginning on or after January 1, 2003) that was allowable on the taxpayers' joint federal return. The fact that a spouse elects to file a separate Iowa return or separately on the combined return form after filing a joint federal return does not mean the spouse is limited to the same deduction for expensing of depreciable business assets of up to \$50,000 (for the tax year beginning on or after January 1, 2003) that would have applied if the spouse had filed a separate federal return.

In situations where a married couple has ownership of a business, the deduction for the expensing of depreciable assets which is allowable on the spouses' joint federal return should be allocated between the spouses in the same ratio as incomes and losses from the business are reported by the spouses. Subrule 40.15(4) sets out criteria for allocation of incomes and losses of businesses in which married couples have an ownership interest.

2. Capital losses. Except for the Iowa capital gains deduction for limited amounts of net capital gains from certain types of assets described in rule 701—40.38(422), the federal income tax provision

for reporting capital gains and losses and for the carryover of capital losses in excess of certain amounts are applicable for Iowa individual income tax purposes. When married taxpayers file a joint federal income tax return and elect to file separate Iowa returns or separately on the combined return form, the spouses must allocate capital gains and losses between them on the basis of the ownership of the assets that were sold or exchanged. That is, the spouses must allocate the capital gains and losses between them on the separate Iowa returns as the capital gains and losses would have been allocated if the taxpayers had filed separate federal returns instead of a joint federal return. However, each spouse is not subject to the \$1,500 capital loss limitation on the separate Iowa return which is applicable to a married taxpayer that files a separate federal return. Instead, the spouses are collectively subject to the same \$3,000 capital loss limitation for married taxpayers filing joint federal returns which is authorized under Section 1211(b) of the Internal Revenue Code. In circumstances where both spouses have net capital losses, each of the spouses can claim a capital loss of up to \$1,500 on the separate Iowa return. In a situation where one spouse has a net capital loss of less than \$1,500 and the other spouse has a capital loss greater than \$1,500, the first spouse can claim the entire capital loss, while the second spouse can claim the portion of the net capital loss on the joint federal return that was not claimed by the first spouse. In no case can the net capital losses claimed on separate Iowa returns by married taxpayers exceed the \$3,000 maximum capital loss that is allowed on the joint federal return. In a circumstance where one spouse has a net capital loss and the other spouse has a net capital gain, the amounts of capital gains and losses claimed by the spouses on their separate Iowa returns must conform with the net capital gain amount or net capital loss amount claimed on the joint federal return for the taxpayers. The following examples illustrate how capital gains and losses are to be allocated between spouses filing separate Iowa returns or separately on the combined Iowa return form for married taxpayers who filed joint federal returns.

EXAMPLE 1. A married couple filed a joint federal return which showed a net capital loss of \$3,000. All of the capital loss was attributable to the husband, as the wife had no capital gains or losses. Therefore, when the taxpayers filed separate Iowa returns, the husband's return showed a \$3,000 capital loss and the wife's return showed no capital gains or losses.

EXAMPLE 2. A married couple filed a joint federal return showing a net capital loss of \$3,000, which was the maximum loss they could claim, although they had aggregate capital losses of \$8,000. The husband had a net capital loss of \$6,000 and the wife had a net capital loss of \$2,000. When the taxpayers filed their separate Iowa returns each spouse claimed a net capital loss of \$1,500, since each spouse had a capital loss of up to \$1,500. The husband had a net capital loss carryover of \$4,500 and the wife had a net capital loss carryover of \$500.

EXAMPLE 3. A married couple filed a joint federal return showing a net capital loss of \$2,500. The husband had a net capital gain of \$7,500 and the wife had a net capital loss of \$10,000. The wife claimed a net capital loss of \$10,000 on her separate Iowa return, while the husband reported a net capital gain of \$7,500 on his separate Iowa return.

EXAMPLE 4. A married couple filed a joint federal return showing a net capital loss of \$3,000. The wife had a net capital loss of \$800 and the husband had a net capital loss of \$2,500. The wife claimed a \$800 net capital loss on her separate Iowa return. The husband claimed a net capital loss on his separate Iowa return of \$2,200 which was the portion of the net capital loss claimed on the joint federal return that was not claimed by the wife. The husband had a net capital loss carryover of \$300.

3. Unemployment compensation benefits. When a husband and wife have filed a joint federal return and elect to file separate Iowa returns or separately on the Iowa combined return form, the spouses are to report the same amount of unemployment compensation benefits on their Iowa returns as was reported for federal income tax purposes as provided in Section 85 of the Internal Revenue Code. When unemployment compensation benefits are received in the tax year the benefits are to be reported by the spouse or spouses who received the benefits as a result of employment of the spouse or spouses. Nonresidents of Iowa, including nonresidents covered by the reciprocal agreement with Illinois, are to report unemployment compensation benefits on the Iowa income tax return as Iowa source income to the extent the benefits pertain to the individual's employment in Iowa. In a situation where the unemployment compensation benefits are the result of employment in Iowa and in one or more other states, the unemployment compensation benefits should be allocated to Iowa on the basis of the

individual's Iowa salaries and wages for the employer to the total salaries and wages for the employer. However, to the extent that unemployment compensation benefits pertain to a person's employment in Iowa for a railroad and the benefits are paid by the railroad retirement board, the benefits are totally exempt from Iowa income tax pursuant to 45 U.S.C. Section 352(e).

40.15(1) *Income from property in which only one spouse has an ownership interest but which is not used in business.* If ownership of property not used in a business is in the name of only one spouse and each files a separate state return, income derived from such property may not be divided between husband and wife but must be reported by only that spouse possessing the ownership interest.

40.15(2) *Income from property in which both husband and wife have an ownership interest but which is not used in a business.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report the share of income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other property not used in a business in the same manner as if their federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interest and, in general, may be summarized as follows:

a. Joint tenants. A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint savings account, should each report on separate returns one-half of the income from the savings account held by them in joint tenancy.

b. Tenants in common. Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legally enforceable ownership interests in the property.

40.15(3) *Salary and wages derived from personal or professional services performed in the course of employment.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must report on each spouse's state return the salary and wages which are attributable to services performed pursuant to each individual's employment. The income must be reported on Iowa separate returns in the same manner as if their federal adjusted gross incomes had been determined separately. The manner of reporting wages and salaries by spouses is dependent upon the nature of the employment relationship and is subject to the following rules:

a. Interspousal employment—salary or wages paid by one spouse to the other. Wages or compensation paid for services or labor performed by one spouse with respect to property or business owned by the other spouse may be reported on a separate return if the amount of the payment is reasonable for the services or labor actually performed. It is presumed that the compensation or wages paid by one spouse to the other is not reasonable nor allowable for purposes of reporting the income separately unless a bona fide employer-employee relationship exists. For example, unless actual services are rendered, payments are actually made, working hours and standards are set and adhered to, unemployment compensation and workers' compensation requirements are met, the payments may not be separately reported by the salaried spouse.

b. Wages and salaries received by a husband or wife pursuant to an employment agreement with an employer other than a spouse. Wages or compensation paid for services or labor performed by a husband or wife pursuant to an employment agreement with some other employer is presumed income of only that spouse that is employed and must be reported separately only by that spouse.

40.15(4) *Income from a business in which both husband and wife have an ownership interest.* Income derived from a business the ownership of which is in both spouses' names, as evidenced by record title or by the existence of a bona fide partnership agreement or by other recognized method of establishing legal ownership, may be allocated between spouses and reported on separate individual state income tax returns provided that the interest of each spouse is allocated according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such business. Compliance with the conditions contained in paragraphs "a" or "b" of this subrule and consideration of paragraphs "c," "d," and "e" of this subrule must be made in allocating income from a business in which both husband and wife have an ownership interest.

a. Allocation of partnership income. Allocation of partnership income between spouses is presumed valid only if partnership information returns, as required for income tax purposes, have currently been filed with respect to the federal self-employment tax law. An oral understanding does not constitute a bona fide partnership implied merely from a common ownership of property.

b. Allocation of income derived from a business other than a partnership in which both husband and wife claim an ownership interest. In the case of a business owned by a husband and wife who filed a joint federal income tax return in which one of them claimed all of the income therefrom for federal self-employment tax purposes, it will be presumed for purposes of administering the state income tax law, unless expressly shown to the contrary by the taxpayer, that the spouse who claimed that income for federal self-employment tax purposes did, thereby, with the consent of the other spouse, claim all right to such income and that therefore such income must be included in the state income tax return of the spouse who claimed it for federal self-employment tax purposes if the husband and wife file separate state income tax returns.

c. Capital contribution. In determining the weight to be attributed to the capital contribution of each spouse to a business, consideration may be given only to that invested capital which is legally traceable to each individual spouse. Capital existing under the right, dominion, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions which do not affect real changes of ownership in capital between spouses in that such transactions do not legally disturb the right, dominion, and control of the assignor or the donor over the capital must be disregarded in determining capital contribution of the recipient spouse.

d. Management and control. Participation in the control and management of a business must be distinguished from the regular performance of nonmanagerial services. Contribution of management and control with respect to the business must be of a substantial nature in order to accord it weight in making an allocation of income. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect to at least major business decisions, and it presupposes substantial acquaintance with an interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that are appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as to family discussions at home or elsewhere will not be accepted as a sufficient showing of actual consultation.

e. Services performed. The amount of services performed by each spouse is a factor to be considered in determining proper allocation of income from a business in which each spouse has an ownership interest. In order to accord weight to services performed by an individual spouse, the services must be of a beneficial nature in that they make a direct contribution to the business. For example, for a business operation, whether it is a retail sales enterprise, farming operation or otherwise, in which both husband and wife have an ownership interest, the services contributed by the spouses must be directly connected with the business operation. Services for the family such as planting and maintaining family gardens, domestic housework, cooking family meals, and routine errands and shopping, are not considered to be services performed or rendered as an incident of or a contribution to the particular business; such activities by a spouse must be disregarded in determining the allocable income attributable to that spouse.

This rule is intended to implement Iowa Code section 422.7.
[ARC 8356B, IAB 12/2/09, effective 1/6/10]

701—40.16(422) Income of nonresidents. Except as otherwise provided in this rule all income of nonresidents derived from sources within Iowa is subject to Iowa income tax.

Net income received by a nonresident taxpayer from a business, trade, profession, or occupation in Iowa must be reported.

Income from the sale of property, located in Iowa, including property used in connection with the trade, profession, business or occupation of the nonresident, is taxable to Iowa even though the sale is consummated outside of Iowa, and provided that the property was sold before subsequent use outside of Iowa. Any income from the property prior to its sale is also Iowa taxable income.

Income received from a trust or an estate, where the income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be

considered taxable Iowa income. Annuities, interest on bank deposits and interest-bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

Interest received from the sale of property, on an installment contract even though the gain from the sale of the property is subject to Iowa taxation, is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation. As to residents, see 701—40.14(422).

40.16(1) *Nonresidents exempt from paying tax.* See 701—subrules 39.5(10) and 39.5(11) for the net income exemption amounts for nonresidents.

These provisions for reducing tax in 701—subrule 39.5(10), paragraph “c,” and 701—subrule 39.5(11), paragraph “b,” do not apply to the Iowa minimum tax which must be paid irrespective of the amount of Iowa income that an individual has.

40.16(2) *Compensation for personal services of nonresidents.* The Iowa income of a nonresident must include compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if the services are performed while the taxpayer is outside of Iowa. However, the salary earned while the nonresident employee or officer is located within the state of Iowa would be subject to Iowa taxation. The Iowa taxable income of the nonresident shall include that portion of the total compensation received from the employer for personal services for the tax year which the total number of working days that the individual was employed within the state of Iowa bears to the total number of working days within and without the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not taxable income to the state of Iowa. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to this state.

Compensation received from the United States Government by a nonresident member of the armed forces is explained in 701—40.5(422).

Income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by the nonresident will include that proportion of the compensation received which the volume of business transacted by the employee within the state of Iowa bears to the total volume of business transacted by the employee within and without the state. Allowable deductions will be apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or the employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon separate accounting.

Nonresident actors, singers, performers, entertainers, wrestlers, boxers (and similar performers), must include as Iowa income the gross amount received for performances within this state.

Nonresident attorneys, physicians, engineers, architects (and other similar professions), even though not regularly employed in this state, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director. However, pursuant to federal law, nonresidents who earn compensation in Iowa and one or more other states for a railway company, an airline company, a

merchant marine company, or a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

40.16(3) *Income from business sources within and without the state.* When income is derived from any business, trade, profession, or occupation carried on partly within and partly without the state only such income as is fairly and equitably attributable to that portion of the business, trade, profession, or occupation carried on in this state, or to services rendered within the state shall be included in the gross income of a nonresident taxpayer. In any event, the entire amount of such income both within and without the state is to be shown on the nonresident's return.

40.16(4) *Apportionment of business income from business carried on both within and without the state.*

a. If a nonresident, or a partnership or trust with a nonresident member, transacts business both within and without the state, the net income must be so apportioned as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

b. The amount of net income attributable to the manufacture or sale of tangible personal property shall be that portion which the gross sales made within the state bears to the total gross sales. The gross sales of tangible personal property are in the state if the property is delivered or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale.

c. Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the portion which the recipient of the service receives benefit of the service in this state.

d. If the taxpayer believes that the gross sales or gross receipts methods subjects the taxpayer to taxation on a greater portion of net income than is reasonably attributable to the business within this state the taxpayer may request the use of separate accounting or another alternative method which the taxpayer believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation shall be disclosed in the taxpayer's return.

e. On or after January 1, 2016, see 701—Chapter 242 for allocation and apportionment of net income to Iowa by an out-of-state business or out-of-state employee who enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

40.16(5) *Income from intangible personal property.* Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in this state, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and other like property is income from sources within the state.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within this state except where such income is derived from a business, trade, profession, or occupation carried on within this state by the nonresident. If a nonresident buys or sells stocks, bonds, or other such property, so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

Following are examples to illustrate when intangible income may or may not be subject to the allocation provisions of Iowa Code section 422.8 and rules 701—40.15(422) and 701—42.5(422):

EXAMPLE A - An Illinois resident is a laborer at a factory in Davenport. A \$50 payroll deduction is made each week from the laborer's paycheck to the company's credit union. The Illinois resident will earn \$600 in interest income from the Iowa credit union account in 1983. The interest income would not be included in the net income allocated to Iowa since the interest income is not derived from the taxpayer's business or utilized for business purposes.

EXAMPLE B - A Nebraska resident is a self-employed plumber, who has a plumbing business in Council Bluffs. The plumber has an interest-bearing checking account in an Iowa bank which the plumber uses to pay bills for the plumbing business. The plumber will earn \$200 in interest income from the checking account in 1982. The plumber will have a net income of \$25,000 from the plumbing

business which will be reported on the plumber's 1982 Iowa return. The interest income earned by this nonresident would be taxable to Iowa since it is derived from the business and is utilized in the business.

EXAMPLE C - An Illinois resident has a farm in Illinois. The Illinois resident has an account in an Iowa savings and loan association and invests earnings from the Illinois farm in the Iowa savings and loan account. In 1982, the Illinois farmer will earn \$1,000 in interest income from the account in the Iowa savings and loan. The interest income is not included in the net income allocable to Iowa since the interest income is not derived from the taxpayer's trade or business.

EXAMPLE D - An Illinois resident has Iowa farms. The Illinois resident invests the profits from the farms in a savings account in an Iowa bank. Several times a year, the taxpayer transfers part of the funds from the savings account to the taxpayer's checking account to purchase machinery to be used in the farming operations. The interest income would not be included in income allocated to Iowa since the interest income is not derived from the taxpayer's trade or business nor is the savings account utilized as a business account.

EXAMPLE E - An Illinois resident is a physician, whose practice is in Iowa. The physician has a business checking account in an Iowa bank that is used to pay the bills relating to the physician's practice. In the same bank, the physician has a personal savings account where all the physician's receipts for a given month are deposited. On the first working day of the month, funds are transferred from the savings account to the checking account to pay the bills that have accrued during the month. The interest income from the savings account would be included in net income allocated to Iowa since it is derived from and utilized in the business.

EXAMPLE F - A nonresident has a farm in Iowa which is the nonresident's principal business, although this person is an Illinois resident. The nonresident has an interest-bearing checking account in an Iowa bank. This checking account is used to pay personal expenditures as well as to pay expenses incurred in operation of the farm. In 1982, the taxpayer will earn \$550 in interest from the checking account. The interest would be included in net income allocated to Iowa since the interest is derived from the business, generated from a business account, and utilized in the business.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by the estate or trust as to create a business, trade, profession, or occupation in this state.

Whether or not the executor or administrator of an estate or the trustee of a trust is a resident of this state is immaterial, insofar as the taxation of income of beneficiaries from the estate or trust are concerned.

EXAMPLE G - A nonresident is a partner in a family investment partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make occasional decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and capital gain income reported by the nonresident would not be included in net income allocated to Iowa since it was not derived from a business carried on within the state.

40.16(6) *Distributive shares of nonresident partners.* When a partnership derives income from sources within this state as determined in 40.16(3) to 40.16(5), the nonresident members of the partnership are taxable only upon that portion of their distributive share of the partnership income which is derived from sources within this state.

40.16(7) *Interest and dividends from government securities.* Interest and dividends from federal securities subject to the federal income tax under the Internal Revenue Code are not to be included in determining the Iowa net income of a nonresident, but any interest and dividends from securities and from securities of state and other political subdivisions exempt for federal income tax under the Internal Revenue Code are to be included in the Iowa net income of a nonresident to the extent that same are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

40.16(8) *Gains or losses from sales or exchanges of real property and tangible personal property by a nonresident of Iowa.* If a nonresident realizes any gains or losses from sales or exchanges of real property or tangible personal property within the state of Iowa, such gains or losses are subject to the Iowa income tax and shall be reported to this state by the nonresident. Gains or losses attributable to Iowa will be determined as follows:

1. Gains or losses from sales or exchanges of real property located in this state are allocable to this state.

2. Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale.

In determining whether a short-term or long-term capital gain or a capital loss is involved in a sale or exchange, and determining the amount of a gain from the sale of real or tangible property in Iowa, the provisions of the Internal Revenue Code are to be followed.

40.16(9) *Capital gains or losses from sales or exchanges of ownership interests in Iowa business entities by nonresidents of Iowa.* Nonresidents of Iowa who sell or exchange ownership interests in various Iowa business entities will be subject to Iowa income tax on capital gains and capital losses from those transactions for different entities as described in the following paragraphs:

a. Capital gains from sales or exchanges of stock in C corporations and S corporations. When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, that shareholder is selling or exchanging the stock, which is intangible personal property. The capital gain received by a nonresident of Iowa from the sale or exchange of capital stock of a C corporation or an S corporation is taxable to the state of the personal domicile or residence of the owner of the capital stock unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business status is determined on a factual basis.

For example, a situation in which capital stock owned by a nonresident of Iowa was used as collateral to secure a loan to remodel a retail store in Iowa, regardless of the ownership of the store, would meet the test for the stock being used as an integral part of some business activity in Iowa.

Assuming that the gain from the sale or exchange of stock is attributable to Iowa, the next step is to determine how much of the gain is attributable to Iowa. This is computed on the basis of the Iowa allocation and apportionment rules applicable to the separate business the stock has become an integral part of for the year in which the sale or exchange occurred. For example, if the business was subject to Iowa income tax on 40 percent of its income in the year of the sale or exchange, then 40 percent of the capital gain would be attributable or taxable by Iowa.

However, the fact that the gain from the sale or exchange of stock is taxable or partially taxable to Iowa does not mean that the dividends received by the nonresident in the year of sale are taxable to Iowa. Dividends from stock used in an Iowa specific business activity would not be taxable to Iowa except under special circumstances. An illustration of these special circumstances would be when the dividends are from capital stock from a business where the purchase and sale of stock constitute a regular business in Iowa. In this situation the dividends would be taxable to Iowa. See subrule 40.16(5).

b. Capital gains from sales or exchanges of interests in partnerships. When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to be localized or "sourced" at the situs of the partnership's activities as a matter of law. *Arizona Tractor Co. v. Arizona State Tax Com'n.*, 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain

would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange.

Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a nonresident partner's interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph "a" of this subrule.

c. Capital gains from sales or exchanges of sole proprietorships. When a nonresident sells or exchanges the individual's interest in a sole proprietorship, the nonresident is actually selling or exchanging tangible and intangible personal property used in this business because the sole proprietor is the legal and equitable owner of all such assets. Therefore, the general source or situs rules governing the gain from the sale or exchange of tangible property and intangible property by a nonresident individual control. Thus, if the sole proprietorship is located in Iowa, the gain from the sale or exchange of the proprietorship by a nonresident would be taxable to Iowa.

d. Capital gains from sales or exchanges of interests in limited liability companies. Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph "b" of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph "a" of this subrule.

e. Taxation of corporate liquidations. As a matter of Iowa law, the proceeds from corporate liquidating distributions are not considered to be the proceeds from the sale or exchange of corporate stock. Rather, such proceeds represent the transfer back to the shareholder of that shareholder's pro-rata share of the actual assets of the corporation in which each shareholder held only an equitable ownership interest prior to the dissolution. *Lynch v. State Board of Assessment and Review*, 228 Iowa 1000, 1003-1004, 291 N.W. 161 (1940). The amount of such gain is calculated by subtracting the distribution realized from the shareholder's basis in the stock. *Id.* Thus, any gain realized by the shareholder upon such distribution is considered a capital gain from a sale or exchange of the assets by the shareholder for purposes of sourcing the shareholder's liquidating distribution gain. Consequently, the gain, whether it is from a distribution of cash or other property, is controlled by the general source or situs rules in subrule 40.16(8) governing the taxation of the sale or exchange of tangible personal property by a nonresident and subrule 40.16(10) governing the sale or exchange of intangible personal property by a nonresident.

f. Capital losses realized by a nonresident of Iowa from the sale or exchange of an ownership interest in an Iowa business entity. In a situation where a nonresident of Iowa sells the ownership interest in an Iowa business entity and has a capital loss from the transaction, the nonresident can claim the loss on the Iowa income tax return under the same circumstances that a capital gain would have been reported as described in paragraphs "a" through "e" of this subrule. The federal income tax provisions for netting Iowa source capital gains and losses are applicable as well as the federal provisions for limiting the net capital loss in the tax year to \$3,000, with the carryover of the portion of net capital losses that exceed \$3,000.

40.16(10) Capital gains and losses from sales or exchanges of intangible personal property other than ownership interests in business entities. Capital gains and losses realized by a nonresident of Iowa from the sale or exchange of intangible personal property (other than interests in business entities) are taxable to Iowa if the intangible property was an integral part of some business activity occurring regularly in Iowa prior to the sale or exchange. In the case of an intangible asset which was an integral part of a business activity of a business entity occurring regularly within and without Iowa, a capital

gain or loss from the sale or exchange of the intangible asset by a nonresident of Iowa would be reported to Iowa in the ratio of the Iowa business activity to the total business activity for the year of the sale.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

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701—40.17(422) Income of part-year residents. A taxpayer who was a resident of Iowa for only a portion of the taxable year is subject to the following rules of taxation:

1. For that portion of the taxable year for which the taxpayer was a nonresident, the taxpayer shall allocate to Iowa only the income derived from sources within Iowa.

2. For that portion of the taxable year for which the taxpayer was an Iowa resident, the taxpayer shall allocate to Iowa all income earned or received whether from sources within or without Iowa.

A taxpayer moving into Iowa may adjust the Iowa-source gross income on Schedule IA 126 by the amount of the moving expense to the extent allowed by Section 217 of the Internal Revenue Code. Any reimbursement of moving expense shall be included in Iowa-source gross income. A taxpayer moving from Iowa to another state or country may not adjust the Iowa-source gross income by the amount of moving expense, nor should any reimbursement of moving expense be allocated to Iowa.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

701—40.18(422) Net operating loss carrybacks and carryovers. Net operating losses shall be allowed or allowable for Iowa individual income tax purposes and will be computed using a method similar to the method used to compute losses allowed or allowable for federal income tax purposes. In determining the applicable amount of Iowa loss carrybacks and carryovers, the adjustments to net income set forth in Iowa Code section 422.7 and the deductions from net income set forth in Iowa Code section 422.9 must be considered.

40.18(1) Treatment of federal income taxes.

a. Refund of federal income taxes due to net operating loss carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

(3) Refunds reported in the year in which the net operating loss occurs which contain both business and nonbusiness components shall be analyzed and separated accordingly. The amount of refund attributable to business income shall be that amount of federal taxes paid on business income which are being refunded.

b. Federal income taxes paid in the year of the loss which contain both business and nonbusiness components shall be analyzed and separated accordingly. Federal income taxes paid in the year of the loss shall be reflected as a deduction to business income to the extent that the federal income tax was the result of the taxpayer's trade or business. Federal income taxes paid which are not attributable to a taxpayer's trade or business shall also be allowed as a deduction but will be limited to the amount of gross income which is not derived from a trade or business.

40.18(2) Nonresidents doing business within and without Iowa. If a nonresident does business both within and without Iowa, the nonresident shall make adjustments reflecting the apportionment of the operating loss on the basis of business done within and without the state of Iowa, according to rule 701—40.16(422). The apportioned income or loss shall be added or deducted, as the case may be, to any amount of other income attributable to Iowa for that year.

40.18(3) Loss carryback and carryforward. The net operating loss attributable to Iowa as determined in rule 701—40.18(422) shall be subject to the federal 2-year carryback and 20-year carryover provisions if the net operating loss was for a tax year beginning after August 5, 1997, or subject to the federal 3-year carryback and the 15-year carryforward provisions if the net operating loss was for a tax year beginning prior to August 6, 1997. However, in the case of a casualty or theft loss for an individual taxpayer or for a net operating loss in a presidentially declared disaster area incurred

by a taxpayer engaged in a small business or in the trade or business of farming, the net operating loss is to be carried back 3 taxable years and forward 20 taxable years if the loss is for a tax year beginning after August 5, 1997. The net operating loss or casualty or theft loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the taxable income attributable to Iowa for that year. However, a net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years if the net operating loss is for a tax year beginning after August 5, 1997, or the net operating loss shall be carried forward 15 taxable years if the loss is for a tax year beginning before August 6, 1997. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa individual return filed with the department.

40.18(4) *Loss not applicable.* No part of a net loss for a year for which an individual was not subject to the imposition of Iowa individual income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

40.18(5) *Special adjustments applicable to net operating losses.* Section 172(d) of the Internal Revenue Code provides for certain modifications when computing a net operating loss. These modifications refer to, but are not limited to, such things as considerations of other net operating loss deductions, treatment of capital gains and losses, and the limitation of nonbusiness deductions. Where applicable, the modifications set forth in Section 172 of the Internal Revenue Code shall be considered when computing the net operating loss carryover or carryback for Iowa income tax purposes.

40.18(6) *Distinguishing business or nonbusiness items.* In computing a net operating loss, nonbusiness deductions may be claimed only to the extent of nonbusiness income. Therefore, it is necessary to distinguish between business and nonbusiness income and expenses. For Iowa net operating loss purposes, an item will retain the same business or nonbusiness identity which would be applicable for federal income tax purposes.

40.18(7) *Examples.* The computation of a net operating loss deduction for Iowa income tax purposes is illustrated in the following examples:

a. Individual A had the following items of income for the taxable year:

Gross income from retail sales business	\$125,000
Interest income from federal securities	2,000
Salary from part-time job	12,500

Individual A's federal return showed the following deductions:

Business deductions (retail sales)	\$150,000
Itemized (nonbusiness) deductions:	
Interest	\$400
Real estate tax	600
Iowa income tax	800
	\$ 1,800

Individual A paid \$3,000 federal income tax during the year which consisted of \$2,500 federal withholding (business) and a \$500 payment (nonbusiness) which was for the balance of the prior year's federal tax liability.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail Sales	\$125,000	\$125,000
Interest income-federal securities	2,000	2,000
Salary	12,500	12,500
Subtotal	<u>\$139,500</u>	<u>\$139,500</u>
Deductions:		
Business	\$150,000	\$150,000
Itemized deductions	1,800	1,800
(Loss) per federal	<u>(\$ 12,300)</u>	
Computed net operating loss		<u>(\$ 12,300)</u>

Since the nonbusiness deductions do not exceed the nonbusiness income, the loss per the federal return and the computed net operating loss are the same.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$125,000	\$125,000
Salary	12,500	12,500
Subtotal	<u>\$137,500</u>	<u>\$137,500</u>
Deductions:		
Business	\$150,000	\$150,000
Federal tax deductions	3,000	2,500
Itemized deductions	1,000	-
(Loss) per return	<u>(\$ 16,500)</u>	
Computed Iowa NOL		<u>(\$ 15,000)</u>

NOTE: Itemized (nonbusiness deductions) are eliminated due to the lack of nonbusiness income. The only nonbusiness income, interest from federal securities, is not taxable for Iowa income tax purposes under Iowa Code section 422.7. The only federal tax deduction allowable is that related to business activity.

b. Individual B had the following items of income for the taxable year:

Gross income from restaurant business	\$300,000
Wages	12,000
Business long-term capital gain @100%	1,000
Municipal bond interest (nonbusiness)	1,000
Federal tax refund of prior year taxes	500
Iowa tax refund of prior year taxes	100

Individual B's federal return showed the following deductions:

Business deductions from restaurant	\$333,000
Itemized deductions:	

Interest (nonbusiness)	\$590	
Real estate tax (nonbusiness)	780	
Iowa income tax*	520	
Alimony (nonbusiness)	600	
Union dues (business)	100	2,590
		<hr/>

*Iowa estimated payments totaled \$220 of which \$70 related to nonbusiness income and \$150 related to business capital gains and business profits. \$300 in Iowa tax was withheld from his wages.

Individual B paid \$2,000 in federal income taxes during the tax year. \$1,500 of this amount was withholding on wages and \$500 was a federal estimated payment based on capital gains and projected business profits.

In the previous year 75 percent of B's income was from business sources and 25 percent was from nonbusiness sources.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500(a)	1,000(a)
Iowa refund	100	100
Subtotal	<hr/> \$312,600	<hr/> \$313,100
Deductions:		
Business	\$333,000	\$333,000
Itemized deductions	2,590	575(b)
(Loss) per federal	<hr/> (\$ 22,990)	
Computed net operating loss		<hr/> (\$ 20,475)

(a) Capital gains are reduced by 50 percent in computing adjusted gross income, but must be reported in full in computing a net operating loss.

(b) Itemized deductions are limited to business deductions consisting of \$100 for union dues, \$450 for Iowa tax on business income, and nonbusiness deductions to the extent of nonbusiness income which amounts to \$25. The only nonbusiness income is 25 percent of the \$100 Iowa refund.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500	1,000
Municipal bond interest	1,000	1,000
Federal refund	500	500
Subtotal	<hr/> \$314,000	<hr/> \$314,500

Deductions:		
Business	\$333,000	\$333,000
Federal tax	2,000	2,000
Itemized deductions	<u>2,070(c)</u>	<u>1,225(d)</u>
(Loss) per return	<u>(\$ 23,070)</u>	
Computed Iowa NOL		<u>(\$ 21,725)</u>

(c) Iowa income tax is not an itemized deduction for Iowa income tax purposes.

(d) Itemized deductions are limited to business deductions of \$100 for union dues and nonbusiness deductions to the extent of nonbusiness income of \$1,125. Nonbusiness income includes \$1,000 of municipal bond interest and 25 percent (\$125) of the federal tax refund.

40.18(8) *Net operating losses for nonresidents and part-year residents for tax years beginning on or after January 1, 1982.* For tax years beginning on or after January 1, 1982, nonresidents and part-year residents may carryback/carryforward only those net operating losses from Iowa sources. Nonresidents and part-year residents may not carryback/carryforward net operating losses which are from all sources.

Before the Iowa net operating loss of a nonresident or part-year resident is available for carryback/carryforward to another tax year, the loss must be decreased or increased by a number of possible adjustments depending on which adjustments are applicable to the taxpayer for the year of the loss. Iowa Net Operating Loss (NOL) Worksheet (41-123) may be used to make the adjustments to the net operating loss and compute the net operating loss deduction available for carryback/carryforward.

If the net operating loss was increased by an adjustment for an individual retirement account or H.R.10 retirement plan, the net operating loss should be decreased by the amount of the adjustment. The net operating loss should also be decreased by the amount of any capital loss or by the capital gain deduction to the extent the capital loss or capital gain deduction was from the sale or exchange of an asset from an Iowa source.

In a situation where the nonresident or part-year resident taxpayer received a federal income tax refund in the year of the NOL, the refund should reduce the loss in the ratio of the Iowa source income to the all source income for the tax year in which the refund was generated.

The net operating loss should be increased by any federal income tax paid in the loss year for a prior year in the ratio of the Iowa income for the prior year to the all source income for the prior year. Federal income tax withheld from wages or other compensation received in the loss year may be used to increase the Iowa net operating loss to the extent the tax is withheld from wages or other compensation earned in Iowa.

Federal estimate tax payments would be allocated to Iowa and increase the net operating loss on the basis of the Iowa income not subject to withholding to total income not subject to withholding. In any case where this method of allocation of federal estimate payments to Iowa is not considered to be equitable, the taxpayer may allocate the payments using another method as long as this method is disclosed on the taxpayer's Iowa individual income tax return for the year of the loss. However, the burden of proof is on the taxpayer to show that an alternate method of allocation is equitable.

Nonbusiness deductions included in the itemized deductions paid during the year of the net operating loss may be used to increase the NOL to the extent of nonbusiness income which is reported to Iowa in computation of the net operating loss. In most instances of net operating losses for nonresidents, no itemized deductions will be allowed in computing the net operating loss deduction. This is because most nonresidents will have no nonbusiness income reported to Iowa. Business deductions included in the federal itemized deductions may be used to increase the net operating loss deduction to the extent the deductions pertain to a business, trade, occupation or profession conducted in Iowa.

EXAMPLE A. A nonresident taxpayer had the following all source income and Iowa source income for 1982:

Category	All Source Income	Iowa Source Income
Wages	\$20,000	\$20,000
Interest	5,000	0
Rental income	5,000	5,000
Business loss	(50,000)	(10,000)
Iowa net income (loss)	<u>(\$20,000)</u>	<u>\$15,000</u>

The nonresident taxpayer did not have an Iowa net operating loss available for carryback/carryforward for Iowa income tax purposes because the taxpayer’s Iowa source income was not negative. The taxpayer’s all source loss of (\$20,000) does not qualify for carryback/carryforward on the Iowa return. However, since the taxpayer’s all source income is negative, the taxpayer will not have an Iowa income tax liability for the year of the all source loss.

EXAMPLE B. A nonresident taxpayer received a federal refund of \$1,000 in 1983. The refund was from the taxpayer’s 1981 federal return where the taxpayer’s Iowa income was 20% of the total income. \$2,000 of federal income tax was withheld from the taxpayer’s Iowa wages in 1982. The taxpayer had \$10,000 in itemized deductions in 1982. However, the taxpayer had no Iowa nonbusiness income in 1982. In addition, no Iowa business deductions were included in the itemized deductions available on the federal return. The individual had the following all source income and Iowa source income in 1982:

Category	All Source Income	Iowa Source Income
Wages	\$60,000	\$10,000
Interest	3,000	0
Rental income	5,000	5,000
Farm income loss	(30,000)	(30,000)
Capital gain	2,000	2,000
Total incomes	<u>\$40,000</u>	<u>(\$13,000)</u>

The taxpayer’s Iowa source loss of (\$13,000) was decreased by \$200 of the federal refund since 20% of the refund was considered to be from Iowa income. The loss was decreased by \$3,000 which was the capital gain deduction of the Iowa source asset sold in 1982. The loss was increased by the federal income tax withheld of \$2,000 from Iowa wages. Because there is no Iowa source nonbusiness income nor Iowa source business deductions, the taxpayer’s itemized deductions will not affect the net operating loss deduction.

Shown below is a recap of the net operating loss deduction for the nonresident taxpayer.

Iowa source net loss	(\$13,000)
Iowa portion of federal refund	200
Federal tax withheld on Iowa wages	(2,000)
Capital gain deduction	<u>3,000</u>
Total	<u>(\$11,800)</u>

The taxpayer’s net operating loss deduction available for carryback/carryforward to another tax year is (\$11,800).

After all adjustments are made to the Iowa net operating loss to compute the net operating loss deduction available for carryback/carryforward, the NOL deduction is applied to the carryback/carryforward tax year as described in paragraph “a” and paragraph “b” below:

a. *Application of net operating losses to tax years beginning prior to January 1, 1982.* In cases where a net operating loss deduction for a nonresident or part-year resident for a tax year beginning on

or after January 1, 1982, is applied to a tax year beginning prior to January 1, 1982, the net operating loss deduction is applied to the taxable income for the carryback/carryforward year unless the NOL deduction is greater than the taxable income. If the NOL deduction is greater than the taxable income, the taxable income is increased by any Iowa source capital loss or any Iowa source capital gain deduction before the NOL deduction is applied against the taxable income.

EXAMPLE 1. A nonresident taxpayer has an Iowa net operating loss deduction of (\$15,000) from the taxpayer's 1982 Iowa return. The taxpayer is carrying the NOL deduction back to 1979 where taxpayer's Iowa taxable income was \$14,000. The taxpayer had a net capital loss of \$3,000 in 1979. Because the taxpayer's 1979 taxable income of \$14,000 was \$1,000 less than the NOL deduction, the taxable income was increased by \$1,000 of the net capital loss so there would be no carryover of the NOL to 1980. However, since the NOL deduction erased all the taxable income for 1979, the taxpayer would be granted a refund of all the Iowa income tax paid for the carryback year of 1979, plus applicable interest.

b. Application of net operating losses to tax years beginning on or after January 1, 1982. In situations where a net operating loss of a nonresident or part-year resident for a tax year beginning on or after January 1, 1982, is carried back/carried forward for application to a tax year beginning on or after January 1, 1982, the net operating loss deduction is applied to the Iowa source income of the taxpayer for the carryback/carryforward year. The Iowa source income is the income on line 25 of Section B of Schedule IA-126 for the 1982 and 1983 Iowa returns and line 26 of Section B of Schedule IA-126 for the 1984 Iowa return and the incomes on similar corresponding lines of Section B of Schedule IA-126 for tax years after 1984. In situations where the net operating loss deductions are larger than the Iowa source incomes, the Iowa source incomes are increased by any Iowa source capital gains or capital losses that are applicable, not to exceed the NOL deduction.

The Iowa source net income after reduction by the NOL deduction is divided by the all source income for the taxpayer. The resulting percentage is the adjusted Iowa income percentage. This percentage is subtracted from 100 percent to arrive at the revised nonresident/part-year resident credit for the taxpayer. The taxpayer's overpayment as a result of the net operating loss is the amount by which the revised nonresident/part-year credit exceeds the nonresident/part-year credit prior to application of the net operating loss deduction.

EXAMPLE 1. A nonresident taxpayer had a net operating loss deduction of \$11,800 for the 1996 tax year. When the 1996 Iowa return was filed, the taxpayer elected to carry the loss forward to the 1997 tax year. The taxpayer's all source net income and Iowa source net income for 1997 were as shown below. The net operating loss carryforward from 1996 is deducted only from the Iowa source income for 1997:

Category	All Source Income	Iowa Source Income
Wages	\$ 60,000	\$ 20,000
Interest	3,000	0
Rental income	10,000	3,000
Farm income	25,000	25,000
Capital gain	2,000	2,000
Net operating loss carryforward	—	(11,800)
Iowa net income	\$100,000	\$ 38,200

The Iowa source income of \$38,200 after reduction by the NOL carryforward is divided by the all source income of \$100,000 which results in an Iowa income percentage of 38.2. This percentage is subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage of 61.8. When the tax after credit amount of \$7,364 is multiplied by the nonresident/part-year credit percentage of 61.8, this results in a credit of \$4,551. This credit is \$869 greater than the nonresident/part-year credit of \$3,682 would have been for 1997 without application of the net operating loss deduction which was carried forward from 1996.

40.18(9) Net operating loss carryback for a taxpayer engaged in the business of farming. Notwithstanding the net operating loss carryback periods described in subrule 40.18(3), a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code for a tax year beginning on or after January 1, 1998, this loss from farming is a net operating loss which the taxpayer may carry back five taxable years prior to the year of the loss. Therefore, if a taxpayer has a net operating loss from the trade or business of farming for the 1998 tax year, the net operating loss from farming can be carried back to the taxpayer's 1993 Iowa return and can be applied to the income shown on that return. The farming loss is the lesser of (1) the amount that would be the net operating loss for the tax year if only income and deductions from the farming business were taken into account, or (2) the amount of the taxpayer's net operating loss for the tax year. Thus, if a taxpayer has a \$10,000 loss from a grain farming business and the taxpayer had wages in the tax year of \$7,000, the taxpayer's loss for the year is only \$3,000. Therefore, the taxpayer has a net operating loss from farming of \$3,000 that may be carried back five years.

However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) for the two-year or three-year carryback in lieu of the five-year carryback may be attached to the Iowa return or the amended Iowa return to show why the carryback was two years or three years instead of five years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7 and Iowa Code Supplement section 422.9(3).

701—40.19(422) Casualty losses. Casualty losses may be treated in the same manner as net operating losses and may be carried back three years and forward seven years in the event said casualty losses exceed income in the loss year.

This rule is intended to implement Iowa Code section 422.7.

701—40.20(422) Adjustments to prior years. When Iowa requests for refunds are filed, they shall be allowed only if filed within three years after the tax payment upon which a refund or credit became due, or one year after the tax payment was made, whichever time is the later. Even though a refund may be barred by the statute of limitations, a loss shall be carried back and applied against income on a previous year to determine the correct amount of loss carryforward.

This rule is intended to implement Iowa Code section 422.73.

701—40.21(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. For tax years beginning on or after January 1, 1984, but before January 1, 1989, a taxpayer who operates a business which is considered to be a small business as defined in subrule 40.21(2) is allowed an additional deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa by employees first hired on or after January 1, 1984, or after July 1, 1984, where the taxpayer first qualifies as a small business under the expanded definition of a small business effective July 1, 1984, and meets one of the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 913.40 applies.

For tax years beginning on or after January 1, 1989, the additional deduction for wages paid or accrued for work done in Iowa by certain individuals is 65 percent of the wages paid for the first 12 months of employment of the individuals, not to exceed \$20,000 per individual. Individuals must meet the same criteria to qualify their employers for this deduction for tax years beginning on or after January 1, 1989, as for tax years beginning before January 1, 1989.

For tax years ending after July 1, 1990, a taxpayer who operates a business which does not qualify as a small business specified in subrule 40.21(2) may claim an additional deduction for wages paid or accrued for work done in Iowa by certain convicted felons provided the felons are described in the four numbered paragraphs above and the following unnumbered paragraph and provided the felons are first hired on or after July 1, 1990. The additional deduction is 65 percent not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

The qualifications mentioned in subrules 40.21(1), 40.21(4), 40.21(5) and 40.21(6) and in subrule 40.21(3), paragraphs “f” and “g,” apply to the additional deduction for work done in Iowa by a convicted felon in situations where the taxpayer is not a small business as well as in situations where the taxpayer is a small business.

The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

40.21(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual’s employment as determined by the department of workforce development, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

40.21(2) The term “small business” means a business entity organized for profit including but not limited to an individual proprietorship, partnership, joint venture, association or cooperative. It includes the operation of a farm, but not the practice of a profession. The following conditions apply to a business entity which is a small business for purposes of the additional deduction for wages:

a. The small business shall not have had more than 20 full-time equivalent employee positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which an individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. The small business shall not have more than \$1 million in annual gross revenues, or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. “Annual gross revenues” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. The small business shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. “Dominant in its field of operation” means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues, or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. “Affiliate or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

40.21(3) Definitions.

a. The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

40.21(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

40.21(5) The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

40.21(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa individual income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2247.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0337C, IAB 9/19/12, effective 10/24/12]

701—40.22(422) Disability income exclusion.

40.22(1) Effective for tax years beginning on or after January 1, 1984, a taxpayer who is permanently and totally disabled and has not attained age 65 by the end of the tax year or reached mandatory retirement age can exclude a maximum of \$100 per week of payments received in lieu of wages. In order for the payments to qualify for the exclusion, the payments must be made under a plan providing payment of such amounts to an employee for a period during which the employee is absent from work on account of permanent and total disability.

40.22(2) In the case of a married couple where both spouses meet the qualifications for the disability exclusion, each spouse may exclude \$5,200 of income received on account of disability.

40.22(3) There is a reduction in the exclusion, dollar for dollar, to the extent that a taxpayer’s federal adjusted gross income (determined without this exclusion and without the deduction for the two-earner married couple) exceeds \$15,000. In the case of a married couple, both spouses’ incomes must be considered for purposes of determining if the disability income exclusion is to be reduced for income that exceeds \$15,000. The taxpayers’ disability income exclusion is eliminated when the taxpayers’ federal adjusted gross income is equal to or exceeds \$20,200. The deduction of the taxpayers’ disability income exclusion because the taxpayers’ federal adjusted gross income is greater than \$15,000 is illustrated in the following example:

A married couple is filing their 1984 Iowa return. The husband retired during the year and received \$8,000 in disability income during the 40-week period in 1984 that he was retired. The husband's other income in 1984 was \$2,500 and the wife's income was \$7,500.

Of the \$8,000 in disability payments received by the husband in the 40-week period he was retired in 1984, only \$4,000 is eligible for the exclusion. This is because the maximum amount that can be excluded on a weekly basis as a result of the disability exclusion is \$100.

However, the \$4,000 that qualifies for the exclusion must be reduced to the extent that the taxpayer's federal adjusted gross income exceeds \$15,000. In this example, the taxpayer's federal adjusted gross income is \$18,000, which exceeds \$15,000 by \$3,000. Therefore, the amount eligible for exclusion of \$4,000 must be reduced by \$3,000. This gives the taxpayers an exclusion of \$1,000.

40.22(4) For purposes of the disability income exclusion, "permanent and total disability" means the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which (a) can be expected to last for a continuous period of 12 months or more or (b) can be expected to result in death. A certificate from a qualified physician must be attached to the individual's tax return attesting to the taxpayer's permanent and total disability as of the date the individual claims to have retired on disability. The certificate must include the name and address of the physician and contain an acknowledgment that the certificate will be used by the taxpayer to claim the exclusion. In an instance where an individual has been certified as permanently and totally disabled by the Veterans Administration, Form 6004 may be attached to the return instead of the physician's certificate. Form 6004 must be signed by a physician on the VA disability rating board.

40.22(5) Mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program.

40.22(6) The disability income exclusion is not applicable to federal income tax for tax years beginning after 1983. There are many revenue rulings, court cases and other provisions which were relevant to the disability income exclusion for the tax periods when the exclusion was available on federal returns. These provisions, court cases and revenue rulings concerning the disability income exclusion are equally applicable to the disability income exclusion on Iowa returns for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.7.

701—40.23(422) Social security benefits. For tax years beginning on or after January 1, 1984, but before January 1, 2014, social security benefits received are taxable on the Iowa return. Although Tier 1 railroad retirement benefits were taxed similarly as social security benefits for federal income tax purposes beginning on or after January 1, 1984, these benefits are not subject to Iowa income tax. 45 U.S.C. Section 231m prohibits taxation of railroad retirement benefits by the states.

The following subrules specify how social security benefits are taxed for Iowa individual income tax purposes for tax years beginning on or after January 1, 1984, but prior to January 1, 1994; for tax years beginning on or after January 1, 1994, but prior to January 1, 2007; and for tax years beginning on or after January 1, 2007, but prior to January 1, 2014:

40.23(1) *Taxation of social security benefits for tax years beginning on or after January 1, 1984, but prior to January 1, 1994.* For tax years beginning on or after January 1, 1984, but prior to January 1, 1994, social security benefits are taxable on the Iowa return to the same extent as the benefits are taxable for federal income tax purposes. When both spouses of a married couple receive social security benefits and file a joint federal income tax return but separate returns or separately on the combined return form, the taxable portion of the benefits must be allocated between the spouses. The following formula should be used to compute the amount of social security benefits to be reported by each spouse on the Iowa return:

$$\text{Taxable Social Security Benefits on the Federal Return} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The example shown below illustrates how taxable social security benefits are allocated between spouses:

A married couple filed a joint federal income tax return for 1984. They filed separately on the combined return form for Iowa income tax purposes. During the tax year the husband received \$6,000 in social security benefits and the wife received \$3,000 in social security benefits. \$2,000 of the social security benefits was taxable on the federal return.

The \$2,000 in taxable social security benefits is allocated to the spouses on the following basis:

$$\begin{array}{r} \text{Husband} \\ \hline \$2,000 \times \frac{\$6,000}{\$9,000} = \$1,333.40 \end{array} \qquad \begin{array}{r} \text{Wife} \\ \hline \$2,000 \times \frac{\$3,000}{\$9,000} = \$666.60 \end{array}$$

In situations where taxpayers have received both social security benefits and Tier 1 railroad retirement benefits and are taxable on a portion of those benefits, the formula which follows should be used to determine the social security benefits to be included in net income:

$$\begin{array}{r} \text{Taxable Social Security Benefits} \\ \text{and Railroad Retirement} \\ \text{Benefits on Federal Return} \end{array} \times \frac{\begin{array}{r} \text{Total Social Security Benefit} \\ \text{Received} \end{array}}{\begin{array}{r} \text{Total Social Security Benefits and} \\ \text{Railroad Retirement Benefits} \\ \text{Received} \end{array}}$$

40.23(2) *Taxation of social security benefits for tax years beginning on or after January 1, 1994, but prior to January 1, 2007.* For tax years beginning on or after January 1, 1994, but prior to January 1, 2007, although up to 85 percent of social security benefits received may be taxable for federal income tax purposes, no more than 50 percent of social security benefits will be taxable for state individual income tax purposes. Thus, in the case of Iowa income tax returns for 1994 through 2006, social security benefits will be taxed as the benefits were taxed from 1984 through 1993 as described in subrule 40.23(1).

The amount of social security benefits that is subject to tax is the lesser of one-half of the annual benefits received in the tax year or one-half of the taxpayer's provisional income over a specified base amount. The provisional income is the taxpayer's modified adjusted gross income plus one-half of the social security benefits and one-half of the railroad retirement benefits received. Although railroad benefits are not taxable, one-half of the railroad retirement benefits received may be used to determine the amount of social security benefits that is taxable for state income tax purposes. Modified adjusted gross income is the taxpayer's federal adjusted gross income, plus interest that is tax-exempt on the federal return, plus any of the following incomes:

1. Savings bond proceeds used to pay expenses of higher education excluded from income under Section 135 of the Internal Revenue Code.
2. Foreign source income excluded from income under Section 911 of the Internal Revenue Code.
3. Income from Guam, American Samoa, and the Northern Mariana Islands excluded under section 931 of the Internal Revenue Code.
4. Income from Puerto Rico excluded under Section 933 of the Internal Revenue Code.

A taxpayer's base amount is: (a) \$32,000 if married and a joint federal return was filed, (b) \$0 if married and separate federal returns were filed by the spouses and (c) \$25,000 for individuals who filed federal returns and used a filing status other than noted in (a) and (b).

The IA 1040 booklet and instructions for 1994 through 2006 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows. Similar worksheets will be used for computing the amount of social security benefits that is taxable for years 1995 through 2006. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of all of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. _____
2. Divide line 1 amount above by 2. 2. _____
- *3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. _____
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. _____
5. Add lines 2, 3 and 4. 5. _____
6. Enter total adjustment to income from Form 1040. 6. _____
7. Subtract line 6 from line 5. 7. _____
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse any time in 1994). 8. _____
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. _____
10. Divide line 9 amount above by 2. 10. _____
11. Taxable social security benefits enter smaller of line 2 or line 10 here and on line 14 IA 1040. 11. _____

*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

40.23(3) *Taxation of social security benefits for tax years beginning on or after January 1, 2007, but prior to January 1, 2014.* For tax years beginning on or after January 1, 2007, but prior to January 1, 2014, the amount of social security benefits subject to Iowa income tax will be computed as described in subrule 40.23(2), but will be further reduced by the following percentages:

Calendar years 2007 and 2008	32%
Calendar year 2009	43%
Calendar year 2010	55%
Calendar year 2011	67%
Calendar year 2012	77%
Calendar year 2013	89%

The Iowa individual income tax booklet and instructions for 2007 through 2013 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. _____
2. Divide line 1 amount above by 2. 2. _____
- *3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. _____
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. _____
5. Add lines 2, 3 and 4. 5. _____
6. Enter total adjustment to income from Form 1040. 6. _____
7. Subtract line 6 from line 5. 7. _____
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse anytime during the year). 8. _____
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. _____
10. Divide line 9 amount above by 2. 10. _____
11. Taxable social security benefits before phase-out exclusion. Enter smaller of line 2 or line 10. 11. _____
12. Multiply line 11 by applicable exclusion percentage. 12. _____
13. Taxable social security benefits. Subtract line 12 from line 11. 13. _____

*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education and employer-provided adoption benefits.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Spouse 1 (or Spouse 2)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The amount on line 12 of this worksheet is the phase-out exclusion of social security benefits which must be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and 701—39.5(422), and this amount must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

40.23(4) *Taxation of social security benefits for tax years beginning on or after January 1, 2014.* For tax years beginning on or after January 1, 2014, no social security benefits are taxable on the Iowa return. However, the 100 percent phase-out exclusion of social security benefits must still be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and

701—39.5(422), and the 100 percent phase-out exclusion of social security benefits must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2408.

701—40.24(99E) Lottery prizes. Prizes awarded under the Iowa Lottery Act are Iowa earned income. Therefore, individuals who win lottery prizes are subject to Iowa income tax in the aggregate amount of prizes received in the tax year, even if the individuals were not residents of Iowa at the time they received the prizes.

This rule is intended to implement Iowa Code section 99E.19.

701—40.25(422) Certain unemployment benefits received in 1979. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.26(422) Contributions to the judicial retirement system. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.27(422) Incomes from distressed sales of qualifying taxpayers. For tax years beginning on or after January 1, 1986, taxpayers with gains from sales, exchanges, or transfers of property must exclude those gains from net income, if the gains are considered to be distressed sale transactions.

40.27(1) Qualifications that must be met for transactions to be considered distressed sales. There are a number of qualifications that must be met before a transaction can be considered to be a distressed sale. The transaction must involve forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure. The following three additional qualifications need to have been met.

a. The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

b. Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt-to-asset ratio exceeded 90 percent as computed under generally accepted accounting principles.

c. The taxpayer's net worth at the end of the tax year was less than \$75,000.

In determining the taxpayer's debt-to-asset ratio immediately before the forfeiture, transfer, or sale or exchange and at the end of the tax year, the taxpayer must include any asset transferred within 120 days prior to the transaction or within 120 days prior to the end of the tax year without adequate and full consideration in money or money's worth.

Proof of forfeiture of the installment real estate contract, proof of transfer of property to a creditor in cancellation of a debt, or a copy of the notice of foreclosure constitutes documentation of the distressed sale and must be made a part of the return. Balance sheets showing the taxpayer's debt-to-asset ratio immediately before the distressed sale transaction and the taxpayer's net worth at the end of the tax year must also be included with the income tax return. The balance sheets supporting the debt-to-asset ratio and the net worth must list the taxpayer's personal assets and liabilities as well as the assets and liabilities of the taxpayer's farm or other business.

For purposes of this provision, in the case of married taxpayers, except in the instance when the husband and wife live apart at all times during the tax year, the assets and liabilities of both spouses must be considered in determining the taxpayers' net worth or the taxpayers' debt-to-asset ratio.

40.27(2) Losses from distressed sale transactions of qualifying taxpayers. Losses from distressed sale transactions meeting the qualifications described above were disallowed prior to the time that the provision for disallowing these losses was repealed in the 1990 session of the General Assembly. Taxpayers whose Iowa income tax liabilities were increased because of disallowance of losses from distressed sales transactions may file refund claims with the department to get refunds of the taxes paid due to disallowance of the losses. Refund claims will be honored by the department to the extent that

the taxpayers provide verification of the distressed sale losses and the claims are filed within the statute of limitations for refund given in Iowa Code subsection 422.73(2).

This rule is intended to implement Iowa Code section 422.7.

701—40.28(422) Losses from passive farming activities. Rescinded IAB 2/18/04, effective 3/24/04.

701—40.29(422) Intangible drilling costs. For tax years beginning on or after January 1, 1986, but before January 1, 1987, intangible drilling and development costs which pertain to any well for the production of oil, gas, or geothermal energy, and which are incurred after the commencement of the installation of the production casing for the well, are not allowed as an expense in the tax year when the costs were paid or incurred and must be added to net income. Instead of expensing the intangible drilling and development costs which are incurred after the commencement of the installation of the production casing for a well, the expenses must be amortized over a 26-month period, beginning in the month in which the costs are paid or incurred if the costs were incurred for a well which is located in the United States, the District of Columbia, and those continental shelf areas which are adjacent to United States territorial waters and over which the United States has exclusive rights with respect to the exploration and exploitation of natural resources as provided in Section 638 of the Internal Revenue Code.

In the case of intangible drilling and development costs which are incurred for oil or gas wells outside the United States, those costs must be recovered over a ten-year straight-line amortization period beginning in the year the costs are paid or incurred. However, in lieu of amortization of the costs, the taxpayer may elect to add these costs to the basis of the property for cost depletion purposes.

For tax years beginning on or after January 1, 1987, the intangible drilling costs, which are an addition to income subject to amortization, are the intangible drilling costs described in Section 57(a)(2) of the Internal Revenue Code. These intangible drilling costs are an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

701—40.30(422) Percentage depletion. For tax years beginning on or after January 1, 1987, the percentage depletion that is an addition to net income is the depletion described in Section 57(a)(1) of the Internal Revenue Code only to the extent the depletion applies to an oil, gas, or geothermal well. This depletion is an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

701—40.31(422) Away-from-home expenses of state legislators. For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim deductions for meals and lodging per “legislative day” in the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized for state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of \$50 per “legislative day.” However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the “legislative days” of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

701—40.32(422) Interest and dividends from regulated investment companies which are exempt from federal income tax. For tax years beginning on or after January 1, 1987, interest and dividends from regulated investment companies which are exempt from federal income tax under the Internal Revenue Code are subject to Iowa income tax. See rule 701—40.52(422) for a discussion of the Iowa income tax exemption of some interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax. To the extent that a loss on the sale or exchange of stock in a regulated investment company was disallowed on an individual's federal income tax return pursuant to Section 852(b)(4)(B) of the Internal Revenue Code because the taxpayer held the stock six months or less and because the regulated investment company had invested in federal tax-exempt securities, the loss is allowed for purposes of computation of net income.

This rule is intended to implement Iowa Code section 422.7.

701—40.33(422) Partial exclusion of pensions and annuities for retired and disabled public employees. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.34(422) Exemption of restitution payments for persons of Japanese ancestry. For tax years beginning on or after January 1, 1988, restitution payments authorized by P.L. 100-383 to individuals of Japanese ancestry who were interned during World War II are exempt from Iowa income tax to the extent the payments are included in federal adjusted gross income. P.L. 100-383 provides for a payment of \$20,000 for each qualifying individual who was alive on August 10, 1988. In cases where the qualifying individuals have died prior to the time that the restitution payments were received, the restitution payments received by the survivors of the interned individuals are also exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.7.

701—40.35(422) Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans. For tax years beginning on or after January 1, 1989, proceeds from settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide received by a disabled veteran or the beneficiary of a disabled veteran for damages from exposure to the herbicide are exempt from Iowa income tax to the extent the proceeds are included in federal adjusted gross income. For purposes of this rule, Vietnam herbicide means a herbicide, defoliant, or other causative agent containing a dioxin, including, but not limited to, Agent Orange used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975.

This rule is intended to implement Iowa Code section 422.7.

701—40.36(422) Exemption of interest earned on bonds issued to finance beginning farmer loan program. Interest earned on or after July 1, 1989, from bonds or notes issued by the agricultural development authority to finance the beginning farmer loan program is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 175.17 and 422.7.

701—40.37(422) Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board. Interest received from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board is exempt from state individual income tax. This is effective for interest received from these bonds on or after May 5, 1989, but before July 1, 2009.

This rule is intended to implement Iowa Code section 455G.6.

701—40.38(422) Capital gain deduction or exclusion for certain types of net capital gains. For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(2) to 40.38(8) are excluded in the computation of net income for qualified individual taxpayers. This includes net capital gains from the sales of real property, sales of assets of a

business entity, sales of certain livestock of a business, sales of timber, liquidation of assets of certain corporations, and certain stock sales which are treated as acquisition of assets of a corporation. “Net capital gains” means capital gains net of capital losses because Iowa’s starting point for computing net income is federal adjusted gross income. A business includes any activity engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. Subrule 40.38(1) describes the criteria for material participation which are required for the exclusion of certain capital gains related to the sale of real property and the sale of assets of business entities. Subrule 40.38(9) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

40.38(1) *Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged.* If the taxpayer has regular, continuous and substantial involvement in the operations of a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the federal tax regulations for material participation in 26 CFR §1.469-5 and §1.469-5T, for the ten years prior to the date of the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether a particular taxpayer has material participation in a business, participation of the taxpayer’s spouse in a business must also be taken into account. The spouse’s participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer or if the spouse has no ownership interest in the business. The activities of other family members, employees, or consultants are not attributed to the taxpayer to determine material participation.

a. Work done in connection with an activity shall not be treated as participation in the activity if such work is not of a type that is customarily done by an owner and one of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.

b. Work done in an activity by an individual in the individual’s capacity as an investor is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business. Investor-type activities include the study and review of financial statements or reports on operations of the activity, preparing or compiling summaries or analyses of finances or operations of the activity for the individual’s own use, and monitoring the finances or operations of the activity in a nonmanagerial capacity.

c. A taxpayer is most likely to have material participation in a business if that business is the taxpayer’s principal business. However, for purposes of this subrule, it is possible for a taxpayer to have had material participation in more than one business in a tax year.

d. A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are conducted. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business. The fact that the taxpayer utilizes employees or contracts for services to perform daily functions in a business will not prevent the taxpayer from qualifying as materially participating in the business, but the services will not be attributed to the taxpayer.

e. Generally, an individual will be considered as materially participating in a tax year if the taxpayer satisfies or meets any of the following tests:

(1) The individual participates in the business for more than 500 hours in the taxable year.

EXAMPLE. Joe and Sam Smith are brothers who formed a computer software business in 2001 in Altoona, Iowa. In 2011, Joe spent approximately 550 hours selling software for the business and Sam spent about 600 hours developing new software programs for the business. Both Joe and Sam would be considered to have materially participated in the computer software business in 2011.

(2) The individual’s participation in the business constitutes substantially all of the participation of all individuals in the business for the tax year.

EXAMPLE. Roger McKee is a teacher in a small town in southwest Iowa. He owns a truck with a snowplow blade. He contracts with some of his neighbors to plow driveways. He maintains and drives

the truck. In the winter of 2011, there was little snow so Mr. McKee spent only 20 hours in 2011 clearing driveways. Roger McKee is deemed to have materially participated in the snowplowing business in 2011.

(3) The individual participates in the business for more than 100 hours in the tax year, and no other individual spends more time in the business activity than the taxpayer.

(4) The individual participates in two or more businesses, excluding rental businesses, in the tax year and participates for more than 500 hours in all of the businesses and more than 100 hours in each of the businesses, and the participation is not material participation within the meaning of one of the tests in subparagraphs 40.38(1)“e”(1) to (3) and (5) to (7). Thus, the taxpayer is regarded as materially participating in each of the businesses.

EXAMPLE. Frank Evans is a full-time CPA. He owns a restaurant and a record store. In 2011, Mr. Evans spent 400 hours working at the restaurant and 150 hours at the record store and other individuals spent more time in the business activity than he did. Mr. Evans is treated as a material participant in each of the businesses in 2011.

(5) An individual who has materially participated (determined with regard to subparagraphs 40.38(1)“e”(1) to (4)) in a business for five of the past ten years will be deemed a material participant in the current year.

EXAMPLE. Joe Bernard is the co-owner of a plumbing business. He retired in 2008 after 35 years in the business. Since Joe’s retirement, he has retained his interest in the business. Joe is considered to be materially participating in the business for the years through 2013 or for the five years after the year of retirement. Thus, if the plumbing business is sold before the end of 2013, the sale will qualify for the Iowa capital gain deduction on Joe’s 2013 Iowa return because he was considered to be a material participant in the business according to the federal rules for material participation.

(6) An individual who has materially participated in a personal service activity for at least three years will be treated as a material participant for life. A personal service activity involves the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting or any other trade or business in which capital is not a material income-producing factor.

EXAMPLE. Gerald Williams is a retired attorney, but he retains an interest in the law firm he was involved in for over 40 years. Because the law firm is a personal service activity, Mr. Williams is considered to be a material participant in the law firm even after his retirement from the firm.

(7) An individual who participates in the business activity for more than 100 hours may be treated as materially participating in the activity if, based on all the facts and circumstances, the individual participates on a regular, continuous, and substantial basis. Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following applies: any person other than the taxpayer is compensated for management services, or any person provides more hours of management services than the taxpayer.

f. The following paragraphs provide clarification regarding material participation:

(1) A retired or disabled farmer is treated as materially participating in a farming activity for the current year if the farmer materially participated in the activity for five of the last eight years before the farmer’s retirement or disability. That is, the farmer must have been subject to self-employment tax in five of the eight years before retirement or disability and had to have been either actively farming so the income was reported on Schedule F or materially participating in a crop-share activity for five of the last eight years prior to retirement or disability. The farmer must be receiving old-age benefits under Title II of the Social Security Act to be considered a retired farmer.

EXAMPLE. Fred Smith was 80 years old in 2011 when he sold 200 acres of farmland he had owned since 1951. Mr. Smith retired in 2001 when he began receiving old-age benefits under Title II of the Social Security Act. In the last eight years before retirement, Mr. Smith was paying self-employment tax on his farm income which was reported on Schedule F for each of those eight years. In the years before he sold the farmland, Mr. Smith was leasing the farmland on a cash-rent basis, whereby Mr. Smith would not be considered to be materially participating in the farming activity. Because Mr. Smith had material participation in the farmland in the eight years before retirement, Mr. Smith was considered to

have met the material participation requirement, so the capital gain qualified for the Iowa capital gain deduction.

(2) A surviving spouse of a farmer is treated as materially participating in the farming activity for the current tax year if the farmer met the material participation requirements at the time of death and the spouse actively participates in the farming business activity. That is, the spouse participates in the making of management decisions relating to the farming activity or arranges for others to provide services (such as repairs, plowing, and planting). However, if the surviving spouse was retired at the time of the farmer's death and the deceased spouse materially participated in the farming activity for five of the last eight years prior to the deceased spouse's retirement, then the surviving spouse is deemed to be materially participating, even if the surviving spouse did not actively participate in the farming activity. See IRS Technical Service Memorandum 200911009, March 13, 2009.

(3) Limited partners of a limited partnership. The limited partners will not be treated as materially participating in any activity of a limited partnership except in a situation where the limited partner would be treated as materially participating under the material participation tests in subparagraphs 40.38(1) "e"(1), (5) and (6) above as if the taxpayer were not a limited partner for the tax year.

(4) Cash farm lease. A farmer who rents farmland on a cash basis will not generally be considered to be materially participating in the farming activity. The burden is on the landlord to show there was material participation in the cash-rent farm activity.

(5) Farm landlord involved in crop-share arrangement. A farm landlord is subject to self-employment tax on net income from a crop-share arrangement with a tenant. The landlord is considered to be materially participating with the tenant in the crop-share activity if the landlord meets one of the four following tests:

TEST 1. The landlord does any three of the following: (1) Pays or is obligated to pay for at least half the direct costs of producing the crop; (2) Furnishes at least half the tools, equipment, and livestock used in producing the crop; (3) Consults with the tenant; and (4) Inspects the production activities periodically.

TEST 2. The landlord regularly and frequently makes, or takes part in making, management decisions substantially contributing to or affecting the success of the enterprise.

TEST 3. The landlord worked 100 hours or more spread over a period of five weeks or more in activities connected with crop production.

TEST 4. The landlord has done tasks or performed duties which, considered in their total effect, show that the landlord was materially and significantly involved in the production of the farm commodities.

(6) Conservation reserve payments (CRP). Farmers entering into long-term contracts providing for less intensive use of highly erodible or other specified cropland can receive compensation for conversion of such land in the form of an "annualized rental payment." Although the CRP payments are referred to as "rental payments," the payments are considered to be receipts from farm operations and not rental payments from real estate.

If an individual is receiving CRP payments and is not considered to be retired from farming, the CRP payments are subject to self-employment tax. If individuals actively manage farmland placed in the CRP program by directly participating in seeding, mowing, and planting the farmland or by overseeing these activities and the individual is paying self-employment tax, the owner will be considered to have had material participation in the farming activity.

(7) Rental activities or businesses. For purposes of subrules 40.38(1) and 40.38(2), the general rule is that a taxpayer may have material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in subparagraphs 40.38(1) "f"(4), (5) and (6)). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code. Rental activity or rental business does not typically involve day-to-day involvement since gross income from this activity represents amounts paid mainly for the use of the property. Examples of qualifying involvement in operations of the property that are considered material participation activities if performed on a regular, continuous and substantial basis include advertising, interviewing potential tenants, preparing leases, collecting rent, handling security deposits, receiving questions and complaints from tenants, and performing routine maintenance.

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1998 and has received rental income from these duplexes since 1998. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in operating, managing and maintaining the duplexes than Mr. Stanley, and Mr. Stanley spends more than 100 hours per year in operating, managing and maintaining the duplexes. The duplexes are sold in 2011, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2011 Iowa return since he met the material participation requirements for this rental activity.

(8) Like-kind exchanges and involuntary conversions. Material participation can be tacked on in cases of replacement property acquired under a like-kind exchange under Section 1031 of the Internal Revenue Code or an involuntary conversion under Section 1033 of the Internal Revenue Code.

EXAMPLE. Dustin James owned Farm A, and he materially participated in the operation of Farm A for 10 years. Mr. James executed a like-kind exchange for Farm B, and he materially participated in the operation of this farm for 4 years until he retired. Mr. James sold Farm B 2 years after he retired. Although he only materially participated in the operation of Farm B for 4 of the last 8 years before he retired, the operation of Farm A can be tacked on for purposes of the material participation test. Mr. James meets the material participation test since he participated in farming activity for the last 14 years before he retired.

(9) Record-keeping requirements. Taxpayers are required to provide proof of services performed and the hours attributable to those services. Detailed records should be maintained by the taxpayer, on as close to a daily basis as possible at or near the time of the performance of the activity, to verify that the material participation test has been met. However, material participation can be established by any other reasonable means, such as approximating the number of hours based on appointment books, calendars, or narrative summaries. Records prepared long after the activity, in preparation of an audit or proceeding, are insufficient to establish participation in an activity.

40.38(2) Net capital gains from the sale of real property used in a business. Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent that the owner had held the real property in the business for ten or more years and had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1). It is not required that the property be located in Iowa for the owner to qualify for the deduction.

a. Meaning of the term “held” for purposes of this rule. For capital gains reported for tax years ending prior to January 1, 2006, the term “held” is defined as “owned.” *James and Linda Bell*, Decision of the Administrative Law Judge, Docket No. 01DORF013, January 15, 2002, and *David V. and Julie K. Gorsche v. Iowa State Board of Tax Review*, Case No. CVCV 8379, Polk County District Court, May 5, 2011. Therefore, the property held by the taxpayer must have been owned by the taxpayer for ten or more years to meet the time held requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term “held” is determined using the holding period provisions set forth in Section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant to Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the time held requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

b. Sale to a lineal descendant. For purposes of taxation of capital gains from the sale of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(3).

c. In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners may exclude the capital gain from their net incomes if the real property was held for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is,

if the owner of the business had held and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

d. Installments received in the tax year from installment sales of businesses are eligible for the exclusion of capital gains from net income if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years at the time of the sale in 2007.

e. Capital gains from the sale of real property by a C corporation do not qualify for the capital gain deduction except under the specific circumstances of a liquidation described in subrule 40.38(7).

f. Capital gains from the sale of real property held for ten or more years for speculation but not used in a business do not qualify for the capital gain deduction.

g. The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and held ABC Company for more than ten years at the time that 500 acres of the land were sold for a capital gain of \$100,000 in 2011. The capital gain recognized in 2011 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and time held requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company, which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1990. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 2011, Smith and Company sold 200 acres of the farmland for a \$50,000 gain. \$25,000 of the capital gain passed through to John Smith and \$25,000 of the capital gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the \$25,000 capital gain from the land sale because he had met the time held and material participation requirements. John Smith could not exclude the \$25,000 capital gain since, although he had met the time held requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for a taxpayer's sale of real estate from a business to a lineal descendant of the taxpayer as is described for the sale of business assets in subrule 40.38(3).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been held for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 2004 and farmed that land until the land was sold in 2011 for a capital gain of \$20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 2005, formed an S corporation, and included the land

in the assets of the S corporation. The land was sold in 2011 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized from the land sale a capital gain of \$15,000, which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had held the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because, although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and in which he had materially participated for 20 years. There were two tracts of farmland in the farming business. In 2011, he sold one tract of farmland in the farming business that he had held for more than 10 years for a \$50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had \$30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers' 2011 Iowa return, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Mr. Myers does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey held the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain deduction. The deduction is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain deduction since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994 and, under his will, Jane acquired a life interest in the farm. The farmland was managed by their son Joseph after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes under Section 1223 of the Internal Revenue Code, the holding period for the capital gain starts in 1994, when Ralph died. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain deduction under Iowa law since he materially participated for ten or more years and the capital gain was reported for a tax year ending on or after January 1, 2006.

40.38(3) *Net capital gains from the sale of assets of a business by an individual who had held the business for ten or more years and had materially participated in the business for ten or more years.* Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent that the individual had held the business for ten or more years and had materially participated in the business for ten or more years. In addition to the time held and material participation qualifications for the capital gain deduction, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

a. For purposes of this subrule, the phrase "substantially all of the tangible personal property or the service of the business" means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business's tangible personal property and service was \$400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the

sale of the assets must be \$360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

b. If the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. If the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten or more years on the date of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer's net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten or more years prior to the sale of the assets of the business.

c. In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

d. For the purposes of this subrule, the term "service of the business" means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, a retail business, or a service business, such as a law firm or an accounting firm.

e. When the business held by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer is not required to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income. The term "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

f. In situations in which substantially all of the tangible personal property or the service of the business was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had held the business for ten or more years and had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale. The criteria for material participation in a business may be found in subrule 40.38(1).

g. Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if, at the time of the sale in 2007, the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years.

h. Sale of capital stock of a corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain deduction, whether the corporation is a C corporation or an S corporation.

i. Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain deduction. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

j. The sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the business or unless the activity or distinct part of a business represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, nonunitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exclusion of the capital gain. The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

k. The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 2011, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a \$100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich's 2011 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 2011, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had held the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 2011 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 2011 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale of the trucks. At the time of sale, the trucks were valued at \$30,000, which was about 10 percent of the fair market value of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 2011 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown's business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop that were in the same building and were part of a sole proprietorship owned only by Mr. Bennet, who had held and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 2011 for \$100,000 and had a capital gain of \$40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was \$250,000. Mr. Bennet could not exclude the capital gain on his 2011 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 2011 when the assets of the partnership were sold to Ray's son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of the partnership assets. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the assets of the partnership because the sale of the partnership assets was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which owned a chain of six gas stations in an Iowa city. In 2011, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain of \$30,000 from the sale. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 2011 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year time held and material participation qualifications are met.

EXAMPLE 7. Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had held both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records.

In 2011, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 2011 because the cafe and fast-food restaurant were considered to be separate and distinct nonunitary businesses.

EXAMPLE 8. Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated in the operations of the S corporation since its incorporation in 1980. In 2008, Mr. Jackson transferred 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust was reported on Mr. Jackson's individual income tax return. In 2011, the assets of Jackson Products Corporation were sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

40.38(4) *Net capital gains from sales of cattle or horses used for certain purposes which were held for 24 months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sales of cattle or horses held for 24 months or more for draft, breeding, dairy, or sporting purposes qualify for the capital gain deduction if more than 50 percent of the taxpayer's gross income in the tax year is from farming or ranching operations. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner held a particular animal for the necessary holding period. Whether cattle or horses are held for draft, breeding, dairy, or sporting purposes depends on all the facts and circumstances of each case.

a. Whether cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in 26 CFR §1.1231-2.

b. In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

c. Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes, are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

d. Capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain deduction.

e. A taxpayer's gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. Gross income from farming or ranching includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer's land. Gross income from farming or ranching also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 2011 tax year, gross income from farming or ranching includes the total of the amounts from line 9 or line 50 of Schedule F and line 7 of Form 4835, Farm Rental Income and Expenses, plus the share of partnership income from farming, the share of distributable net taxable income from farming of an estate or trust, and total gains from the sale of livestock held for draft, breeding, dairy, or sporting purposes, as shown on Form 4797, Sale of Business Property. In the case of an individual's returns for tax years beginning after 2011, equivalent lines from returns and supplementary forms would be used to determine a taxpayer's gross income from farming or ranching for those years.

To make the calculation as to whether more than half of the taxpayer's gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the

previous paragraph is divided by the taxpayer's total gross income. If the resulting percentage is greater than 50 percent, the taxpayer's capital gains from sales of cattle and horses will be considered for the capital gain deduction.

In instances where married taxpayers file a joint return, the gross income from farming or ranching of both spouses will be considered for the purpose of determining whether the taxpayers received more than half of their gross income from farming or ranching. However, in situations where married taxpayers file separate Iowa returns or separately on the combined return form, each spouse must separately determine whether that spouse has more than 50 percent of gross income from farming or ranching operations.

EXAMPLE. Bob Deen had a cattle operation that owned black angus cattle in the operation for breeding purposes. In 2011, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was \$125,000, but he had a \$10,000 loss from his farming operation. Mr. Deen also had wages of \$25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 2011 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

40.38(5) *Net capital gains from sale of breeding livestock, other than cattle or horses, held for 12 or more months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sale of breeding livestock, other than cattle or horses, held for 12 or more months from the date of acquisition qualify for the capital gain deduction, if more than one-half of the taxpayer's gross income is from farming or ranching. For the purposes of this subrule, "livestock" has a broad meaning and includes hogs, mules, donkeys, sheep, goats, fur-bearing mammals, and other mammals. Livestock does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, or reptiles. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in 26 CFR §1.1231-2, the livestock will also be deemed to have been breeding livestock for purposes of this subrule. In addition, for the purposes of this subrule livestock does not include cattle and horses held for 24 or more months for draft, breeding, dairy, or sporting purposes which were described in subrule 40.38(4).

a. The procedure in subrule 40.38(4) for determining whether more than one-half of a taxpayer's gross income is from farming or ranching operations is also applicable for this subrule.

b. In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held for 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer is not required to have more than one-half of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain deduction.

c. Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the capital gain deduction to the extent the owners receiving the capital gains meet the qualifications for the deduction on the basis of having more than one-half of the gross income in the tax year from farming or ranching operations.

d. Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the capital gain deduction.

40.38(6) *Net capital gains from sales of timber held by the taxpayer for more than one year.* Capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gain deduction. In all of the following examples of circumstances where gains from sales of timber qualify for capital gain treatment, it is assumed that the timber sold was held by the owner for more than one year at the time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, cross ties, and other wood products. Timber eligible for the capital gain deduction does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer

owned or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

Fair market value of timber on January 1, 2011	\$400,000
Adjusted basis for depletion	- \$100,000
Capital gain on cutting of timber	<u>\$300,000</u>

The fair market value shown above of \$400,000 is the basis of the timber. A later sale of the cut timber including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

a. Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term “evergreen trees” is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer’s farm, there is no sale until the tree is cut. However, evergreen trees sold in a live state do not qualify for capital gain treatment.

b. Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber. Additional information about gains and losses from the sale of timber is included under 26 CFR §1.631-1 and §1.631-2.

c. Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain deduction.

d. Capital gains from the sale of timber by a C corporation do not qualify for the capital gain deduction.

40.38(7) *Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes.* Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain deduction. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

40.38(8) *Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes.* Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had held an interest in the target corporation and had materially participated in the corporation for ten years prior to the date of the sale of the corporation. The burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

40.38(9) *Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried.* The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

a. The capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 2011 return showing a net loss of \$12,000. On this return, Mr. Jones claimed a capital gain deduction of \$3,000 from sale of breeding livestock, other than cattle or horses, held for 12 months or more which was considered in computing the loss of \$12,000. However, the \$3,000 capital gain deduction is not allowed in the computation of the net operating loss deduction for 2011 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 2011 is \$9,000.

b. In the case of net operating losses which are carried back to a tax year where the taxpayer has claimed the capital gain deduction, the capital gain deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of \$20,000 on the Iowa return he filed for 2011. Mr. Brown elected to carry back the net operating loss to his 2009 Iowa return. The 2009 return showed a taxable income of \$27,000 which included a capital gain deduction of \$3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by \$3,000 to disallow the capital gain deduction properly allowed in computing taxable income for the carryback year. Therefore, the net operating loss deduction from 2011 was applied to an income of \$30,000 for the carryback year.

40.38(10) Sale of employer securities to an Iowa employee stock ownership plan. For tax years beginning on or after January 1, 2012, 50 percent of the net capital gain from the sale or exchange of employer securities of an Iowa corporation to a qualified Iowa employee stock ownership plan (ESOP) may be eligible for the Iowa capital gain deduction. To be eligible for the capital gain deduction, the qualified Iowa ESOP must own at least 30 percent of all outstanding employer securities issued by the Iowa corporation after completion of the transaction.

a. Definitions. The following definitions apply to this subrule:

“Employer securities” means the same as defined in Section 409(l) of the Internal Revenue Code. “Employer securities” includes common stock issued by the employer and preferred stock if the provisions of Section 409(l)(3) of the Internal Revenue Code are met.

“Iowa corporation” means a corporation whose commercial domicile, as defined in Iowa Code section 422.32, is in Iowa. A limited liability company is not considered an Iowa corporation.

“Qualified Iowa ESOP” means an employee stock ownership plan, as defined in Section 4975(e)(7) of the Internal Revenue Code, and trust that are established by an Iowa corporation for the benefit of the employees of the corporation.

b. The material participation requirements set forth in subrule 40.38(1) do not apply for the sale of employer securities to an Iowa ESOP. In addition, the holding period requirements set forth in paragraph 40.38(2)“a” do not apply for the sale of employer securities to an Iowa ESOP.

This rule is intended to implement Iowa Code section 422.7 as amended by 2012 Iowa Acts, House File 2465, division XII.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0073C, IAB 4/4/12, effective 5/9/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1303C, IAB 2/5/14, effective 3/12/14]

701—40.39(422) Exemption of interest from bonds or notes issued to fund the 911 emergency telephone system. Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the 911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

[ARC 4309C, IAB 2/13/19, effective 3/20/19]

701—40.40(422) Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield. For tax years ending on or after August 2, 1990, military pay received by persons in the national guard and persons in the armed forces military reserve is exempt from state income tax to the extent the military pay is not otherwise excluded from taxation and the military pay is for active-duty military service on or after

August 2, 1990, pursuant to military orders related to Operation Desert Shield. The exemption applies to individuals called to active duty in Iowa to replace other persons who were in military units who were called to serve on active duty outside Iowa provided the military orders specify that the active duty assignment in Iowa pertains to Operation Desert Shield.

Persons filing original returns or amended returns on Form IA 1040X for tax years where the exempt income was received should print the notation, "Operation Desert Shield" at the top of the original return form or amended return form. A copy of the military orders showing the person was called to active duty and was called in support of Operation Desert Shield should be attached to the original return form or amended return form to support the exemption of the active duty military pay.

This rule is intended to implement Iowa Code section 422.7.

701—40.41(422) Disallowance of private club expenses. Rescinded IAB 11/24/04, effective 12/29/04.

701—40.42(422) Depreciation of speculative shell buildings.

40.42(1) For tax years beginning on or after January 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal adjusted gross income in order to deduct depreciation computed under this rule.

40.42(2) On sale or other disposition of the speculative building, the taxpayer must report on the taxpayer's Iowa individual income tax return the same gain or loss as is reported on the taxpayer's federal individual income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

40.42(3) For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1(27) "c."

This rule is intended to implement Iowa Code section 422.7.

701—40.43(422) Retroactive exemption for payments received for providing unskilled in-home health care services to a relative. Retroactive to January 1, 1988, for tax years beginning on or after that date, supplemental assistance payments authorized under Iowa Code section 249.3(2) "a"(2) which are received by an individual providing unskilled in-home health care services to a member of the caregiver's family are exempt from state income tax to the extent that the individual caregiver is not a licensed health care professional designated in Iowa Code section 147.13, subsections 1 to 10.

For purposes of this exemption, a member of the caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great-grandparent, and lineal descendant such as grandchild and great-grandchild, and those previously described relatives who are related by marriage or adoption. Those licensed health care professionals who are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, audiologists, and other similar licensed health care professionals.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8589B, IAB 3/10/10, effective 4/14/10]

701—40.44(422,541A) Individual development accounts. Individual development accounts are authorized for low-income taxpayers for tax years beginning on or after January 1, 1994. Additions to the accounts are described in the following subrule:

40.44(1) Exemption of additions to individual development accounts. The following additions to individual development accounts are exempt from the state income tax of the owners of the accounts to the extent the additions were subject to federal income tax:

a. The amount of contributions made in the tax year to an account by persons and entities other than the owner of the account.

b. The amount of any savings refund or state match payments made in the tax year to an account as authorized for contributions made to the accounts by the owner of the account.

c. Earnings on the account in the tax year or interest earned on the account.

40.44(2) *Additions to net income for withdrawals from individual development accounts.* Rescinded IAB 9/11/96, effective 10/16/96.

This rule is intended to implement Iowa Code sections 422.7, 541A.2 and 541A.3 as amended by 2008 Iowa Acts, Senate File 2430.

701—40.45(422) Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa. For tax years beginning on or after January 1, 1994, a distribution from a pension plan, annuity, individual retirement account, or deferred compensation plan which is received by a nonresident of Iowa is exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the pensioner, annuitant, owner of individual retirement account, or participant in a deferred compensation arrangement. For tax years beginning on or after January 1, 1996, distributions of nonqualified retirement benefits which are paid by a partnership to its retired partners and which are received by a nonresident of Iowa are exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the partner. In a situation where the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies before the date of documented retirement, any distribution from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to the beneficiary receiving the distributions if the beneficiary is a nonresident of Iowa. If the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies after the date of documented retirement, any distributions from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to a beneficiary receiving distributions if the beneficiary is a nonresident of Iowa.

For purposes of this rule, the distributions from the pensions, annuities and deferred compensation arrangements were from pensions, annuities, and deferred compensation earned entirely or at least partially from employment or self-employment in Iowa. For purposes of this rule, distributions from individual retirement arrangements were from individual retirement arrangements that were funded by contributions from the arrangements that were deductible or partially deductible on the Iowa income tax return of the owner of the individual retirement accounts.

The following subrules include definitions and examples which clarify when distributions from pensions, annuities, individual retirement accounts, and deferred compensation arrangements are exempt from Iowa income tax, when the distributions are received by nonresidents of Iowa:

40.45(1) Definitions.

a. The word “beneficiary” means an individual who receives a distribution from a pension or annuity plan, individual retirement arrangement, or deferred compensation plan as a result of either the death or divorce of the pensioner, annuitant, participant of a deferred compensation arrangement, or owner of an individual retirement account.

b. The term “individual’s documented retirement” means any evidence that the individual can provide to the department of revenue which would establish that the individual or the individual’s beneficiary is receiving distributions from the pension, annuity, individual retirement account, or the deferred compensation arrangement due to the retirement of the individual.

Examples of documents that would establish an individual’s retirement may include: copies of birth certificates or driver’s licenses to establish an individual’s age; copies of excerpts from an employer’s personnel manual or letter from employer to establish retirement or early retirement policies; a copy of a statement from a physician to establish an individual’s disability which could have contributed to a person’s retirement.

c. The term “nonresident” applies only to individuals and includes all individuals other than those individuals domiciled in Iowa and those individuals who maintain a permanent place of abode in Iowa. See 701—subrule 38.17(2) for the definition of domicile.

40.45(2) Examples:

a. John Jones had worked for the same Iowa employer for 32 years when he retired at age 62 and moved to Arkansas in March of 1994. Mr. Jones started receiving distributions from the pension plan from his former employer starting in May 1994. Because Mr. Jones was able to establish that he was receiving the distributions from the pension plan due to his retirement from his employment, Mr. Jones was not subject to Iowa income tax on the distributions from the pension plan. Note that Mr. Jones had sold his Iowa residence in March and established his domicile in Arkansas at the time of his move to Arkansas.

b. Wanda Smith was the daughter of John Smith who died in February 1994 after 25 years of employment with a company in Urbandale, Iowa. Wanda Smith was the sole beneficiary of John and started receiving distributions from John’s pension in April 1994. Wanda Smith was a bona fide resident of Oakland, California, when she received distributions from her father’s pension. Wanda was not subject to Iowa income tax on the distributions since she was a nonresident of Iowa at the time the distributions were received.

c. Martha Graham was 55 years old when she quit her job with a firm in Des Moines to take a similar position with a firm in Dallas, Texas. Ms. Graham had worked for the Des Moines business for 22 years before she resigned from the job in May 1994. Starting in July 1994, Ms. Graham received monthly distributions from the pension from her former Iowa employer. Although Ms. Graham was a nonresident of Iowa, she was subject to Iowa income tax on the pension distribution since the taxpayer didn’t have a documented retirement.

d. William Moore was 58 years old when he quit his job with a bank in Mason City in February 1994 after 30 years of employment with the bank. By the time Mr. Moore started receiving pension payments from his employment with the bank, he had moved permanently to New Mexico. Shortly after he arrived in New Mexico, Mr. Moore secured part-time employment. The pension payments were not taxable to Iowa as Mr. Moore was retired notwithstanding his part-time employment in New Mexico.

e. Joe Brown had worked for an Iowa employer for 25 years when he retired in June 1992 at the age of 65. Mr. Brown started receiving monthly pension payments in July 1992. Mr. Brown resided in Iowa until August 1994, when he moved permanently to Nevada to be near his daughter. Mr. Brown was not taxable to Iowa on the pension payments he received after his move to Nevada. Mr. Brown’s retirement occurred in June 1992 when he resigned from full-time employment.

This rule is intended to implement Iowa Code section 422.8.

701—40.46(422) Taxation of compensation of nonresident members of professional athletic teams. Effective for tax years beginning on or after January 1, 1995, the Iowa source income of a nonresident individual who is a member of a professional athletic team includes the portion of the individual’s total compensation for services provided for the athletic team that is in the ratio that the number of duty days spent in Iowa rendering services for the team during the tax year bears to the total number of duty days spent both within and without Iowa in the tax year. Thus, if a nonresident member of a professional athletic team has \$50,000 in total compensation from the team in 1995 and the athlete has 20 Iowa duty days and 180 total duty days for the team in 1995, \$5,556 of the compensation would be taxable to Iowa ($\$50,000 \times 20/180 = \$5,556$).

The following subrules include definitions, examples, and other information which clarify Iowa’s taxation of nonresident members of professional athletic teams:

40.46(1) Definitions.

a. The term “professional athletic team” includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

b. The term “member of a professional athletic team” includes those employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and

perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

c. The term “total compensation for services rendered as a member of a professional athletic team” means the total compensation received during the taxable year for services rendered. “Total compensation” includes, but is not limited to, salaries, wages, bonuses (as described in subparagraph (1) of this paragraph), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, and any other payments not related to services rendered for the team.

For purposes of this paragraph, “bonuses” included in “total compensation for services rendered as a member of a professional athletic team” subject to the allocation described in this rule are:

(1) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff, or “bowl” games played by a team, or for the member’s selection to all-star, league, or other honorary positions; and

(2) Bonuses paid for signing a contract, unless all of the following conditions are met:

1. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

2. The signing bonus is payable separately from the salary and any other compensation; and

3. The signing bonus is nonrefundable.

d. Except as provided in subparagraphs (4) and (5) of this paragraph, the term “duty days” means all days during the taxable year from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes or is scheduled to compete. Duty days are included in the allocation described in this rule for the tax year in which they occur, including where a team’s official preseason training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one tax year.

(1) Duty days also includes days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the previously mentioned period (e.g., participation in instructional leagues, the “Pro Bowl” or promotional “caravans”). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(2) Included within duty days are game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(3) Duty days for any person who joins a team during the period from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes, or is scheduled to compete, begins on the day the person joins the team. Conversely, duty days for any person who leaves a team during such period ends on the day the person leaves the team. When a person switches teams during a taxable year, separate duty day calculations are to be made for the period the person was with each team.

(4) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, are not to be treated as duty days.

(5) Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Iowa, are not to be considered duty days spent in Iowa. However, all days on the disability list are considered to be included in total duty days spent both within and outside the state of Iowa.

(6) Total duty days for members of a professional athletic team that are not professional athletes are the number of days in the year that the members are employed by the professional athletic team. Thus, in the case of a coach of a professional athletic team who was coach for the entire year of 1995, the coach’s total duty days for 1995 would be 365.

(7) Travel days in Iowa by a team member that do not involve a game, practice, team meeting, all-star game, or other personal service for the team are not considered to be duty days in Iowa. However, to the extent these days fall within the period from the team's preseason training period through the team's final game, these Iowa travel days will be considered in the total duty days spent within and outside Iowa, for team members who are professional athletes.

(8) Duty days in Iowa do not include days a team member performs personal services for the professional athletic team in Iowa on those days that the team member is a bona fide resident of a state with which Iowa has a reciprocal tax agreement. See rule 701—38.13(422).

40.46(2) *Filing composite Iowa returns for nonresident members of professional athletic teams.* Professional athletic teams may file composite Iowa returns on behalf of team members who are nonresidents of Iowa and who have compensation that is taxable to Iowa from duty days in Iowa for the athletic team. However, the athletic team may include on the composite return only those team members who are nonresidents of Iowa and who have no Iowa source incomes other than the incomes from duty days in Iowa for the team. The athletic team may exclude from the composite return any team member who is a nonresident of Iowa and whose income from duty days in Iowa is less than \$1,000. See rule 701—48.1(422) about filing Iowa composite returns.

40.46(3) *Examples of taxation of nonresident members of professional athletic teams.*

a. Player A, a member of a professional athletic team, is a nonresident of Iowa. Player A's contract for the team requires A to report to such team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Player A's contract provides that A is to receive \$500,000 for the year 1/year 2 season and \$600,000 for the year 2/year 3 season. Assuming player A receives \$550,000 from the contract during taxable year 2 (\$250,000 for one-half the year 1/year 2 season and \$300,000 for one-half the year 2/year 3 season), the portion of compensation received by player A for taxable year 2, attributable to Iowa, is determined by multiplying the compensation player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Iowa during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of player A's duty days spent both within and outside Iowa for the entire taxable year.

b. Player B, a member of a professional athletic team, is a nonresident of Iowa. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team, but is located in Iowa, B's team travels to Iowa for a game. The number of days B's team spends in Iowa for practice, games, meetings, for example, while B is present at the clinic, are not to be considered duty days spent in Iowa for player B for that taxable year for purposes of this rule, but these days are considered to be included within total duty days spent both within and outside Iowa.

c. Player C, a member of a professional athletic team, is a nonresident of Iowa. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Iowa as well as at personal facilities in Iowa. The days C performs rehabilitation exercise in the facilities of C's team are considered duty days spent in Iowa for player C for that taxable year for purposes of this rule. However, days player C spends at personal facilities in Iowa are not to be considered duty days spent in Iowa for player C for that taxable year for purposes of this rule, but the days are considered to be included within total duty days spent both within and outside Iowa.

d. Player D, a member of a professional athletic team, is a nonresident of Iowa. During the season, D travels to Iowa to participate in the annual all-star game as a representative of D's team. The number of days D spends in Iowa for practice, the game, meetings, for example, are considered to be duty days spent in Iowa for player D for that taxable year for purposes of this rule, as well as included within total duty days spent both within and outside Iowa.

e. Assume the same facts as given in paragraph "d," except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending this game solely as a spectator. The number of days player D spends in Iowa for the

game is not to be considered to be duty days spent in Iowa for purposes of this rule. However, the days are considered to be included within total duty days spent both within and outside Iowa.

40.46(4) *Use of an alternative method to compute taxable portion of a nonresident's compensation as a member of a professional athletic team.* If a nonresident member of a professional athletic team believes that the method provided in this rule for allocation of the member's compensation to Iowa is not equitable, the nonresident member may propose the use of an alternative method for the allocation of the compensation to Iowa. The request for an alternative method for allocation must be filed no later than 60 days before the due date of the return, considering that the due date may be extended for up to 6 months after the original due date if at least 90 percent of the tax liability was paid by the original due date (April 30 for taxpayers filing on a calendar-year basis).

The request for an alternative method should be filed with the Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

If the department determines that the alternative method is more reasonable for allocation of the taxable portion of the team member's compensation than the method provided in this rule, the team member can use the alternative method on the current return and on subsequent returns.

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule 701—7.8(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.
[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors. For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of \$5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion shall be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses. See rule 701—40.80(422) for the exclusion of military retirement pay for tax years beginning on or after January 1, 2014.

EXAMPLE 1. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The wife received \$95,000 in retirement benefits and the husband received \$5,000 in retirement benefits. Since the wife received 95 percent of the retirement benefits, she would be entitled to 95 percent of the \$10,000 retirement income exclusion or a retirement income exclusion

of \$9,500. The husband would be entitled to 5 percent of the \$10,000 retirement income exclusion or an exclusion of \$500.

EXAMPLE 2. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The husband had \$15,000 in retirement benefits from a pension. The wife received no retirement benefits. In this situation, the husband can use the entire \$10,000 retirement income exclusion to exclude \$10,000 of his pension benefits since the spouse did not use any of the \$10,000 retirement income exclusion for the tax year.

EXAMPLE 3. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$20,000. The other spouse was 55 years of age and received no pension income. Since the spouse receiving the pension income was not 55 years of age, no exclusion is allowed on the Iowa return.

EXAMPLE 4. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$10,000. The other spouse was 55 years of age and received a pension income of \$8,000. Since only one spouse receiving the pension income was 55 years of age, an exclusion of \$8,000 is allowed on the Iowa return. The exclusion of \$8,000 is allowed since a married couple is allowed a combined exclusion of up to \$12,000.

For tax years beginning on or after January 1, 1995, but prior to January 1, 1998, the retirement income exclusion was up to \$3,000 for single individuals, up to \$3,000 for each married person filing a separate Iowa return, up to \$3,000 for each married person filing separately on the combined return form, and up to \$6,000 for married taxpayers filing joint Iowa returns. For example, a married couple elected to file separately on the combined return form and both spouses were 55 years of age or older. One spouse had \$2,000 in pension income that could be excluded, since the pension income was \$3,000 or less. The other spouse had \$6,000 in pension income and could exclude \$3,000 of that income due to the retirement income exclusion. This second spouse could not exclude an additional \$1,000 of the up to \$3,000 retirement income exclusion that was not used by the other spouse.

“Insurable interest” is a term used in life insurance which also applies to this rule and is defined to be “such an interest in the life of the person insured, arising from the relations of the party obtaining the insurance, either as credit of or surety for the assured, or from the ties of blood or marriage to him, as would justify a reasonable expectation of advantage or benefit from the continuance of his life.” *Warnock v. Davis*, 104 U.S. 775, 779, 26 L.Ed. 924; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Adams’ Adm’r v. Reed*, Ky., 36 S.W. 568, 570; *Trinity College v. Travelers’ Co.*, 18 S.E. 175, 176, 113 N.C. 244, 22 L.R.A. 291; *Opitz v. Karel*, 95 N.W. 948, 951, 118 Wis. 527, 62 L.R.A. 982. It is not necessary that the expectation of advantage or profit should always be capable of pecuniary estimation, for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful, as operating the more efficaciously, to protect the life of the insured than any other consideration, but in all cases there must be a reasonable ground, founded on relations to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Warnock v. Davis*, 104 U.S. 775, 26 L.Ed. 924; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800.

For purposes of this rule, the term “insurable interest” will be considered to apply to a beneficiary receiving retirement benefits due to the death of a pensioner or annuitant under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the pensioner or annuitant.

For purposes of this rule, the term “survivor” is a person other than the surviving spouse of an annuitant or pensioner who is receiving the annuity or pension benefits because the person was a beneficiary of the pensioner or annuitant at the time of death of the pensioner or annuitant. In addition, in order for this person to qualify for the partial exclusion of pensions or retirement benefits, this survivor must have had an insurable interest in the pensioner or annuitant at the time of death of the annuitant or pensioner.

A survivor other than the surviving spouse will be considered to have an insurable interest in the pensioner or annuitant if the survivor is a son, daughter, mother, or father of the annuitant or pensioner. The relationship of these individuals to the pensioner or annuitant is considered to be so close that no separate pecuniary or monetary interest between the pensioner or annuitant and any of these relatives must be established.

A survivor may include relatives of the pensioner or annuitant other than those relatives that were mentioned above. However, before any of these relatives can be considered to be a survivor for purposes of this rule, the relative must have had some pecuniary interest in the continuation of the life of the pensioner or annuitant. That is, the relative must establish a relationship with the pensioner or annuitant that shows there was a reasonable expectation of an advantage or benefit which the person would have received with the continuance of the life of the pensioner or annuitant.

The fact that a niece of the pensioner or annuitant was named beneficiary of an uncle's pension where the uncle had no closer relatives does not in itself establish that the niece had an insurable interest in the pension benefits, if the niece was not receiving monetary benefits or the niece did not have some special relationship to the uncle at the time of the uncle's death.

If a grandson was receiving college tuition regularly from his grandfather and received the grandfather's pension as a beneficiary of the grandfather after the grandfather's death, the grandson would be deemed to have an insurable interest in the benefits and would be eligible for the partial retirement benefit exclusion.

A person who is not related to the pensioner or annuitant, such as a partner in a business or a creditor, may have an insurable interest in the pensioner or annuitant. However, the burden of proof is on a nonrelated person to show that the person had an insurable interest in the pensioner or the annuitant at the time of death of the pensioner or annuitant.

There are numerous court cases which deal with whether a person had established an insurable interest in the life of an individual that was insured. These cases may be used as a guideline to determine whether or not a person receiving a pension or annuity due to the death of an annuitant or pensioner had an insurable interest in the annuitant or pensioner at the time of death of the pensioner or annuitant. Thus, if a person would have met criteria for an insurable interest for purposes of an interest in a person's life insurance policy, the person would also be considered to be qualified for an insurable interest in a pensioner or annuitant.

Retirement benefits subject to the retirement income exclusion include, but are not limited to: benefits from defined benefit or defined contribution pension and annuity plans, benefits from annuities, incomes from individual retirement accounts, benefits from pension or annuity plans contributed by an employer or maintained or contributed by a self-employed person and benefits and earnings from deferred compensation plans. However, the exclusion does not apply to social security benefits. A surviving spouse who is not disabled or is not 55 years of age or older can only exclude retirement benefits received as a result of the death of the other spouse and on the basis that the deceased spouse would have been eligible for the exclusion in the tax year. In order for a survivor other than the surviving spouse to qualify for the partial exclusion of retirement benefits, the survivor must have received the retirement benefits as a result of the death of a pensioner or annuitant who would have qualified for the exclusion in the tax year on the basis of age or disability. In addition, the survivor other than the surviving spouse would have had to have an insurable interest in the pensioner or annuitant at the time of the death of the pensioner or annuitant.

For purposes of this rule, a disabled individual is a person who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

Note that the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for purposes of determining whether or not a particular individual's income is low enough to exempt that taxpayer from tax. In addition, the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered

as a part of net income for the alternative tax computation, which is available to all taxpayers except those taxpayers filing as single individuals.

Finally, the pension or other retirement benefits are to be considered as a part of net income for individuals using the single filing status whose tax liabilities are limited so the liabilities cannot reduce the person's net income plus exempt benefits below \$9,000, or below \$18,000 for taxpayers 65 years of age or older for the 2007 and 2008 tax years, or below \$24,000 for taxpayers 65 years of age or older for the 2009 and subsequent tax years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7.
[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1665C, IAB 10/15/14, effective 11/19/14]

701—40.48(422) Health insurance premiums deduction. For tax years beginning on or after January 1, 1996, the amounts paid by a taxpayer for health insurance for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents are deductible in computing net income on the Iowa return to the extent the amounts paid were not otherwise deductible in computing adjusted gross income. However, amounts paid by a taxpayer for health insurance on a pretax basis whereby the portion of the wages of the taxpayer used to pay health insurance premiums is not included in the taxpayer's gross wages for income tax or social security tax purposes are not deductible on the Iowa return.

In situations where married taxpayers pay health insurance premiums from a joint checking or other joint account and the taxpayers are filing separate state returns or separately on the combined return form, the taxpayers must allocate the deduction between the spouses on the basis of the net income of each spouse to the combined net income unless one spouse can show that only that spouse's income was deposited to the joint account.

In circumstances where a taxpayer is self-employed and takes a deduction on the 1996 federal return for 30 percent of the premiums paid for health insurance on the federal return, the taxpayer would be allowed a deduction on the Iowa return for the portion of the health insurance premiums that was not deducted on the taxpayer's federal return, including any health insurance premiums deducted as an itemized medical deduction under Section 213 of the Internal Revenue Code.

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction for tax years beginning in the 1996 calendar year are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). For tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses, irrespective of the limitations set forth in Section 213(d)(10) of the Internal Revenue Code. For example, a 55-year-old taxpayer who paid \$1,050 in premiums for long-term health insurance for nursing home coverage for the 2004 tax year would be allowed a deduction for Iowa purposes for the entire \$1,050, even though the limitation for the federal itemized deduction for medical expenses in Section 213(d)(10) of the Internal Revenue Code for these premiums for this taxpayer is \$980.

Amounts paid under an insurance contract for other than medical care (such as payment for loss of limb or life or sight) are not deductible, unless the medical charge is stated separately in the contract or provided in a separate statement.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, Senate File 129.

701—40.49(422) Employer social security credit for tips. Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying

minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994.

This rule is intended to implement Iowa Code Supplement section 422.7.

701—40.50(422) Computing state taxable amounts of pension benefits from state pension plans. For tax years beginning on or after January 1, 1995, a retired member of a state pension plan, or a beneficiary of a member, who receives benefits from the plan where there was a greater contribution to the plan for the member for state income tax purposes than for federal income tax purposes can report less taxable income from the benefits on the Iowa individual income tax return than was reported on the federal return for the same tax year. This rule applies only to a member of a state pension plan, or the beneficiary of a member, who received benefits from the plan sometime after January 1, 1995, and only in circumstances where the member received wages from public employment in 1995, 1996, 1997, or 1998, or possibly in 1999 for certain teachers covered by the state pension plan authorized in Iowa Code chapter 294 so the member had greater contributions to the state pension plan for state income tax purposes than for federal income tax purposes. Starting with wages paid on or after January 1, 1999, to employees covered by a state pension plan other than teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions made to the pension plan will be made on a pretax basis for state income tax purposes as well as for federal income tax purposes. However, in the case of teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions to the pension plan on behalf of these teachers on a pretax basis for state income tax purposes may start after January 1, 1999.

For example, in the case of a state employee who was covered by IPERS and had wages from covered public employment of \$41,000 or more in 1995, that person would have made posttax contributions to IPERS of \$1,517 for state income tax purposes for 1995 and zero posttax contributions to IPERS for federal income tax purposes for 1995. The \$1,517 in contributions to IPERS for federal income tax purposes was made on a pretax basis and was considered to have been made by the employee's employer or the state of Iowa and not the employee. At the time this employee receives retirement benefits from IPERS, the retired employee will be subject to federal income tax on the portion of the benefits that is attributable to the \$1,517 IPERS contribution made in 1995. However, this employee will not be subject to state income tax on the portion of the IPERS benefits received which is attributable to the \$1,517 contribution to IPERS for 1995.

This rule does not apply to members or beneficiaries of members who elect to take a lump sum distribution of benefits from a state pension plan in lieu of receiving monthly payments of benefits from the plan.

The following subrules further clarify how the portion of certain state pension benefits that is taxable for state individual income tax purposes for tax years beginning on or after January 1, 1995, is determined.

40.50(1) Definitions related to state taxation of benefits from state pension plan. The following definitions clarify those terms and phrases that have a bearing on the state's taxation of certain individuals who receive retirement benefits from state pension plans:

a. For purposes of this rule, the terms "state pension," "state pensions," and "state pension plans" mean only those pensions and those pension plans authorized in Iowa Code chapter 97A for public safety peace officers, chapter 97B for Iowa public employees (IPERS), chapter 294 for certain teachers, and chapter 411 for police officers and firefighters. There are other pension plans available for some public employees in the state which may be described as "state pensions" or "state pension plans" in other contexts or situations, but these pension plans are not covered by this rule. An example of a pension plan that is not a "state pension plan" for purposes of this rule is the judicial retirement system for state judges authorized in Iowa Code section 602.9101.

b. For purposes of this rule, “member” is an individual who was employed in public service covered by a state pension plan and is either receiving or was receiving benefits from the pension plan.

c. For purposes of this rule, “beneficiary” is a person who has received or is receiving benefits from a state pension plan due to the death of an individual or member who earned benefits in a state pension plan.

d. For purposes of this rule, the term “IPERS” means the Iowa public employees retirement system.

e. For purposes of this rule, the term “pretax,” when the term is applied to a contribution made to a state pension plan during a year from a public employee’s compensation, means a contribution to a state pension plan that is not taxed on the employee’s income tax return for the tax year in which the contribution is made. The contribution is considered to have been made by the state or the employee’s employer and not by the employee so this contribution is not part of the employee’s basis in the pension that is not taxed when the pension is received.

f. For purposes of this rule, the term “posttax,” when the term is applied to a contribution made to a state pension plan during a year from a public employee’s compensation, means the contribution is included in the employee’s taxable income for the tax year of the contribution and the contribution is considered to have been made by the employee. That is, the contribution is part of the employee’s basis in the pension which is not taxed at the time the pension is received.

40.50(2) *Computation of the taxable amount of the state pension for federal income tax purposes.* An individual who receives benefits in the tax year from one of the state pension plans is not subject to federal income tax on the benefits to the extent of the pensioner’s or member’s recovery of posttax contribution to the pension plan. The individual receiving benefits in the year from a state pension plan should get a Form 1099-R showing the total benefits received in the tax year from the pension plan. The individual can determine the federal taxable amount of the benefits by using the general rule or the simplified general rule which is described in federal publication 17 or federal publication 575. Note that members who first receive pension benefits after November 18, 1996, must compute the federal taxable amount of their pension benefits by using the simplified general rule shown in the federal tax publications. Note also that individuals receiving benefits in the tax year from IPERS who started receiving benefits in 1993 or in later years will receive information with the 1099-R form which shows the amount of gross benefits received in the tax year that is taxable for federal income tax purposes.

40.50(3) *Computing the taxable amount of state pension benefits for state individual income tax purposes.* An individual receiving state pension benefits in the tax year must have a number of facts about the state pension in order to be able to compute the taxable amount of the pension for Iowa income tax purposes. The individual must know the gross pension benefits received in the tax year, the taxable amount of the pension for federal income tax purposes, the employee’s contribution to the pension for federal income tax purposes, and the employee’s contribution to the pension for state income tax purposes. In situations where the employee’s contribution for state income tax purposes is equal to the contribution for federal income tax purposes, the same amount of the pension will be taxable on the state income tax return as is taxable on the federal return.

In cases when all of an individual’s employment covered by a state pension plan occurred on or after January 1, 1995, so that all the contributions to the pension plan (other than posttax service purchases) for the employee were made on a pretax basis for federal income tax purposes, all of the benefits received from the pension would be taxed on the federal income tax return. In this situation, the state taxable amount of the pension would be computed using the general rule or the simplified general rule shown in federal publication 17 or federal publication 575. The employee’s state contribution or state basis would be entered on line 2 of the worksheet in the federal publication that is usually used to compute the taxable amount of the pension for the federal income tax return.

To compute the state taxable amount of the state pension in situations where the employee had a contribution to the pension for federal tax purposes, the federal taxable amount for the year is first subtracted from the gross pension benefit received in the year which leaves the amount of the pension received in the year which was not taxable on the federal return. Next, the member’s posttax contribution or basis in the pension for federal tax purposes is divided by the member’s posttax contribution or basis

in the pension for state income tax purposes which provides the ratio of the member's federal basis or contribution to the member's state contribution or basis. Next, the amount of the state pension received in the year that is not taxed on the federal return is divided by the ratio or percentage that was determined in the previous step, which provides the exempt amount of the pension for state tax purposes. Finally, the state exempt amount determined in the previous step is subtracted from the gross amount received in the year, which leaves the taxable amount for state income tax purposes. Note that individuals who retired in 1993 and in years after 1993 and are receiving benefits from IPERS will receive information from IPERS which will advise them of the taxable amount of the pension for state income tax purposes. The examples in subrule 40.50(4) are provided to illustrate how the state taxable amounts of state pension benefits received in the tax year are computed in different factual situations.

40.50(4) Examples.

a. A state employee retired in April 1996 and started receiving IPERS benefits in April 1996. The retired state employee received \$1,794.45 in gross benefits from IPERS in 1996. The federal taxable amount of the benefits was \$1,690.36. The employee's federal posttax contribution or basis in the pension was \$4,907 and the state posttax contribution or basis was \$7,194. The nontaxable amount of the IPERS benefits for federal income tax was \$104.09 which was calculated by subtracting the federal taxable amount of \$1,690.36 from the gross amount of the benefits of \$1,794.45. The ratio of the employee's posttax contribution to the pension for federal income tax purposes was 68.21 percent of the employee's contribution to the pension for state income tax purposes. This was determined by dividing \$4,907 by \$7,194. The nontaxable amount of the IPERS benefit for federal income tax purposes of \$104.09 was then divided by 68.21 percent, which is the ratio determined in the previous step, and which results in a total of \$152.60. This was the nontaxable amount of the pension for state income tax purposes. When \$152.60 is subtracted from the gross benefits of \$1,794.45 paid in the year, the remaining amount is \$1,641.85 which is the taxable amount of the pension that should be reported on the individual's Iowa individual income tax return for the 1996 tax year.

b. A state employee retired in July 1995. The retired employee received \$1,881.88 in IPERS benefits in 1996 and \$1,790.60 of the benefits was taxable on the individual's federal return for 1996. The person's federal posttax contribution to the IPERS pension was \$3,130 and the posttax contribution for state income tax purposes was \$3,821. The amount of benefits not taxable for federal income tax purposes was \$91.28 which was computed by subtracting the amount of pension benefits of \$1,790.60 that was taxable on the federal income tax return from the gross benefits of \$1,881.88 received in 1996. The retiree's federal posttax contribution of \$3,130 to IPERS was divided by the retiree's posttax contribution of \$3,821 to IPERS for state income tax purposes which resulted in a ratio of 81.91 percent. The amount of IPERS benefits of \$91.28 exempt for federal income tax purposes is divided by the 81.91 percent computed in the previous step which results in an amount of \$111.44 which is the amount of IPERS benefits received in 1996 which is not taxable on the Iowa return. \$111.44 is subtracted from the gross benefits of \$1,881.88 received in 1996 which leaves the state taxable amount for 1996 of \$1,770.44.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, House File 2513.

701—40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area. For active duty military pay received on or after November 21, 1995, by national guard personnel and by armed forces military reserve personnel, the pay is exempt from state income tax to the extent the military pay was earned overseas for services performed pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area. In order for the active duty pay to qualify for exemption from tax, the military service had to have been performed outside the United States, but not necessarily in the Bosnia-Herzegovina area.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, House File 355.

701—40.52(422) Mutual funds. Iowa does not tax dividend or interest income from regulated investment companies to the extent that such income is derived from interest on United States Government obligations or obligations of this state and its political subdivisions. The exemption is also applicable to income from regulated investment companies which is derived from interest on government-sponsored enterprises and agencies where federal law specifically precludes state taxation of such interest. Income derived from interest on securities which are merely guaranteed by the federal government or from repurchase agreements collateralized by the United States Government obligations is not excluded and is subject to Iowa income tax. There is no distinction between Iowa's tax treatment of interest received by a direct investor as compared with a mutual fund shareholder. The interest retains its same character when it "flows-through" the mutual fund and is subject to taxation accordingly.

Taxpayers may subtract from federal adjusted gross income, income received from any of the obligations listed in subrule 40.2(1) and rule 701—40.3(422) above, even if the obligations are owned indirectly through owning shares in a mutual fund:

1. If the fund invests exclusively in these state tax-exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.

2. If the fund invests in both exempt and nonexempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.

3. If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the amount to be subtracted by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund in state-exempt United States obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.

Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of the dividend or interest.

This rule is intended to implement Iowa Code section 422.7.

701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted. The Iowa educational savings plan trust was created so that individuals and certain other qualified participants can contribute funds on behalf of beneficiaries in accounts administered by the treasurer of state to cover qualified education expenses of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals' net incomes are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted. Definitions and other information about establishing college savings Iowa accounts may be found in rules promulgated by the treasurer of state. See 781—Chapter 16.

40.53(1) *Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries.*

- a. An individual referred to as a "participant" can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary.

- b. For tax years beginning on or after January 1, 2015, if a participant makes a contribution to the Iowa educational savings plan trust on or after January 1, but on or before the deadline for filing an Iowa individual income tax return, excluding extensions, the participant may elect to have the deduction for the contribution apply to that participant's Iowa individual income taxes for the calendar year immediately preceding the year in which the contribution was made. Once a participant has elected to apply a contribution to the calendar year immediately preceding the year in which the contribution was made, the contribution is deemed to have been made on December 31 of that previous calendar year. Once the election has been made, the deduction for that contribution may only be applied in computing the taxpayer's Iowa net income for the calendar year immediately preceding the year in which the contribution was made. Contributions made on or after January 1, but before the deadline

for filing Iowa individual income taxes, that the participant elects to have applied to the immediately preceding calendar year shall count toward the maximum contribution that may be deducted for that previous year. See paragraph 40.53(1)“c” below.

EXAMPLE: An individual makes a contribution to her Iowa educational savings plan account on April 5, 2018. The deadline for filing a 2017 Iowa income tax return is April 30, 2018. The individual elects to have the contribution apply to her 2017 individual income taxes instead of her 2018 Iowa individual income taxes. The department of revenue will consider the individual’s contribution to have been made on December 31, 2017. The individual may now claim a deduction for the contribution, up to the annual maximum deduction, on her 2017 Iowa income taxes. However, because the individual elected to have her contribution apply to her 2017 Iowa income taxes, she cannot claim the deduction for the April 5, 2018, contribution on her 2018 Iowa income tax return.

c. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. Rollover contributions from other states’ educational savings plans will qualify for the deduction, subject to the maximum amount allowable. Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount contributed or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the Iowa educational savings plan trust in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.

EXAMPLE: An individual has ten grandchildren from the age of six months to 12 years. In October 1998, the person became a participant in the Iowa educational savings plan trust by making \$2,000 contributions to the trust on behalf of each of the ten grandchildren. When the participant filed the 1998 Iowa individual income tax return, the participant could claim a deduction on the return for the \$20,000 contributed to the Iowa educational savings plan trust on behalf of the individual’s ten grandchildren.

40.53(2) *Exclusion of interest and earnings on beneficiary accounts in the Iowa educational savings plan trust.* To the extent that interest or other earnings accrue on a beneficiary’s account in the Iowa educational savings plan trust, the interest or other earnings are excluded for purposes of computing net income on the Iowa individual income tax return of the participant or the return of the beneficiary.

40.53(3) *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* The refund or withdrawal of funds is to be included in net income on a participant’s Iowa individual income tax return to the extent that contributions to the account had been deducted on prior Iowa individual income tax returns of the participant if the participant cancels a beneficiary’s account in the Iowa educational savings plan trust and receives a refund of the funds in the account made on behalf of the beneficiary or if the participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the following:

a. *Qualifying higher education withdrawals.* The payment of qualified higher education expenses as defined in Section 529(e)(3) of the Internal Revenue Code. The term “qualified higher education expenses” does not include tuition expenses related to attendance at an elementary or secondary school.

b. *Qualifying elementary and secondary tuition withdrawals.* For withdrawals made on or after January 1, 2018, the payment of tuition expenses in connection with and required for enrollment or attendance at an elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, and which adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216. These qualified tuition expenses shall not exceed \$10,000 per beneficiary per year. This limitation is based on the beneficiary, not the participant.

Participants are responsible for tracking the amount of qualified tuition expense payments a beneficiary may receive from other participants. If a beneficiary’s distributions exceed this annual limitation, the most recent payments are presumed to be the nonqualifying payments. By agreement amongst themselves, account holders are permitted to choose an alternative method for determining which payments are nonqualifying. An alternative method is presumed valid if, after the additions

to income required by this paragraph, the beneficiary's total qualifying tax-free withdrawals for elementary or secondary school tuition expenses do not exceed the \$10,000 limitation. However, upon request, the account holders are responsible for providing the department with adequate documentation to substantiate the method used.

c. Change in beneficiaries. A change in beneficiaries under, or transfer to another account within, the Iowa educational savings plan trust.

d. ABLE rollovers. A transfer to the Iowa ABLE savings plan trust, provided such change or transfer is permitted under Iowa Code section 12D.6(5).

EXAMPLE: Because a beneficiary of a certain participant died in the year 2000, this participant in the Iowa educational savings plan trust canceled the participant agreement for the beneficiary with the trust and received a refund of \$4,200 of funds in the beneficiary's account. Because \$4,000 of the refund represented contributions that the participant had deducted on prior Iowa individual income tax returns, the participant was to report on the Iowa return for the tax year 2000, \$4,000 in contributions that had been deducted on the participant's Iowa returns for 1998 and 1999.

EXAMPLE: Beneficiary A is an elementary school student who attends an accredited elementary school located in Iowa. Participant B and participant C have each opened an Iowa educational savings plan trust account with A as the designated beneficiary. In January 2019, participant B withdraws \$6,000 from B's account to pay A's spring semester tuition. In August 2019, participant C withdraws \$6,000 from C's account to pay for A's fall semester tuition. Although neither B nor C has made a withdrawal in excess of \$10,000, that limitation is based on the beneficiary, A, who has received a total of \$12,000 in distributions in 2019. Because A's total distributions have exceeded the annual limitation on distributions related to elementary or secondary school tuition, the participants must include the \$2,000 excess in their net income. Because C's withdrawal was made after B's, the entire excess is presumed attributable to C, and therefore C must include the entire \$2,000 excess in C's Iowa net income for 2019, unless B and C can show that they agreed to an alternative method of allocating the excess amount.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 3664C, IAB 2/28/18, effective 4/4/18; ARC 4516C, IAB 6/19/19, effective 7/24/19]

701—40.54(422) Roth individual retirement accounts. Roth individual retirement accounts were authorized in the Taxpayer Relief Act of 1997 and are applicable for tax years beginning after December 31, 1997. Generally, no deduction is allowed on either the federal income tax return or the Iowa individual income tax return for a contribution to a Roth IRA. The following subrules include information about tax treatment of certain transactions for Roth IRAs.

40.54(1) Taxation of income derived from rolling over or converting existing IRAs to Roth IRAs. At the time existing IRAs are rolled over to or converted to Roth IRAs in the 1998 calendar year or in a subsequent year, any income realized from the rollover or conversion of the existing IRA is taxable. However, in the case of conversion of existing IRAs to Roth IRAs in 1998, the taxpayer can make an election to have all the income realized from the conversion subject to tax in 1998 rather than have the conversion income spread out over four years. If the conversion income is spread out over four years, one-fourth of the conversion income is included on the 1998 Iowa and federal returns of the taxpayer and one-fourth of the income is included on the taxpayer's Iowa and federal returns for each of the following three tax years. Note that if an existing IRA for an individual is converted to a Roth IRA for the individual in a calendar year after 1998, all the income realized from the conversion is to be reported on the federal return and the Iowa return for that tax year for the individual. That is, when conversion of existing IRAs to Roth IRAs occurs after 1998, there is no provision for having the conversion income taxed over four years.

For example, an Iowa resident converted three existing IRAs to one Roth IRA in 1998, realized \$20,000 in income from the conversion, and did not elect to have all the conversion income taxed on the 1998 Iowa and federal returns. Because the taxpayer did not make the election so all the conversion income was taxed in 1998, \$5,000 in conversion income was to be reported on the taxpayer's federal and Iowa returns for 1998 and similar incomes were to be reported on the federal and Iowa returns for 1999, 2000, and 2001. Note that to the extent the recipient of the Roth IRA conversion income is

eligible, the conversion income is subject to the pension/retirement income exclusion described in rule 701—40.47(422).

40.54(2) Roth IRA conversion income for part-year residents. To the extent that an Iowa resident has Roth IRA conversion income on the individual's federal income tax return, the same income will be included on the resident's Iowa income tax return. However, when an individual with Roth IRA conversion income in the tax year is a part-year resident of Iowa, the individual may allocate the conversion income on the Iowa return in the ratio of the taxpayer's months in Iowa during the tax year to 12 months. In a situation where an individual spends more than half of a month in Iowa, that month is to be reported to Iowa for purposes of the allocation.

For example, an individual moved to Des Moines from Omaha on June 12, 1998, and had \$20,000 in Roth IRA conversion income in 1998. Because the individual spent 7 months in Iowa in 1998, 7/12, or 60 percent, of the \$20,000 in conversion income is allocated to Iowa. Thus, \$12,000 of the conversion income should be reported on the taxpayer's Iowa return for 1998.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, Senate File 2357.

701—40.55(422) Exemption of income payments for victims of the Holocaust and heirs of victims. For tax years beginning on or after January 1, 2000, income payments received by individuals because they were victims of the Holocaust or income payments received by individuals who are heirs of victims of the Holocaust are excluded in the computation of net incomes, to the extent the payments were included in the individuals' federal adjusted gross incomes. Victims of the Holocaust were victims of persecution in the World War II era for racial, ethnic or religious reasons by Nazi Germany or other Axis regime.

Holocaust victims may receive income payments for slave labor performed in the World War II era. Income payments may also be received by Holocaust victims as reparation for assets stolen from, hidden from, or otherwise lost in the World War II era, including proceeds from insurance policies of the victims. The World War II era includes the time of the war and the time immediately before and immediately after the war. However, income from assets acquired with the income payments or from the sale of those assets shall not be excluded from the computation of net income. The exemption of income payments shall only apply to the first recipient of the income payments who was either a victim of persecution by Nazi Germany or any other Axis regime or a person who is an heir of the victim of persecution.

This rule is intended to implement Iowa Code sections 217.39 and 422.7.

701—40.56(422) Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions. For tax years beginning on or after January 1, 2001, income from the sale of obligations of the state of Iowa and its political subdivisions shall be added to Iowa net income to the extent not already included. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa net income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition of the bonds from the Iowa individual income tax.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, chapter 116.

701—40.57(422) Installment sales by taxpayers using the accrual method of accounting. For tax years beginning on or after January 1, 2000, and prior to January 1, 2002, taxpayers who use the accrual method of accounting and who have sales or exchanges of property that they reported on the installment method for federal income tax purposes must report the total amount of the gain or loss from the transaction in the tax year of the sale or exchange pursuant to Section 453 of the Internal Revenue Code as amended up to and including January 1, 2000.

EXAMPLE 1. Taxpayer Jones uses the accrual method of accounting for reporting income. In 2001, Mr. Jones sold farmland he had held for eight years for \$200,000 which resulted in a capital gain of

\$50,000. For federal income tax purposes, Mr. Jones elected to report the transaction on the installment basis, where he reported \$12,500 of the gain on his 2001 federal return and will report capital gains of \$12,500 on each of his federal returns for the 2002, 2003 and 2004 tax years.

However, for Iowa income tax purposes, Mr. Jones must report on his 2001 Iowa return the entire capital gain of \$50,000 from the land sale. Although Taxpayer Jones must report a capital gain of \$12,500 on each of his federal income tax returns for 2002, 2003 and 2004, from the installment sale of the farmland in 2001, he will not have to include the installments of \$12,500 on his Iowa income tax returns for those three tax years because Mr. Jones had reported the entire capital gain of \$50,000 from the 2001 transaction on his 2001 Iowa income tax return.

EXAMPLE 2. Taxpayer Smith uses the accrual method of accounting for reporting income. In 2002, Mr. Smith sold farmland he had held for eight years for \$500,000 which resulted in a capital gain of \$100,000. For federal income tax purposes, Mr. Smith elected to report the transaction on the installment basis, where he reported \$20,000 of the gain on his 2002 federal return and will report the remaining capital gains on federal returns for the four subsequent tax years. Because this installment sale occurred in 2002, Mr. Smith shall report \$20,000 of the capital gain on his Iowa income tax return for 2002 and will report the balance of the capital gains from the installment sale on Iowa returns for the next four tax years, the same as reported on his federal returns for those years.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, House File 2116.

701—40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States. For tax years beginning on or after January 1, 2002, members of the Iowa national guard or members of military reserve forces of the United States who are ordered to national guard duty or federal active duty are not subject to Iowa income tax on the amount of distributions received during the tax year from qualified retirement plans of the members to the extent the distributions were taxable for federal income tax purposes. In addition, the members are not subject to state penalties on the distributions even though the members may have been subject to federal penalties on the distributions for early withdrawal of benefits. Because the distributions described above are not taxable for Iowa income tax purposes, a national guard member or armed forces reserve member who receives a distribution from a qualified retirement plan may request that the payer of the distribution not withhold Iowa income tax from the distribution.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2097.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

701—40.59(422) Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate. Rescinded ARC 1137C, IAB 10/30/13, effective 12/4/13.

701—40.60(422) Additional first-year depreciation allowance.

40.60(1) *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance (“bonus depreciation”) of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss

reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

40.60(2) *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa individual income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa individual income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

a. If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of \$50,000 for the difference between federal depreciation and Iowa depreciation relating to the disallowance of 50 percent bonus depreciation. Taxpayer now elects to take the 50 percent bonus depreciation for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional \$50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2005 Iowa return.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

40.60(3) *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss

reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

40.60(4) *Qualified disaster assistance property.* For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

40.60(5) *Assets acquired after December 31, 2009, but before January 1, 2014.* For tax periods beginning after December 31, 2009, but beginning before January 1, 2014, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, Public Law No. 111-312, Section 401, and Public Law No. 112-240, Section 331, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2014, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2014, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2013 Iowa Acts, Senate File 106.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13]

701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn. For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2010, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation New Dawn. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, but before January 1, 2011, for service not covered

by military orders for one of the operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. For active duty pay received on or after January 1, 2011, see rule 701—40.76(422). An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

701—40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve. A taxpayer may subtract, in computing net income, the costs not reimbursed that were incurred for overnight transportation, meals and lodging expenses for travel away from the taxpayer's home more than 100 miles, to the extent the travel expenses were incurred for the performance of services on or after January 1, 2003, by the taxpayer as a national guard member or an armed forces military reserve member. The deduction for Iowa tax purposes is the same that is allowed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 186.

701—40.63(422) Exclusion of income from military student loan repayments. Individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

701—40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty. An eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces, who has died while on active duty may subtract, to the extent included in federal adjusted gross income, a gratuity death payment made to the eligible survivor of a member of the armed forces who died while on active duty after September 10, 2001. This exclusion applies to a gratuity death payment made to the eligible survivor of any person in the armed forces or a reserve component of the armed forces who died while on active duty after September 10, 2001.

The purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces to meet financial needs during the period immediately following a service member's death and before other survivor benefits, if any, become available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

701—40.65(422) Section 179 expensing.

40.65(1) In general. Iowa taxpayers who elect to expense certain depreciable business assets in the year the assets were placed in service under Section 179 of the Internal Revenue Code must also expense those same assets for Iowa income tax purposes in that year. However, for certain years, the Iowa

limitations on this deduction are different from the federal limitations for the same year. This means that for some tax years, adjustments are required to determine the correct Iowa section 179 expensing deduction, as described in this rule.

40.65(2) Claiming the deduction.

a. Timing and requirement to follow federal election. A taxpayer who takes a federal section 179 deduction must also take the deduction for the same asset in the same year for Iowa purposes, except as expressly provided by Iowa law or this rule. A taxpayer who takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer who does not take a federal section 179 deduction on a specific qualifying asset is not permitted to take a section 179 deduction for Iowa purposes on that asset.

b. Qualifying for the deduction. Whether a specific business asset qualifies for a section 179 deduction is determined by the Internal Revenue Code (Title 26, U.S. Code) and applicable federal regulations for both federal and Iowa purposes.

c. Amount of the Iowa deduction. Generally, the Iowa deduction must equal the amount of the federal deduction taken for the same asset in the same year, subject to special Iowa limitations. The following chart provides a comparison of the Iowa and federal section 179 dollar limitations and reduction limitations. See rule 701—53.23(422) for the section 179 rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax, and see rule 701—59.24(422) for the section 179 rules applicable to financial institutions subject to the franchise tax.

Section 179 Deduction Allowances Under Federal and Iowa Law				
Tax Year	Federal		Iowa	
	Dollar Limitation	Reduction Limitation	Dollar Limitation	Reduction Limitation
2003	\$ 100,000	\$ 400,000	\$ 100,000	\$ 400,000
2004	102,000	410,000	102,000	410,000
2005	105,000	420,000	105,000	420,000
2006	108,000	430,000	108,000	430,000
2007	125,000	500,000	125,000	500,000
2008	250,000	800,000	250,000	800,000
2009	250,000	800,000	133,000	530,000
2010	500,000	2,000,000	500,000	2,000,000
2011	500,000	2,000,000	500,000	2,000,000
2012	500,000	2,000,000	500,000	2,000,000
2013	500,000	2,000,000	500,000	2,000,000
2014	500,000	2,000,000	500,000	2,000,000
2015	500,000	2,000,000	500,000	2,000,000
2016	500,000	2,010,000	25,000	200,000
2017	510,000	2,030,000	25,000	200,000
2018	1,000,000	2,500,000	70,000	280,000
2019	1,020,000	2,550,000	100,000	400,000
2020 and later	Iowa limitations are the same as federal			

d. Reduction. Both the federal and the Iowa deductions for section 179 assets are reduced (phased out dollar for dollar) for taxpayers whose total section 179 assets placed in service during a given year cost more than the amount specified (reduction limitation) for that year. Like the deduction limitation, the Iowa and federal reduction limitations are different for certain years. See paragraph 40.65(2) “c” for applicable limitations.

EXAMPLE: Taxpayer purchases \$400,000 worth of qualifying section 179 assets and places all of them in service in 2018. Taxpayer claims a section 179 deduction of \$400,000 for the full cost of the assets on the 2018 federal return. The Iowa section 179 deduction for 2018 is phased out dollar for

dollar by the amount of section 179 assets placed in service in excess of \$280,000. This means that, for 2018, the Iowa deduction is fully phased out if the taxpayer placed in service section 179 assets that cost, in total, more than \$350,000. Since the cost of the qualifying assets in this example exceeds the Iowa section 179 phase-out limit, the taxpayer cannot claim any section 179 deduction on the Iowa return. However, the taxpayer may depreciate the entire cost of the assets for Iowa purposes.

e. Amounts in excess of the Iowa limits.

(1) Recovering the excess. Due to the differences between the Iowa and federal limitations for certain years, taxpayers may have a federal section 179 deduction that exceeds the amount allowed for Iowa purposes. This excess amount is handled in different ways depending on the source of the deduction.

1. Assets placed in service by the taxpayer or entity reporting the deduction. The cost of any section 179 assets placed in service by the taxpayer in excess of the Iowa limitation for a given year may be recovered through regular depreciation under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). The Iowa section 179 and depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: Taxpayer purchases a \$100,000 piece of equipment and places it in service in 2018. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2018 federal return. Taxpayer is also required to claim a section 179 deduction of \$70,000 on the 2018 Iowa return (the full amount of the federal deduction up to the Iowa limit). The taxpayer can depreciate the remaining \$30,000 cost of the equipment for Iowa purposes.

2. Special election for assets placed in service by a pass-through entity when the section 179 deduction is claimed by the owner of that pass-through. See subrule 40.65(3) for information on a special election available to certain owners of pass-through entities related to any section 179 deductions passed through from a partnership or other entity that, in the aggregate, exceed the Iowa limitations.

(2) Application of limitation to pass-throughs. In the case of pass-through entities, section 179 limitations apply at both the entity level and the owner level. Pass-through entities that are required to file an Iowa return and that actually place section 179 assets in service should follow 40.65(2) "e"(1)"1" to account for any assets for which the total federal section 179 deductions for a given year exceeded the Iowa limitation. Owners of pass-throughs receiving section 179 deductions from one or more pass-throughs that, in the aggregate, exceed the Iowa limitations should follow 40.65(2) "e"(1)"2."

EXAMPLE: Partner A (an individual and an Iowa resident) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C does business exclusively in Iowa, places \$200,000 worth of section 179 assets in service during tax year 2019 and claims a federal section 179 deduction for the full cost of the assets. Because C is required to file an Iowa partnership return, C is subject to the Iowa section 179 limitations for 2019 and must adjust its Iowa section 179 deduction as provided in 40.65(2) "e"(1)"1." C passes 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) through to A. A also receives \$50,000 each in section 179 deductions from D and E, for a total of \$150,000 in section 179 deductions (for Iowa purposes) in 2019. A is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because A received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, A is eligible for the special election referenced in 40.65(2) "e"(1)"2."

f. Income limitation. The Iowa section 179 deduction for any given year is limited to the taxpayer's income from active conduct in a trade or business in the same manner that the section 179 deduction is limited for federal purposes. If an allowable Iowa section 179 deduction exceeds the taxpayer's business income for a given year, any excess may be carried forward as described in paragraph 40.65(2) "g."

g. Carryforward. This paragraph applies only to amounts that do not exceed the Iowa section 179 deduction limitations for a given year but do exceed the taxpayer's business income for that year. As with the federal deduction, allowable Iowa section 179 deductions claimed in a given year that exceed a taxpayer's business income may be carried forward and claimed in future years. This carryforward, if any, is calculated using only amounts up to the Iowa limit. Any federal section 179 deduction the

taxpayer claimed in excess of the Iowa limit is not an Iowa section 179 deduction and therefore is not eligible for the carryforward described in this paragraph. Such amounts must instead be recovered as described in paragraph 40.65(2)“e,” or in subrule 40.65(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

EXAMPLE: Taxpayer purchases a \$100,000 piece of equipment and places it in service in 2019. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2019 federal return. Taxpayer is also required to claim a section 179 deduction of \$100,000 on the 2019 Iowa return (because the federal deduction is equal to the Iowa limit for the year, the Iowa and federal deductions are the same). However, the taxpayer has only \$50,000 in business income for 2019, so the allowable deduction for that year is limited to \$50,000. The remaining \$50,000 may be carried forward and applied as a section 179 deduction (subject to all limitations) in 2020, and in any future years until the amount is fully deducted.

h. Differences in basis. Iowa adjustments for differences between the Iowa and federal section 179 deduction limitations may cause the taxpayer to have a different basis in the same asset for Iowa and federal purposes. Taxpayers are required to use forms made available on the department’s website to calculate and track these differences.

40.65(3) Section 179 deduction received from a pass-through entity. In some cases, an individual or entity that receives income from one or more pass-through entities may receive a section 179 deduction in excess of the Iowa deduction limitation listed in paragraph 40.65(2)“c” for a given year. The individual or entity may be eligible for a special election with regard to that excess section 179 deduction, as described in this subrule.

a. Tax years beginning before January 1, 2018. For tax years beginning before January 1, 2018, the amount of any section 179 deduction received in excess of the Iowa deduction limitation for that year is not eligible for the special election.

b. Special election available for tax years 2018 and 2019. For tax years beginning on or after January 1, 2018, but before January 1, 2020, an individual or entity that receives a section 179 deduction from one or more pass-through entities in excess of the Iowa deduction limitation for that tax year may elect to deduct the excess in future years, as described in this subrule. See rule 701—53.23(422) for rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax, and see rule 701—59.24(422) for rules applicable to financial institutions subject to the franchise tax.

(1) This special election applies only to section 179 deductions passed through to the individual or entity by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the individual or entity exceeds the federal section 179 deduction limitation for that year, the individual or entity may only use the amount up to the federal limitation when calculating the deduction under this election. Any amount in excess of the federal limitation shall not be deducted for Iowa purposes.

c. Section 179 assets of an individual or entity. An individual or entity that makes the special election may not claim an Iowa section 179 deduction for any assets the individual or entity placed in service during the same year but must instead depreciate such assets using the modified accelerated cost recovery system (MACRS) without regard to bonus depreciation under Section 168(k) of the Internal Revenue Code. To the extent the individual or entity claimed a federal section 179 deduction on those assets, the Iowa depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa law and federal law are calculated and tracked on forms made available on the department’s website.

EXAMPLE: A is a sole proprietor who places in service \$20,000 worth of section 179 assets in tax year 2018 and claims the deduction for the full amount for federal purposes. A is also a partner in Partnership B, an out-of-state partnership with no Iowa filing obligation. Partnership B also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$100,000 of that deduction through to A. For federal purposes, A has a total of \$120,000 in section 179 deductions. Because A has section 179 deductions from a pass-through that exceed the Iowa limitation for the year, A is eligible for the special election. A makes the special election and claims the maximum Iowa section

179 deduction of \$70,000 on the amount passed through from Partnership B. Under the special election, A will be allowed to deduct the remaining \$30,000 passed through from Partnership B over the next five years, as described in paragraph 40.65(3)“e.” However, because A made the special election, A will be required to depreciate the entire \$20,000 cost of the assets A placed in service as a sole proprietor.

d. Calculating the special election. An eligible individual or entity electing to take advantage of the special election must first add together all section 179 deductions which the individual or entity received from all relevant pass-through entities. The individual or entity must claim an aggregate Iowa section 179 deduction equal to the Iowa limit for the tax year. This amount must be subtracted from the total. Whatever remains is the amount the individual or entity will be permitted to deduct (special election deduction) in future years.

e. Special election deduction.

(1) Calculation. The remaining amount from paragraph 40.65(3)“d” must be divided into five equal shares.

(2) Claiming the special election deduction. The individual or entity may deduct one of the five shares in each of the next five years. The dollar limitations and reduction limitations on section 179 deductions do not apply to special deduction amounts allowed over the five-year period under this paragraph.

(3) Excess special deduction. The special election deduction for a given year is limited to the taxpayer’s business income for that year. Any excess may be carried forward to future years. Any amounts carried forward under this subparagraph shall be added to, and treated in the same manner as, regular Iowa section 179 deduction carryforwards as described in paragraph 40.65(2)“g.”

EXAMPLE: A is an Iowa resident who is a partner in a partnership that does not do business in Iowa. In 2019, the partnership passes through a \$600,000 federal section 179 deduction and does not recalculate the deduction for Iowa purposes, because the partnership has no obligation to file an Iowa return. A claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning A will be allowed to take a \$100,000 Iowa deduction in each of the next five years.

In 2020, A is eligible for the \$100,000 deduction carried forward under the election, but A only has \$50,000 in business income. The deduction is limited to business income, so A can only use \$50,000 of the deduction in this year. However, A will be permitted to treat the excess \$50,000 as a section 179 carryforward and use it to offset business income in future years until the deduction is used up.

f. Basis. The individual’s or entity’s basis in the pass-through entity assets is adjusted by the full amount of the section 179 deduction passed through in the year that the section 179 deduction is received and is therefore the same for both Iowa and federal purposes.

g. Later tax years. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal section 179 deduction and special Iowa treatment for excess section 179 deductions received from pass-throughs is not available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2019 Iowa Acts, Senate File 220.

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701—40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant. For tax years beginning on or after January 1, 2005, a taxpayer, while living, may subtract up to \$10,000 in unreimbursed expenses that were incurred relating to the taxpayer’s donation of all or part of a liver, pancreas, kidney, intestine, lung or bone marrow to another human being for immediate human organ transplantation. The taxpayer can claim this deduction only once, and the deduction can be claimed in the year in which the transplant occurred. The unreimbursed expenses must not be compensated by insurance to qualify for the deduction.

The unreimbursed expenses which are eligible for the deduction include travel expenses, lodging expenses and lost wages. If the deduction is claimed for travel expenses and lodging expenses, these expenses cannot also be claimed as an itemized deduction for medical expenses under Section 213(d)

of the Internal Revenue Code for Iowa tax purposes. The deduction for lost wages does not include any sick pay or vacation pay reimbursed by an employer.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 801.

701—40.67(422) Deduction for alternative motor vehicles. For tax years beginning on or after January 1, 2006, but beginning before January 1, 2015, a taxpayer may subtract \$2,000 for the cost of a clean fuel motor vehicle if the taxpayer was eligible to claim for federal tax purposes the alternative motor vehicle credit under Section 30B of the Internal Revenue Code for this motor vehicle.

The vehicles eligible for this deduction include new qualified fuel cell motor vehicles, new advanced lean burn technology motor vehicles, new qualified hybrid motor vehicles, qualified plug-in electric drive motor vehicles and new qualified alternative fuel vehicles. The advanced lean burn technology, qualified hybrid and qualified alternative fuel vehicles must be placed in service before January 1, 2011, to qualify for the deduction. The qualified plug-in electric drive motor vehicles must be placed in service before January 1, 2012, to qualify for the deduction. The qualified fuel cell motor vehicles must be placed in service before January 1, 2015, to qualify for the deduction. A taxpayer must claim a credit on the taxpayer's federal income tax return on federal Form 8910 to claim the deduction on the Iowa return.

This rule is intended to implement Iowa Code section 422.7.
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

701—40.68(422) Injured veterans grant program.

40.68(1) For tax years beginning on or after January 1, 2006, a taxpayer who receives a grant under the injured veterans grant program provided in 2006 Iowa Acts, Senate File 2312, section 1, may subtract, to the extent included in federal adjusted gross income, the amount of the grant received. The injured veterans grant program is administered by the Iowa department of veterans affairs, and grants of up to \$10,000 are provided to veterans who are residents of Iowa and are injured in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

40.68(2) For tax years beginning on or after January 1, 2006, a taxpayer may subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts contributed to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in 2006 Iowa Acts, Senate File 2312, section 1. If a deduction is claimed for these amounts contributed to the injured veterans grant program, this deduction cannot also be claimed as an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2312.

701—40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain. For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa individual income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa individual income tax can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms "threat" and "imminence," and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

40.69(1) Reporting requirements. In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa individual income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 40.69(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

40.69(2) Claiming the exclusion when gain is not recognized for federal tax purposes. For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa individual income tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa individual income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa individual income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of \$50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa individual income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of \$70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of \$50,000 on the 2009 Iowa individual income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.7.

701—40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects.

40.70(1) Projects registered on or after January 1, 2007, but before July 1, 2009. For tax years beginning on or after January 1, 2007, a taxpayer who is a resident of Iowa may exclude, to the extent included in federal adjusted gross income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—42.37(15,422). See rule 701—38.17(422) for the determination of Iowa residency.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—42.37(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a limited liability company with three members, all of whom are Iowa residents. If any of the three members receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, such member(s) cannot exclude this income on the Iowa income tax return because the member(s) has an equity interest in the business which received the credit.

40.70(2) *Projects registered on or after July 1, 2009.* For tax years beginning on or after July 1, 2009, a taxpayer who is a resident of Iowa may exclude no more than 25 percent of the income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development in the year in which the qualified expenditure occurred. A reduction of 25 percent of the income is allowed to be excluded for the three subsequent tax years.

EXAMPLE: An Iowa taxpayer received \$10,000 in income in the 2010 tax year related to qualified film expenditures for a project registered on February 1, 2010. The \$10,000 was reported as income on taxpayer's 2010 federal tax return. Taxpayer may exclude \$2,500 of income on the Iowa individual income tax return for each of the tax years 2010-2013.

40.70(3) *Repeal of exclusion.* The exclusion of income from the sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects is repealed for tax years beginning on or after January 1, 2012. However, the exclusion is still available if the contract or agreement related to a film project was entered into on or before May 25, 2012. Assuming the same facts as those in the example in subrule 40.70(2), the taxpayer can continue to exclude \$2,500 of income on the Iowa individual income tax return for the 2012 and 2013 tax years since the contract or agreement was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40, and Iowa Code section 422.7 as amended by 2012 Iowa Acts, House File 2337, section 33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0398C, IAB 10/17/12, effective 11/21/12]

701—40.71(422) Exclusion for certain victim compensation payments. Effective for tax years beginning on or after January 1, 2007, a taxpayer may exclude from Iowa individual income tax any income received from certain victim compensation payments to the extent this income was reported on the federal income tax return. The amounts which may be excluded from income include the following:

1. Victim compensation awards paid under the victim compensation program administered by the department of justice in accordance with Iowa Code section 915.81, and received by the taxpayer during the tax year.

2. Victim restitution payments received by a taxpayer during the tax year in accordance with Iowa Code chapter 910 or 915.

3. Damages awarded by a court, and received by a taxpayer, in a civil action filed by a victim against an offender during the tax year.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 70.

701—40.72(422) Exclusion of Vietnam Conflict veterans bonus.

40.72(1) For tax years beginning on or after January 1, 2007, but before January 1, 2013, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs, and bonuses of up to \$500 are awarded to residents of Iowa who served on active duty in the armed forces of the United States between July 1, 1973, and May 31, 1975.

40.72(2) For tax years beginning on or after January 1, 2008, but before January 1, 2013, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs. Bonuses of up to \$500 are awarded to veterans who were inducted into active duty service from the state of Iowa, who served on active duty in the United States armed forces between July 1, 1958, and May 31, 1975, and who have not received a bonus for that service from Iowa or another state.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2038.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents. Effective for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

40.73(1) Term of coverage. Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

40.73(2) Federal treatment. Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return. For tax years beginning on or after January 1, 2011, income is no longer reported on the federal income tax return on the value of health care coverage of children who are not claimed as dependents and who have not attained age 27 as of the end of the tax year; therefore, no adjustment is required on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

701—40.74(422) Exclusion for AmeriCorps Segal Education Award. Effective for tax years beginning on or after January 1, 2010, a taxpayer may exclude from Iowa individual income tax any amount of AmeriCorps Segal Education Award to the extent the education award was reported as income on the federal income tax return. The AmeriCorps Segal Education Award is available to individuals who complete a year of service in the AmeriCorps program. The education award can be used to pay education costs at institutions of higher learning, for educational training, or to repay qualified student loans.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

[ARC 8605B, IAB 3/10/10, effective 4/14/10]

701—40.75(422) Exclusion of certain amounts received from Iowa veterans trust fund. For tax years beginning on or after January 1, 2010, a taxpayer may subtract, to the extent included in federal adjusted gross income, the amounts received from the Iowa veterans trust fund related to travel expenses directly related to follow-up medical care for wounded veterans and their spouses and amounts received related to unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

This rule is intended to implement Iowa Code section 422.7 as amended by 2010 Iowa Acts, House File 2532.

[ARC 9103B, IAB 9/22/10, effective 10/27/10]

701—40.76(422) Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard. For tax years beginning on or after January 1, 2011, all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard is excluded to the extent the pay was included in federal adjusted gross income.

40.76(1) Definition of active duty personnel. Active duty personnel who qualify for the exclusion include the following:

- a. Active duty members of the regular armed forces, which include the Army, Navy, Marines, Air Force and Coast Guard of the United States.
- b. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are on an active duty status as defined in Title 10 of the United States Code.
- c. Members of the national guard who are in an active duty status as defined in Title 10 of the United States Code.

40.76(2) Military personnel who do not qualify for the exclusion include the following:

- a. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are not in an active duty status as defined in Title 10 of the United States Code.
- b. Full-time members of the national guard who perform duties in accordance with Title 32 of the United States Code.
- c. Other members of the national guard who are not in an active duty status as defined in Title 10 of the United States Code.
- d. Other members of the national guard who do not receive pay from the federal government.

40.76(3) Income from nonmilitary activities. Any wages earned from nonmilitary wages for personal services conducted in Iowa by both residents and nonresidents of Iowa will still be subject to Iowa individual income tax. In addition, both residents and nonresidents of Iowa who earn income from businesses, trades, professions or occupations operated in Iowa that are unrelated to military activity will be subject to Iowa individual income tax on that income.

40.76(4) Exemption from Iowa withholding. Active duty personnel meeting the requirements of subrule 40.76(1) who are receiving pay from the federal government on or after January 1, 2011, that is exempt from Iowa individual income tax may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received from the federal government.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

701—40.77(422) Exclusion of biodiesel production refund. A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

701—40.78(422) Allowance of certain deductions for 2008 tax year.

40.78(1) For the tax year beginning on or after January 1, 2008, but before January 1, 2009, the following deductions provided in the federal Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, will be allowed on the Iowa individual income tax return:

- a. The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.
- b. The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.
- c. The deduction for disaster-related casualty losses allowed under Section 165(h) of the Internal Revenue Code.

40.78(2) Taxpayers who did not claim these deductions on the Iowa return for 2008 as originally filed, or taxpayers who claimed these deductions on the Iowa return as filed and subsequently filed an amended return disallowing these deductions, must file an amended return for the 2008 tax year to claim these deductions. The amended return must be filed within the statute of limitations provided in 701—subrules 43.3(8) and 43.3(15). If the amended return is filed within the statute of limitations,

the taxpayer is only entitled to a refund of the excess tax paid. The taxpayer will not be entitled to any interest on the excess tax paid.

This rule is intended to implement Iowa Code sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 533.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

701—40.79(422) Special filing provisions related to 2010 tax changes.

40.79(1) For the tax year beginning on or after January 1, 2010, but before January 1, 2011, the following adjustments will be allowed on the Iowa individual income tax return:

a. The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

b. The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

c. The increased expensing allowance authorized under Section 179(b) of the Internal Revenue Code.

40.79(2) Taxpayers who did not claim these adjustments on the Iowa return for 2010 as originally filed have two options to reflect these adjustments. Taxpayer may either file an amended return for the 2010 tax year to reflect these adjustments or taxpayer may reflect these adjustments on the tax return for the 2011 tax year. If the taxpayer elects to reflect these adjustments on the 2011 tax return, the following provisions are suspended related to the claiming of the following adjustments for 2011:

a. The limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code with regard to the Section 179(b) adjustment.

b. The applicable dollar limit provision of Section 222(b)(2)(B) of the Internal Revenue Code with regard to the qualified tuition and related expenses adjustment.

40.79(3) Examples. The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Taxpayer claimed a \$150,000 Section 179 expense on the federal return for 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for 2010. Taxpayer elects not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer reported a loss from the taxpayer's trade or business on the 2011 federal return, so no Section 179 expense can be claimed on the federal return for 2011 in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for 2011 since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

EXAMPLE 2: Taxpayers are a married couple who claimed a \$4,000 tuition and related expenses deduction on their federal return for 2010. Taxpayers did not claim this deduction on their Iowa return as originally filed for 2010. Taxpayers elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayers reported federal adjusted gross income in excess of \$160,000 on their 2011 federal return, so no deduction for tuition and related expenses can be claimed on the 2011 federal return in accordance with Section 222(b)(2)(B) of the Internal Revenue Code. Taxpayers can claim the \$4,000 deduction on the Iowa return for 2011 since the dollar limit provision of Section 222(b)(2)(B) is suspended for Iowa tax purposes.

EXAMPLE 3: Taxpayer is an elementary school teacher who claimed a \$250 deduction for out-of-pocket expenses for school supplies on the federal return for 2010. Taxpayer did not claim this deduction on the Iowa return as originally filed for 2010. Taxpayer elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer also claimed a \$200 deduction for out-of-pocket expenses for school supplies on the federal return for 2011. Taxpayer can claim a \$450 (\$250 plus \$200) deduction on the Iowa return for 2011.

This rule is intended to implement 2011 Iowa Acts, Senate File 533, section 143.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

701—40.80(422) Exemption for military retirement pay. For tax years beginning on or after January 1, 2014, retirement pay received by taxpayers from the federal government for military service performed in the armed forces, armed forces reserves, or national guard is exempt from state income tax. In addition,

amounts received by a surviving spouse, former spouse, or other beneficiary of a taxpayer who served in the armed forces, armed forces reserves, or national guard under the Survivor Benefit Plan are also exempt from state income tax for tax years beginning on or after January 1, 2014. The retirement pay is only deductible to the extent it is included in the taxpayer's federal adjusted gross income.

40.80(1) Coordination with pension exclusion. The exclusion of retirement pay is in addition to the partial exclusion, provided in rule 701—40.47(422), of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses and survivors. In addition, taxpayers who receive retirement pay under federal law that combines retirement pay for both uniformed service and the federal civil service retirement system or federal employees' retirement system must prorate the retirement pay based on years of service.

EXAMPLE 1: A married individual who is 60 years of age receives \$20,000 of federal retirement pay from military service and \$30,000 in retirement pay from the Iowa public employees' retirement system during the 2014 tax year. The taxpayer can exclude \$20,000 of military retirement pay and \$12,000 as a pension exclusion under rule 701—40.47(422), for a total exclusion of \$32,000 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

EXAMPLE 2: A single taxpayer who is 65 years of age receives \$60,000 as a federal pension during the 2014 tax year. The taxpayer has 20 years of military service and 27 years of civilian employment with the federal government. The military retirement pay portion is \$25,532 (20 years divided by 47 years multiplied by \$60,000). The taxpayer can exclude \$25,532 of military retirement pay and \$6,000 as a pension exclusion under rule 701—40.47(422), for a total exclusion of \$31,532 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

40.80(2) Coordination with filing threshold and alternate tax. The military retirement pay is excluded from the calculation of income used to determine whether an Iowa income tax return is required to be filed pursuant to 701—subrules 39.1(1) and 39.5(10) through 39.5(13). In addition, the military retirement pay is excluded from the calculation of the special tax computation for all low-income taxpayers except single taxpayers pursuant to rule 701—39.9(422) and is excluded from the calculation of the special tax computation for taxpayers who are 65 years of age or older under rule 701—39.15(422).

40.80(3) Iowa withholding. The amount of military retirement pay is excluded from the calculation of payments used to determine whether Iowa tax should be withheld from pension and annuity payments as determined pursuant to 701—subrule 46.3(4).

This rule is intended to implement Iowa Code sections 422.5 and 422.7 as amended by 2014 Iowa Acts, Senate File 303.

[ARC 1665C, IAB 10/15/14, effective 11/19/14]

701—40.81(422) Iowa ABLE savings plan trust. The Iowa ABLE savings plan trust was created so that individuals can contribute funds on behalf of designated beneficiaries into accounts administered by the treasurer of state. The funds contributed to the trust may be used to cover future disability-related expenses of the designated beneficiary. The funds contributed to the trust are intended to supplement, but not supplant, other benefits provided to the designated beneficiary by various federal, state, and private sources. The Iowa ABLE savings plan program is administered by the treasurer of state under the terms of Iowa Code chapter 12I. The following subrules provide details about how an individual's net income is affected by contributions to a beneficiary's account, by interest and any other earnings on a beneficiary's account, and by distributions of contributions which were previously deducted.

40.81(1) Definitions.

"Account owner" means an individual who enters into a participation agreement under Iowa Code chapter 12I for the payment of qualified disability expenses on behalf of a designated beneficiary.

"Designated beneficiary" means an individual who is a resident of this state or a resident of a contracting state and who meets the definition of "eligible individual" found in Section 529A of the Internal Revenue Code.

"Iowa ABLE savings plan trust" means a qualified ABLE program administered by the Iowa treasurer of state under the terms of Iowa Code chapter 12I.

“*Other qualified ABLE program*” refers to any qualified ABLE program administered by another state with which the Iowa treasurer of state has entered into an agreement under the terms of Iowa Code section 12I.10 (see subrule 40.81(2) below).

“*Qualified ABLE program*” means the same as defined in Section 529A of the Internal Revenue Code.

“*Qualified disability expenses*” means the same as defined in Section 529A of the Internal Revenue Code.

40.81(2) *Contracting with other states.* Iowa Code section 12I.10 allows the treasurer of state to choose to defer implementation of Iowa’s own qualified ABLE program and instead enter into an agreement with another state that already has a qualified ABLE program, to provide Iowa residents access to that state’s qualified ABLE program, provided that the other state’s program meets the qualifications set out in Iowa Code section 12I.10(1).

40.81(3) *Subtraction from net income for contributions made to the Iowa ABLE savings plan trust or other qualified ABLE program.* For tax years beginning on or after January 1, 2016, individuals can subtract from their Iowa net income the amount contributed to the Iowa ABLE savings plan trust or other qualified ABLE program on behalf of a designated beneficiary during the tax year, subject to the maximum contribution level for that year. This subtraction is not allowed for any contribution that is a transfer from an Iowa educational savings plan trust account and that was previously deducted as a contribution to the Iowa educational savings plan trust.

40.81(4) *Exclusion of interest and earnings on beneficiary accounts in the Iowa ABLE savings plan trust or other qualified ABLE program.* For tax years beginning on or after January 1, 2016, to the extent that interest or other earnings accrue on an account in the Iowa ABLE savings plan trust or other qualified ABLE program (if the account owner is an Iowa resident), the interest or other earnings are excluded for purposes of computing net income on the designated beneficiary’s Iowa individual income tax return.

40.81(5) *Addition to net income of amounts distributed to the participant from the Iowa ABLE savings plan trust or other qualified ABLE program that had previously been deducted.*

a. For tax years beginning on or after January 1, 2016, if a taxpayer, as an account owner, cancels the account owner’s account in the Iowa ABLE savings plan trust or other qualified ABLE program and receives a distribution of the funds in the account, the amount of the distribution shall be included in net income on the account owner’s Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the account owner or any other person as a contribution to the Iowa ABLE savings plan trust or other qualified ABLE program or as a contribution to an Iowa educational savings plan trust account.

b. For tax years beginning on or after January 1, 2016, if a taxpayer makes a withdrawal of funds previously deducted by the taxpayer or any other person from the Iowa ABLE savings plan trust or other qualified ABLE program for purposes other than the payment of qualified disability expenses, the amount of the withdrawal shall be included in net income on the taxpayer’s Iowa individual income tax return to the extent that contributions to the account had been deducted on prior Iowa individual income tax returns of the taxpayer or any other person as contributions to a qualified ABLE program or an Iowa educational savings plan trust account.

40.81(6) *Maximum contribution level.* The amount of the deduction available for an individual taxpayer each year for contributions on behalf of any one designated beneficiary to the Iowa ABLE savings plan trust or other qualified ABLE program may not exceed the maximum contribution level for that year. The maximum contribution level is set by the treasurer of state. The maximum contribution level is indexed yearly for inflation pursuant to Iowa Code section 12D.3(1).

This rule is intended to implement Iowa Code section 422.7.
[ARC 2691C, IAB 8/31/16, effective 10/5/16; ARC 4516C, IAB 6/19/19, effective 7/24/19]

701—40.82(422,541B) First-time homebuyer savings accounts.

40.82(1) *Definitions.* Definitions that apply to the first-time homebuyer savings account program may be found in Iowa Code section 541B.2.

40.82(2) *Establishing an account.*

a. Account holders.

- (1) A first-time homebuyer savings account holder must be an individual or married couple.
- (2) Any individual may establish a first-time homebuyer savings account by opening an account that meets the requirements provided in this rule.
- (3) A married couple who files a joint Iowa income tax return may establish a joint first-time homebuyer savings account by opening a joint savings account that meets the requirements provided in this rule. Married couples who file separately or separately on a combined return for Iowa income tax purposes may not establish a joint first-time homebuyer savings account.

(4) There is no limit on the number of first-time homebuyer savings accounts that any account holder may open. However, account holders are subject to other restrictions under the Iowa Code and these rules, including but not limited to the annual contribution limits and aggregate lifetime limits in paragraph 40.82(4) "c."

- (5) No account holder may open or hold more than one account for the same designated beneficiary.
- (6) The account holder may change the designated beneficiary of the account at any time.

b. Beneficiaries.

(1) In order to be a designated beneficiary of a first-time homebuyer savings account, an individual must:

1. Be a resident of Iowa, as defined in Iowa Code section 422.4,
2. Not own, either individually or jointly, any single-family or multifamily residence, and
3. Not have owned or purchased, individually or jointly, any single-family or multifamily residence at any time in the three years immediately prior to both:
 - The date on which the individual is designated the beneficiary of a first-time homebuyer savings account, and
 - The date of the qualified home purchase for which the eligible home costs are paid or reimbursed from the first-time homebuyer savings account.

(2) The designated beneficiary may also be the account holder.

(3) Each account shall have only one designated beneficiary.

(4) The account holder must designate a beneficiary, on forms provided by the department, by April 30 of the year immediately following the tax year in which the account holder opened the account.

c. Account requirements. To qualify as a first-time homebuyer savings account, the account must be:

(1) An interest-bearing savings account meeting the qualifications for a "savings deposit" under 12 CFR 204.2(d),

(2) At a state or federally chartered bank, savings and loan association, credit union, or trust company in Iowa, and

(3) Used exclusively as a first-time homebuyer savings account, in compliance with the requirements of this rule.

40.82(3) Maintaining the account.

a. Contributing to the account.

(1) Any person may make cash contributions to a first-time homebuyer savings account. Cash contributions may be made by people other than the account holder or the beneficiary. However, only the account holder may claim a deduction for contributing to a first-time homebuyer savings account, as described in subrule 40.82(4).

(2) There is no limit on the amount of contributions that may be made to or retained in a first-time homebuyer savings account. However, there are restrictions on the amounts that can be deducted for Iowa income tax purposes, as described in subrule 40.82(4).

b. Documenting transactions.

(1) Annual reports. For each tax year beginning with the tax year in which the first-time homebuyer savings account is established, the account holder must submit a report to the department showing all account activity during the tax year. The report shall be included with the taxpayer's Iowa individual income tax return and must show the account number of, all deposits into, and withdrawals from, the

first-time homebuyer savings account, along with any other information required by the forms provided by the department.

(2) *Withdrawal reports.* All withdrawals must be reported, on forms provided by the department, within 90 days of the date of the withdrawal or, for withdrawals made less than 90 days before an account holder files an income tax return with the department, no later than the date the return is filed. Account holders must report both withdrawals for eligible home costs and any nonqualifying withdrawals. Any withdrawal that appears on the annual report but that is not properly reported at the time it is made shall be deemed to be a nonqualifying withdrawal that must be added back on the account holder's Iowa income tax return for the tax year in which the withdrawal was made.

(3) *Account fees.* Fees and charges for the maintenance of the account that are deducted from the account by the financial institution in which the first-time homebuyer savings account is held shall not be considered withdrawals for the purposes of the reporting requirements described in paragraph 40.82(3) "b."

c. Nonqualifying withdrawals. Funds may be withdrawn from a first-time homebuyer savings account at any time. However, once any nonqualifying withdrawal, as defined in subparagraph 40.82(5) "a"(2), is made, the account holder may no longer claim the Iowa income tax benefits related to the first-time homebuyer savings account described in subrule 40.82(4). Furthermore, any nonqualifying withdrawal shall also result in an addition to income and penalty as described in subrule 40.82(5).

d. Ten-year limitation. An account shall not remain designated a first-time homebuyer savings account for more than ten years, beginning with the year in which the account was first opened. Any funds remaining in the account on January 1 of the tenth calendar year following the year in which the account holder first opened the account shall be deemed immediately withdrawn and may be subject to Iowa income taxes and penalties as described in subrule 40.82(5). The account holder has no obligation to close the account, but as of January 1 of the tenth calendar year after the year in which the account was opened, the account will no longer be a first-time homebuyer savings account entitled to the Iowa income tax benefits described in this rule. A change in the designated beneficiary of the account does not extend the ten-year period in which the account holder may maintain a first-time homebuyer savings account; the period still runs from the year the account was first opened.

e. Exclusively first-time homebuyer account. For an account to qualify as a first-time homebuyer savings account, the account holder shall use the account exclusively as a first-time homebuyer savings account consistent with these rules.

40.82(4) Deductions.

a. Deduction for contributions. Any funds contributed to the first-time homebuyer savings account by the account holder during the tax year may be deducted from the account holder's net income on the account holder's Iowa individual income tax return for that year, subject to the limitations described in paragraph 40.82(4) "c." Although anyone may contribute funds to the first-time homebuyer savings account, only the account holder may claim the deduction, and the deduction may be claimed only for amounts the account holder personally contributed.

b. Deduction for interest. To the extent that any interest earned on the funds in a first-time homebuyer savings account is included in the account holder's Iowa income for a tax year, the amount of that interest may be deducted from the account holder's net income on the account holder's Iowa individual income tax return for that tax year, subject to the lifetime limitation described in subparagraph 40.82(4) "c"(2).

c. Limitations.

(1) *Annual limitation.* The deduction described in paragraph 40.82(4) "a" is subject to the limitations described in paragraphs "1" and "2" below. These limitations apply to the total contributions that the account holder makes to all first-time homebuyer savings accounts owned by the account holder:

1. *Joint first-time homebuyer savings account holders.* For married couples who are joint first-time homebuyer savings account holders, the deduction is limited to \$4,000 per year, adjusted annually for inflation.

2. For all other taxpayers who are first-time homebuyer savings account holders, the deduction is limited to \$2,000 per year, adjusted annually for inflation.

(2) Lifetime limitation. Account holders are subject to an aggregate lifetime limit on the deductions described in paragraphs 40.82(4) "a" and "b." No account holder may take total deductions under this program in excess of the lifetime limitation in place for the tax year in which the account holder first opens a first-time homebuyer savings account. The applicable lifetime limit imposed upon taxpayers opening an account in a given year is calculated annually by multiplying the annual limit in effect for that year by 10.

(3) Annual publication of limitations. Each year, the department shall publish the annual contribution limit as indexed for inflation and the lifetime limit applicable to account holders who open accounts during that year.

40.82(5) Additions to income.

a. Nonqualifying withdrawals.

(1) Addition to income. If there is any nonqualifying withdrawal, as defined in subparagraph 40.82(5) "a"(2), during the tax year, the account holder must add to the account holder's Iowa net income for that year the full amount of the nonqualifying withdrawal, to the extent such income was previously deducted under paragraph 40.82(4) "a." Any nonqualifying withdrawal also makes the account holder ineligible to claim any further deductions described in subrule 40.82(4) in any future tax year.

(2) Nonqualifying withdrawal defined.

1. Any withdrawal from a first-time homebuyer savings account for any purpose other than the payment or reimbursement of the designated beneficiary's eligible home costs in connection with a qualified home purchase is a nonqualifying withdrawal. A nonqualifying withdrawal includes but is not limited to a withdrawal caused by the death of the account holder and withdrawal made pursuant to garnishment, levy, bankruptcy order, or any other order. If a nonqualifying withdrawal occurs, the account holder cannot cure the nonqualifying withdrawal by returning funds to the account.

2. A withdrawal shall be presumed to be a nonqualifying withdrawal unless:

- Ownership of the qualifying home which the funds from the account are used to purchase passes to the designated beneficiary within 60 days of the date the funds are withdrawn, and
- The designated beneficiary actually occupies the home as the designated beneficiary's primary residence within 90 days of the date the funds are withdrawn.

3. Notwithstanding subparagraph 40.82(5) "a"(2), any amount transferred between different first-time homebuyer savings accounts of the same account holder by a person other than the account holder shall not be considered a nonqualifying withdrawal.

b. Unused funds. Any amount remaining in a first-time homebuyer savings account on January 1 of the tenth calendar year after the calendar year in which the account holder first opened any first-time homebuyer savings account shall be considered immediately withdrawn. This remaining amount shall be subject to the add-back described in paragraph 40.82(5) "a."

c. Penalties. For any amount considered a withdrawal required to be added to net income pursuant to this subrule, the account holder shall be assessed a penalty equal to 10 percent of the amount of the withdrawal. The penalty shall not apply to withdrawals made by reason of the death of the account holder or to withdrawals made pursuant to a garnishment, levy, or other order, including but not limited to an order in bankruptcy following a filing for protection under the federal Bankruptcy Code, 11 U.S.C. §101 et seq.

d. Examples.

EXAMPLE 1: Taxpayer eligible for the deduction; no addition to income or penalty from nonqualifying withdrawal. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form to the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A contributes \$1,000 per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. In 2021, after A contributed \$1,000 to the first-time homebuyer savings

account, Z made a qualified home purchase. A withdrew the entire balance of the first-time homebuyer savings account and applied the amount to eligible home costs. Within 90 days of withdrawing the funds, A submitted the required withdrawal report and the necessary supporting documentation to the department.

Result: A is allowed to deduct from net income the amount of the contributions generated from the first-time homebuyer account, since the yearly contributions are below the annual limits. A is allowed to deduct \$1,000 each year from A's 2018, 2019, 2020, and 2021 net income. Additionally, A is allowed to deduct income from interest generated from the account each year. A does not have any addition to net income or any penalties associated with the withdrawal or usage of the funds.

EXAMPLE 2: Nonqualifying withdrawal of entire account due to voluntary withdrawal by A. Assume the same facts as Example 1. However, rather than making a qualified withdrawal, in 2021, A withdraws the entire balance of the first-time homebuyer savings account and pays for Z's college tuition.

Result: The withdrawal is a nonqualified withdrawal. Any withdrawal that is not for eligible home costs is a nonqualified withdrawal. A's nonqualified withdrawal has three results. First, the amount of the nonqualified withdrawal is added back to the account holder's net income for the tax year in which the nonqualified withdrawal occurred. In this example, A's 2021 net income would increase by the amount of the contributions that A previously deducted. (See Iowa Code section 422.7(41) "c"(1).) Second, A will be assessed a penalty equal to 10 percent of the total contributions that A previously deducted. (See Iowa Code section 422.7(41) "d.") Third, A will no longer be able to claim the first-time homebuyer deduction in any future tax years. (See Iowa Code section 422.7(41) "b"(2)(b).) A is barred from claiming the first-time homebuyer deduction in the future, even if A attempts to open a first-time homebuyer account for a different beneficiary in a different tax year.

EXAMPLE 3: Nonqualifying withdrawal of entire account by legal process. Assume the same facts as Example 1. However, rather than a qualifying withdrawal occurring, in 2021, a creditor levies the entire balance of the first-time homebuyer account in order to satisfy A's debt to the creditor.

Result: The levy is a nonqualified withdrawal. Any withdrawal, including a withdrawal that is caused by a legal process not initiated by A, that is not for a qualified home purchase is a nonqualified withdrawal. Example 3 has the same result as Example 2, except in Example 3, A does not incur a 10 percent penalty because the withdrawal was due to a levy. (See Iowa Code section 422.7(41) "d.")

EXAMPLE 4: Nonqualifying withdrawal of a partial balance of a first-time homebuyer savings account. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form with the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A contributes \$1,000 per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. After making the \$1,000 deposit for 2021, A has a total of \$4,100 in the first-time homebuyer savings account. In 2022, A withdraws \$1,000 from the account in order to pay for personal expenses.

Result: The \$1,000 withdrawal is a nonqualifying withdrawal. A must file a withdrawal report with the department within 90 days of the withdrawal. A withdrawal report is required for both qualifying and nonqualifying withdrawals. The \$1,000 withdrawal will result in the addition of \$1,000 to A's 2022 net income. A will also be assessed a \$100 penalty. The balance of the first-time homebuyer account is \$3,100. Subject to the ten-year limitation and the other requirements of the deduction, A may use the remaining \$3,100 for Z's eligible home costs prior to January 1, 2028. If A does so, A will not have the \$3,000 added back to A's net income or face any penalties associated with the \$3,000 eligible home costs. Regardless of what occurs with the remaining \$3,100, A will be prohibited from claiming the first-time homebuyer deduction for any period after the date of the nonqualified withdrawal. This is true even if A attempts to repay the \$1,000 withdrawal or if A attempts to open any other first-time homebuyer accounts.

EXAMPLE 5: No withdrawals made within ten years of opening the account. A is an individual. In March of 2018, A creates a new interest-bearing savings account with a financial institution. A completes

all of the necessary paperwork and designates Z as the beneficiary of the account. In 2018, and in each subsequent year, A contributes \$1,000 to the first-time homebuyer savings account. On December 31, 2027, A has made a total of \$10,000 dollars in contributions to the account, has taken a deduction for each contribution, and has made no withdrawals from the account. On January 1, 2028, Z still has not purchased a qualifying home.

Result: As of January 1, 2028, the account is no longer a first-time homebuyer savings account, and the entire account balance is deemed to have been withdrawn in a nonqualifying withdrawal. A is required to report the entire \$10,000 previously deducted for contributions to the account as income in tax year 2028 and pay a \$1,000 penalty for the nonqualifying withdrawal. A can no longer open a new first-time homebuyer savings account or take any deductions for contributions made to another account under the program.

EXAMPLE 6: Divorce between taxpayers with a joint account. A and B are a married couple who file a joint Iowa income tax return. In 2018, A and B open a joint savings account and take the necessary steps to designate it as a joint first-time homebuyer savings account. In 2018, A and B contribute \$2,000 to the account and deduct the full amount on their joint Iowa income tax return for 2018. They contribute the same amount, file joint returns, and deduct the full amount in tax years 2019, 2020, and 2021. In 2022, A and B divorce. The divorce decree divides the funds in the account evenly between A and B.

Result: In this situation, when the funds from the account are distributed between A and B, the entire withdrawal is deemed to be a nonqualifying withdrawal, and A and B are jointly and severally liable for the payment of the tax and penalty due on the entire amount that they previously deducted for contributions to the first-time homebuyer savings account.

Alternative result: A and B can avoid this result by taking some steps before the divorce decree is entered. Prior to the divorce decree, A and B can each open a new first-time homebuyer savings account individually. As long as the divorce decree orders that funds from the original joint first-time homebuyer savings account be transferred to A's and B's new individual accounts, the funds may be transferred without triggering a nonqualifying withdrawal, A and B will not be subject to taxes or penalties on their previous contributions to the account, and each will still be eligible to take deductions for contributions to their new accounts, subject to the applicable limitations. In this scenario, the transfer must occur as a direct result of a court order; if A or B transfers funds themselves, the transfer is deemed to be a nonqualifying withdrawal.

Even if the funds in A and B's original joint account are successfully transferred without triggering a nonqualifying withdrawal as described above, both A and B will still be jointly and severally liable for any tax or penalty due on any nonqualifying withdrawal that either makes later, up to the amount they deducted on their joint returns prior to the divorce.

EXAMPLE 7: Death of the account holder. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form to the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A makes \$1,000 contributions per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. In 2022, A dies without having withdrawn any funds from the account either for a qualifying home purchase for Z or for any other reason.

Result: All of the funds in the account are deemed immediately withdrawn at the time of A's death. Because this is a nonqualifying withdrawal, the \$4,000 in contributions which A previously deducted must be included as income on A's final return. However, because the reason for the deemed withdrawal was A's death, the 10 percent penalty is not included on A's final return.

This rule is intended to implement Iowa Code section 422.7 and chapter 541B.
[ARC 3770C, IAB 4/25/18, effective 5/30/18]

701—40.83(422) Like-kind exchanges of personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020.

40.83(1) *In general.* Public Law 115-97, Section 13303, repealed the deferral of gain or loss from exchanges of like-kind personal property for federal purposes under Section 1031 of the Internal Revenue Code. This federal repeal applies to exchanges completed after December 31, 2017, unless the taxpayer began the exchange by transferring personal property or receiving replacement personal property on or before that date. Iowa did not conform to this federal repeal for Iowa individual income tax purposes for tax periods beginning before January 1, 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020, Iowa generally conforms to the federal treatment of gain or loss from exchanges of like-kind personal property, but eligible taxpayers may elect the treatment that applied under prior federal law for Iowa purposes. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal treatment for these exchanges, and no special election is available. This rule governs exchanges of like-kind personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020. This rule does not apply to exchanges completed during any tax year beginning on or after January 1, 2020.

40.83(2) *Qualification.* Section 1031 of the Internal Revenue Code in effect on December 21, 2017, and any applicable federal regulations govern whether transactions involving the disposition and acquisition of personal property qualify for Iowa individual income tax purposes as a like-kind exchange of personal property subject to the deferral of gain or loss, and also govern the date and tax period during which an exchange is considered completed. The treatment of such transactions as a like-kind exchange for Iowa individual income tax purposes is either mandatory or permissive depending on the date the like-kind exchange is completed.

a. Like-kind exchanges completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019. Transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019, are required to be treated as a like-kind exchange for Iowa individual income tax purposes.

b. Like-kind exchanges completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020. For tax periods beginning on or after January 1, 2019, Iowa is conformed to the federal repeal of deferral of gain or loss from exchanges of like-kind personal property, so the federal and Iowa treatment of such transactions under Section 1031 of the Internal Revenue Code will generally be the same. However, transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020, may at the election of the taxpayer be treated as a like-kind exchange for Iowa individual income tax purposes. The election is made by completing the necessary worksheets and forms and making the required adjustments on the Iowa return as described in subrule 40.83(3). No special attachment or statement is required. The election only applies to the transactions involved in the like-kind exchange, and the taxpayer may elect or not elect to treat other qualifying transactions as a like-kind exchange for Iowa purposes.

40.83(3) *Calculation and Iowa adjustments.* A taxpayer required to or electing to treat qualifying transactions as a like-kind exchange for Iowa tax purposes must make certain Iowa calculations and adjustments on forms and worksheets made available on the department's website. The IA 8824 Worksheet described in this subrule need not be included with the Iowa return but must be kept with the taxpayer's records. The taxpayer is responsible for providing documentation at the department's request to substantiate a like-kind exchange under this rule.

a. Like-kind exchange calculation. The taxpayer must complete Parts I and II of the IA 8824 Worksheet to compute the Iowa recognized gain, if any, the Iowa deferred gain or loss, and the Iowa basis of the like-kind personal property received in the like-kind exchange.

EXAMPLE 1: X, a sole proprietor engaged in commercial farming and filing on a calendar-year basis, trades a tractor with a fair market value (FMV) of \$25,000 along with \$75,000 in cash to Y for a new tractor with an FMV of \$100,000. For purposes of this example it is assumed that the tractor trade occurs in 2019 and qualifies as a like-kind exchange and that X elects such treatment for Iowa individual income tax purposes under paragraph 40.83(2) "b." At the time of the trade, the adjusted basis of X's old tractor is \$0 for federal tax purposes and is \$13,680 for Iowa tax purposes. X realizes a gain for Iowa purposes

on the exchange of the old tractor in the amount of \$11,320 (\$100,000 FMV of new tractor - \$75,000 cash paid - \$13,680 Iowa adjusted basis of old tractor). Because X did not receive any cash or other property that was not like-kind, or assume any liabilities from Y, the entire amount of X's \$11,320 realized gain qualifies for deferral, so X recognizes \$0 of gain on the exchange for Iowa tax purposes. As a result, X's basis in the new tractor for Iowa tax purposes is \$88,680 (\$13,680 Iowa adjusted basis of old tractor + \$75,000 cash paid by X).

b. Iowa nonconformity adjustment.

(1) The taxpayer must complete Part III of the IA 8824 Worksheet to adjust for the difference between any recognized Iowa gain from the exchange as calculated on the IA 8824 Worksheet, Part II, and any gain or loss (including gain or loss recaptured as ordinary income) recognized on the taxpayer's federal return.

EXAMPLE 2: Assume the same facts as given in Example 1. Because the tractor trade occurred in 2019, it will not qualify as a like-kind exchange for federal tax purposes but will instead be treated as two separate transactions: a sale of the old tractor and a purchase of the new tractor. X recognizes a gain for federal tax purposes on the sale of the old tractor in the amount of \$25,000 (\$25,000 sales price of old tractor - \$0 federal adjusted basis of old tractor), the entire amount of which is recaptured as ordinary income because of prior depreciation. X reports the \$25,000 of income on the federal return. X is required to report the same \$25,000 as income on the Iowa return but is also allowed a \$25,000 subtraction on the same Iowa return because X's recognized gain for Iowa tax purposes is \$0 as calculated in Example 1. X's nonconformity adjustment of -\$25,000 must be reported on the Iowa return in the manner prescribed on the IA 8824 Worksheet.

(2) If the total recognized federal gain is reported using the installment sale method under Section 453 of the Internal Revenue Code, the total amount of any Iowa nonconformity adjustment related to that federal gain must be claimed over the same installment period, and the proportion of the total Iowa nonconformity adjustment claimed for each tax year shall equal the same proportion that the federal gain reported for that tax year bears to the total amount of federal gain that will ultimately be reported for all tax years resulting from the disposition of the personal property. The taxpayer must complete an IA 8824 Worksheet for each tax year that an Iowa nonconformity adjustment is claimed.

c. Cost recovery adjustments.

(1) The taxpayer must complete the IA 4562A to account for any differences between the federal and Iowa cost recovery deductions related to the like-kind personal property involved in the like-kind exchange, including if the taxpayer's basis in the like-kind personal property received is different for federal and Iowa purposes, or if the taxpayer claimed additional first-year depreciation or a section 179 deduction for federal purposes on the like-kind property received in the exchange. See rule 701—40.60(422) for requirements related to the disallowance of additional first-year depreciation for Iowa individual income tax purposes. See rule 701—40.65(422) for the section 179 limitations imposed under the Iowa individual income tax.

(2) Treasury Regulation §1.168(i)-6 prescribes rules related to the calculation of depreciation for certain assets involved in a like-kind exchange, but a taxpayer may elect to not have those rules apply pursuant to Treasury Regulation §1.168(i)-6(i). A taxpayer may choose to make a similar election under Treasury Regulation §1.168(i)-6(i) for Iowa tax purposes with regard to a like-kind exchange under this rule if the personal property otherwise would have qualified for such federal election notwithstanding the fact that no like-kind exchange occurred for federal purposes or the fact that no election was actually made for federal tax purposes in accordance with Treasury Regulation §1.168(i)-6(j). The election is made by calculating depreciation for Iowa tax purposes on the personal property involved in the like-kind exchange using the method described in Treasury Regulation §1.168(i)-6(i) on the timely filed Iowa return, including extensions, for the same tax year that the like-kind exchange was completed. No special attachment or statement is required.

EXAMPLE 3: Assume the same facts as given in Examples 1 and 2. X elects additional first-year depreciation on the new tractor and claims a depreciation deduction on the federal return of \$100,000 (100 percent of X's federal basis). X is required to add back the total amount of the federal depreciation on the Iowa return because Iowa does not allow additional first-year depreciation. But X is permitted

deductions for regular depreciation on the new tractor with an Iowa basis of \$88,680 (\$13,680 carryover basis from old tractor + \$75,000 excess basis from cash paid) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). See rule 701—40.60(422) for more information on the disallowance of additional first-year depreciation.

EXAMPLE 4: Assume the same facts as given in Examples 1 and 2. X elects to expense the entire cost of the new tractor under Section 179 of the Internal Revenue Code and claims a deduction on the federal return of \$100,000. X is also required to claim the section 179 deduction on the new tractor for Iowa tax purposes pursuant to subrule 40.65(2). However, the amount that represents the carryover basis from the old tractor (\$13,680) is not eligible for the deduction under Section 179(d)(3) of the Internal Revenue Code, so the cost of the new tractor that is eligible for the section 179 deduction for Iowa purposes is only \$75,000 (excess basis from cash paid). This is the amount of section 179 deduction that X must claim on the Iowa return, subject to the applicable Iowa dollar limitation and reduction limitations in rule 701—40.65(422). Because X is the taxpayer who placed the new tractor in service, X is permitted deductions for regular depreciation on the carryover basis in the new tractor (\$13,680) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k).

This rule is intended to implement Iowa Code section 422.7 as amended by 2018 Iowa Acts, chapter 1161 [Senate File 2417].

[ARC 4614C, IAB 8/14/19, effective 9/18/19]

701—40.84(422) Broadband infrastructure grant exemption.

40.84(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.7.

40.84(2) *Definitions.*

“Facilitate” shall have the same meaning as defined in Iowa Code section 8B.1.

“Grant” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

40.84(3) *Limitation on certain refund claims.* For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.7.

[ARC 5606C, IAB 5/5/21, effective 6/9/21]

701—40.85(422) Interest expense deduction adjustments. For tax years beginning on or after January 1, 2020, the limit on the amount of business interest expense that a taxpayer may deduct in a taxable year under Internal Revenue Code (IRC) Section 163(j) does not apply for Iowa purposes. This rule provides information on how taxpayers must calculate and report their business interest expense deduction for Iowa purposes for tax year 2018 (subrule 40.85(2)), when Iowa did not conform to the limitation; tax year 2019 (subrule 40.85(3)), when Iowa did conform to the limitation; and tax years 2020 and later (subrule 40.85(4) et seq.), when Iowa again does not conform to this limitation. All references to the

Code of Federal Regulations (Treas. Reg.) and certain other information in this rule are based on final Internal Revenue Service (IRS) regulations and guidance in effect on January 13, 2021.

40.85(1) Definitions. The following terms apply to the interpretation and application of this rule.

“*Current-year business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(9).

“*Excess business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(16).

“*Iowa partnership*” means any partnership required to file an Iowa return (IA 1065) for the relevant tax year.

“*Iowa S corporation*” means any S corporation required to file an Iowa return (IA 1120S) for the relevant tax year.

“*Non-Iowa partnership*” means any partnership that is not required to file an Iowa return (IA 1065) for the relevant tax year.

“*Non-Iowa S corporation*” means any S corporation that is not required to file an Iowa return (IA 1120S) for the relevant tax year.

40.85(2) Tax year 2018. For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

a. In general. For tax year 2018, Iowa taxpayers are permitted to deduct current-year business interest expense without regard to the limitations imposed by IRC Section 163(j) under the TCJA. The taxpayer’s additional deduction is computed on the 2018 Nonconformity Adjustments Worksheet. Taxpayers who qualify for these higher Iowa deductions in 2018 may need to make further adjustments in 2019 for amounts deducted under this subrule for Iowa purposes but disallowed and carried forward for federal purposes. See subrule 40.85(3) for more information about these 2019 adjustments.

b. Special rules for partnerships and S corporations.

(1) Iowa partnerships and S corporations. Partnerships and S corporations required to file Iowa returns in tax year 2018 are required to make adjustments for Iowa’s nonconformity with IRC Section 163(j) at the entity level, meaning they can deduct the full interest expense on the entity’s own Iowa return and the reduction to the partner’s or shareholder’s share of the entity’s income will be included in the all source modifications line of the partners’ or shareholders’ Iowa Schedules K-1.

EXAMPLE 1: P, a partnership doing business in Iowa, has \$100,000 in current-year business interest expense in 2018. For federal purposes, \$20,000 of that amount is disallowed under IRC Section 163(j). The partnership deducts \$80,000 at the entity level in 2018, and the remaining disallowed \$20,000 is allocated to the partners to be deducted in future years. For Iowa purposes, the \$80,000 of business interest expense allowed for federal purposes is included in the partnership’s non-separately stated ordinary business income (loss), and the partnership will make an adjustment on the entity’s IA 1065 to deduct the \$20,000 of current-year business interest expense that was disallowed for federal purposes. The \$20,000 additional Iowa deduction will be reported to the partners as an all source modification on the partners’ IA 1065 Schedules K-1, and partners will receive the benefit of this all source modification item when the partners report their Iowa partnership income on their own Iowa tax return for the year. The partners will not be permitted to make further Iowa adjustments on their own Iowa tax return for the excess business interest expense amounts passed through to them from the partnership for federal purposes.

(2) Owners of partnerships and S corporations with no entity-level 2018 Iowa filing requirement.

1. Non-Iowa partnerships. Iowa partners who received interest expense deductions from partnerships that were not required to file 2018 Iowa returns may claim the larger Iowa deduction for business interest expenses passed through from the partnership on the partner’s own 2018 Iowa return by including in the partner’s Iowa deduction the amount of disallowed business interest expense deduction shown on the 2018 federal Schedule K-1 (Form 1065), line 13, code K, received from the non-Iowa partnership.

EXAMPLE 2: X is an Iowa resident and a partner in P2, an out-of-state partnership with no business in Iowa and no Iowa filing obligation. In 2018, P2 has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, P2 is permitted to deduct \$80,000 on its 2018 federal partnership return. The \$20,000 in excess business interest expense is then allocated to P2's partners. X is allocated \$5,000 in excess business interest expense from P2. Because P2 is not required to file an Iowa return, and therefore X did not receive a 2018 IA 1065 Schedule K-1 from P2, X is permitted to deduct the \$5,000 allocated from P2 as current-year business interest expense on X's 2018 Iowa income tax return.

2. Non-Iowa S corporations. Iowa shareholders of S corporations that have no Iowa filing requirement are limited to the deduction actually passed through to them on the federal Schedule K-1 received from the S corporation for Iowa purposes in tax year 2018. These shareholders are not permitted to make adjustments for interest expense disallowed at the entity level for the non-Iowa S corporation.

EXAMPLE 3: R is an Iowa resident and a shareholder in X, an out-of-state S corporation with no business in Iowa and no Iowa filing obligation. In 2018, X has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, X is permitted to deduct \$80,000 on its 2018 federal income tax return. The \$20,000 in excess business interest expense is then carried forward to be deducted by X in future tax years. Because X is not required to file an Iowa return, and excess business interest expense amounts are carried forward at the entity level for S corporations rather than being allocated to shareholders, R is not eligible to make an adjustment for X's disallowed business interest expense amounts on R's 2018 Iowa income tax return. R will only be able to benefit from the deductions for these disallowed amounts for Iowa purposes in the same years that X actually deducts the carried-forward amounts for federal purposes.

40.85(3) Tax year 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020 (tax year 2019), Iowa conforms to the IRC in effect on March 24, 2018.

a. Applicable limitation. For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed conformity date, Iowa did not conform with the higher 50 percent limitation retroactively imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to the extent that increased limitation applied in tax year 2019 for federal purposes. For tax year 2019 only, taxpayers are required to calculate their Iowa business interest expense deduction by applying the limitations of IRC Section 163(j) without regard to IRC Section 163(j)(10).

EXAMPLE 4: Taxpayer Z has an adjusted taxable income (ATI) of \$100,000 for tax year 2019 and \$80,000 in deductible business interest expense. For federal purposes, Z's business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, Z's Iowa business interest expense deduction for the year is limited to \$30,000. Z will report this difference by entering a negative \$20,000 adjustment on IA 101, line 3 (Z may have additional adjustments on this line if the current year federal deduction included amounts carried forward from 2018).

b. Addition to income for tax year 2018 federal carryforward amounts deducted in tax year 2019. To the extent a taxpayer's tax year 2019 federal business interest expense deduction includes amounts that were disallowed and carried forward to future years under IRC Section 163(j) in tax year 2018 for federal purposes, but allowed as a deduction in tax year 2018 for Iowa purposes under paragraph 40.85(2) "a" (in general), subparagraph 40.85(2) "b"(1) (Iowa partnerships and S corporations), or numbered paragraph 40.85(2) "b"(2) "1" (non-Iowa partnerships), these carried-forward amounts must be added back in computing Iowa income. These prior deductions and current adjustments are calculated and tracked on the IA 101 Nonconformity Adjustments form. Note that shareholders of non-Iowa S corporations should not be required to add back 2018 carryforward amounts deducted by the S corporation 2019, because the shareholders were not permitted to deduct these excess amounts for Iowa purposes in 2018. See numbered paragraph 40.85(2) "b"(2) "2."

EXAMPLE 5: X is a partner in P under the same facts described in Example 1 above. For tax year 2019, X completes federal Form 8990 and is eligible to deduct \$1,000 of the excess business interest expense allocated to X from P in 2018 on X's 2019 federal income tax return. This \$1,000 federal deduction for prior-year excess business interest expense allocated from P must be added back in computing X's 2019 Iowa income. The same add-back would be required if this scenario were applied to the facts in Example 2 above.

40.85(4) *Tax years beginning on or after January 1, 2020.* For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation.

a. Current-year business interest expense. For tax years beginning on or after January 1, 2020, a taxpayer's current-year business interest expense is fully deductible to the extent permitted by IRC Section 163 for Iowa purposes without regard to any limitation under subsection 163(j). Even though Iowa does not conform to IRC Section 163(j), provisions of the IRC other than Section 163(j) may subject interest expense to disallowance, deferral, capitalization, or other limitations, and those other provisions of the IRC still generally apply for Iowa purposes. No additional Iowa adjustments are permitted for federal limitations such as those described in Treas. Reg. Section 1.163(j)-3(b)(4), which are determined after the application of IRC Section 163(j) for federal purposes. See Treas. Reg. Section 1.163(j)-3 for examples of other provisions of the IRC that may restrict interest expense deductions for federal and Iowa purposes, independent of the IRC Section 163(j) limitation.

b. Carryforward.

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer's 2020 Iowa income tax return using form IA 163A. Business interest expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 6: In 2019, X had \$100,000 in current-year business interest expense. X's business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa's nonconformity with the CARES Act for that year. See paragraph 40.85(3) "a." In 2020, X is again subject to an IRC Section 163(j) limitation and is not permitted to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does not conform to the IRC Section 163(j) limitation for 2020, X may deduct all of X's current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of X's disallowed Iowa interest expense carried over from 2019. X must complete the IA 163 in order to calculate X's current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts which may be deducted in full on X's 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes, when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of "disallowed business interest expense." Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 40.85(4) "b"(1). All prior-year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer's Iowa income for the year.

EXAMPLE 7: In 2020, taxpayer X has \$100,000 in current-year business interest expense. For federal purposes, X is subject to the IRC Section 163(j) limitation. X deducts \$70,000 in business interest expense on X's 2020 federal return and carries the remaining \$30,000 forward to be deducted in future years. For Iowa purposes, X deducts the full \$100,000 in current-year business interest expense in 2020.

In 2021, X has \$50,000 in current-year business interest expense. For federal purposes, X is permitted to deduct the full \$50,000 in interest expense generated in 2021, plus \$5,000 of the amount that was disallowed in 2020 for a total federal deduction of \$55,000 in 2021. X must add the federal carryforward amount (\$5,000) back on X's 2021 Iowa return, limiting X's 2021 Iowa deduction to the \$50,000 in current-year business interest expense.

40.85(5) Partners and partnerships.

a. Partnership-level adjustments. For tax years beginning on or after January 1, 2020, an Iowa partnership that is subject to the IRC Section 163(j) limitation for federal purposes is permitted to deduct all current-year business interest expense at the partnership level in that tax year for Iowa purposes.

(1) Excess business interest expense. A partnership may include as a reduction on the partnership's Iowa income tax return any excess business interest expense, as defined in Treas. Reg. Section 1.163(j)-1(b)(16), of the partnership that was disallowed and allocated to the partners for that tax year for federal purposes.

(2) Tiered partnerships. For partnerships that receive excess business interest expense passed through from a partnership in which they are a partner, see paragraph 40.85(5) "b" for information on how to report Iowa adjustments for that passed-through income.

b. Partner-level adjustments.

(1) Interest expense from Iowa partnerships. Iowa adjustments related to excess business interest expense of an Iowa partnership are made at the entity level as described in subparagraph 40.85(5) "a"(1) and are reported to partners on an IA 1065 Schedule K-1. Partners are not permitted to make any Iowa adjustment at the partner level to their federal interest expense deduction for amounts of excess business interest expense allocated from an Iowa partnership on the partner's federal Schedule K-1 related to that Iowa partnership. See Example 1 above.

(2) Interest expense from non-Iowa partnerships. For tax years beginning on or after January 1, 2020, partners may include as part of their Iowa business interest expense deduction the total amount of current-year excess business interest expense deduction passed through to them from all non-Iowa partnerships as shown on the federal Schedule K-1 (Form 1065), line 13, code K. See Example 2 above.

(3) Partnership basis. A partner's basis is reduced (but not below zero) by the amount of excess business interest expense the partnership passes through to the partner each year. See Treas. Reg. Section 163(j)-6(h) for detailed information about how to make these basis adjustments. For federal purposes, immediately before disposition of the partnership interest, the partner's basis is then increased by the amount of any passed-through business interest expense which has not yet been treated as paid or accrued by the partner as described in Treas. Reg. Section 163(j)-6(h)(3). No basis increase at the time of disposition is allowed for Iowa purposes for passed-through business interest expense amounts that were deducted for Iowa, but not for federal, purposes due to Iowa's nonconformity with IRC Section 163(j).

40.85(6) S corporation adjustments. For federal purposes, IRC Section 163(j) limitations are applied at the S corporation level. Unlike partnerships, disallowed business interest expense amounts are carried forward and deducted in future years at the entity level rather than being passed through to shareholders. See rule 701—53.29(422) for more information about the IRC Section 163(j) adjustments required for corporations, including S corporations, for Iowa purposes. See also Treas. Reg. Section 1.163(j)-6(l) for more information about the application of IRC Section 163(j) to S corporations for federal purposes.

This rule is intended to implement Iowa Code section 422.7(60).
[ARC 5733C, IAB 6/30/21, effective 8/4/21]

701—40.86(422) COVID-19 grant exclusion.

40.86(1) Definitions. For purposes of this rule:

"Administering agency" means the economic development authority, the Iowa finance authority, or the department of agriculture and land stewardship.

"Grant recipient" means a person who applies for and is issued a qualifying COVID-19 grant by an administering agency.

“*Issued*” means the approval of the grant recipient’s application and amount for a qualifying COVID-19 grant by an administering agency, regardless of when the grant funds were paid by the administering agency.

40.86(2) *Qualifying COVID-19 grant programs.*

a. The department is responsible for determining whether a grant program provides a “qualifying COVID-19 grant” as defined in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5. In making this determination, and for purposes of the definition of “qualifying COVID-19 grant,” a grant program is “created to primarily provide COVID-19 related financial assistance to economically impacted individuals and businesses located in this state” if that grant program, at the time of its inception, was intended by the administering agency to provide a majority (more than 50 percent) of its financial assistance to or for the benefit of either or both of the following persons economically affected by the COVID-19 pandemic:

- (1) Individuals living in Iowa.
- (2) Businesses that are doing business in Iowa or are deriving income from sources within Iowa.

b. The administering agency shall notify the director of the existence of any grant program it believes may be a qualifying COVID-19 grant program. Upon such notification, the department will request from the administering agency the information necessary to determine whether that program is a qualifying COVID-19 grant as defined in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5, and this rule. The administering agency shall provide the department with the requested information within the time frame prescribed by the department in its request. Failure to provide the requested information to the department shall prevent the department from determining that the grant program is a qualifying COVID-19 grant. Grant programs not specifically listed below in paragraph 40.86(2)“c” are not qualifying COVID-19 grants and are not eligible for the exclusion provided in this rule, even if that program may otherwise meet the definition of “qualifying COVID-19 grant” in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5.

c. The following is an exhaustive list of programs that have been identified by the department as qualifying COVID-19 grants, including a general description of each program’s grant recipients, that may qualify for the exclusion from Iowa net income under subrule 40.86(3):

- (1) Beef up Iowa program administered by the department of agriculture and land stewardship. Grant recipient is Iowa State University.
- (2) Iowa beginning farmer debt relief fund administered by the Iowa finance authority. Grant recipients include Iowa beginning farmers.
- (3) Iowa biofuels relief program administered by the economic development authority. Grant recipients include Iowa biodiesel and ethanol producers.
- (4) Iowa county fairs relief fund administered by the economic development authority. Grant recipients include Iowa county and district fairs.
- (5) Iowa COVID-19 business disruption relief program administered by the economic development authority. Grant recipients include Iowa bars, taverns, breweries, distilleries, wineries, and other similar drinking establishments.
- (6) Iowa COVID-19 targeted small business sole operator fund administered by the economic development authority. Grant recipients include Iowa targeted small businesses.
- (7) Iowa disposal assistance program administered by the department of agriculture and land stewardship. Grant recipients include Iowa pork and egg producers.
- (8) Iowa eviction and foreclosure prevention program administered by the Iowa finance authority. Grant recipients include Iowa residential renters and homeowners.
- (9) Iowa homeowner foreclosure prevention program administered by the Iowa finance authority. Grant recipients include Iowa residential homeowners.
- (10) Iowa hospital COVID-19 relief fund administered by the economic development authority. Grant recipients include Iowa hospitals.
- (11) Iowa livestock producer relief fund administered by the economic development authority. Grant recipients include Iowa livestock producers.

(12) Iowa movie theatre relief grant program administered by the economic development authority. Grant recipients include Iowa movie theaters.

(13) Iowa nonprofit recovery fund administered by the economic development authority. Grant recipients include Iowa nonprofit organizations.

(14) Iowa renewable fuel retail recovery program administered by the department of agriculture and land stewardship. Grant recipients include Iowa fuel retailers.

(15) Iowa rent and utility assistance program administered by the Iowa finance authority. Grant recipients include Iowa residential renters.

(16) Iowa residential utility disruption prevention program administered by the economic development authority. Grant recipients include Iowa residential renters and homeowners.

(17) Iowa restaurant and bar relief grant program administered by the economic development authority. Grant recipients include Iowa bars, breweries, brewpubs, distilleries, wineries, and restaurants.

(18) Iowa small business relief grant program administered by the economic development authority. Grant recipients include Iowa small businesses.

(19) Iowa small business utility disruption prevention program administered by the economic development authority. Grant recipients include Iowa small businesses and small nonprofit organizations.

(20) Local produce and protein program administered by the department of agriculture and land stewardship. Grant recipients include Iowa schools, early childcare centers, specialty crop producers, and food hubs.

(21) Meat processing expansion and development program administered by the department of agriculture and land stewardship. Grant recipients include Iowa meat and poultry processing businesses and employees and Iowa livestock producers.

(22) Pack the pantry program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food pantries.

(23) Pass the pork program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food banks.

(24) Turkey to table program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food banks.

40.86(3) Excluding qualifying COVID-19 grants from Iowa net income.

a. Generally. A grant recipient may subtract a qualifying COVID-19 grant when calculating Iowa net income if all of the following apply:

(1) The grant was issued as part of a qualifying COVID-19 grant program identified in paragraph 40.86(2)“c.”

(2) The grant was issued on or after March 17, 2020, and on or before December 31, 2021.

(3) The grant funds were included in the grant recipient’s net income for a tax year ending on or after March 17, 2020, but beginning before January 1, 2024. The grant may only be subtracted to the extent it is included in the grant recipient’s net income for that qualifying tax year. A qualifying COVID-19 grant that is exempt from federal income tax, and thus not included in the grant recipient’s Iowa net income, does not qualify for an additional subtraction on the grant recipient’s Iowa return.

b. Third-party payee of grant funds. A third-party payee of qualifying COVID-19 grant funds is not eligible for this exemption from Iowa income. If the proceeds of a qualifying COVID-19 grant are paid to someone other than the grant recipient, only the grant recipient on whose behalf the grant proceeds were paid may qualify for this exemption from Iowa income.

c. Repayment. Grant funds that were repaid to the administering agency for any reason are not eligible for this exemption from Iowa income.

d. Reporting requirements. A grant recipient who received qualifying COVID-19 grant funds and who excludes those funds when calculating Iowa net income should retain documentation to support the claimed exclusion. A grant recipient must provide such documentation to the department if requested.

The required documentation may include, but is not limited to, documentation to support that the grant recipient was issued and received the grant within the qualifying periods.

This rule is intended to implement Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5.

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◊ Two or more ARCs

CHAPTER 53
DETERMINATION OF NET INCOME
[Prior to 12/17/86, Revenue Department[730]]

701—53.1(422) Computation of net income for corporations. Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 701—53.2(422) to 701—53.13(422) and 701—53.17(422) to 701—53.26(422). The remaining provisions of this rule and 701—53.14(422) to 701—53.16(422) shall also be applicable in determining net income.

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

701—53.2(422) Net operating loss carrybacks and carryovers. In years beginning after December 31, 1954, net operating losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes for the same period, provided the following adjustments are made:

53.2(1) Additions to income.

a. Refunds of federal income taxes due to net operating loss and credit carrybacks shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss or excess credit occurs. The federal refund shall still accrue for tax periods beginning on or after January 1, 2009, even though the Iowa net operating loss carryback is not allowed.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received. The federal refund due to any net operating loss carryback for federal income tax purposes for tax years beginning on or after January 1, 2009, must still be reflected even though the Iowa net operating loss carryback is not allowed.

b. Iowa income tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

53.2(2) Reductions of income.

a. Federal income tax paid or accrued during the year of the net operating loss shall be reflected to the extent allowed by law as an additional deduction in the year of the loss.

b. Iowa income tax refunds reported as income for federal return purposes in the loss year shall be reflected as reductions of income in the year of the loss.

c. Interest and dividends received from federal securities during the loss year shall be reflected in the year of the loss as a reduction of income.

53.2(3) If a corporation does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 53.2(1) and 53.2(2).

a. After making the adjustments to federal taxable income as provided in 53.2(1) and 53.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—54.5(422), 54.6(422) and 54.7(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

b. The net operating loss attributable to Iowa, as determined in rule 701—53.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision for tax years beginning prior to August 6, 1997. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

c. For tax years beginning after August 5, 1997, but before January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

d. For tax years beginning on or after January 1, 1998, but before January 1, 2009, for a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss. However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) of the Internal Revenue Code for the two-year or three-year carryback in lieu of the five-year carryback must be attached to the Iowa return or the Form IA 1139 Application for Refund Due to the Carryback of Corporate Farming Losses, to show why the carryback was two years or three years instead of five years. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa.

When the taxpayer carries on more than one trade or business within a corporate shell or files a consolidated Iowa corporation income tax return, the income or loss from each trade or business must be combined to determine the amount of net operating loss that exists and whether it is a net operating loss from the trade or business of farming.

EXAMPLE 1. The taxpayer carries on the trade or business of farming and also the trade or business of trucking for entities outside the corporate shell. For the tax year, the taxpayer had a net operating loss

from farming of \$25,000 and net income from trucking of \$10,000 for a net operating loss for the year of \$15,000 which is a net operating loss from the trade or business of farming which may be carried back 5 tax years and forward 20 tax years.

EXAMPLE 2. The taxpayer carries on the trade or business of farming and the trade or business of construction. For the tax year, the taxpayer had income from farming of \$12,000 and a net operating loss from construction of \$45,000 for a net operating loss for the year of \$33,000 which is a net operating loss from the trade or business of construction which may be carried back 2 tax years and forward 20 tax years.

EXAMPLE 3. The taxpayer carries on the trade or business of farming and the trade or business of construction. During the tax year, the taxpayer had a net operating loss of \$18,000 from farming and a net operating loss of \$9,000 from construction for a total net operating loss of \$27,000. Of this net operating loss, \$18,000 is from farming and may be carried back 5 years and forward 20 years and \$9,000 is from construction and may be carried back 2 years and forward 20 years.

e. For tax years beginning on or after January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), shall be carried forward 20 taxable years. The net operating loss cannot be carried back to a previous tax year. The federal refund due to any carryback of a federal net operating loss must still be included in income as provided in subrule 53.2(1), paragraph “a.”

53.2(4) No part of a net operating loss for a year which the corporation was not subject to the imposition of Iowa corporation income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss. To be deductible, a net operating loss must be sustained from that portion of the corporation’s trade or business carried on in Iowa.

53.2(5) No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

53.2(6) The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a part of a consolidated income tax return for federal income tax purposes, but a separate return for Iowa income tax purposes, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

701—53.3(422) Capital loss carryback.

53.3(1) Capital losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes. Capital loss carrybacks shall be treated as an adjustment to federal taxable income to arrive at net allocable and apportionable income.

a. For accrual-basis taxpayers the federal income tax refund shall not be accrued to the loss year but rather treated as a reduction in federal income tax paid in the carryback year.

b. Cash-basis taxpayers shall include the federal income tax refund in Iowa taxable income in the year received.

c. Where the taxpayer files a separate Iowa corporation income tax return but files as part of a federal consolidated income tax return, the portion of the federal refund due to a capital loss carryback attributable to the taxpayer shall be calculated by computing the federal tax deduction in the carryback year as follows:

Separate Company Income - Separate Company Capital Loss Carryback	×	Consolidated Federal Tax	×	50%
<hr/>				
Sum of the Incomes of Profit Companies - Sum of Separate Company Capital Loss Carrybacks to Profit Companies		after Capital Loss Carryback		

53.3(2) When the carryback year has both allocable and apportionable capital gains, the capital loss carryback shall be applied pro rata on a percentage basis of the specific gain to the total gains.

EXAMPLE: Assume a taxpayer has a 1973 capital loss carryback available of \$2000. The loss would be applied in the following manner:

1970	1970	1970
<u>Total Capital Gain</u>	<u>Allocable Gain</u>	<u>Apportionable Gain</u>
\$16,000	\$4,000	\$12,000
Allocable gain	-\$4,000	
Total capital gain	-\$16,000	= ¼ or 25% of carryback to allocable gain
1970 allocable capital gain after application of loss carryback: \$4,000 less (\$2,000 × 25%) = \$3,500 net allocable capital gain.		

This rule is intended to implement Iowa Code sections 422.35 and 422.37.

701—53.4(422) Net operating and capital loss carrybacks and carryovers. If the taxpayer, for tax periods beginning prior to January 1, 2009, has both a net operating loss and a capital loss carryback to a prior tax year, the capital loss shall be carried back first and then the new operating loss offset against any remaining income.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

701—53.5(422) Interest and dividends from federal securities. See rule 701—40.2(422) for a discussion of the exempt status of interest and dividends from federal securities.

This rule is intended to implement Iowa Code section 422.35.

701—53.6(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions. Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income. See rule 701—40.3(422) for a listing of obligations of the state of Iowa and its political subdivisions, the interest from which is exempt from Iowa corporation income tax. For the tax treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in rule 701—40.3(422), see rule 701—40.52(422).

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal tax under Section 852(b)(5) of the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six

months or less to the extent the loss was disallowed under Section 852(b)(4)(B) of the Internal Revenue Code.

For tax years beginning on or after January 1, 2001, add, to the extent not already included, income from the sale of obligations of the state of Iowa and its political subdivisions. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa taxable income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition from Iowa corporation income tax.

This rule is intended to implement Iowa Code section 422.35 as amended by 2001 Iowa Acts, House File 715.

701—53.7(422) Safe harbor leases. For tax years ending after January 1, 1981, deductions in determining federal taxable income for sale-leaseback agreements taken as a result of the application of Section 168(f)(8) of the Internal Revenue Code shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of Sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense, and the lessee shall add rental expense. When the deduction for depreciation is not allowed under a previous provision of this rule, the lessee shall be allowed a deduction for depreciation on any property involved in a sale-leaseback agreement. This depreciation shall be computed in accordance with Section 168(a) of the Internal Revenue Code. Income received as a result of a sale-leaseback agreement shall be deducted in determining Iowa taxable income. The lessee shall deduct interest income and the lessor shall deduct rent income. Each lessor and lessee corporation shall include a copy of federal Form 6793 in its Iowa corporation income tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code section 422.35.

701—53.8(422) Additions to federal taxable income.

53.8(1) Disallowance of private club expenses. Rescinded IAB 11/24/04, effective 12/29/04.

53.8(2) Percentage depletion. For tax years beginning on or after January 1, 1986, add the amount that percentage depletion of an oil, gas, or geothermal well computed under Section 613 of the Internal Revenue Code is in excess of cost depletion computed under Section 611 of the Internal Revenue Code.

53.8(3) Charitable contributions relating to the charitable conservation contribution tax credit. For tax years beginning on or after January 1, 2008, a taxpayer who claims a charitable conservation contribution tax credit in accordance with rule 701—52.37(422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

53.8(4) Charitable contributions relating to school tuition organizations. For tax years beginning on or after July 1, 2009, a taxpayer who claims a school tuition organization tax credit in accordance with rule 701—52.38(422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution to the school tuition organization for which the tax credit is claimed for Iowa tax purposes.

53.8(5) Charitable contributions relating to the endow Iowa tax credit. For tax years beginning on or after January 1, 2010, a taxpayer who claims an endow Iowa tax credit in accordance with rule 701—52.23(15E,422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

53.8(6) Charitable contributions related to the from farm to food donation tax credit. For tax years beginning on or after January 1, 2014, a taxpayer who claims a from farm to food donation tax credit in accordance with rule 701—52.45(422,85GA,SF452) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.35 and 2013 Iowa Acts, Senate File 452. [ARC 1303C, IAB 2/5/14, effective 3/12/14]

701—53.9(422) Gains and losses on property acquired before January 1, 1934. Where property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date. *City National Bank of Clinton v. Iowa State Tax Commission*, 251 Iowa 603, 102 N.W.2d 381 (1960).

If as a result of this provision a basis is to be used for purposes of Iowa corporation income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.35.

701—53.10(422) Work opportunity tax credit and alcohol and cellulosic biofuel fuels credit. Where provided for in the Internal Revenue Code, as detailed below, a deduction shall be allowed for the amount of credit to the extent that the credit increased federal taxable income.

53.10(1) For tax years beginning on or after January 1, 1977, the amount of credit allowable for federal work opportunity tax credit as provided for in Section 51 of the Internal Revenue Code shall be a deduction from Iowa taxable income to the extent the credit increased income.

53.10(2) For tax periods beginning on or after January 1, 1980, the amount of credit allowable for the federal alcohol and cellulosic biofuel fuels credit as provided for in Section 40 of the Internal Revenue Code shall be a deduction from Iowa taxable income to the extent the credit increased income.

This rule is intended to implement 2011 Iowa Code Supplement section 422.35 as amended by 2012 Iowa Acts, Senate File 2328.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

701—53.11(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. For tax years beginning on or after January 1, 1984, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2), is allowed a deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 904.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code chapter 913 applies.

For tax years beginning on or after January 1, 1989, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2) is allowed a deduction for 65 percent not to exceed \$20,000 of the first 12 months of wages paid or accrued during the tax year for work done in Iowa for employees first hired after January 1, 1989, who meet the above criteria.

53.11(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

53.11(2) The term “small business corporation” includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

a. A small business corporation shall not have had more than 20 full-time equivalent positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which the individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. A small business corporation shall not have more than \$1 million in annual gross revenues or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. “Annual gross revenues” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. A small business corporation shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. “Dominant in its field of operation” means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. “Affiliate or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

53.11(3) Definitions.

a. The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

53.11(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual, constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

53.11(5) The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

53.11(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

53.11(7) For tax years ending after July 1, 1990, a taxpayer who did not qualify for the additional deduction for wages paid or accrued for work done in Iowa by certain individuals set forth above is allowed an additional deduction of 65 percent not to exceed \$20,000 of the first 12 months of wages paid or accrued for work done in Iowa for employees first hired on or after July 1, 1990, if the new employee is:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to Iowa Code chapter 906.

(3) Is on probation pursuant to Iowa Code chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to Iowa Code chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

The additional deduction is not allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction is allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

The taxpayer must include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring, and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

If the employee for whom an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer must file an amended return adding back the additional deduction for wages. The amended return must state the name and social security number of the employee who failed to successfully complete a probationary period.

53.11(8) The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa. The conditions set out in the unnumbered paragraphs under paragraph "b" of subrule 53.11(7) also apply to the deduction for the hiring of certain individuals in this subrule.

This rule is intended to implement 2011 Iowa Code Supplement section 422.35 as amended by 2012 Iowa Acts, Senate File 2247.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

701—53.12(422) Federal income tax deduction. "Federal income taxes" shall mean those income taxes paid or payable to the United States Government and shall not include taxes paid or payable or taxes deemed to have been paid to a foreign country. *Construction Products, Inc. v. Briggs, State Board of Tax Review*, Case No. 25, February 1, 1972. "Federal income taxes" includes the federal alternative minimum tax. For tax years beginning on or after January 1, 1990, and before January 1, 1996, "federal income taxes" includes the federal environmental tax. Because the federal environmental tax is deducted in computing federal taxable income and Iowa Code subsection 422.35(4) only allows a deduction for 50 percent of the federal income tax paid or accrued, the federal environmental tax deducted in computing federal taxable income must be added to federal taxable income.

53.12(1) Cash basis taxpayer.

a. When a taxpayer is reporting on the cash basis, 50 percent of the amount of federal income taxes actually paid during the taxable period is allowable as a deduction, whether or not such taxes represent the preceding year's tax or additional taxes for prior years. Fifty percent of a federal tax refund shall be reported as income in the year received.

b. A corporation reporting on the cash basis may deduct 50 percent of the federal income tax on the accrual basis if an election is made upon filing the first return. If the corporation claims an accrual deduction on the first return, it shall be considered as an election. Once the election is made,

the corporation may change the basis of federal income tax deduction only with the permission of the director. If a change in accounting method is approved or required by the Internal Revenue Service, the director is deemed to have approved the change in the basis of the federal tax deduction.

c. The federal income tax deduction during the transitional period following a change in accounting method from cash to accrual is the accrual deduction in the year of change, plus any cash payment of federal income tax paid in the year of the change for the tax year prior to the change in accounting method, reduced by a refund of federal income tax paid for the tax year prior to the year of the change in accounting method received in the year of the change. For the year of change and years subsequent to the year of the change, the deduction shall be the accrual deduction plus any federal income tax paid for a tax year prior to the year of change as a result of an amended federal return or federal audit, reduced by any refund of federal income tax paid for a tax year prior to the year of the change in accounting method.

d. The federal income tax deduction during the transitional period following a change in accounting method from accrual to cash is the cash deduction in the year of change, plus any cash payment of federal estimated income tax paid in the year prior to the year of the change for the year of the change. Any refund of federal income tax from a tax year prior to the year of the change received in the year of the change or in a subsequent year is properly accrued to the prior tax year. Any payment of federal income tax due to an amended return or federal audit for a tax year prior to the year of the change made in the year of the change or a subsequent year is accrued to that prior tax year. (For information on amended returns, see 701—subrule 52.3(4).)

53.12(2) *Accrual basis taxpayer.*

a. The amount of federal income tax to be allowed as a deduction for an accrual basis taxpayer is limited to 50 percent of the actual federal income tax liability for that year.

b. Additional federal income taxes and refunds of federal income taxes (except for 53.12(2)“*c*”) shall be a part of the tax liability accrued for such prior years.

c. Refunds resulting from net operating loss carrybacks, investment credit carrybacks, unused excess profits tax credits, and similar items shall be included in income for Iowa corporation income tax purposes in the year in which such refunds are legally accrued.

53.12(3) Rescinded, effective February 2, 1977.

53.12(4) *Consolidated federal income tax allocation.*

a. When a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the allowable deduction shall be 50 percent of the consolidated federal income tax liability allocable to that corporation. The allocation of the consolidated federal income tax shall be determined as follows: The net consolidated federal income tax liability is multiplied by a fraction, the numerator of which is the taxpayer’s federal taxable income as computed on a separate basis, and the denominator of which is the total federal taxable incomes of each corporation included in the consolidated return. If the computation of the taxable income of a member results in an excess of deductions over gross income such member’s taxable income shall be zero. *Sibley State Bank v. Bair, State Board of Tax Review, Docket No. 182, May 26, 1978. Internorth, Inc., and Northern Propane Gas Company v. Iowa State Board of Tax Review, Iowa Department of Revenue and Gerald D. Bair, Director of Revenue, 333 N.W.2d 471 (Iowa 1983).*

b. If a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the federal income tax deduction allowed the Iowa taxpayer shall not exceed 50 percent of the consolidated federal income tax liability.

This rule is intended to implement Iowa Code section 422.35.

701—53.13(422) Iowa income taxes and Iowa tax refund. Iowa corporation income taxes paid or accrued during the tax year as may be applicable under the method of filing are permissible deductions for federal corporation income tax purposes, but are not permissible deductions for purposes of determining Iowa net taxable income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa corporation income tax purposes. Refunds of Iowa income tax to the extent that the refunds were included in the determination of federal taxable

income shall be subtracted from federal taxable income, only to the extent that a deduction for Iowa income taxes was disallowed on a prior Iowa return. Iowa income tax refunds resulting from Iowa refundable tax credits are not allowed as a deduction for Iowa corporation income tax purposes.

EXAMPLE: Corporation A reports income on a cash basis and made Iowa estimated payments of \$2,000 during the 2003 tax year. The \$2,000 of estimated payments was claimed as a deduction for federal income tax purposes, but was not allowed as a deduction for Iowa tax purposes. The 2003 Iowa return reported a tax liability of \$1,600. Corporation A had \$2,000 of Iowa estimated payments and a \$500 ethanol blended gasoline tax credit, and received a \$900 Iowa tax refund in 2004. Of the \$900 refund reported as income on the federal return, Corporation A will be allowed a \$400 (\$2,000 - \$1,600) reduction on the Iowa return for 2004.

This rule is intended to implement Iowa Code section 422.35.

701—53.14(422) Method of accounting, accounting period. The return shall be computed on the same basis and for the same accounting period as the taxpayer's return for federal corporation income tax purposes. Permission to change accounting methods or accounting periods for corporation tax purposes is not required provided the taxpayer furnishes the department with a copy of the federal consent.

This rule is intended to implement Iowa Code section 422.35.

701—53.15(422) Consolidated returns.

53.15(1) Definition. The term "common parent" as used in these rules shall have the same general meaning as when used in the federal income tax regulation. However, where the common parent is not subject to the Iowa income tax because of the provisions of 701—subrule 52.1(1) or because of specific exemption under Iowa Code section 422.34, the common parent shall designate as the agent for the affiliated group, one of its subsidiaries subject to the Iowa income tax and shall notify the director of the same in writing. Where the common parent has designated one of its subsidiaries to act as agent for the affiliated group, reference in this rule to "common parent" shall mean the designated agent.

Unless otherwise distinctly expressed, the terms used in this rule shall have the same meaning as when used in a comparable context in the federal income tax regulations for consolidated returns except for determining whether an affiliated group had exercised its privilege of filing a consolidated return. All references to the "commissioner" or "district director" in the federal regulations shall be construed to mean the director for purposes of the Iowa rules.

a. An affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year. Each corporation which is subject to the Iowa corporation income tax and has been a member during any part of the taxable year for which the consolidated return is to be filed must consent (as provided in paragraph 53.15(1) "d") to the filing of the consolidated return.

b. If a group wishes to exercise its privilege of filing a consolidated return, the consolidated return must be filed not later than the date prescribed by Iowa Code section 422.21 (including extensions of time) for the filing of the common parent's return. The consolidated return may not be withdrawn after the last day for filing (including extensions of time) but the group may change the basis of its return at any time prior to the last day.

c. The consolidated return shall be made on Form IA-1120 for the group by the common parent corporation. The common parent corporation of the group must attach a copy of the federal Form 851 (Affiliations Schedule) to the consolidated return.

d. If a group wishes to exercise its privilege of filing a consolidated return, each subsidiary must consent to the filing of the consolidated return for the year. The subsidiaries must consent to the filing of an Iowa consolidated return by joining in the filing of an Iowa consolidated return on or before the due date (including any extensions of time). If both separate and consolidated returns are filed on or before the due date (including any extensions of time), the latest returns filed will be considered as the taxpayers' election in regards to the filing of separate or consolidated returns.

e. The common parent, for all purposes other than the making of the consent required by subrule 53.15(1) "a," shall be the sole agent for each subsidiary in the group, duly authorized to act in its own

name in all matters relating to the tax liability for the consolidated return year. No subsidiary shall have authority to act for or to represent itself in any matter. The provisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. If a subsidiary has ceased to be a member of the group and if the subsidiary files written notice of the cessation with the director, then upon request of the subsidiary, the director will furnish it with a copy of any notice of deficiency in respect of the tax for a consolidated return year for which it was a member. The filing of the written notification and request by a corporation shall not have the effect of limiting the scope of the agency of the common parent.

f. Unless the director agrees to the contrary, an agreement entered into by the common parent extending the time within which a notice of deficiency may be issued, or a levy or a proceeding in court begun in respect of the tax for a consolidated return year shall be applicable to each corporation which was a member of the group during any part of the taxable year and to each corporation, the income of which was included in the consolidated return for the taxable year, notwithstanding that the liability of the corporation is subsequently computed on the basis of a separate return under these rules.

g. If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall forthwith notify the director of that fact and designate another member to act as its agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If this notice is not given by the common parent, the remaining members may, subject to the approval of the director, designate another member to act as agent, and notice of the designation shall be given to the director. Until a notice in writing designating a new agent has been approved by the director, any notice of deficiency or other communications mailed to the common parent shall be considered as having been properly mailed to the agent of the group. If the director has reasons to believe that the existence of the common parent has terminated, the director may, if deemed advisable, deal directly with any member in respect of its liability.

53.15(2) *When director may require consolidated return.* In accordance with the provisions of rule 701—53.15(422), the director may require a consolidated return for those members of an affiliated group of corporations which would be eligible to elect to consolidate their incomes under Iowa Code section 422.37 if the filing of separate returns for such corporations would improperly reflect the taxable incomes of said corporations or of said group.

53.15(3) *Discontinuance of filing consolidated returns.*

a. An affiliated group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it is allowed to discontinue filing consolidated returns, or unless a federal consolidated return is not filed by the group.

b. In the event that a consolidated filing for Iowa tax purposes is discontinued for any reason, the common parent shall so notify the department by letter. The mere filing of separate returns does not, in itself, constitute sufficient notice.

c. The following constitute factors for determining when consolidated filing for Iowa tax purposes can be discontinued:

(1) If the filing of separate returns will more clearly disclose the taxable income of each member of the affiliated group. Corporations should note that such determination is vested in the director. Therefore, corporations should make application to the director within a reasonable time prior to the due date of the return (including extensions of time). Normally, this would be not later than 90 days prior to said due date. The application should set forth in detail the taxable income on both a consolidated and separate basis together with the reasons why separate returns would more clearly disclose Iowa taxable income. The mere fact that the consolidated tax liability is greater or less than the combined separate liabilities is not, of itself, a ground for discontinuance of consolidated filing.

(2) If one or more of the members of the affiliated group cease to be subject to Iowa corporate income tax, consolidation may be discontinued in whole or in part.

(3) If one or more of the members of the affiliated group change in character so that they are no longer taxable under the Iowa corporate income tax law.

EXAMPLE: Common parent A is a manufacturer. Subsidiary B is a company engaged in small loans. A and B file consolidated Iowa returns. In a subsequent taxable year, B changes its business by surrendering its small loan company license and obtains a state bank charter. Even though A and B continue to file federal consolidated returns, B is now a corporation exempt from tax under Iowa Code section 422.34. Therefore A and B should discontinue filing Iowa consolidated returns.

(4) If the affiliated group is purchased by another corporation or affiliated group so that after the purchase the stockholders own less than 50 percent of the fair market value of all classes of outstanding stock of the new corporation or affiliated group then the old group must discontinue filing Iowa consolidated returns. The new group may exercise its privilege of filing a consolidated return.

d. If a group is allowed to discontinue filing consolidated returns for any taxable year, then each member of the affiliated group subject to Iowa tax must file a separate return for such year on or before the last day prescribed by law (including extensions of time) for the filing of the consolidated return for such year.

e. A group shall be considered as remaining in existence, for the purposes of the Code, in accordance with the rules prescribed in Treasury Regulation Section 1.1502-75(d).

f. If a consolidated return erroneously includes the income of one or more corporations which were not members of the group at any time during the consolidated return year, the tax liability of such corporations will be determined upon the basis of separate returns (or a consolidated return of another group, if paragraph 53.15(1)“c” or 53.15(3)“a” applies) and the consolidated return will be considered as including only the income of the corporations which were members of the group during that taxable year.

g. In any case in which amounts have been assessed and paid upon the basis of a consolidated return, and where the tax liability of one or more of the corporations included in the consolidated return is to be computed in the manner described in paragraph 53.15(3)“f,” the amounts so paid shall be allocated between the group composed of the corporations properly included in the consolidated return and each of the corporations, whose tax liability is to be computed on a separate basis (or on the basis of a consolidated return of another group) in such manner as the corporations which were included in the consolidated return, and where the tax liability of one or more of the corporations included absence of an agreement, the tax liability of the group shall be allocated under subrule 53.12(4).

h. The taxable year of members of the group, including rules for changing the parent’s taxable year, income to be included in the separate returns, and the time for making separate returns for periods not included in a consolidated return for the purposes of the Iowa Code, shall be in accordance with the rules prescribed in Treasury Regulation Section 1.1502-76(a)-(c).

53.15(4) Determination of consolidated Iowa income.

a. Unless otherwise provided by these rules or manifestly inconsistent with the provisions of the Iowa Code, the consolidated taxable income for a consolidated return year under the Iowa Code shall be determined in the same manner and under the same procedures, including intercompany adjustments and eliminations, as are required by the federal income tax regulations in the case of a federal consolidated return.

b. If the Iowa affiliated group differs in its members from the federal affiliated group, such nonqualifying member(s) shall not be considered includable corporations and all computations hereunder shall be made as if such member(s) were not members of the affiliated group. The consolidated federal income tax liability shall be allocated between includable corporations and nonincludable corporations by subrule 53.12(4).

c. The apportionment provisions of Iowa Code section 422.33 shall be taken into account by an affiliated group doing business within and without Iowa. All members of an affiliated group which join in the filing of an Iowa consolidated return shall determine the portion of the consolidated net income earned within and without Iowa by the same method. All intercompany transactions shall be eliminated in the determination of the apportionment factors.

The gross receipts of each corporation which joins in the filing of an Iowa consolidated corporation income tax return shall be included in the computation of the business activity ratio. The gross receipts of each corporation shall be included in the numerator of the business activity ratio to the extent that it has

nexus in Iowa and its gross receipts are not eliminated by intercompany adjustments and are considered Iowa gross receipts by rules 701—54.2(422) to 701—54.8(422). The gross receipts of each corporation shall be included in the denominator of the business activity ratio to the extent its gross receipts are not eliminated by intercompany adjustments.

d. On or after January 1, 2016, see 701—Chapter 242 for requirements of an out-of-state business to be a part of an affiliated group filing an Iowa consolidated return that enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

53.15(5) Schedules. Supporting schedules shall be filed with the consolidated return. The statement of gross income and deductions and other schedules required for each corporation shall be prepared and filed in columnar form so that the details of the items of gross income, deductions, and credits for each member may be readily ascertained. A column shall also be provided giving effect to any eliminations and adjustments. The items included in the column for eliminations and adjustments should be symbolized to identify contra items affected, and suitable explanations appended, if necessary. Similar schedules shall contain in columnar form a reconciliation of retained earnings for each corporation, together with a reconciliation of consolidated retained earnings. Consolidated balance sheets at the beginning and close of the taxable year of the group shall accompany the consolidated return prepared in a form similar to that required for other schedules. Transactions with a subsidiary which is not included as part of the Iowa consolidated return shall not be considered as intercompany transactions for elimination purposes in computing the consolidated Iowa taxable income for the return period.

53.15(6) Liability for tax.

a. Except as provided in paragraph 53.15(6)“*b*,” the common parent corporation and each subsidiary subject to the Iowa corporation income tax which was a member of the affiliated group during any part of the consolidated return year shall be severally liable for the tax for the year computed in accordance with Iowa Code chapter 422, on or before the due date (not including extensions of time) for the filing of the consolidated return for that year.

b. If a subsidiary has ceased to be a member of the group and if the cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the director may make an assessment and collection of the deficiency from the former subsidiary in an amount not exceeding the portion of the deficiency which the director may determine to be allocable to it. If the director makes assessment and collection of any part of a deficiency from the former subsidiary, then for purposes of any credit or refund of the amount collected from the former subsidiary the agency of the common parent under the provisions of paragraph 53.15(1)“*e*” shall not apply.

c. No agreement entered into by one or more members of the affiliated group with any other member of the group shall in any case have the effect of reducing the liability prescribed under this subrule.

53.15(7) Computation of contribution. Computation of a separate corporation’s contribution to consolidated income or net operating loss subject to Iowa tax for purposes of net operating loss carryover and carryback limitations shall be as follows:

$$\frac{A}{B} \times C \times \frac{D}{A} + E = \begin{array}{l} \text{separate corporation contribution to} \\ \text{consolidated income subject to Iowa tax.} \end{array}$$

A = Separate corporation gross sales within and without Iowa after elimination of all intercompany transactions.

B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.

C = Iowa consolidated net income subject to apportionment.

D = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.

E = Separate corporation income allocable to Iowa.

53.15(8) Limitations on net operating loss carryover and carryback.

a. Definitions.

(1) The term “separate return year” means a year in which a corporation filed a separate return and also a year for which it joined (or was required to join) in the filing of an Iowa consolidated return by another affiliated group.

(2) The term “separate return limitation year” means any separate return year of a member of the group or of a predecessor of the member.

b. Limitation on net operating loss carryover. A net operating loss from a separate return limitation year of a member of the group may be carried over only to the extent that the member contributed to the Iowa consolidated taxable income as computed under subrule 53.15(7). A net operating loss carryover from a separate return limitation year cannot create or increase a consolidated net operating loss which is carried back for tax years beginning prior to January 1, 2009.

A consolidated net operating loss may be carried over to a consolidated return year without limitation even though in the carryover year the affiliated group contains members which were not members of the group in the loss year.

If a member of the affiliated group in the loss year leaves the group through the sale of its stock or because it is now a corporation exempt from tax under Iowa Code section 422.34, its share, as determined by subrule 53.15(7), of the unabsorbed consolidated net operating loss at the end of the consolidated return year during which the member left the group or became exempt from tax may not be carried forward to a subsequent consolidated return.

c. Limitation on net operating loss carryback for tax periods beginning prior to January 1, 2009. A member’s share of an Iowa consolidated net operating loss as computed under subrule 53.15(7) must be carried back to a separate return year, unless the affiliated group elected to carry the net operating loss forward. However, if the member was not in existence in the carryback year but had been a member of the group for every tax year of its existence, its share of the Iowa consolidated loss may be carried back to a separate return year of the common parent.

If a consolidated net operating loss is carried back to a consolidated return year and all members of the affiliated group are the same in the carryback year as in the loss year, the consolidated net operating loss may be carried back without limitation. If there are members of the affiliated group in the loss year which were not members in the carryback year, then the formula in subrule 53.15(7) must be used to determine the portion of the consolidated net operating loss attributable to the members in existence in the carryback year and which may be carried back. Any member of the affiliated group which was a member of the loss-year affiliated group which has been a member of the group since its formation will be regarded as having been a member of the group in the carryback year even though it was not then in existence. A merger or liquidation of members within the affiliated group will be disregarded in determining whether there has been a change in the group between the loss year and the carryback year.

The amount of net operating loss that may be carried back from a separate return year to a consolidated return year is limited to the extent that the former member contributed to the Iowa consolidated taxable income as computed under subrule 53.15(7).

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483, and section 422.37.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 3085C, IAB 5/24/17, effective 6/28/17]

701—53.16(422) Federal rulings and regulations. In determining whether “taxable income,” “net operating loss deduction” or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the Commissioner of Internal Revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which call for an alternative method for determining “taxable income,” “net operating loss deduction,” or any other deductions, or unless the department finds that an applicable Internal Revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code section 422.35.

701—53.17(422) Depreciation of speculative shell buildings.

53.17(1) For tax years beginning on or after July 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal taxable income in order to deduct depreciation under this rule.

53.17(2) On sale or other disposition of the speculative shell building, the taxpayer must report on the taxpayer's Iowa corporation income tax return the same gain or loss reported on the taxpayer's federal corporation income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

53.17(3) For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1, subsection (27) "c."

This rule is intended to implement Iowa Code section 422.35.

701—53.18(422) Deduction of multipurpose vehicle registration fee. For tax years beginning on or after January 1, 1992, and before January 1, 2005, corporations may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124, subsection 3, paragraph "h." In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an ordinary and necessary business expense.

For tax years beginning on or after January 1, 2005, the deduction for Iowa corporation income tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

This rule is intended to implement Iowa Code section 422.35.

701—53.19(422) Deduction of foreign dividends. For tax years beginning on or after January 1, 1992, corporations may claim a deduction based on percentage of ownership as set forth in Section 243 of the Internal Revenue Code for foreign dividends including Subpart F income as defined in Section 952 of the Internal Revenue Code. See *Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance*, 505 U.S. 71, 120 L.Ed 59, 112 S.Ct. 2365 (1992).

This rule is intended to implement Iowa Code section 422.35.

701—53.20(422) Employer social security credit for tips. Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994. No social security tax credit is allowed on the Iowa corporation income tax return.

This rule is intended to implement Iowa Code section 422.35 as amended by 1995 Iowa Acts, chapter 152.

701—53.21(422) Deductions related to the Iowa educational savings plan trust. For tax years beginning on or after January 1, 2016, certain qualifying organizations may establish Iowa education savings plan trust accounts as participants, as described in Iowa Code chapter 12D. Taxpayers may make contributions to such qualifying organizations so that the organization can deposit the contribution into the organization's Iowa education savings plan trust account. However, for Iowa income tax purposes, a taxpayer must add back any portion of the federal charitable contribution deduction allowed

for a contribution to a qualifying organization, to the extent that the taxpayer designated that any part of such contribution be used for the direct benefit of a dependent of a shareholder or for the benefit of any other specific person chosen by the taxpayer.

This rule is intended to implement Iowa Code section 422.35 as amended by 2016 Iowa Acts, chapter 1107.

[ARC 3664C, IAB 2/28/18, effective 4/4/18]

701—53.22(422) Additional first-year depreciation allowance.

53.22(1) *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance (“bonus depreciation”) of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: Taxpayer acquired a \$100,000 qualifying asset on January 1, 2002, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a \$44,000 depreciation deduction on the federal return for 2002. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a \$20,000 depreciation deduction on the Iowa return for 2002. Therefore, a \$24,000 (\$44,000 – \$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2002.

EXAMPLE 2: Taxpayer acquired a \$1,000,000 qualifying asset on January 1, 2002, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2005, for \$500,000. Using the bonus depreciation provision, taxpayer claimed \$677,440 of depreciation deductions on the federal returns for 2002-2005. This results in a basis for this asset of \$322,560 (\$1,000,000 – \$677,440), and a gain of \$177,440 (\$500,000 – \$322,560) on the federal return for 2005 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed \$539,200 of depreciation deductions on the Iowa returns for 2002-2005. This results in a basis for this asset of \$460,800 (\$1,000,000 – \$539,200), and a gain of \$39,200 (\$500,000 – \$460,800) on the Iowa return for 2005 on the sale of the asset. Therefore, a decrease to net income of \$138,240 (\$177,440 – \$39,200) relating to this gain adjustment must be made on the Iowa return for 2005.

53.22(2) *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa corporation income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa corporation income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

a. If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005.

Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.60(2), paragraph “a,” for examples illustrating how this subrule is applied.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

53.22(3) *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: Taxpayer acquired a \$100,000 qualifying asset on January 10, 2008, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a \$44,000 depreciation deduction on the federal return for 2008. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a \$20,000 depreciation deduction on the Iowa return for 2008. Therefore, a \$24,000 (\$44,000 – \$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2008.

EXAMPLE 2: Taxpayer acquired a \$1,000,000 qualifying asset on January 10, 2008, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2011, for \$500,000. Using the bonus depreciation provision, taxpayer claimed \$677,440 of depreciation deductions on the federal returns for 2008-2011. This results in a basis for this asset of \$322,560 (\$1,000,000 – \$677,440), and a gain of \$177,440 (\$500,000 – \$322,560) on the federal return for 2011 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed \$539,200 of depreciation deductions on the Iowa returns for 2008-2011. This results in a basis for this asset of \$460,800 (\$1,000,000 – \$539,200), and a gain of \$39,200 (\$500,000 – \$460,800) on the Iowa return for 2011 on the sale of the asset. Therefore, a decrease to net income of \$138,240 (\$177,440 – \$39,200) relating to this gain adjustment must be made on the Iowa return for 2011.

53.22(4) *Qualified disaster assistance property.* For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of

depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

53.22(5) Assets acquired after December 31, 2009, but before January 1, 2014. For tax periods beginning after December 31, 2009, but beginning before January 1, 2014, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, Public Law No. 111-312, Section 401, and Public Law No. 112-240, Section 331, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2014, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2014, can be calculated on Form IA 4562A.

See subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.35 as amended by 2013 Iowa Acts, Senate File 106.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13]

701—53.23(422) Section 179 expensing.

53.23(1) In general. Iowa taxpayers that elect to expense certain depreciable business assets in the year the assets were placed in service under section 179 of the Internal Revenue Code must also expense those same assets for Iowa income tax purposes in that year. However, for certain years, the Iowa limitations on this deduction are different from the federal limitations for the same year. This means that for some tax years, adjustments are required to determine the correct Iowa section 179 expensing deduction, as described in this rule.

53.23(2) Claiming the deduction.

a. Timing and requirement to follow federal election. A taxpayer that takes a federal section 179 deduction must also take the deduction for the same asset in the same year for Iowa purposes, except as expressly provided by Iowa law or this rule. A taxpayer that takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer that does not take a federal section 179 deduction on a specific qualifying asset is not permitted to take a section 179 deduction for Iowa purposes on that asset.

b. Qualifying for the deduction. Whether a specific business asset qualifies for a section 179 deduction is determined by the Internal Revenue Code (Title 26, U.S. Code) and applicable federal regulations for both federal and Iowa purposes.

c. Amount of the Iowa deduction. Generally, the Iowa deduction must equal the amount of the federal deduction taken for the same asset in the same year, subject to special Iowa limitations. The following chart provides a comparison of the Iowa and federal section 179 dollar limitations and reduction limitations. See rule 701—40.65(422) for the section 179 rules applicable to individuals

and other noncorporate entities, and see rule 701—59.24(422) for the section 179 rules applicable to financial institutions subject to the franchise tax.

Section 179 Deduction Allowances Under Federal and Iowa Law				
	Federal		Iowa	
Tax Year	Dollar Limitation	Reduction Limitation	Dollar Limitation	Reduction Limitation
2003	\$ 100,000	\$ 400,000	\$ 100,000	\$ 400,000
2004	102,000	410,000	102,000	410,000
2005	105,000	420,000	105,000	420,000
2006	108,000	430,000	108,000	430,000
2007	125,000	500,000	125,000	500,000
2008	250,000	800,000	250,000	800,000
2009	250,000	800,000	133,000	530,000
2010	500,000	2,000,000	500,000	2,000,000
2011	500,000	2,000,000	500,000	2,000,000
2012	500,000	2,000,000	500,000	2,000,000
2013	500,000	2,000,000	500,000	2,000,000
2014	500,000	2,000,000	500,000	2,000,000
2015	500,000	2,000,000	500,000	2,000,000
2016	500,000	2,010,000	25,000	200,000
2017	510,000	2,030,000	25,000	200,000
2018	1,000,000	2,500,000	70,000	280,000
2019	1,020,000	2,550,000	100,000	400,000
2020 and later	Iowa limitations are the same as federal			

d. Reduction. Both the federal and the Iowa deductions for section 179 assets are reduced (phased out dollar for dollar) for taxpayers whose total section 179 assets placed in service during a given year cost more than the amount specified (reduction limitation) for that year. Like the deduction limitation, the Iowa and federal reduction limitations are different for certain years. See paragraph 53.23(2) “c” for applicable limitations.

EXAMPLE: Taxpayer, a corporation, purchases \$400,000 worth of qualifying section 179 assets and places all of them in service in 2018. Taxpayer claims a section 179 deduction of \$400,000 for the full cost of the assets on the 2018 federal return. For corporations, the Iowa section 179 deduction for 2018 is phased out dollar for dollar by the amount of section 179 assets placed in service in excess of \$280,000. This means that, for 2018, the Iowa deduction is fully phased out if the taxpayer placed in service section 179 assets that cost, in total, more than \$350,000. Since the cost of the qualifying assets in this example exceeds the Iowa section 179 phase-out limit, the taxpayer cannot claim any section 179 deduction on the Iowa return. However, the taxpayer may depreciate the entire cost of the assets for Iowa purposes.

e. Amounts in excess of the Iowa limits.

(1) Recovering the excess. Due to the differences between the Iowa and federal limitations for certain years, taxpayers may have a federal section 179 deduction that exceeds the amount allowed for Iowa purposes. This excess amount is handled in different ways depending on the source of the deduction.

1. Assets placed in service by the taxpayer or entity reporting the deduction. The cost of any section 179 assets placed in service by the taxpayer in excess of the Iowa limitation for a given year may be recovered through regular depreciation under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). The Iowa section 179 and depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa and federal law are calculated and tracked on forms made available on the department’s website.

EXAMPLE: Taxpayer, a corporation, purchases a \$100,000 piece of equipment and places it in service in 2018. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2018 federal return. Taxpayer is also required to claim a section 179 deduction of \$70,000 on the 2018 Iowa return (the full amount of the federal deduction up to the Iowa limit for corporations for 2018). The taxpayer can depreciate the remaining \$30,000 cost of the equipment for Iowa purposes.

2. Special election for assets placed in service by a pass-through entity when the section 179 deduction is claimed by an owner of that pass-through. See subrule 53.23(3) for information on a special election available to certain owners of pass-through entities related to any section 179 deductions passed through from a partnership or other entity that, in the aggregate, exceed the Iowa limitations.

(2) Special information for pass-throughs. In the case of pass-through entities, section 179 limitations apply at both the entity level and the owner level. Pass-through entities that are required to file an Iowa return and that actually place section 179 assets in service should follow 53.23(2)“e”(1)“1” to account for any assets for which the total federal section 179 deductions for a given year exceeded the Iowa limitation. Owners of pass-throughs receiving section 179 deductions from one or more pass-throughs that, in the aggregate, exceed the Iowa limitations should follow 53.23(2)“e”(1)“2.”

EXAMPLE: A, Inc. (a corporation doing business exclusively in Iowa) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C, which also does business exclusively in Iowa, places \$200,000 worth of section 179 assets in service during tax year 2019 and claims a federal section 179 deduction for the full cost of the assets. Because C is required to file an Iowa partnership return, C is subject to the Iowa section 179 limitations for 2019 and must adjust its Iowa section 179 deduction as provided in 701—numbered paragraph 40.65(2)“e”(1)“1.” C passes through 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) to A, Inc. A, Inc. also receives \$50,000 each in section 179 deductions from D and E, for a total of \$150,000 in section 179 deductions (for Iowa purposes) in 2019. A, Inc. is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because A, Inc. received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, A, Inc. is eligible for the special election referenced in 53.23(2)“e”(1)“2.”

f. Income limitation. The Iowa section 179 deduction for any given year is limited to the taxpayer’s income from active conduct in a trade or business in the same manner that the section 179 deduction is limited for federal purposes. If an allowable Iowa section 179 deduction exceeds the taxpayer’s business income for a given year, any excess allowable Iowa section 179 deduction may be carried forward as described in paragraph 53.23(2)“g.”

g. Carryforward. This paragraph applies only to amounts that do not exceed the Iowa section 179 deduction limitations for a given year but do exceed the taxpayer’s business income for that year. As with the federal deduction, allowable Iowa section 179 deductions claimed in a given year that exceed a taxpayer’s business income may be carried forward and claimed in future years. This carryforward, if any, is calculated using only amounts up to the Iowa limit. Any federal section 179 deduction the taxpayer claimed in excess of the Iowa limit is not an Iowa section 179 deduction and therefore is not eligible for the carryforward described in this paragraph. Such amounts must instead be recovered as described in paragraph 53.23(2)“e,” or in subrule 53.23(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

h. Difference in basis. Iowa adjustments for differences between the Iowa and federal section 179 deduction limitations may cause the taxpayer to have a different basis in the same asset for Iowa and federal purposes. Taxpayers are required to use forms made available on the department’s website to calculate and track these differences.

53.23(3) Section 179 deduction received from a pass-through entity. In some cases, an entity that receives income from one or more pass-through entities may receive a section 179 deduction in excess of the Iowa deduction limitation listed in paragraph 53.23(2)“c” for a given year. The entity may be eligible for a special election with regard to that excess section 179 deduction, as described in this subrule.

a. Tax years beginning before January 1, 2018. For tax years beginning before January 1, 2018, the amount of any section 179 deduction received by a corporation (both C and S corporations) or an entity subject to the corporate income tax in excess of the Iowa deduction limitation for that year is not eligible for the special election.

b. Special election available for tax years 2018 and 2019. For tax years beginning on or after January 1, 2018, but before January 1, 2020, a corporation (both C and S corporations) or an entity subject to the corporate income tax that receives a section 179 deduction from one or more pass-through entities in excess of the Iowa deduction limitation for that tax year may elect to deduct the excess in future years, as described in this subrule. See rule 701—40.65(422) for rules applicable to individuals and other noncorporate entities, and see rule 701—59.24(422) for rules applicable to financial institutions subject to the franchise tax.

(1) This special election applies only to section 179 deductions passed through to the corporation or entity subject to the corporate income tax by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the corporation or entity subject to the corporate income tax exceeds the federal section 179 deduction limitation for that year, the corporation or other entity may only use the amount up to the federal limitation when calculating the deduction under this election. Any amount in excess of the federal limitation shall not be deducted for Iowa purposes.

c. Section 179 assets of a corporation or entity subject to the corporate income tax. A corporation or entity subject to the corporate income tax that makes this special election may not claim an Iowa section 179 deduction for any assets the corporation or entity placed in service during the same year but must instead depreciate such assets using the modified accelerated cost recovery system (MACRS) without regard to bonus depreciation under Section 168(k) of the Internal Revenue Code. To the extent the corporation or entity claimed a federal section 179 deduction on those assets, the Iowa depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa law and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: A, Inc., a corporation doing business in Iowa, places in service \$20,000 worth of section 179 assets in tax year 2019 and claims the deduction for the full amount for federal purposes. A, Inc. is also a member of B, LLC, an entity that has elected to be taxed as a partnership for federal purposes and does not do any business in Iowa. B, LLC also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$150,000 of that deduction through to A, Inc. For federal purposes, A, Inc. has a total of \$170,000 in section 179 deductions. Because A, Inc. has section 179 deductions from a pass-through that exceed the Iowa limitation for 2019, A, Inc. is eligible for the special election. A, Inc. makes the special election and claims the maximum Iowa section 179 deduction of \$100,000 on the amount passed through from B, LLC. Under the special election, A, Inc. will be allowed to deduct the remaining \$50,000 passed through from B, LLC over the next five years, as described in paragraph 53.23(3)"e." However, because A, Inc. made the special election, A, Inc. will be required to depreciate the entire \$20,000 cost of the assets A, Inc. placed in service in 2019.

d. Calculating the special election. A corporation or other entity subject to the corporate income tax that elects to take advantage of the special election must first add together all section 179 deductions which the corporation or other entity received from all relevant pass-through entities. The corporation or other entity must claim an aggregate Iowa section 179 deduction equal to the Iowa limit for the tax year. This amount must be subtracted from the total. Whatever remains is the amount the corporation or other entity will be permitted to deduct (special election deduction) in future years.

e. Special election deduction.

(1) Calculation. The remaining amount from paragraph 53.23(3)"d" must be separated into five equal shares.

(2) Claiming the special election deduction. The corporation or other entity may deduct one of the five shares in each of the next five years. The dollar limitations and reduction limitations on section 179 deductions do not apply to special deduction amounts allowed over the five-year period under this paragraph.

(3) Excess special deduction. The special election deduction for a given year is limited to the taxpayer's business income for that year. Any excess may be carried forward to future years. Any amounts carried forward under this subparagraph shall be added to, and treated in the same manner as, regular Iowa section 179 deduction carryforwards as described in paragraph 53.23(2)"g."

EXAMPLE: D, Inc., a corporation doing business in Iowa, is a partner in a partnership that does not do business in Iowa. In 2019, the partnership passes through a \$600,000 federal section 179 deduction and

does not recalculate the deduction for Iowa purposes because the partnership has no obligation to file an Iowa return. D, Inc. claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning the corporation will be allowed to take a \$100,000 Iowa deduction in each of the next five years.

In 2020, D, Inc. is eligible for the \$100,000 deduction carried forward under the election, but the corporation only has \$50,000 in business income. The deduction is limited to business income, so the corporation can only use \$50,000 of the deduction in this year. However, D, Inc. will be permitted to treat the excess \$50,000 as a section 179 carryforward and use it to offset business income in future years until the deduction is used up.

f. Basis. The individual's or entity's basis in the pass-through entity assets is adjusted by the full amount of the section 179 deduction passed through in the year that the section 179 deduction is received and is therefore the same for both Iowa and federal purposes.

g. Later tax years. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal section 179 deduction and special Iowa treatment for excess section 179 deductions received from pass-throughs is not available.

This rule is intended to implement Iowa Code section 422.35 as amended by 2019 Iowa Acts, Senate File 220.

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701—53.24(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain. For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa corporation income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa purposes can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms “threat” and “imminence,” and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

53.24(1) Reporting requirements. In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa corporation income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 53.24(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

53.24(2) Claiming the exclusion when gain is not recognized for federal tax purposes. For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa corporation tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain

income relating to the involuntary conversion. The basis of the property for Iowa corporation income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa corporation income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of \$50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa corporation income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of \$70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of \$50,000 on the 2009 Iowa corporation income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.35.

701—53.25(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television, or video projects.

53.25(1) *Projects registered on or after January 1, 2007, but before July 1, 2009.* For tax years beginning on or after January 1, 2007, a taxpayer that is an Iowa-based business may exclude, to the extent included in federal taxable income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—52.34(15,422). An Iowa-based business is a business whose commercial domicile as defined in Iowa Code section 422.32(3) is in Iowa.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—52.34(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a corporation which is domiciled in Iowa. If this same corporation receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, the corporation cannot exclude this income on the Iowa corporation income tax return because the corporation has claimed the film qualified expenditure tax credit.

53.25(2) *Projects registered on or after July 1, 2009.* For tax years beginning on or after July 1, 2009, a taxpayer that is an Iowa-based business may exclude no more than 25 percent of the income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development in the year in which the qualified expenditure occurred. A reduction of 25 percent of the income is allowed to be excluded for the three subsequent tax years.

EXAMPLE: An Iowa taxpayer received \$10,000 in income in the 2010 tax year related to qualified film expenditures for a project registered on February 1, 2010. The \$10,000 was reported as income on taxpayer's 2010 federal tax return. Taxpayer may exclude \$2,500 of income on the Iowa corporation income tax return for each of the tax years 2010-2013.

53.25(3) *Repeal of exclusion.* The exclusion of income from the sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects is repealed for tax years beginning on or after January 1, 2012. However, the exclusion is still available if the contract or agreement related to a film project was entered into on or before May 25, 2012. Assuming the same facts as those in the example in subrule 53.25(2), the taxpayer may continue to exclude \$2,500

of income on the Iowa corporation income tax return for the 2012 and 2013 tax years since the contract or agreement was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40, and Iowa Code section 422.35 as amended by 2012 Iowa Acts, House File 2337, section 35.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 0398C, IAB 10/17/12, effective 11/21/12]

701—53.26(422) Exclusion of biodiesel production refund. A taxpayer may exclude, to the extent included in federal taxable income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

701—53.27(422) Like-kind exchanges of personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020.

53.27(1) *In general.* Public Law 115-97, Section 13303, repealed the deferral of gain or loss from exchanges of like-kind personal property for federal purposes under Section 1031 of the Internal Revenue Code. This federal repeal applies to exchanges completed after December 31, 2017, unless the taxpayer began the exchange by transferring personal property or receiving replacement personal property on or before that date. Iowa did not conform to this federal repeal for Iowa corporation income tax purposes for tax periods beginning before January 1, 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020, Iowa generally conforms to the federal treatment of gain or loss from exchanges of like-kind personal property, but eligible taxpayers may elect the treatment that applied under prior federal law for Iowa purposes. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal treatment for these exchanges, and no special election is available. This rule governs exchanges of like-kind personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020. This rule does not apply to exchanges completed during any tax year beginning on or after January 1, 2020.

53.27(2) *Qualification.* Section 1031 of the Internal Revenue Code in effect on December 21, 2017, and any applicable federal regulations govern whether transactions involving the disposition and acquisition of personal property qualify for Iowa corporate income tax purposes as a like-kind exchange of personal property subject to the deferral of gain or loss and also govern the date and tax period during which an exchange is considered completed. The treatment of such transactions as a like-kind exchange for Iowa corporate income tax purposes is either mandatory or permissive depending on the date the like-kind exchange is completed.

a. Like-kind exchanges completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019. Transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019, are required to be treated as a like-kind exchange for Iowa corporate income tax purposes.

b. Like-kind exchanges completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020. For tax periods beginning on or after January 1, 2019, Iowa is conformed to the federal repeal of deferral of gain or loss from exchanges of like-kind personal property, so the federal and Iowa treatment of such transactions under Section 1031 of the Internal Revenue Code will generally be the same. However, transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020, may at the election of the taxpayer be treated as a like-kind exchange for Iowa corporate income tax purposes. The election is made by completing the necessary worksheets and forms and making the required adjustments on the Iowa return as described in subrule 53.27(3). No special attachment or statement is required. The election only applies to the transactions involved in the like-kind exchange, and the taxpayer may elect or not elect to treat other qualifying transactions as a like-kind exchange for Iowa purposes.

53.27(3) Calculation and Iowa adjustments. A taxpayer required to or electing to treat qualifying transactions as a like-kind exchange for Iowa tax purposes must make certain Iowa calculations and adjustments on forms and worksheets made available on the department's website. The IA 8824 Worksheet described in this subrule need not be included with the Iowa return but must be kept with the taxpayer's records. The taxpayer is responsible for providing documentation at the department's request to substantiate a like-kind exchange under this rule.

a. Like-kind exchange calculation. The taxpayer must complete Parts I and II of the IA 8824 Worksheet to compute the Iowa recognized gain, if any, the Iowa deferred gain or loss, and the Iowa basis of the like-kind personal property received in the like-kind exchange.

EXAMPLE 1: X, a corporation engaged in commercial farming and filing on a calendar-year basis, trades a tractor with a fair market value (FMV) of \$25,000 along with \$75,000 in cash to Y for a new tractor with an FMV of \$100,000. For purposes of this example it is assumed that the tractor trade occurs in 2019 and qualifies as a like-kind exchange and that X elects such treatment for Iowa corporate income tax purposes under paragraph 53.27(2) "b." At the time of the trade, the adjusted basis of X's old tractor is \$0 for federal tax purposes and is \$13,680 for Iowa tax purposes. X realizes a gain for Iowa purposes on the exchange of the old tractor in the amount of \$11,320 (\$100,000 FMV of new tractor - \$75,000 cash paid - \$13,680 Iowa adjusted basis of old tractor). Because X did not receive any cash or other property that was not like-kind, or assume any liabilities from Y, the entire amount of X's \$11,320 realized gain qualifies for deferral, so X recognizes \$0 of gain on the exchange for Iowa tax purposes. As a result, X's basis in the new tractor for Iowa tax purposes is \$88,680 (\$13,680 Iowa adjusted basis of old tractor + \$75,000 cash paid by X).

b. Iowa nonconformity adjustment.

(1) The taxpayer must complete Part III of the IA 8824 Worksheet to adjust for the difference between any recognized Iowa gain from the exchange as calculated on the IA 8824 Worksheet, Part II, and any gain or loss (including gain or loss recaptured as ordinary income) recognized on the taxpayer's federal return.

EXAMPLE 2: Assume the same facts as given in Example 1. Because the tractor trade occurred in 2019, it will not qualify as a like-kind exchange for federal tax purposes but will instead be treated as two separate transactions: a sale of the old tractor and a purchase of the new tractor. X recognizes a gain for federal tax purposes on the sale of the old tractor in the amount of \$25,000 (\$25,000 sales price of old tractor - \$0 federal adjusted basis of old tractor), the entire amount of which is recaptured as ordinary income because of prior depreciation. X reports the \$25,000 of income on the federal return. X is required to report the same \$25,000 as income on the Iowa return but is also allowed a \$25,000 subtraction on the same Iowa return because X's recognized gain for Iowa tax purposes is \$0 as calculated in Example 1. X's nonconformity adjustment of -\$25,000 must be reported on the Iowa return in the manner prescribed on the IA 8824 Worksheet.

(2) If the total recognized federal gain is reported using the installment sale method under Section 453 of the Internal Revenue Code, the total amount of any Iowa nonconformity adjustment related to that federal gain must be claimed over the same installment period, and the proportion of the total Iowa nonconformity adjustment claimed for each tax year shall equal the same proportion that the federal gain reported for that tax year bears to the total amount of federal gain that will ultimately be reported for all tax years resulting from the disposition of the personal property. The taxpayer must complete an IA 8824 Worksheet for each tax year that an Iowa nonconformity adjustment is claimed.

c. Cost recovery adjustments.

(1) The taxpayer must complete the IA 4562A to account for any differences between the federal and Iowa cost recovery deductions related to the like-kind personal property involved in the like-kind exchange, including if the taxpayer's basis in the like-kind personal property received is different for federal and Iowa purposes, or if the taxpayer claimed additional first-year depreciation or a section 179 deduction for federal purposes on the like-kind property received in the exchange. See rule 701—53.22(422) for requirements related to the disallowance of additional first-year depreciation for Iowa corporate income tax purposes. See rule 701—53.23(422) for the section 179 limitations imposed under the Iowa corporate income tax.

(2) Treasury Regulation §1.168(i)-6 prescribes rules related to the calculation of depreciation for certain assets involved in a like-kind exchange, but a taxpayer may elect to not have those rules apply pursuant to Treasury Regulation §1.168(i)-6(i). A taxpayer may choose to make a similar election under Treasury Regulation §1.168(i)-6(i) for Iowa tax purposes with regard to a like-kind exchange under this rule if the personal property otherwise would have qualified for such federal election notwithstanding the fact that no like-kind exchange occurred for federal purposes or the fact that no election was actually made for federal tax purposes in accordance with Treasury Regulation §1.168(i)-6(j). The election is made by calculating depreciation for Iowa tax purposes on the personal property involved in the like-kind exchange using the method described in Treasury Regulation §1.168(i)-6(i) on the timely filed Iowa return, including extensions, for the same tax year that the like-kind exchange was completed. No special attachment or statement is required.

EXAMPLE 3: Assume the same facts as given in Examples 1 and 2. X elects additional first-year depreciation on the new tractor and claims a depreciation deduction on the federal return of \$100,000 (100 percent of X's federal basis). X is required to add back the total amount of the federal depreciation on the Iowa return because Iowa does not allow additional first-year depreciation. But X is permitted deductions for regular depreciation on the new tractor with an Iowa basis of \$88,680 (\$13,680 carryover basis from old tractor + \$75,000 excess basis from cash paid) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). See rule 701—53.22(422) for more information on the disallowance of additional first-year depreciation.

EXAMPLE 4: Assume the same facts as given in Examples 1 and 2. X elects to expense the entire cost of the new tractor under Section 179 of the Internal Revenue Code and claims a deduction on the federal return of \$100,000. X is also required to claim the section 179 deduction on the new tractor for Iowa tax purposes pursuant to subrule 53.23(2). However, the amount that represents the carryover basis from the old tractor (\$13,680) is not eligible for the deduction under Section 179(d)(3) of the Internal Revenue Code, so the cost of the new tractor that is eligible for the section 179 deduction for Iowa purposes is only \$75,000 (excess basis from cash paid). This is the amount of section 179 deduction that X must claim on the Iowa return, subject to the applicable Iowa dollar limitation and reduction limitations in rule 701—53.23(422). Because X is the taxpayer who placed the new tractor in service, X is permitted deductions for regular depreciation on the carryover basis in the new tractor (\$13,680) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k).

This rule is intended to implement 2019 Iowa Acts, chapter 152 [House File 779], section 11. [ARC 4614C, IAB 8/14/19, effective 9/18/19]

701—53.28(422) Broadband infrastructure grant exemption.

53.28(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.35.

53.28(2) *Definitions.*

“*Facilitate*” shall have the same meaning as defined in Iowa Code section 8B.1.

“*Grant*” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

53.28(3) Limitation on certain refund claims. For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.35.
[ARC 5606C, IAB 5/5/21, effective 6/9/21]

701—53.29(422) Interest expense deduction adjustments. For tax years beginning on or after January 1, 2020, the limit on the amount of business interest expense that a taxpayer may deduct in a taxable year under Internal Revenue Code (IRC) Section 163(j) does not apply for Iowa purposes. This rule provides information on how taxpayers must calculate and report their business interest expense deduction for Iowa purposes, for tax year 2018 (subrule 53.29(2)), when Iowa did not conform to the limitation; tax year 2019 (subrule 53.29(3)), when Iowa did conform to the limitation; and tax years 2020 and later (subrule 53.29(4) et seq.), when Iowa again does not conform to this limitation. All references to the Code of Federal Regulations (Treas. Reg.) and certain other information in this rule are based on final Internal Revenue Service (IRS) regulations and guidance in effect on January 13, 2021.

53.29(1) Definitions. The following terms apply to the interpretation and application of this rule.

“*Current-year business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(9).

“*Excess business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(16).

“*Iowa partnership*” means any partnership required to file an Iowa return (IA 1065) for the relevant tax year.

“*Iowa S corporation*” means any S corporation required to file an Iowa return (IA 1120S) for the relevant tax year.

“*Non-Iowa partnership*” means any partnership that is not required to file an Iowa return (IA 1065) for the relevant tax year.

“*Non-Iowa S corporation*” means any S corporation that is not required to file an Iowa return (IA 1120S) for the relevant tax year.

53.29(2) Tax year 2018. For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

a. In general. For tax year 2018, Iowa taxpayers are permitted to deduct current-year business interest expense without regard to the limitations imposed by IRC Section 163(j) under the TCJA. The taxpayer’s additional deduction is computed on the 2018 Nonconformity Adjustments Worksheet. Taxpayers who qualify for these higher Iowa deductions in 2018 may need to make further adjustments in 2019 for amounts deducted under this subrule for Iowa purposes but disallowed and carried forward for federal purposes. See subrule 53.29(3) for more information about these 2019 adjustments.

b. Special rules for partnerships and S corporations.

(1) Iowa partnerships and S corporations. Partnerships and S corporations required to file Iowa returns in tax year 2018 are required to make adjustments for Iowa’s nonconformity with IRC Section 163(j) at the entity level, meaning they can deduct the full interest expense on the entity’s own Iowa return and the reduction to the partner’s or shareholder’s share of the entity’s income will be included in the all source modifications line of the partners’ or shareholders’ Iowa Schedules K-1.

EXAMPLE 1: P, a partnership doing business in Iowa, has \$100,000 in current-year business interest expense in 2018. For federal purposes, \$20,000 of that amount is disallowed under IRC Section 163(j). The partnership deducts \$80,000 at the entity level in 2018, and the remaining disallowed \$20,000 is allocated to the partners to be deducted in future years. For Iowa purposes, the \$80,000 of business interest expense allowed for federal purposes is included in the partnership’s non-separately stated ordinary business income (loss), and the partnership will make an adjustment on the entity’s IA 1065 to

deduct the \$20,000 of current-year business interest expense that was disallowed for federal purposes. The \$20,000 additional Iowa deduction will be reported to the partners as an all source modification on the partners' IA 1065 Schedules K-1, and partners will receive the benefit of this all source modification item when the partners report their Iowa partnership income on their own Iowa tax return for the year. The partners will not be permitted to make further Iowa adjustments on their own Iowa tax return for the excess business interest expense amounts passed through to them from the partnership for federal purposes.

(2) Owners of partnerships and S corporations with no entity-level 2018 Iowa filing requirement.

1. Non-Iowa partnerships. Iowa partners who received interest expense deductions from partnerships which were not required to file 2018 Iowa returns may claim the larger Iowa deduction for business interest expenses passed through from the partnership on the partner's own 2018 Iowa return by including in the partner's Iowa deduction the amount of disallowed business interest expense deduction shown on the 2018 federal Schedule K-1 (Form 1065), line 13, code K, received from the non-Iowa partnership.

EXAMPLE 2: ABC, Inc. is a corporation doing business in Iowa and a partner in P2, an out-of-state partnership with no business in Iowa and no Iowa filing obligation. In 2018, P2 has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, P2 is permitted to deduct \$80,000 on its 2018 federal partnership return. The \$20,000 in excess business interest expense is then allocated to P2's partners. ABC, Inc. is allocated \$5,000 in excess business interest expense from P2. Because P2 is not required to file an Iowa return, and therefore ABC, Inc. did not receive a 2018 IA 1065 Schedule K-1 from P2, ABC, Inc. is permitted to deduct the \$5,000 allocated from P2 as current-year business interest expense on ABC, Inc.'s 2018 Iowa income tax return.

2. Non-Iowa S corporations. Iowa shareholders of S corporations that have no Iowa filing requirement are limited to the deduction actually passed through to them on the federal Schedule K-1 received from the S corporation for Iowa purposes in tax year 2018. These shareholders are not permitted to make adjustments for interest expense disallowed at the entity level for the non-Iowa S corporation. See Example 3 in 701—subrule 40.85(2) for an example of how Iowa shareholders of non-Iowa S corporations should report the business interest expense deduction allocated to them from the S corporation.

53.29(3) Tax year 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020 (tax year 2019), Iowa conforms to the IRC in effect on March 24, 2018.

a. Applicable limitation. For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed conformity date, Iowa did not conform with the higher 50 percent limitation retroactively imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to the extent that increased limitation applied in tax year 2019 for federal purposes. For tax year 2019 only, taxpayers are required to calculate their Iowa business interest expense deduction by applying the limitations of IRC Section 163(j) without regard to IRC Section 163(j)(10).

EXAMPLE 3: XYZ Corp. has an adjusted taxable income (ATI) of \$100,000 for tax year 2019 and \$80,000 in deductible business interest expense. For federal purposes, XYZ Corp.'s business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, XYZ Corp.'s Iowa business interest expense deduction for the year is limited to \$30,000. XYZ Corp. will report this difference by making a \$20,000 adjustment on IA 101, line 3 (XYZ Corp. may have additional adjustments on this line if the current-year federal deduction included amounts carried forward from 2018).

b. Addition to income for tax year 2018 federal carryforward amounts deducted in tax year 2019. To the extent a taxpayer's tax year 2019 federal business interest expense deduction includes amounts that were disallowed and carried forward to future years under IRC Section 163(j) in tax year 2018 for federal purposes, but allowed as a deduction in tax year 2018 for Iowa purposes under paragraph 53.29(2)"a" (in general), subparagraph 53.29(2)"b"(1) (Iowa partnerships and S corporations), or

numbered paragraph 53.29(2)“b”(2)“1” (non-Iowa partnerships), these carried-forward amounts must be added back in computing Iowa income. These prior deductions and current adjustments are calculated and tracked on the IA 101 Nonconformity Adjustments form. Note that shareholders of non-Iowa S corporations should not be required to add back 2018 carryforward amounts deducted by the S corporation in 2019, because the shareholders were not permitted to deduct these excess amounts for Iowa purposes in 2018. See numbered paragraph 53.29(2)“b”(2)“2.”

EXAMPLE 4: QRS, Inc. is a partner in P under the same facts described in Example 1 above. For tax year 2019, QRS, Inc. completes federal Form 8990 and is eligible to deduct \$1,000 of the excess business interest expense allocated to QRS, Inc. from P in 2018 on QRS, Inc.’s 2019 federal income tax return. This \$1,000 federal deduction for prior-year excess business interest expense allocated from P must be added back in computing QRS, Inc.’s 2019 Iowa income. The same add-back would be required if this scenario was applied to the facts in Example 2 above.

53.29(4) Tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation.

a. Current-year business interest expense. For tax years beginning on or after January 1, 2020, a taxpayer’s current-year business interest expense is fully deductible to the extent permitted by IRC Section 163 for Iowa purposes without regard to any limitation under IRC Section 163(j). Even though Iowa does not conform to IRC Section 163(j), provisions of the IRC other than Section 163(j) may subject interest expense to disallowance, deferral, capitalization, or other limitations, and those other provisions of the IRC still generally apply for Iowa purposes. No additional Iowa adjustments are permitted for federal limitations such as those described in Treas. Reg. Section 1.163(j)-3(b)(4), which are determined after the application of IRC Section 163(j) for federal purposes. See Treas. Reg. Section 1.163(j)-3 for examples of other provisions of the IRC that may restrict interest expense deductions for federal and Iowa purposes, independent of the IRC Section 163(j) limitation.

b. Carryforward.

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer’s 2020 Iowa income tax return using form IA 163A. Excess business interest expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 5: In 2019, QRS, Inc. had \$100,000 in current-year business interest expense. QRS, Inc.’s business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa’s nonconformity with the CARES Act for that year. See paragraph 53.29(3)“a.” In 2020, QRS, Inc. is again subject to an IRC Section 163(j) limitation and is not permitted to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does not conform to the IRC Section 163(j) limitation for 2020, QRS, Inc. may deduct all of the company’s current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of QRS, Inc.’s disallowed Iowa interest expense carried over from 2019. QRS, Inc. must complete the IA 163 in order to calculate the company’s current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts, which may be deducted in full on QRS, Inc.’s 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes, when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of “disallowed business interest expense.” Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 53.29(4)“b”(1). All

prior-year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer's Iowa income for the year.

EXAMPLE 6: In 2020, QRS, Inc. has \$100,000 in current-year business interest expense. For federal purposes, QRS, Inc. is subject to the IRC Section 163(j) limitation. QRS, Inc. deducts \$70,000 in business interest expense on QRS, Inc.'s 2020 federal return and carries the remaining \$30,000 forward to be deducted in future years. For Iowa purposes, QRS, Inc. deducts the full \$100,000 in current-year business interest expense in 2020.

In 2021, QRS, Inc. has \$50,000 in current-year business interest expense. For federal purposes, QRS, Inc. is permitted to deduct the full \$50,000 in interest expense generated in 2021, plus \$5,000 of the amount that was disallowed in 2020 for a total federal deduction of \$55,000 in 2021. QRS, Inc. must add the federal carryforward amount (\$5,000) back on the company's 2021 Iowa return, limiting QRS, Inc.'s 2021 Iowa deduction to the \$50,000 in current-year business interest expense.

c. Consolidated groups. Corporations that were included on a federal consolidated return but that either file separate returns for Iowa purposes or file an Iowa consolidated return that does not include all members of the federal consolidated group are required to recalculate their proper current-year business interest expense deduction as described in paragraph 53.29(4) "a," and the amount of any prior-year disallowed business interest expense carryforward which must be added back for Iowa purposes as described in paragraph 53.29(4) "b," for the separate entity or Iowa consolidated group by completing pro forma federal interest expense deduction forms for the separate entity or Iowa consolidated group. Treas. Reg. Section 1.163(j)-4(d) and any other applicable federal regulations or guidance govern how Iowa consolidated groups should make this pro forma calculation. For more information about the election to file Iowa consolidated returns and group membership requirements, see rule 701—53.15(422).

(1) **Departure from group.** In the event that a member leaves the consolidated group, both the newly separated member and the remaining group shall be required to include any carryforward amounts allocated to them under Treas. Reg. Section 1.163(j)-5(b)(3)(iii) in their respective Iowa incomes in the year or years the separate company or group actually deducts those amounts for federal purposes.

(2) **Carryforwards from separate return limitation years (SRLY).** A consolidated group is not permitted to deduct any disallowed business interest expense carryforward amount of a member arising in a SRLY for Iowa purposes and must add back such amounts on the Iowa return in the same year in which the consolidated group is permitted to deduct the SRLY carryforward amount for federal purposes. See 26 Treas. Reg. Section 1.163(j)-5(d) for more information about the federal treatment of these carryforward amounts.

53.29(5) Partners and partnerships.

a. Partnership-level adjustments. For tax years beginning on or after January 1, 2020, partnerships that file an Iowa income tax return for a tax year in which the partnership is subject to the IRC Section 163(j) limitation for federal purposes are permitted to deduct all current-year business interest expense at the partnership level in that tax year. See 701—paragraph 40.85(5) "a" for more information about the calculation and reporting of partnership-level adjustments.

b. Partner-level adjustments.

(1) **Interest expense from Iowa partnerships.** Iowa adjustments related to excess business interest expense of an Iowa partnership are made at the entity level as described in 701—paragraph 40.85(5) "a" and are reported to partners on an IA 1065 Schedule K-1. Partners are not permitted to make any Iowa adjustment at the partner level to their federal interest expense deduction for amounts of excess business interest expense allocated from an Iowa partnership on the partner's federal Schedule K-1 related to that Iowa partnership. See Example 1 above.

(2) **Interest expense from non-Iowa partnerships.** For tax years beginning on or after January 1, 2020, partners may include as part of their Iowa business interest expense deduction the total amount of current-year excess business interest expense deduction passed through to them from all non-Iowa partnerships as shown on the federal Schedule K-1 (Form 1065), line 13, code K. See Example 2 above.

(3) **Partnership basis.** A partner's basis is reduced (but not below zero) by the amount of excess business interest expense the partnership passes through to the partner each year. See Treas. Reg. Section

163(j)-6(h) for detailed information about how to make these basis adjustments. For federal purposes, immediately before disposition of the partnership interest, the partner's basis is then increased by the amount of any passed-through business interest expense which has not yet been treated as paid or accrued by the partner as described in Treas. Reg. Section 163(j)-6(h)(3). No basis increase at the time of disposition is allowed for Iowa purposes for passed-through business interest expense amounts that were deducted for Iowa, but not for federal, purposes due to Iowa's nonconformity with IRC Section 163(j).

53.29(6) *S corporation adjustments.* For federal purposes, IRC Section 163(j) limitations are applied at the S corporation level. Unlike partnerships, disallowed business interest expense amounts are carried forward and deducted in future years at the entity level rather than being passed through to shareholders. S corporations should calculate their entity-level business interest expense deduction for Iowa purposes under the provisions of this rule. See also Treas. Reg. Section 1.163(j)-6(l) for more information about the application of IRC Section 163(j) to S corporations for federal purposes.

This rule is intended to implement Iowa Code section 422.35(27).
[ARC 5733C, IAB 6/30/21, effective 8/4/21]

701—53.30(422) COVID-19 grant exclusion.

53.30(1) *Definitions.* For purposes of this rule:

“*Administering agency*” means the economic development authority, the Iowa finance authority, or the department of agriculture and land stewardship.

“*Grant recipient*” means a person who applies for and is issued a qualifying COVID-19 grant by an administering agency.

“*Issued*” means the approval of the grant recipient's application and amount for a qualifying COVID-19 grant by an administering agency, regardless of when the grant funds were paid by the administering agency.

53.30(2) *Qualifying COVID-19 grant programs.*

a. The department is responsible for determining whether a grant program provides “qualifying COVID-19 grants” as defined in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5. In making this determination, and for purposes of the definition of “qualifying COVID-19 grant,” a grant program is “created to primarily provide COVID-19 related financial assistance to economically impacted individuals and businesses located in this state” if that grant program, at the time of its inception, was intended by the administering agency to provide a majority (more than 50 percent) of its financial assistance to or for the benefit of businesses that are doing business in Iowa or are deriving income from sources within Iowa, and that are economically affected by the COVID-19 pandemic.

b. The administering agency shall notify the director of the existence of any grant program it believes may be a qualifying COVID-19 grant program. Upon such notification, the department will request from the administering agency the information necessary to determine whether that program is a qualifying COVID-19 grant as defined in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5, and this rule. The administering agency shall provide the department with the requested information within the time frame prescribed by the department in its request. Failure to provide the requested information to the department shall prevent the department from determining that the grant program is a qualifying COVID-19 grant. Grant programs not specifically listed below in paragraph 53.30(2)“*c*” are not qualifying COVID-19 grants and are not eligible for the exclusion provided in this rule, even if that program may otherwise meet the definition of “qualifying COVID-19 grant” in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5.

c. The following is an exhaustive list of programs that have been identified by the department as qualifying COVID-19 grants, including a general description of each program's grant recipients, that may qualify for the exclusion from Iowa net income under subrule 53.30(3):

(1) Beef up Iowa program administered by the department of agriculture and land stewardship. Grant recipient is Iowa State University.

(2) Iowa beginning farmer debt relief fund administered by the Iowa finance authority. Grant recipients include Iowa beginning farmers.

(3) Iowa biofuels relief program administered by the economic development authority. Grant recipients include Iowa biodiesel and ethanol producers.

(4) Iowa county fairs relief fund administered by the economic development authority. Grant recipients include Iowa county and district fairs.

(5) Iowa COVID-19 business disruption relief program administered by the economic development authority. Grant recipients include Iowa bars, taverns, breweries, distilleries, wineries, and other similar drinking establishments.

(6) Iowa COVID-19 targeted small business sole operator fund administered by the economic development authority. Grant recipients include Iowa targeted small businesses.

(7) Iowa disposal assistance program administered by the department of agriculture and land stewardship. Grant recipients include Iowa pork and egg producers.

(8) Iowa hospital COVID-19 relief fund administered by the economic development authority. Grant recipients include Iowa hospitals.

(9) Iowa livestock producer relief fund administered by the economic development authority. Grant recipients include Iowa livestock producers.

(10) Iowa movie theatre relief grant program administered by the economic development authority. Grant recipients include Iowa movie theaters.

(11) Iowa nonprofit recovery fund administered by the economic development authority. Grant recipients include Iowa nonprofit organizations.

(12) Iowa renewable fuel retail recovery program administered by the department of agriculture and land stewardship. Grant recipients include Iowa fuel retailers.

(13) Iowa restaurant and bar relief grant program administered by the economic development authority. Grant recipients include Iowa bars, breweries, brewpubs, distilleries, wineries, and restaurants.

(14) Iowa small business relief grant program administered by the economic development authority. Grant recipients include Iowa small businesses.

(15) Iowa small business utility disruption prevention program administered by the economic development authority. Grant recipients include Iowa small businesses and small nonprofit organizations.

(16) Local produce and protein program administered by the department of agriculture and land stewardship. Grant recipients include Iowa schools, early childcare centers, specialty crop producers, and food hubs.

(17) Meat processing expansion and development program administered by the department of agriculture and land stewardship. Grant recipients include Iowa meat and poultry processing businesses and employees and Iowa livestock producers.

(18) Pack the pantry program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food pantries.

(19) Pass the pork program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food banks.

(20) Turkey to table program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food banks.

53.30(3) Excluding qualifying COVID-19 grants from Iowa net income.

a. Generally. A grant recipient may subtract a qualifying COVID-19 grant when calculating Iowa net income if all of the following apply:

(1) The grant was issued as part of a qualifying COVID-19 grant program identified in paragraph 53.30(2)“c.”

(2) The grant was issued on or after March 17, 2020, and on or before December 31, 2021.

(3) The grant funds were included in the grant recipient’s net income for a tax year ending on or after March 17, 2020, but beginning before January 1, 2024. The grant may only be subtracted to the extent it is included in the grant recipient’s net income for that qualifying tax year. A qualifying

COVID-19 grant that is exempt from federal income tax, and thus not included in the grant recipient's Iowa net income, does not qualify for an additional subtraction on the grant recipient's Iowa return.

b. Third-party payee of grant funds. A third-party payee of qualifying COVID-19 grant funds is not eligible for this exemption from Iowa income. If the proceeds of a qualifying COVID-19 grant are paid to someone other than the grant recipient, only the grant recipient on whose behalf the grant proceeds were paid may qualify for this exemption from Iowa income.

c. Repayment. Grant funds that were repaid to the administering agency for any reason are not eligible for this exemption from Iowa income.

d. Reporting requirements. A grant recipient who received qualifying COVID-19 grant funds and who excludes those funds when calculating Iowa net income should retain documentation to support the claimed exclusion. A grant recipient must provide such documentation to the department if requested. The required documentation may include, but is not limited to, documentation to support that the grant recipient was issued and received the grant within the qualifying periods.

This rule is intended to implement Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5.

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◊ Two or more ARCs

CHAPTER 59
DETERMINATION OF NET INCOME
[Prior to 12/17/86, Revenue Department[730]]

701—59.1(422) Computation of net income for financial institutions. “Net income” for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in rules 701—59.2(422) to 701—59.13(422). The remaining provisions of this rule and rules 701—59.14(422) to 701—59.24(422) shall also be applicable in determining net income.

In the case of a financial institution which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the financial institution had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer’s separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.

701—59.2(422) Net operating loss carrybacks and carryovers. Net operating losses shall be allowed or allowable for Iowa franchise tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes, provided the following adjustments are made:

59.2(1) Additions to income.

a. Refunds of federal income taxes due to net operating loss, capital loss and investment credit or other credit carrybacks shall not be added for tax years beginning on or after January 1, 1980.

b. Iowa franchise tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

59.2(2) Reductions of income. Iowa franchise tax refunds reported as income for federal income tax purposes in the loss year shall be reflected as reductions of income in the year of the loss.

59.2(3) If a financial institution does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 59.2(1) and 59.2(2).

a. After making the adjustments to federal taxable income as provided in subrules 59.2(1) and 59.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—59.25(422) to 701—59.29(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

b. The net operating loss attributable to Iowa, as determined in rule 701—59.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision for tax years beginning before August 6, 1997. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be

carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

c. For tax years beginning after August 5, 1997, but before January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—59.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa franchise tax return filed with the department.

d. For tax years beginning on or after January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—59.2(422), shall be carried forward 20 taxable years. The net operating loss cannot be carried back to a previous tax year.

59.2(4) No part of a net loss for a year for which the financial institution was not subject to the imposition of Iowa franchise tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

59.2(5) No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

59.2(6) The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a member of a consolidated income tax return for federal income tax purposes, but is required to file a separate franchise tax return, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483, and sections 422.61 and 422.63.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

701—59.3(422) Capital loss carryback. Capital losses shall be allowed or allowable for Iowa franchise tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes. Capital loss carrybacks shall be treated as an adjustment to federal taxable income to arrive at net income. For capital losses occurring in tax years beginning on or after January 1, 1980, refunds of federal corporation income taxes shall not be an adjustment in computing income subject to the franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.4(422) Net operating and capital loss carrybacks and carryovers. If the taxpayer, for tax periods beginning before January 1, 2009, has both a net operating loss and a capital loss carryback to a prior tax year, the capital loss shall be carried back first and then the net operating loss offset against any remaining income.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483, and section 422.61.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

701—59.5(422) Interest and dividends from federal securities. For franchise tax purposes, dividends received from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies and instrumentalities become a part of the taxable income. Examples of these types of obligations are bonds issued by the governments of Puerto Rico, Washington D.C., Guam and the Virgin Islands. Notwithstanding the above, only interest received after July 1, 1991, from bonds purchased after January 1, 1991, issued by the governments of Puerto Rico, Guam and the Virgin Islands is subject to tax.

Gains or losses from the sale or other disposition of any bonds shall be taxable for state franchise tax purposes.

Interest received on federal tax refunds is taxable for Iowa franchise tax purposes.

This rule is intended to implement Iowa Code section 422.61.

701—59.6(422) Interest and dividends from foreign securities and securities of states and other political subdivisions. Interest and dividends from foreign securities and securities of states and their political subdivisions including Iowa shall be included in taxable income for periods beginning on or after January 1, 1980. For tax periods beginning on or after January 1, 1987, subtract interest expense allocable to interest exempt from federal income tax which was disallowed as a deduction under Internal Revenue Code Section 265(b) or 291(e)(1)(B).

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal income tax under Section 852(b)(5) of the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under Section 852(b)(4)(B) of the Internal Revenue Code.

For tax years beginning on or after January 1, 2001, add, to the extent not already included, income from the sale of obligations of the state of Iowa and its political subdivisions and interest and dividend income from these obligations. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, along with interest and dividend income from these bonds, shall be included in Iowa taxable income unless the law authorizing these obligations specifically exempts the income from the sale and interest and dividend income from Iowa franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61 as amended by 2001 Iowa Acts, House File 715.

701—59.7(422) Safe harbor leases. For tax years ending after January 1, 1981, deductions in determining federal taxable income for sale-leaseback agreements taken as a result of the application of Section 168(f)(8) of the Internal Revenue Code shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of Sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense, and the lessee shall add rental expense. When the deduction for depreciation is not allowed under a previous provision of this rule, the lessee shall be allowed a deduction for depreciation on any property involved in a sale-leaseback agreement. The depreciation shall be computed in accordance with Section 168(a) of the Internal Revenue Code. Income received as a result of sale-leaseback agreement shall be deducted in determining Iowa taxable income. The lessee shall deduct interest income and the lessor shall deduct rent income. Each lessor and lessee corporation shall include a copy of federal Form 6793 in its Iowa franchise tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.8(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. For tax years beginning on or after January 1, 1984, a taxpayer which is considered to be a small business corporation, as defined by subrule 59.8(2), is allowed a deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 904, division IX.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

For tax years beginning on or after January 1, 1989, a taxpayer which is considered to be a small business corporation, as defined by 701—subrule 53.11(2), is allowed a deduction for 65 percent not to exceed \$20,000 of the 12 months of wages paid or accrued during the tax year for work done in Iowa for employees first hired after January 1, 1989, who meet the above criteria.

59.8(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the division of job service of the department of employment services, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

59.8(2) The term "small business corporation" includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

a. A small business corporation shall not have had more than 20 full-time equivalent positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which the individual for whom an additional deduction for wages is taken was hired. "Full-time equivalent position" means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. A small business corporation shall not have more than \$1 million in annual gross revenues or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. "Annual gross revenues" means total interest received from loans and investments, service charges, management fees, fiduciary fees, commissions, and gross proceeds from the sale of securities held as investments as determined in accordance with generally accepted accounting principles.

c. A small business corporation shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. "Dominant in its field of operation" means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues, or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. "Affiliate

or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

59.8(3) Definitions.

a. The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term “*handicapped*” does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

59.8(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs tax credit under Section 59 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A “vocational rehabilitation referral” is any individual certified by a state employment agency as having a physical or mental disability which, for the individual, constitutes or results in a substantial

handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state- or federal-approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

59.8(5) The taxpayer shall include a schedule with the filing of the taxpayer's tax return showing the name, address, social security number, date of hiring and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

59.8(6) If the employee for whom an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

59.8(7) For tax years ending after July 1, 1990, a taxpayer who did not qualify for the additional deduction for wages paid or accrued for work done in Iowa by certain individuals set forth above is allowed an additional deduction of 65 percent not to exceed \$20,000 of the first 12 months of wages paid or accrued for work done in Iowa for employees first hired on or after July 1, 1990, if the new employee is:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to Iowa Code chapter 906.
- (3) Is on probation pursuant to Iowa Code chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to Iowa Code chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

The additional deduction is not allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction is allowed.

The taxpayer must include a schedule with the filing of the taxpayer's tax return showing the name, address, social security number, date of hiring, and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa franchise tax return taking the additional deduction for wages, the taxpayer must file an amended return adding back the additional deduction for wages. The amended return must state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code section 16.1 and 2011 Iowa Code Supplement section 422.35 as amended by 2012 Iowa Acts, Senate File 2247.
[ARC 0337C, IAB 9/19/12, effective 10/24/12]

701—59.9(422) Work opportunity tax credit. Where a financial institution claims the federal work opportunity tax credit as provided in Section 51 of the Internal Revenue Code, the amount of credit

allowable shall be a deduction from Iowa taxable income to the extent the credit increased federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.10(422) Like-kind exchanges of personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020.

59.10(1) *In general.* Public Law 115-97, Section 13303, repealed the deferral of gain or loss from exchanges of like-kind personal property for federal purposes under Section 1031 of the Internal Revenue Code. This federal repeal applies to exchanges completed after December 31, 2017, unless the taxpayer began the exchange by transferring personal property or receiving replacement personal property on or before that date. Iowa did not conform to this federal repeal for Iowa franchise tax purposes for tax periods beginning before January 1, 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020, Iowa generally conforms to the federal treatment of gain or loss from exchanges of like-kind personal property, but eligible taxpayers may elect the treatment that applied under prior federal law for Iowa purposes. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal treatment for these exchanges, and no special election is available. This rule governs exchanges of like-kind personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020. This rule does not apply to exchanges completed during any tax year beginning on or after January 1, 2020.

59.10(2) *Qualification.* Section 1031 of the Internal Revenue Code in effect on December 21, 2017, and any applicable federal regulations govern whether transactions involving the disposition and acquisition of personal property qualify for Iowa franchise tax purposes as a like-kind exchange of personal property subject to the deferral of gain or loss and also govern the date and tax period during which an exchange is considered completed. The treatment of such transactions as a like-kind exchange for Iowa franchise tax purposes is either mandatory or permissive depending on the date the like-kind exchange is completed.

a. Like-kind exchanges completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019. Transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019, are required to be treated as a like-kind exchange for Iowa franchise tax purposes.

b. Like-kind exchanges completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020. For tax periods beginning on or after January 1, 2019, Iowa is conformed to the federal repeal of deferral of gain or loss from exchanges of like-kind personal property, so the federal and Iowa treatment of such transactions under Section 1031 of the Internal Revenue Code will generally be the same. However, transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020, may at the election of the taxpayer be treated as a like-kind exchange for Iowa franchise tax purposes. The election is made by completing the necessary worksheets and forms and making the required adjustments on the Iowa return as described in subrule 59.10(3). No special attachment or statement is required. The election only applies to the transactions involved in the like-kind exchange, and the taxpayer may elect or not elect to treat other qualifying transactions as a like-kind exchange for Iowa purposes.

59.10(3) *Calculation and Iowa adjustments.* A taxpayer required to or electing to treat qualifying transactions as a like-kind exchange for Iowa tax purposes must make certain Iowa calculations and adjustments on forms and worksheets made available on the department's website. The IA 8824 Worksheet described in this subrule need not be included with the Iowa return but must be kept with the taxpayer's records. The taxpayer is responsible for providing documentation at the department's request to substantiate a like-kind exchange under this rule.

a. Like-kind exchange calculation. The taxpayer must complete Parts I and II of the IA 8824 Worksheet to compute the Iowa recognized gain, if any, the Iowa deferred gain or loss, and the Iowa basis of the like-kind personal property received in the like-kind exchange.

EXAMPLE 1: X, a financial institution filing on a calendar-year basis, trades a computer system with a fair market value (FMV) of \$25,000 along with \$75,000 in cash to Y for a new computer system with an FMV of \$100,000. For purposes of this example it is assumed that the computer system trade occurs in 2019 and qualifies as a like-kind exchange and that X elects such treatment under paragraph 59.10(2) “b.” At the time of the trade, the adjusted basis of X’s old computer system is \$0 for federal tax purposes and is \$13,680 for Iowa tax purposes. X realizes a gain for Iowa purposes on the exchange of the old computer system in the amount of \$11,320 (\$100,000 FMV of new computer system - \$75,000 cash paid - \$13,680 Iowa adjusted basis of old computer system). Because X did not receive any cash or other property that was not like-kind, or assume any liabilities from Y, the entire amount of X’s \$11,320 realized gain qualifies for deferral, so X recognizes \$0 of gain on the exchange for Iowa tax purposes. As a result, X’s basis in the new computer system for Iowa tax purposes is \$88,680 (\$13,680 Iowa adjusted basis of old computer system + \$75,000 cash paid by X).

b. Iowa nonconformity adjustment.

(1) The taxpayer must complete Part III of the IA 8824 Worksheet to adjust for the difference between any recognized Iowa gain from the exchange as calculated on the IA 8824 Worksheet, Part II, and any gain or loss (including gain or loss recaptured as ordinary income) recognized on the taxpayer’s federal return.

EXAMPLE 2: Assume the same facts as given in Example 1. Because the computer trade occurred in 2019, it will not qualify as a like-kind exchange for federal tax purposes but will instead be treated as two separate transactions: a sale of the old computer system and a purchase of the new computer system. X recognizes a gain for federal tax purposes on the sale of the old computer system in the amount of \$25,000 (\$25,000 sales price of old computer system - \$0 federal adjusted basis of old computer system), the entire amount of which is recaptured as ordinary income because of prior depreciation. X reports the \$25,000 of income on the federal return. X is required to report the same \$25,000 as income on the Iowa return but is also allowed a \$25,000 subtraction on the same Iowa return because X’s recognized gain for Iowa tax purposes is \$0 as calculated in Example 1. X’s nonconformity adjustment of -\$25,000 must be reported on the Iowa return in the manner prescribed on the IA 8824 Worksheet.

(2) If the total recognized federal gain is reported using the installment sale method under Section 453 of the Internal Revenue Code, the total amount of any Iowa nonconformity adjustment related to that federal gain must be claimed over the same installment period, and the proportion of the total Iowa nonconformity adjustment claimed for each tax year shall equal the same proportion that the federal gain reported for that tax year bears to the total amount of federal gain that will ultimately be reported for all tax years resulting from the disposition of the personal property. The taxpayer must complete an IA 8824 Worksheet for each tax year that an Iowa nonconformity adjustment is claimed.

c. Cost recovery adjustments.

(1) The taxpayer must complete the IA 4562A to account for any differences between the federal and Iowa cost recovery deductions related to the like-kind personal property involved in the like-kind exchange, including if the taxpayer’s basis in the like-kind personal property received is different for federal and Iowa purposes, or if the taxpayer claimed additional first-year depreciation or a section 179 deduction for federal purposes on the like-kind property received in the exchange. See rule 701—59.23(422) for requirements related to the disallowance of additional first-year depreciation for Iowa franchise tax purposes. See rule 701—59.24(422) for the section 179 limitations imposed under the Iowa franchise tax.

(2) Treasury Regulation §1.168(i)-6 prescribes rules related to the calculation of depreciation for certain assets involved in a like-kind exchange, but a taxpayer may elect to not have those rules apply pursuant to Treasury Regulation §1.168(i)-6(i). A taxpayer may choose to make a similar election under Treasury Regulation §1.168(i)-6(i) for Iowa tax purposes with regard to a like-kind exchange under this rule if the personal property otherwise would have qualified for such federal election notwithstanding the fact that no like-kind exchange occurred for federal purposes or the fact that no election was actually made for federal tax purposes in accordance with Treasury Regulation §1.168(i)-6(j). The election is made by calculating depreciation for Iowa tax purposes on the personal property involved in the like-kind exchange using the method described in Treasury Regulation §1.168(i)-6(i) on the timely filed Iowa

return, including extensions, for the same tax year that the like-kind exchange was completed. No special attachment or statement is required.

EXAMPLE 3: Assume the same facts as given in Examples 1 and 2. X elects additional first-year depreciation on the new computer system and claims a depreciation deduction on the federal return of \$100,000 (100 percent of X's federal basis). X is required to add back the total amount of the federal depreciation on the Iowa return because Iowa does not allow additional first-year depreciation. But X is permitted deductions for regular depreciation on the new computer system with an Iowa basis of \$88,680 (\$13,680 carryover basis from old computer system + \$75,000 excess basis from cash paid) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). See rule 701—59.23(422) for more information on the disallowance of additional first-year depreciation.

EXAMPLE 4: Assume the same facts as given in Examples 1 and 2. X elects to expense the entire cost of the new computer system under Section 179 of the Internal Revenue Code and claims a deduction on the federal return of \$100,000. X is also required to claim the section 179 deduction on the new computer system for Iowa tax purposes pursuant to subrule 59.24(2). However, the amount that represents the carryover basis from the old computer system (\$13,680) is not eligible for the deduction under Section 179(d)(3) of the Internal Revenue Code, so the cost of the new computer system that is eligible for the section 179 deduction for Iowa purposes is only \$75,000 (excess basis from cash paid). This is the amount of section 179 deduction that X must claim on the Iowa return, subject to the applicable Iowa dollar limitation and reduction limitations in rule 701—59.24(422). Because X is the taxpayer who placed the new computer system in service, X is permitted deductions for regular depreciation on the carryover basis in the new computer system (\$13,680) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k).

This rule is intended to implement 2019 Iowa Acts, chapter 152 [House File 779], section 11.
[ARC 4614C, IAB 8/14/19, effective 9/18/19]

701—59.11(422) Gains and losses on property acquired before January 1, 1934. Where property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date. *City National Bank of Clinton v. Iowa State Tax Commission*, 251 Iowa 603, 102 N.W.2d 381 (1960).

If as a result of this provision a basis is to be used for purposes of Iowa franchise tax which is different from the basis used for purposes of federal income tax, an appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa income subject to franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.12(422) Federal income tax deduction. For tax years beginning on or after January 1, 1980, a deduction for 50 percent of federal income taxes paid or accrued is not allowed. Cash-basis taxpayers are not allowed a deduction for 50 percent of federal income taxes paid during a tax year beginning on or after January 1, 1980, which represent the preceding year's tax or additional taxes for prior years. Fifty percent of a federal income tax refund received during a tax year beginning on or after January 1, 1980, shall not be reported as income. For tax years beginning on or after January 1, 1990, because the federal environmental tax is deducted in computing federal taxable income and Iowa Code section 422.61(3)“a” does not allow the deduction of federal income taxes, the federal environmental tax must be added to federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.13(422) Iowa franchise taxes. Iowa franchise taxes paid or accrued during the tax year as may be applicable under the method of filing are permissible deductions for federal corporation income tax purposes, but not for purposes of determining Iowa net income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa

franchise tax purposes. Refunds of Iowa franchise tax to the extent that the returns are included in the determination of federal taxable income shall all be subtracted from federal taxable income.

This rule is intended to implement Iowa Code section 422.61.

701—59.14(422) Method of accounting, accounting period. The return shall be computed on the same basis and for the same accounting period as the taxpayer's return for federal corporation income tax purposes. Permission to change accounting methods or accounting periods for franchise tax purposes is not required provided the taxpayer furnishes the department with a copy of the federal consent.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.15(422) Consolidated returns. There is no provision in the Iowa franchise tax law to allow financial institutions to file consolidated Iowa franchise tax returns with another financial institution or another corporation as defined in Iowa Code section 422.32. In the absence of any statutory authority for allowing consolidated Iowa franchise tax returns, separate Iowa franchise tax returns must be filed.

This rule is intended to implement Iowa Code sections 421.14 and 422.68(1).

701—59.16(422) Federal rulings and regulations. In determining whether "taxable income," "net operating loss deduction" or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the Commissioner of Internal Revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which call for an alternative method for determining "taxable income," "net operating loss deduction," or any other deductions, or unless the department finds that an applicable Internal Revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—59.17(15E,422) Charitable contributions relating to the endow Iowa tax credit. For tax years beginning on or after January 1, 2010, a taxpayer who claims an endow Iowa tax credit in accordance with rule 701—58.13(15E,422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

This rule is intended to implement Iowa Code section 15E.305.

[ARC 1303C, IAB 2/5/14, effective 3/12/14]

701—59.18(422) Depreciation of speculative shell buildings.

59.18(1) For tax years beginning on or after July 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost of recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to federal taxable income in order to deduct depreciation under this rule.

59.18(2) On sale or other disposition of the speculative shell building, the taxpayer must report on the taxpayer's Iowa corporation income tax return the same gain or loss reported on the taxpayer's federal corporation income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

59.18(3) For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1, subsection (27) "c."

This rule is intended to implement Iowa Code sections 422.35 and 422.63.

701—59.19(422) Deduction of multipurpose vehicle registration fee. For tax years beginning on or after January 1, 1992, and before January 1, 2005, corporations may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124,

subsection 3, paragraph “h.” In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an ordinary and necessary business expense.

For tax years beginning on or after January 1, 2005, the deduction for Iowa franchise tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

This rule is intended to implement Iowa Code section 422.35.

701—59.20(422) Disallowance of expenses to carry an investment subsidiary for tax years which begin on or after January 1, 1995. A financial institution which has an investment in an investment subsidiary on or after July 1, 1995, must allocate a portion of its total expenses used in computing its federal taxable income on a separate return basis to its investment subsidiary. The expenses which are allocable to the investment in an investment subsidiary are computed by multiplying the financial institution’s total expenses used in computing its federal taxable income on a separate return basis by the ratio of the average adjusted basis in its investment subsidiary to the average adjusted basis for all assets of the financial institution. For tax years beginning on or after January 1, 1995, and before December 31, 1995, a financial institution which has an investment in an investment subsidiary on July 1, 1995, must allocate a portion of its total expenses for the entire tax year to its investment in an investment subsidiary even though it did not have an investment in an investment subsidiary for the entire tax year.

A calculation of the average for the tax year of the adjusted bases of a financial institution’s investment in investment subsidiaries, and total assets, held each day of the tax year is the most accurate method for determining under Iowa Code subsection 422.61(3) the portion of a financial institution’s total expenses that is allocable to the financial institution’s investment in investment subsidiaries. However, the department will generally allow the average adjusted bases of an investment in investment subsidiaries for the tax year to be calculated using the average of the adjusted bases of the investment in investment subsidiaries held by the financial institution at the end of each month within the tax year. The department generally will allow the average bases of all assets of the financial institution for the tax year to be calculated using the average bases of all assets held by the financial institution at the end of each quarter of the tax year. A financial institution may compute for any tax year, without prior permission of the director, the average adjusted bases of investment in investment subsidiaries or total assets on a more frequent basis than set forth above. However, a financial institution may not compute these averages for any tax year on a less frequent basis than quarterly without obtaining prior approval of the director. This permission will be granted only in extraordinary circumstances. In addition, a financial institution may not compute these averages for any tax year on a less frequent basis than it used for the preceding tax year unless the financial institution obtains prior approval of the director. A financial institution that has elected to use an estimate of the adjusted tax bases of its total assets for each of the first three quarters of the taxable year under Internal Revenue Service’s Revenue Ruling 90-44 for federal income tax purposes may use this estimate for Iowa franchise purposes.

59.20(1) For the purposes of this rule, the term “affiliate” means a corporation, trust, estate, association, or similar organization:

a. Of which a financial institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions; or

b. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of a financial institution who own or control either a majority of the shares of such financial institution or more than 50 percent of the number of shares voted for election of directors of such financial institution at the preceding election, or by trustees for the benefit of the shareholders of such financial institution; or

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any financial institution; or

d. Which owns or controls, directly or indirectly, either a majority of the voting shares of a financial institution or more than 50 percent of the number of shares voted for the election of directors of a financial institution at the preceding election, or controls in any manner the election of a majority of the directors of a financial institution, or for the benefit of those shareholders or members all or substantially all of the outstanding voting shares of a financial institution is held by trustees; or

e. Which is a bank holding company, as defined by the laws of the United States, of which a financial institution is a subsidiary, and any other subsidiary as defined by the laws of the United States, of a bank holding company.

59.20(2) For the purposes of this rule, the term “average adjusted basis” means the financial institution’s average adjusted basis as computed pursuant to Section 1016 of the Internal Revenue Code on a separate company basis.

59.20(3) For purposes of this rule, the term “investment subsidiary” means an affiliate that is owned, capitalized or utilized by a financial institution with one of its purposes being to make, hold, or manage, for and on behalf of the financial institution, investments in securities which the financial institution would be permitted by applicable law to make for its own account.

This rule is intended to implement Iowa Code section 422.61 as amended by 1995 Iowa Acts, chapter 193.

701—59.21(422) S corporation and limited liability company financial institutions. For tax years beginning on or after January 1, 1997, a financial institution as defined in Section 581 of the Internal Revenue Code which has in effect an election under Subchapter S of the Internal Revenue Code must compute an amount of income as if the financial institution were subject to federal corporation income tax. For tax years beginning on or after July 1, 2004, a financial institution organized as a limited liability company under Iowa Code chapter 524 that is taxed as a partnership for federal income tax purposes must compute an amount of income as if the financial institution were subject to federal corporation income tax. The income is to be computed in the same manner as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable tax would compute its federal taxable income.

This rule is intended to implement Iowa Code section 422.61 as amended by 2004 Iowa Acts, House File 2484.

701—59.22(422) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust. To the extent that the contribution was not deductible for federal income tax purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust may be deducted for Iowa franchise tax purposes. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code sections 422.35 as amended by 1998 Iowa Acts, House File 2119, and 422.61.

701—59.23(422) Additional first-year depreciation allowance.

59.23(1) Assets acquired after September 10, 2001, but before May 6, 2003. For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance (“bonus depreciation”) of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss

reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

59.23(2) *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa franchise tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa franchise tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

a. If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.60(2), paragraph “a,” for examples illustrating how this subrule is applied.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

59.23(3) *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

59.23(4) *Qualified disaster assistance property.* For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must

add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

59.23(5) *Assets acquired after December 31, 2009, but before January 1, 2014.* For tax periods beginning after December 31, 2009, but beginning before January 1, 2014, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, Public Law No. 111-312, Section 401, and Public Law No. 112-240, Section 331, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2014, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2014, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.35 as amended by 2013 Iowa Acts, Senate File 106, and section 422.61.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13]

701—59.24(422) Section 179 expensing.

59.24(1) *In general.* Iowa taxpayers that elect to expense certain depreciable business assets in the year the assets were placed in service under Section 179 of the Internal Revenue Code must also expense those same assets for Iowa income tax purposes in that year. However, for certain years, the Iowa limitations on this deduction are different from the federal limitations for the same year. This means that for some tax years, adjustments are required to determine the correct Iowa section 179 expensing deduction, as described in this rule.

59.24(2) *Claiming the deduction.*

a. Timing and requirement to follow federal election. A taxpayer that takes a federal section 179 deduction must also take the deduction for the same asset in the same year for Iowa purposes, except as expressly provided by Iowa law or this rule. A taxpayer that takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer that does not take a federal section 179 deduction on a specific qualifying asset is not permitted to take a section 179 deduction for Iowa purposes on that asset.

b. Qualifying for the deduction. Whether a specific business asset qualifies for a section 179 deduction is determined by the Internal Revenue Code (Title 26, U.S. Code) and applicable federal regulations for both federal and Iowa purposes.

c. Amount of the Iowa deduction. Generally, the Iowa deduction must equal the amount of the federal deduction taken for the same asset in the same year, subject to special Iowa limitations. The following chart provides a comparison of the Iowa and federal section 179 dollar limitations and reduction limitations. See rule 701—40.65(422) for the section 179 rules applicable to individuals

and other noncorporate entities, and see rule 701—53.23(422) for the section 179 rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax.

Section 179 Deduction Allowances Under Federal and Iowa Law				
	Federal		Iowa	
Tax Year	Dollar Limitation	Reduction Limitation	Dollar Limitation	Reduction Limitation
2003	\$ 100,000	\$ 400,000	\$ 100,000	\$ 400,000
2004	102,000	410,000	102,000	410,000
2005	105,000	420,000	105,000	420,000
2006	108,000	430,000	108,000	430,000
2007	125,000	500,000	125,000	500,000
2008	250,000	800,000	250,000	800,000
2009	250,000	800,000	133,000	530,000
2010	500,000	2,000,000	500,000	2,000,000
2011	500,000	2,000,000	500,000	2,000,000
2012	500,000	2,000,000	500,000	2,000,000
2013	500,000	2,000,000	500,000	2,000,000
2014	500,000	2,000,000	500,000	2,000,000
2015	500,000	2,000,000	500,000	2,000,000
2016	500,000	2,010,000	25,000	200,000
2017	510,000	2,030,000	25,000	200,000
2018	1,000,000	2,500,000	70,000	280,000
2019	1,020,000	2,550,000	100,000	400,000
2020 and later	Iowa limitations are the same as federal			

d. Reduction. Both the federal and the Iowa deductions for section 179 assets are reduced (phased out dollar for dollar) for taxpayers whose total section 179 assets placed in service during a given year cost more than the amount specified (reduction limitation) for that year. Like the deduction limitation, the Iowa and federal reduction limitations are different for certain years. See paragraph 59.24(2) “c” for applicable limitations.

EXAMPLE: Taxpayer, a financial institution doing business in Iowa, purchases \$400,000 worth of qualifying section 179 assets and places all of them in service in 2018. Taxpayer claims a section 179 deduction of \$400,000 for the full cost of the assets on the 2018 federal return. For financial institutions, the Iowa section 179 deduction for 2018 is phased out dollar for dollar by the amount of section 179 assets placed in service in excess of \$280,000. This means that for 2018, the Iowa deduction is fully phased out if the taxpayer placed in service section 179 assets that cost, in total, more than \$350,000. Since the cost of the qualifying assets in this example exceeds the Iowa section 179 phase-out limit, the taxpayer cannot claim any section 179 deduction on the Iowa return. However, the taxpayer may depreciate the entire cost of the assets for Iowa purposes.

e. Amounts in excess of the Iowa limits.

(1) Recovering the excess. Due to the differences between the Iowa and federal limitations for certain years, taxpayers may have a federal section 179 deduction that exceeds the amount allowed for Iowa purposes. This excess amount is handled in different ways depending on the source of the deduction.

1. Assets placed in service by the taxpayer or entity reporting the deduction. The cost of any section 179 assets placed in service by the taxpayer in excess of the Iowa limitation for a given year may be recovered through regular depreciation under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). The Iowa section 179 and depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa and federal law are calculated and tracked on forms made available on the department’s website.

EXAMPLE: Taxpayer, a financial institution doing business in Iowa, purchases a \$100,000 piece of equipment and places it in service in 2018. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2018 federal return. Taxpayer is also required to claim a section 179 deduction of \$70,000 on the 2018 Iowa return (the full amount of the federal deduction up to the Iowa limit for financial institutions for 2018). The taxpayer can depreciate the remaining \$30,000 cost of the equipment for Iowa purposes.

2. Special election for assets placed in service by a pass-through entity when the section 179 deduction is claimed by an owner of that pass-through. See subrule 59.24(3) for information on a special election available to certain owners of pass-through entities related to any section 179 deductions passed through from a partnership or other entity that, in the aggregate, exceed the Iowa limitations.

(2) Special information for pass-throughs. In the case of pass-through entities, section 179 limitations apply at both the entity level and the owner level. Pass-through entities that are required to file an Iowa return and that actually place section 179 assets in service should follow 59.24(2)“e”(1)“1” to account for any assets for which the total federal section 179 deductions for a given year exceeded the Iowa limitation. Owners of pass-throughs receiving section 179 deductions from one or more pass-throughs that, in the aggregate, exceed the Iowa limitations should follow 59.24(2)“e”(1)“2.”

EXAMPLE: Bank A (a financial institution doing business exclusively in Iowa) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C, which also does business exclusively in Iowa, places \$200,000 worth of section 179 assets in service during tax year 2019 and claims a federal section 179 deduction for the full cost of the assets. Because C is required to file an Iowa partnership return, C is subject to the Iowa section 179 limitations for 2019 and must adjust its Iowa section 179 deduction as provided in 701—numbered paragraph 40.65(2)“e”(1)“1.” C passes through 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) to Bank A. Bank A also receives \$50,000 each in section 179 deductions from D and E, for a total of \$150,000 in section 179 deductions (for Iowa purposes) in 2019. Bank A is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because Bank A received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, Bank A is eligible for the special election referenced in 59.24(2)“e”(1)“2.”

f. Income limitation. The Iowa section 179 deduction for any given year is limited to the taxpayer’s income from active conduct in a trade or business in the same manner that the section 179 deduction is limited for federal purposes. If an allowable Iowa section 179 deduction exceeds the taxpayer’s business income for a given year, any excess allowable Iowa section 179 deduction may be carried forward as described in paragraph 59.24(2)“g.”

g. Carryforward. This paragraph applies only to amounts that do not exceed the Iowa section 179 deduction limitations for a given year but do exceed the taxpayer’s business income for that year. As with the federal deduction, allowable Iowa section 179 deductions claimed in a given year that exceed a taxpayer’s business income may be carried forward and claimed in future years. This carryforward, if any, is calculated using only amounts up to the Iowa limit. Any federal section 179 deduction the taxpayer claimed in excess of the Iowa limit is not an Iowa section 179 deduction and therefore is not eligible for the carryforward described in this paragraph. Such amounts must instead be recovered as described in paragraph 59.24(2)“e,” or in subrule 59.24(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

h. Difference in basis. Iowa adjustments for differences between the Iowa and federal section 179 deduction limitations may cause the taxpayer to have a different basis in the same asset for Iowa and federal purposes. Taxpayers are required to use forms made available on the department’s website to calculate and track these differences.

59.24(3) Section 179 deduction received from a pass-through entity. In some cases, a financial institution that receives income from one or more pass-through entities may receive a section 179 deduction in excess of the Iowa deduction limitation listed in paragraph 59.24(2)“c” for a given year. The financial institution may be eligible for a special election with regard to that excess section 179 deduction, as described in this subrule.

a. Tax years beginning before January 1, 2018. For tax years beginning before January 1, 2018, the amount of any section 179 deduction received by a financial institution subject to the franchise tax in excess of the Iowa deduction limitation for that year is not eligible for the special election.

b. Special election available for tax years 2018 and 2019. For tax years beginning on or after January 1, 2018, but before January 1, 2020, a financial institution subject to the franchise tax that receives a section 179 deduction from one or more pass-through entities in excess of the Iowa deduction limitation for that tax year may elect to deduct the excess in future years, as described in this subrule. See rule 701—40.65(422) for rules applicable to individuals and other noncorporate entities, and see rule 701—53.23(422) for rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax.

(1) This special election applies only to section 179 deductions passed through to the financial institution by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the financial institution exceeds the federal section 179 deduction limitation for that year, the financial institution may only use the amount up to the federal limitation when calculating the deduction under this election. Any amount in excess of the federal limitation shall not be deducted for Iowa purposes.

c. Section 179 assets of a financial institution. A financial institution that makes this special election may not claim an Iowa section 179 deduction for any assets the financial institution placed in service during the same year but must instead depreciate such assets using the modified accelerated cost recovery system (MACRS) without regard to bonus depreciation under Section 168(k) of the Internal Revenue Code. To the extent the financial institution claimed a federal section 179 deduction on those assets, the Iowa depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa law and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: Bank A, a financial institution doing business in Iowa, places in service \$20,000 worth of section 179 assets in tax year 2019 and claims the deduction for the full amount for federal purposes. Bank A is also a member of B, LLC, an entity that has elected to be taxed as a partnership for federal purposes and does not do any business in Iowa. B, LLC also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$150,000 of that deduction through to Bank A. For federal purposes, Bank A has a total of \$170,000 in section 179 deductions. Because Bank A has section 179 deductions from a pass-through that exceed the Iowa limitation for 2019, Bank A is eligible for the special election. Bank A makes the special election and claims the maximum Iowa section 179 deduction of \$100,000 on the amount passed through from B, LLC. Under the special election, Bank A will be allowed to deduct the remaining \$50,000 passed through from B, LLC over the next five years, as described in paragraph 59.24(3)“e.” However, because Bank A made the special election, Bank A will be required to depreciate the entire \$20,000 cost of the assets Bank A placed in service in 2019.

d. Calculating the special election. A financial institution that elects to take advantage of the special election must first add together all section 179 deductions which the financial institution received from all relevant pass-through entities. The financial institution must claim an aggregate Iowa section 179 deduction equal to the Iowa limit for the tax year. This amount must be subtracted from the total. Whatever remains is the amount the financial institution will be permitted to deduct (special election deduction) in future years.

e. Special election deduction.

(1) Calculation. This remaining amount from paragraph 59.24(3)“d” must be separated into five equal shares.

(2) Claiming the special election deduction. The financial institution may deduct one of the five shares in each of the next five years. The dollar limitations and reduction limitations on section 179 deductions do not apply to special deduction amounts allowed over the five-year period under this paragraph.

(3) Excess special deduction. The special election deduction for a given year is limited to the taxpayer's business income for that year. Any excess may be carried forward to future years. Any

amounts carried forward under this subparagraph shall be added to, and treated in the same manner as, regular Iowa section 179 deduction carryforwards as described in paragraph 59.24(2) “g.”

EXAMPLE: Bank D, a financial institution doing business in Iowa, is a partner in a partnership that does not do business in Iowa. In 2019, the partnership passes through a \$600,000 federal section 179 deduction and does not recalculate the deduction for Iowa purposes because the partnership has no obligation to file an Iowa return. Bank D claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning the bank will be allowed to take a \$100,000 Iowa special election deduction in each of the next five years.

In 2020, Bank D is eligible for the \$100,000 deduction carried forward under the election, but the bank only has \$50,000 in business income. The deduction is limited to business income, so the bank can only use \$50,000 of the deduction in 2020. However, Bank D will be permitted to treat the excess \$50,000 as a section 179 carryforward and use it to offset business income in future years until the deduction is used up.

f. Basis. The financial institution’s basis in the pass-through entity assets is adjusted by the full amount of the section 179 deduction passed through in the year that the section 179 deduction is received and is therefore the same for both Iowa and federal purposes.

g. Later tax years. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal section 179 deduction and special Iowa treatment for excess section 179 deductions received from pass-throughs is not available.

This rule is intended to implement Iowa Code section 422.35 as amended by 2019 Iowa Acts, Senate File 220.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 4142C, IAB 11/21/18, effective 12/26/18; ARC 4517C, IAB 6/19/19, effective 7/24/19]

ALLOCATION AND APPORTIONMENT

701—59.25(422) Basis of franchise tax. Iowa Code section 422.60 imposes a franchise tax on financial institutions (as defined in 701—subrule 57.1(2)) for the privilege of doing business within the state. The tax is measured by net income. For financial institutions subject to the tax, the tax is levied and collected only on income which may accrue or be recognized to the financial institutions from business done or carried on in the state plus net income from certain sources without the state which by rule follows the commercial domicile of the financial institution.

If a financial institution carries on business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The financial institution will be presumed to be carrying on its business entirely within the state of Iowa if its activities are carried on only within Iowa, even though it receives income from sources outside the state in the form of interest, dividends, royalties, and other sources of income from intangibles.

59.25(1) Definition—doing business. The term “doing business” is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every financial institution organized for profit and carrying out any of the purposes of its organization shall be deemed to be “doing business.” In determining whether a financial institution is doing business, it is immaterial whether its activities actually result in a profit or loss.

59.25(2) Definition—carrying on business partly within and partly without the state. “Carrying on business partly within and partly without the state” means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a financial institution is carrying on business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of past or future years have no bearing on the current year.

The following nonexclusive activities if done on a regular and continuing basis by financial institution officers or employees in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

- a. Solicitation of loans by traveling loan officers.
- b. Collection of overdue accounts.
- c. Any other activities carried on in advancement, promotion, or fulfillment of the business of the financial institution.

This rule is intended to implement Iowa Code sections 422.60 and 422.63.

701—59.26(422) Allocation and apportionment.

59.26(1) The classification of income by the labels customarily given, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents and royalties shall be apportioned as business income to the extent the income was earned as a part of a financial institution's unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes*, 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.*, 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether income is part of a financial institution's unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of financial institutions in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

59.26(2) Application of related expense to nonbusiness income. Subrule 59.26(1) deals with the separation of "net" income, therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa. Related expenses shall mean those expenses directly related.

A directly related expense shall mean an expense which can be specifically attributed to an item of income. Interest expense shall be considered directly related to a specific property which generates, has generated, or could reasonably have been expected to generate gross income if the existence of all of the facts and circumstances described below is established. Such facts and circumstances are as follows:

- a. The indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property;
- b. The proceeds of the borrowing were actually applied to the specified purpose;
- c. The creditor can look only to the specific property (or any lease or other interest therein) as security for the loan;
- d. It may be reasonably assumed that the return on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and
- e. There are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in "c" and "d" above.

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of the facts and circumstances are not present in substance. Any expense directly attributable to allocable interest, dividends, rents and royalties shall be deducted from income to arrive at net allocable income.

EXAMPLE: For purposes of this example, it is assumed that the taxpayer has nonbusiness rental income. The taxpayer invests in a 20-story office building. Under the terms of the lease agreements, the taxpayer provides heat, electricity, janitorial services, and maintenance. The taxpayer also pays the property taxes. Construction of the building was funded through borrowings which meet the criteria of a direct expense under the provisions of this paragraph. The directly related expenses to the operation of the property are:

Interest expense	\$1,200,000
Property taxes	500,000
Depreciation	500,000
Electricity	300,000
Heat	200,000
Insurance	150,000
Janitorial services	100,000
Repairs	50,000
Total expenses	<u>\$3,000,000</u>

The directly related expense of the allocable rental income is \$3,000,000.

This rule is intended to implement Iowa Code section 422.63.

701—59.27(422) Net gains and losses from the sale of assets. For purposes of administration of this rule, a capital gain or loss shall mean the sale price or value at the time of disposal of an asset less the adjusted basis, whether reportable as short-term or long-term capital gain or ordinary income for federal income tax purposes.

59.27(1) Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned by the business activity ratio applicable to the year the gain or loss is reported on the federal income tax return and may at the taxpayer's election be included in the computation of the business activity ratio as follows:

a. Gain from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state.

b. Gain from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

c. Gains from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator if the taxpayer's commercial domicile is in this state.

d. All gains shall be included in the denominator of the activity ratio.

A taxpayer cannot elect to exclude or include gains or loss from the sale of assets where the election would result in an understatement of income reasonably attributable to Iowa. Noninclusive examples of gains or loss from the sale, exchange or other disposition of real or tangible or intangible property which may not be included in the computation of the business activity ratio because to do so would result in an understatement of net income reasonably attributable to Iowa are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code or gain recognized under Section 631(a) of the Internal Revenue Code.

59.27(2) Gain or loss from the sale, exchange, or other disposition of property not used in the taxpayer's trade or business shall be allocated as follows:

a. Gains or losses from the sale, exchange, or other disposition of real property located in this state are allocable to this state.

b. Gains or losses from the sale, exchange, or other disposition of tangible personal property are allocable to this state if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

c. Gains or losses from the sale, exchange, or other disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

This rule is intended to implement Iowa Code section 422.63.

701—59.28(422) Apportionment factor. In determining the total net taxable income, the apportionable income attributable to this state, as determined by use of the apportionment fraction, shall be added to the nonapportionable income allocable to this state.

59.28(1) Receipts derived from transactions and activities in the regular course of trade or business which produce business income are included in the denominator of the apportionment factor. Income which is not subject to the Iowa franchise tax shall not be included in the computation of the apportionment factor.

59.28(2) The numerator of the apportionment factor is that portion of the total receipts included in the denominator of the taxpayer attributable to this state during the income year determined as follows:

a. Receipts from the lease, rental, or other use of real property shall be included in the numerator if the real property is located in Iowa.

b. Receipts from the sale of tangible personal property shall be included in the numerator if the property is delivered or shipped to a purchaser in this state regardless of the f.o.b. point or other conditions of the sales.

c. Receipts from the use of tangible personal property shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

d. All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

e. Interest and other receipts from assets in the nature of loans (including federal funds sold and banker's acceptances) and installment obligations shall be attributed to the state where the borrower is located.

f. Interest income from a participating bank's portion of participation loan shall be attributed to the state where the borrower is located.

g. Interest income from loans solicited by traveling loan officers shall be attributed to the state where the borrower is located.

h. Interest or service charges from bank, travel, and entertainment credit card receivables and credit card holders' fees shall be attributed to the state in which the credit card holder resides in the case of an individual or, if a corporation, to the state of the corporation's commercial domicile.

i. Merchant discount income derived from bank and financial corporation credit card holder transactions with a merchant shall be attributed to the state in which the merchant is located. It shall be presumed that the location of the merchant is the address on the invoice submitted by the merchant to the taxpayer.

j. Receipts for the performance of fiduciary services are attributable to the state where the services are principally performed.

k. Receipts from investments of a bank in securities, the income from which constitutes business income, shall be attributed to its commercial domicile except that:

(1) Receipts from securities used to maintain reserves against deposits to meet federal and state reserve deposit requirements shall be attributed to each state based upon the ratio that total deposits in the state bear to total deposits everywhere.

(2) Receipts from securities owned by a bank but held by a state treasurer or other public official or pledged to secure public or trust funds deposited in the bank shall be attributed to the banking office at which the secured deposit is maintained.

l. Receipts (fees or charges) from the issuance of traveler's checks and money orders shall be attributed to the state where the taxpayer's office is located that issued the traveler's checks. If the traveler's checks are issued by an independent representative or agent of the taxpayer, the fees or charges shall be attributed to the state where the independent representative or agent issued the traveler's checks.

m. Fees, commissions, or other compensation for financial services rendered for a customer located in this state or an account maintained within this state.

n. Any other gross receipts resulting from the operation as a financial organization within the state to the extent the items do not represent a recapture of an expense.

o. Receipts from management services if the recipient of the management services is located in this state.

This rule is intended to implement Iowa Code section 422.63.

[ARC 4955C, IAB 2/26/20, effective 4/1/20; see Rescission note at end of chapter]

701—59.29(422) Allocation and apportionment of income in special cases. If a taxpayer feels that the allocation and apportionment method as prescribed by rule 701—59.28(422) in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by rule 701—59.28(422) and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing the alternative method shall be submitted to the department. The department shall require detail and proof within the time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. The petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair*, 437 U.S. 267, 57 L.Ed.2d 197 (1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair*, supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair*, supra.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue*, 414 N.W.2d 113 (Iowa 1987).

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule, “statutory method of apportionment” means the apportionment factor set forth in rule 701—59.28(422).

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the taxpayer services and policy division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department’s determination and the reasons therefor in accordance with rule 701—7.8(17A). The department’s determination letter shall set forth the taxpayer’s rights to protest the department’s determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department’s determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer’s continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory, or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing the taxpayer’s return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.63.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—59.30(422) Broadband infrastructure grant exemption.

59.30(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.35.

59.30(2) *Definitions.*

“*Facilitate*” shall have the same meaning as defined in Iowa Code section 8B.1.

“*Grant*” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition

to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

59.30(3) Limitation on certain refund claims. For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.35.
[ARC 5606C, IAB 5/5/21, effective 6/9/21]

701—59.31(422) Interest expense deduction adjustments. For tax years beginning on or after January 1, 2020, the limit on the amount of business interest expense that a taxpayer may deduct in a taxable year under Internal Revenue Code (IRC) Section 163(j) does not apply for Iowa purposes. This rule provides information on how taxpayers must calculate and report their business interest expense deduction for Iowa purposes, for tax year 2018 (subrule 59.31(2)), when Iowa did not conform to the limitation; tax year 2019 (subrule 59.31(3)), when Iowa did conform to the limitation; and tax years 2020 and later (subrule 59.31(4) et seq.), when Iowa again does not conform to this limitation. All references to the Code of Federal Regulations (Treas. Reg.) and certain other information in this rule are based on final Internal Revenue Service (IRS) regulations and guidance in effect on January 13, 2021.

59.31(1) Definitions. The following terms apply to the interpretation and application of this rule.

“*Current-year business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(9).

“*Excess business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(16).

“*Iowa partnership*” means any partnership required to file an Iowa return (IA 1065) for the relevant tax year.

“*Iowa S corporation*” means any S corporation required to file an Iowa return (IA 1120S) for the relevant tax year.

“*Non-Iowa partnership*” means any partnership that is not required to file an Iowa return (IA 1065) for the relevant tax year.

“*Non-Iowa S corporation*” means any S corporation that is not required to file an Iowa return (IA 1120S) for the relevant tax year.

59.31(2) Tax year 2018. For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

a. In general. For tax year 2018, Iowa taxpayers are permitted to deduct current-year business interest expense without regard to the limitations imposed by IRC Section 163(j) under the TCJA. The taxpayer’s additional deduction is computed on the 2018 Nonconformity Adjustments Worksheet. Taxpayers who qualify for these higher Iowa deductions in 2018 may need to make further adjustments in 2019 for amounts deducted under this subrule for Iowa purposes but disallowed and carried forward for federal purposes. See subrule 59.31(3) for more information about these 2019 adjustments.

b. Special rules for partnerships and S corporations.

(1) Iowa partnerships and S corporations. Partnerships and S corporations required to file Iowa returns in tax year 2018 are required to make adjustments for Iowa’s nonconformity with IRC Section 163(j) at the entity level, meaning they can deduct the full interest expense on the entity’s own Iowa

return and the reduction to the partner's or shareholder's share of the entity's income will be included in the all source modifications line of the partners' or shareholders' Iowa Schedules K-1.

EXAMPLE 1: P, a partnership doing business in Iowa, has \$100,000 in current-year business interest expense in 2018. For federal purposes, \$20,000 of that amount is disallowed under IRC Section 163(j). The partnership deducts \$80,000 at the entity level in 2018, and the remaining disallowed \$20,000 is allocated to the partners to be deducted in future years. For Iowa purposes, the \$80,000 of business interest expense allowed for federal purposes is included in the partnership's non-separately stated ordinary business income (loss), and the partnership will make an adjustment on the entity's IA 1065 to deduct the \$20,000 of current-year business interest expense that was disallowed for federal purposes. The \$20,000 additional Iowa deduction will be reported to the partners as an all source modification on the partners' IA 1065 Schedules K-1, and partners will receive the benefit of this all source modification item when the partners report their Iowa partnership income on their own Iowa tax return for the year. The partners will not be permitted to make further Iowa adjustments on their own Iowa tax return for the excess business interest expense amounts passed through to them from the partnership for federal purposes.

(2) Owners of partnerships and S corporations with no entity-level 2018 Iowa filing requirement.

1. Non-Iowa partnerships. Iowa partners who received interest expense deductions from partnerships which were not required to file 2018 Iowa returns may claim the larger Iowa deduction for business interest expense passed through from the partnership on the partner's own 2018 Iowa return by including in the partner's Iowa deduction the amount of disallowed business interest expense deduction shown on the 2018 federal Schedule K-1 (Form 1065), line 13, code K, received from the non-Iowa partnership.

EXAMPLE 2: ABC, Inc. is a corporation doing business in Iowa and a partner in P2, an out-of-state partnership with no business in Iowa and no Iowa filing obligation. In 2018, P2 has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, P2 is permitted to deduct \$80,000 on its 2018 federal partnership return. The \$20,000 in excess business interest expense is then allocated to P2's partners. ABC, Inc. is allocated \$5,000 in excess business interest expense from P2. Because P2 is not required to file an Iowa return, and therefore ABC, Inc. did not receive a 2018 IA 1065 Schedule K-1 from P2, ABC, Inc. is permitted to deduct the \$5,000 allocated from P2 as current-year business interest expense on ABC, Inc.'s 2018 Iowa income tax return.

2. Non-Iowa S corporations. Iowa shareholders of S corporations that have no Iowa filing requirement are limited to the deduction actually passed through to them on the federal Schedule K-1 received from the S corporation for Iowa purposes in tax year 2018. These shareholders are not permitted to make adjustments for interest expense disallowed at the entity level for the non-Iowa S corporation. See Example 3 in 701—subrule 40.85(2) for an example of how Iowa shareholders of non-Iowa S corporations should report the business interest expense deduction allocated to them from the S corporation.

59.31(3) Tax year 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020 (tax year 2019), Iowa conforms to the IRC in effect on March 24, 2018.

a. *Applicable limitation.* For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed conformity date, Iowa did not conform with the higher 50 percent limitation retroactively imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to the extent that increased limitation applied in tax year 2019 for federal purposes. For tax year 2019 only, taxpayers are required to calculate their Iowa business interest expense deduction by applying the limitations of IRC Section 163(j) without regard to IRC Section 163(j)(10).

EXAMPLE 3: X Bank has an adjusted taxable income (ATI) of \$100,000 for tax year 2019, and \$80,000 in deductible business interest expense. For federal purposes, X Bank's business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, X Bank's Iowa business interest expense deduction for the year is limited to

\$30,000. X Bank will report this difference by making a \$20,000 adjustment on IA 101, line 3 (X Bank may have additional adjustments on this line if the current-year federal deduction included amounts carried forward from 2018).

b. Addition to income for tax year 2018 federal carryforward amounts deducted in tax year 2019. To the extent a taxpayer's tax year 2019 federal business interest expense deduction includes amounts that were disallowed and carried forward to future years under IRC Section 163(j) in tax year 2018 for federal purposes, but allowed as a deduction in tax year 2018 for Iowa purposes under paragraph 59.31(2)“a” (in general), subparagraph 59.31(2)“b”(1) (Iowa partnerships and S corporations), or numbered paragraph 59.31(2)“b”(2)“1” (non-Iowa partnerships), these carried-forward amounts must be added back in computing Iowa income. These prior deductions and current adjustments are calculated and tracked on the IA 101 Nonconformity Adjustments form. Note that shareholders of non-Iowa S corporations should not be required to add back 2018 carryforward amounts deducted by the S corporation in 2019, because the shareholders were not permitted to deduct these excess amounts for Iowa purposes in 2018. See numbered paragraph 59.31(2)“b”(2)“2.”

EXAMPLE 4: QRS, Inc. is a partner in P under the same facts described in Example 1 above. For tax year 2019, QRS, Inc. completes federal Form 8990 and is eligible to deduct \$1,000 of the excess business interest expense allocated to QRS, Inc. from P in 2018 on QRS, Inc.'s 2019 federal income tax return. This \$1,000 federal deduction for prior-year excess business interest expense allocated from P must be added back in computing QRS, Inc.'s 2019 Iowa income. The same add-back would be required if this scenario was applied to the facts in Example 2 above.

59.31(4) Tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation.

a. Current-year business interest expense. For tax years beginning on or after January 1, 2020, a taxpayer's current-year business interest expense is fully deductible to the extent permitted by IRC Section 163 for Iowa purposes without regard to any limitation under IRC Section 163(j). Even though Iowa does not conform to IRC Section 163(j), provisions of the IRC other than Section 163(j) may subject interest expense to disallowance, deferral, capitalization, or other limitations, and those other provisions of the IRC still generally apply for Iowa purposes. No additional Iowa adjustments are permitted for federal limitations such as those described in Treas. Reg. Section 1.163(j)-3(b)(4), which are determined after the application of IRC Section 163(j) for federal purposes. See Treas. Reg. Section 1.163(j)-3 for examples of other provisions of the IRC that may restrict interest expense deductions for federal and Iowa purposes, independent of the Section 163(j) limitation.

b. Carryforward.

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer's 2020 Iowa income tax return using form IA 163A. Excess business interest expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 5: In 2019, X Bank had \$100,000 in current-year business interest expense. X Bank's business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa's nonconformity with the CARES Act for that year. See paragraph 59.31(3)“a.” In 2020, X Bank is again subject to an IRC Section 163(j) limitation and is not permitted to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does not conform to the IRC Section 163(j) limitation for 2020, X Bank may deduct all of the company's current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of X Bank's disallowed Iowa interest expense carried over from 2019. X Bank must complete the IA 163 in order to calculate the company's current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts, which may be deducted in full on X Bank's 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of “disallowed business interest expense.” Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 59.31(4)“b”(1). All prior year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer’s Iowa income for the year.

EXAMPLE 6: In 2020, X Bank has \$100,000 in current-year business interest expense. For federal purposes, X Bank is subject to the IRC Section 163(j) limitation. X Bank deducts \$70,000 in business interest expense on X Bank’s 2020 federal return and carries the remaining \$30,000 forward to be deducted in future years. For Iowa purposes, X Bank deducts the full \$100,000 in current-year business interest expense in 2020.

In 2021, X Bank has \$50,000 in current-year business interest expense. For federal purposes, X Bank is permitted to deduct the full \$50,000 in interest expense generated in 2021, plus \$5,000 of the amount that was disallowed in 2020 for a total federal deduction of \$55,000 in 2021. X Bank must add the federal carryforward amount (\$5,000) back on the company’s 2021 Iowa return, limiting X Bank’s 2021 Iowa deduction to the \$50,000 in current-year business interest expense.

59.31(5) Partners and partnerships.

a. Partnership-level adjustments. For tax years beginning on or after January 1, 2020, partnerships that file an Iowa income tax return for a tax year in which the partnership is subject to the IRC Section 163(j) limitation for federal purposes are permitted to deduct all current-year business interest expense at the partnership level in that tax year. See 701—paragraph 40.85(5)“a” for more information about the calculation and reporting of partnership-level adjustments.

b. Partner-level adjustments.

(1) Interest expense from Iowa partnerships. Iowa adjustments related to excess business interest expense of an Iowa partnership are made at the entity level as described in 701—paragraph 40.85(5)“a” and are reported to partners on an IA 1065 Schedule K-1. Partners are not permitted to make any Iowa adjustment at the partner level to their federal interest expense deduction for amounts of excess business interest expense allocated from an Iowa partnership on the partner’s federal Schedule K-1 related to that Iowa partnership. See Example 1 above.

(2) Interest expense from non-Iowa partnerships. For tax years beginning on or after January 1, 2020, partners may include as part of their Iowa business interest expense deduction the total amount of current-year excess business interest expense deduction passed through to them from all non-Iowa partnerships as shown on the federal Schedule K-1 (Form 1065), line 13, code K. See Example 2 above.

(3) Partnership basis. A partner’s basis is reduced (but not below zero) by the amount of excess business interest expense the partnership passes through to the partner each year. See Treas. Reg. Section 163(j)-6(h) for detailed information about how to make these basis adjustments. For federal purposes, immediately before disposition of the partnership interest, the partner’s basis is then increased by the amount of any passed-through business interest expense which has not yet been treated as paid or accrued by the partner as described in Treas. Reg. Section 163(j)-6(h)(3). No basis increase at the time of disposition is allowed for Iowa purposes for passed-through business interest expense amounts that were deducted for Iowa, but not for federal, purposes due to Iowa’s nonconformity with IRC Section 163(j).

59.31(6) S corporation adjustments. For federal purposes, IRC Section 163(j) limitations are applied at the S corporation level. Unlike partnerships, disallowed business interest expense amounts are carried forward and deducted in future years at the entity level rather than being passed through to shareholders. S corporations should calculate their entity-level business interest expense deduction for

Iowa purposes under the provisions of rule 701—53.29(422). See also Treas. Reg. Section 1.163(j)-6(l) for more information about the application of IRC Section 163(j) to S corporations for federal purposes.

This rule is intended to implement Iowa Code sections 422.35(27) and 422.61.
[ARC 5733C, IAB 6/30/21, effective 8/4/21]

701—59.32(422) COVID-19 grant exclusion.

59.32(1) Definitions. For purposes of this rule:

“*Administering agency*” means the economic development authority, the Iowa finance authority, or the department of agriculture and land stewardship.

“*Grant recipient*” means a person who applies for and is issued a qualifying COVID-19 grant by an administering agency.

“*Issued*” means the approval of the grant recipient’s application and amount for a qualifying COVID-19 grant by an administering agency, regardless of when the grant funds were paid by the administering agency.

59.32(2) Qualifying COVID-19 grant programs.

a. The department is responsible for determining whether a grant program provides “qualifying COVID-19 grants” as defined in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5. In making this determination, and for purposes of the definition of “qualifying COVID-19 grant,” a grant program is “created to primarily provide COVID-19 related financial assistance to economically impacted individuals and businesses located in this state” if that grant program, at the time of its inception, was intended by the administering agency to provide a majority (more than 50 percent) of its financial assistance to or for the benefit of businesses that are doing business in Iowa or are deriving income from sources within Iowa, and that are economically affected by the COVID-19 pandemic.

b. The administering agency shall notify the director of the existence of any grant program it believes may be a qualifying COVID-19 grant program. Upon such notification, the department will request from the administering agency the information necessary to determine whether that program is a qualifying COVID-19 grant as defined in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5, and this rule. The administering agency shall provide the department with the requested information within the time frame prescribed by the department in its request. Failure to provide the requested information to the department shall prevent the department from determining that the grant program is a qualifying COVID-19 grant. Grant programs not specifically listed below in paragraph 59.32(2)“*c*” are not qualifying COVID-19 grants and are not eligible for the exclusion provided in this rule, even if that program may otherwise meet the definition of “qualifying COVID-19 grant” in Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5.

c. For an exhaustive list of programs that have been identified by the department as qualifying COVID-19 grants, including a general description of each program’s grant recipients, that may qualify for the exclusion from Iowa net income under subrule 59.32(3), see 701—paragraph 53.30(2)“*c*.”

59.32(3) Excluding qualifying COVID-19 grants from Iowa net income.

a. Generally. A grant recipient may subtract a qualifying COVID-19 grant when calculating Iowa net income if all of the following apply:

(1) The grant was issued as part of a qualifying COVID-19 grant program identified in 701—paragraph 53.30(2)“*c*.”

(2) The grant was issued on or after March 17, 2020, and on or before December 31, 2021.

(3) The grant funds were included in the grant recipient’s net income for a tax year ending on or after March 17, 2020, but beginning before January 1, 2024. The grant may only be subtracted to the extent it is included in the grant recipient’s net income for that qualifying tax year. A qualifying COVID-19 grant that is exempt from federal income tax, and thus not included in the grant recipient’s Iowa net income, does not qualify for an additional subtraction on the grant recipient’s Iowa return.

b. Third-party payee of grant funds. A third-party payee of qualifying COVID-19 grant funds is not eligible for this exemption from Iowa income. If the proceeds of a qualifying COVID-19 grant

are paid to someone other than the grant recipient, only the grant recipient on whose behalf the grant proceeds were paid may qualify for this exemption from Iowa income.

c. Repayment. Grant funds that were repaid to the administering agency for any reason are not eligible for this exemption from Iowa income.

d. Reporting requirements. A grant recipient who received qualifying COVID-19 grant funds and who excludes those funds when calculating Iowa net income should retain documentation to support the claimed exclusion. A grant recipient must provide such documentation to the department if requested. The required documentation may include, but is not limited to, documentation to support that the grant recipient was issued and received the grant within the qualifying periods.

This rule is intended to implement Iowa Code section 422.7(62) as amended by 2021 Iowa Acts, Senate File 619, section 5.

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Rules 701—59.25(422) to 701—59.29(422) are effective for tax years beginning on or after June 1, 1989.

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⁰ Two or more ARCs

¹ Paragraph 59.28(2)“p” rescinded by 2020 Iowa Acts, House File 2641, section 79, effective June 29, 2020.

CHAPTER 68
MOTOR FUEL AND UNDYED SPECIAL FUEL
[Prior to 1/1/96, see 701—Ch 64]

701—68.1(452A) Definitions. See 701—67.1(452A).

701—68.2(452A) Tax rates—time tax attaches—responsible party.

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	30.7¢ per gallon (for July 1, 2016, through June 30, 2017) 30.5¢ per gallon (for July 1, 2017, through June 30, 2018) 30.7¢ per gallon (for July 1, 2018, through June 30, 2019) 30.5¢ per gallon (for July 1, 2019, through June 30, 2020) 30¢ per gallon (beginning July 1, 2020)
Ethanol blended gasoline	29¢ per gallon (for July 1, 2016, through June 30, 2020)
Ethanol blended gasoline E-10 to E-14	30¢ per gallon (beginning July 1, 2020)
E-85 gasoline	29¢ per gallon (for July 1, 2016, through June 30, 2020)
Ethanol blended gasoline E-15 or higher	24¢ per gallon (beginning July 1, 2020)
Aviation gasoline	8¢ per gallon (beginning July 1, 1988)
Diesel fuel other than B-11 or higher	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)
Biodiesel blended fuel (B-11 or higher)	29.5¢ per gallon (for July 1, 2015, through June 30, 2020) 30.1¢ per gallon (for July 1, 2020, through June 30, 2021) 30.4¢ per gallon (beginning July 1, 2021)
Aviation jet fuel	3¢ per gallon (on and before February 28, 2015) 5¢ per gallon (beginning March 1, 2015)
L.P.G.	20¢ per gallon (on and before February 28, 2015) 30¢ per gallon (beginning March 1, 2015)
C.N.G.	16¢ per 100 cu. ft. (on and before June 30, 2014) 21¢ per gallon (for July 1, 2014, through February 28, 2015) 31¢ per gallon (beginning March 1, 2015)
L.N.G.	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)

68.2(2) Fuel distribution percentages.

a. Ethanol distribution percentage.

(1) Except as otherwise provided in this paragraph, this paragraph shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. An excise tax of 30 cents is imposed on each gallon of motor fuel other than ethanol blended gasoline classified as E-15 or higher.

(2) On and after July 1, 2026, an excise tax of 30 cents is imposed on each gallon of ethanol blended gasoline classified as E-15 or higher.

(3) Before July 1, 2026, the rate of the excise tax on ethanol blended gasoline classified as E-15 or higher shall be based on the ethanol distribution percentage as specified in Iowa Code section 452A.3. The ethanol distribution percentage is the number of gallons of ethanol blended gasoline classified as E-15 or higher that are distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. The department shall determine the percentage for each determination period beginning January 1 and ending December 31 based on data

from reports filed pursuant to Iowa Code section 452A.33. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period.

b. Biodiesel distribution percentage.

(1) Except as otherwise provided in this paragraph, the rate of the excise tax on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state, other than biodiesel blended fuel classified as B-11 or higher, is 32.5 cents.

1. Except as otherwise provided in this paragraph, this paragraph shall apply to the excise tax imposed on each gallon of biodiesel blended fuel classified as B-11 or higher used for any purpose for the privilege of operating motor vehicles in this state.

2. On and after July 1, 2026, the rate of the excise tax on each gallon of biodiesel blended fuel classified as B-11 or higher is 32.5 cents.

3. Before July 1, 2026, the rate of the excise tax shall be based on the biodiesel distribution percentage as specified in Iowa Code section 452A.3. The biodiesel distribution percentage is the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state. The department shall determine the percentage for each determination period beginning January 1 and ending December 31 based on data from reports filed pursuant to Iowa Code section 452A.33. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period.

(2) The determination period for the biodiesel distribution percentage is January through December each calendar year.

c. Legislative review. The ethanol distribution percentage, the biodiesel distribution percentage, and the corresponding excise tax rates are subject to legislative review at least every five years. The review is based upon a fuel distribution percentage formula status report, which contains the recommendations of a legislative interim committee appointed to conduct a review of the fuel distribution percentage formulas. The report is prepared with the assistance of the Iowa department of revenue and the Iowa department of transportation. The report includes recommendations for changes or revisions to the fuel distribution percentage formulas based upon advances in technology, fuel use trends, and fuel price fluctuations observed during the preceding five-year interval; an analysis of the operation of the fuel distribution percentage formulas during the preceding five-year interval; and a summary of issues that have arisen since the previous review and potential approaches for resolution of those issues. The first report will be submitted to the general assembly no later than January 1, 2020, with subsequent reports developed and submitted by January 1 at least every fifth year thereafter.

68.2(3) The tax attaches when the fuel is withdrawn from a terminal or imported into Iowa. The tax is payable to the department by the supplier, restrictive supplier, importer, blender, or any person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer or any other person who possesses taxable fuel upon which the tax has not been paid. The tax is to be remitted to the department by a supplier, restrictive supplier, or blender by the last day of the month following the month in which the fuel is withdrawn from a terminal or imported. The tax is to be remitted by an importer by the last day of the month for fuel imported in the first 15 days of the month and by the fifteenth day of the following month for fuel imported after the fifteenth day of the previous month. Nonlicensees who possess taxable fuel upon which the tax has not been paid must file returns and pay the tax the same as a restrictive supplier (monthly). All licensees must make payment by electronic funds transfer (see publication 90-201 for EFT requirements).

68.2(4) Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

a. Persons subject to the tax imposed under this subrule shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within 30 days of the prescribed inventory date.

b. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage. The inventory tax rate is equal to the increased excise tax rate less the previous excise tax rate. The inventory tax does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8 and 452A.85.
[ARC 8225B, IAB 10/7/09, effective 11/11/09; ARC 0399C, IAB 10/17/12, effective 11/21/12; ARC 1442C, IAB 4/30/14, effective 6/4/14; ARC 1805C, IAB 1/7/15, effective 2/11/15; ARC 2247C, IAB 11/25/15, effective 12/30/15; ARC 2698C, IAB 8/31/16, effective 10/5/16; ARC 3146C, IAB 6/21/17, effective 7/26/17; ARC 4252C, IAB 1/16/19, effective 2/20/19; ARC 4585C, IAB 7/31/19, effective 9/4/19; ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—68.3(452A) Exemption.

68.3(1) Motor fuel or undyed special fuel sold for export or exported from this state to another state, territory, or foreign country is exempt from the excise tax. The fuel is deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the fuel withdrawn from the terminal is outside the state of Iowa. The mode of transportation is not of consequence. In the event fuel is taxed and then subsequently exported, an amount equal to the tax previously paid will be allowable as a refund, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported fuel is completed in Iowa, then the sale is subject to Iowa sales tax if it is not exported for resale or otherwise exempt from sales tax. The sale is completed in Iowa if the foreign purchaser takes physical possession of the fuel in this state. See sales tax rule 701—18.37(422,423).

68.3(2) Indelible dye meeting United States Environmental Protection Agency and Internal Revenue Service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel can only be used for a nontaxable purpose listed in Iowa Code section 452A.17(1)“a.” However, this exemption does not apply to fuel used for idle time, power takeoffs, reefer units, or pumping credits, or fuel used by contract carriers.

This rule is intended to implement Iowa Code section 452A.3 as amended by 1995 Iowa Acts, chapter 155.

[ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—68.4(452A) Blended fuel taxation—nonterminal location.

68.4(1) *Responsibilities of all blenders at nonterminal locations.* A person who blends ethanol blended gasoline or biodiesel blended fuel at a nonterminal location must obtain a blender’s license. Blending ethanol with gasoline, or blending biodiesel with petrodiesel, may result in additional tax due or an allowable refund depending on the ethanol content of the mixture and the tax paid on its components. The blender must make payment to the department for the additional tax due. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE 1. A blender blends three parts ethanol with 17 parts gasoline to create E-15. The E-15 is taxed as ethanol blended gasoline, and the blender may be due a refund for excess tax paid on the gasoline used.

EXAMPLE 2. A blender blends one part biodiesel with four parts petrodiesel to create B-20. The B-20 is taxed as B-11 or higher, and the blender may be due a refund for excess tax paid on the petrodiesel used.

EXAMPLE 3. A blender blends one part biodiesel with 19 parts petrodiesel to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the biodiesel used.

EXAMPLE 4. A blender blends one part B-20 with five parts B-2 to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the B-20 used.

68.4(2) *Blenders of ethanol blended gasoline.*

a. A blender who owns the ethanol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,000 gallons tax-paid gasoline ($7,000 \times .30$) =	\$2,100.00
Blender adds 3,000 gallons untaxed ethanol	\$0.00
Total tax paid on products	<u>\$2,100.00</u>
Total tax due on 10,000 gallons ethanol blended gasoline E-15 or higher ($10,000 \times .24$) =	\$2,400.00
Additional Amount Due	<u>\$300.00</u>

b. A blender who purchases ethanol and gasoline from a supplier must pay tax on both the ethanol purchased and the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,000 gallons tax-paid gasoline ($7,000 \times .30$) =	\$2,100.00
Blender purchases 3,000 gallons tax-paid ethanol ($3,000 \times .24$) =	\$720.00
Total tax paid on products	<u>\$2,820.00</u>
Total tax due on 10,000 gallons ethanol blended gasoline E-15 or higher ($10,000 \times .24$) =	\$2,400.00
Amount of Refund Allowable	<u>\$420.00</u>

c. A blender who purchases ethanol and gasoline from any source must pay tax on both the ethanol purchased and the gasoline purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon, the tax rate for ethanol is presumed to be 24¢ per gallon, and the tax rate for ethanol blended gasoline E-10 is presumed to be 30¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ($7,200 \times .30$) =	\$2,160.00
Blender purchases 800 gallons tax-paid ethanol ($800 \times .24$) =	\$192.00
Total tax paid on products	<u>\$2,352.00</u>
Total tax due on 8,000 gallons ethanol blended gasoline E-10 ($8,000 \times .30$) =	\$2,400.00
Additional Amount Due	<u>\$48.00</u>

d. A blender who purchases ethanol blended gasoline E-10 to E-14 and ethanol blended gasoline E-15 or higher from a supplier must pay tax on both the ethanol blended gasoline E-10 to E-14 purchased

and the ethanol blended gasoline E-15 purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for E-10 to E-14 purchased is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,000 gallons tax-paid ethanol blended gasoline E-10 to E-14 (7,000 × .30) =	\$2,100.00
Blender purchases 3,000 gallons tax-paid ethanol blended gasoline E-15 or higher (3,000 × .24) =	\$720.00
Total tax paid on products	<u>\$2,820.00</u>
Total tax due on 10,000 gallons ethanol blended gasoline E-15 or higher (10,000 × .24) =	\$2,400.00
Amount of Refund Allowable	<u>\$420.00</u>

e. Ethanol blended gasoline E-15 or higher—blending errors.

Where a blending error occurs and an insufficient amount of ethanol has been blended with gasoline so that the mixture fails to qualify as ethanol blended gasoline E-15 or higher, a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the ethanol erroneously blended with gasoline is at least 14 percent of the total blended product by volume, the ethanol and gasoline blended product is considered ethanol blended gasoline E-15 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of ethanol erroneously blended with gasoline is less than 14 percent of the total blended product by volume, the total blend of gasoline and ethanol is subject to tax as ethanol blended gasoline E-10 to E-14 at the prevailing rate of tax.

(3) This paragraph applies only if a blender intends to produce ethanol blended gasoline E-15 or higher. If a blender does not intend to produce ethanol blended gasoline when blending ethanol and gasoline, and the mixture contains less than 14 percent ethanol by volume, no error has occurred and the mixture is subject to tax as ethanol blended gasoline E-10 to E-14.

(4) The following formulas are used to compute blending errors:

Actual gasoline + actual ethanol = total gallons of blended product

Total gallons of blended product × .14 = required ethanol

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend ethanol blended gasoline E-15 or higher. Figures are rounded to the nearest whole gallon; ethanol blended gasoline E-15 or higher is taxed at 24¢ per gallon; gasoline is taxed at 30¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1:

Actual gasoline	=	8,500 gal.
Actual ethanol	=	1,500 gal.
Total blended product	=	10,000 gal.
10,000 × .14	=	1,400 gal. required ethanol

The actual ethanol (1,500 gallons) is more than the required ethanol (1,400 gallons), which means that the tax is applied according to subparagraph 68.4(2) “e”(1) as follows:

$$10,000 \text{ gal. of blended product} \times .24 = \$2,400 \text{ tax on ethanol blended gasoline E-15 or higher}$$

EXAMPLE 2:

Actual gasoline	=	9,200 gal.
Actual ethanol	=	800 gal.
Total blended product	=	10,000 gal.
$10,000 \times .14$	=	1,400 gal. required ethanol

The actual ethanol (800 gallons) is less than the required ethanol (1,400 gallons), which means that the entire blend is considered gasoline and the tax is applied according to subparagraph 68.4(2) "e"(2) as follows:

$$10,000 \text{ gal. of blended product} \times .30 = \$3,000 \text{ tax on gasoline}$$

68.4(3) Blenders of biodiesel blended fuel.

a. A blender who owns the biodiesel being used to blend with diesel must purchase the diesel from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 30.1¢ per gallon and the tax rate for diesel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

Blender purchases 7,120 gallons tax-paid petrodiesel ($7,120 \times .325$) =	\$2,314.00
Blender adds 880 gallons untaxed biodiesel =	\$.00
Total tax paid on products =	<u>\$2,314.00</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons blended B-11 or higher ($8,000 \times .301$) =	\$2,408.00
Additional Amount Due =	<u>\$94.00</u>

EXAMPLE 2.

Blender purchases 7,600 gallons tax-paid petrodiesel ($7,600 \times .325$) =	\$2,470.00
Blender adds 400 gallons untaxed biodiesel =	\$.00
Total tax paid on products =	<u>\$2,470.00</u>

The blended product is 8,000 gallons of diesel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons diesel other than B-11 or higher ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	<u>\$130.00</u>

EXAMPLE 3.

Blender purchases 7,750 gallons tax-paid B-2 ($7,750 \times .325$) =	\$2,518.75
Blender adds 250 gallons untaxed biodiesel =	\$.00
Total tax paid on products =	<u>\$2,518.75</u>

7,750 gallons of B-2 contains 155 gallons (2%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 405 gallons (155 + 250, or 5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons diesel other than B-11 or higher ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	<u>\$81.25</u>

b. A blender who purchases diesel products from a supplier must pay the appropriate tax on all diesel products purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for any additional amount due. The blender must also obtain a refund permit to receive a refund of any overpayment of tax on the blended product. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 30.1¢ per gallon and the tax rate for diesel fuel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

Blender purchases 7,120 gallons tax-paid petrodiesel ($7,120 \times .325$) =	\$2,314.00
Blender purchases 880 gallons tax-paid biodiesel ($880 \times .301$) =	\$264.88
Total tax paid on products =	<u>\$2,578.88</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons blended B-11 or higher ($8,000 \times .301$) =	\$2,408.00
Amount of Refund Allowable =	<u>\$170.88</u>

EXAMPLE 2.

Blender purchases 7,600 gallons tax-paid petrodiesel ($7,600 \times .325$) =	\$2,470.00
Blender purchases 400 gallons tax-paid biodiesel ($400 \times .301$) =	\$120.40
Total tax paid on products =	<u>\$2,590.40</u>

The blended product is 8,000 gallons of biodiesel blended fuel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons blended B-5 ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	<u>\$9.60</u>

EXAMPLE 3.

Blender purchases 4,000 gallons tax-paid B-2 ($4,000 \times .325$) =	\$1,300.00
Blender purchases 4,000 gallons tax-paid B-20 ($4,000 \times .301$) =	\$1,204.00
Total tax paid on products =	<u>\$2,504.00</u>

4,000 gallons of B-2 contains 80 gallons (2%) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 880 gallons (80 + 800, or 11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons B-11 or higher ($8,000 \times .301$) =	\$2,408.00
Amount of Refund Allowable =	<u>\$96.00</u>

c. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has been blended with petrodiesel so that the mixture fails to qualify as B-11 or higher as defined in rule 701—67.1(452A), a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the biodiesel erroneously blended with petrodiesel is at least 10 percent of the total blended product by volume, the biodiesel and petrodiesel blended product is considered B-11 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of biodiesel blended with petrodiesel is less than 10 percent of the total blended product by volume, the entire mixture is considered taxable diesel other than B-11 or higher and subject to tax at the prevailing rate.

(3) This paragraph applies only if a blender intends to produce B-11 or higher. If a blender does not intend to produce B-11 or higher when blending biodiesel and petrodiesel, and the mixture contains less than 11 percent biodiesel by volume, no error has occurred and the mixture is subject to tax as diesel other than B-11 or higher.

(4) The following formulas are used to compute blending errors:

Actual biodiesel + actual petrodiesel = total gallons of blended product

Total gallons of blended product \times .1 = required biodiesel

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend B-11 or higher. Figures are rounded to the nearest whole gallon; B-11 or higher is taxed at .301¢ per gallon; diesel other than B-11 or higher is taxed at .325¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

Actual petrodiesel	=	8,095 gal.
Actual biodiesel	=	905 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (905 gallons) is more than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

$$9,000 \text{ gal. of blended product} \times .301 = \$2,709 \text{ tax on B-11 or higher}$$

EXAMPLE 2.

Actual petrodiesel	=	8,105 gal.
Actual biodiesel	=	895 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (895 gallons) is less than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(2) as follows:

$$9,000 \text{ gal. of blended product} \times .325 = \$2,925 \text{ tax on diesel other than B-11 or higher}$$

EXAMPLE 3.

A blender erroneously mixes 5,000 gallons of B-2 with 4,500 gallons of B-20 with the intent of creating B-11 or higher. 5,000 gallons of B-2 contains 100 gallons (2%) of biodiesel. 4,500 gallons of B-20 contains 900 gallons (20%) of biodiesel. Thus, the 9,500 gallons (4,500 + 5,000) of blended product includes 1,000 gallons (100 + 900) of biodiesel and 8,500 gallons (9,500 – 1,000) of petrodiesel.

Actual petrodiesel	=	8,500 gal.
Actual biodiesel	=	1,000 gal.
Total blended product	=	9,500 gal.
$9,500 \times .1$	=	950 gal. required biodiesel

The actual biodiesel (1,000 gallons) is greater than the required biodiesel (950 gallons), which means that the entire blend is considered B-11 or higher and the tax is applied according to subparagraph 68.4(3) “c”(1) as follows:

$$9,500 \text{ gal. of blended product} \times .301 = \$2,859.50 \text{ tax on B-11 or higher}$$

This rule is intended to implement Iowa Code section 452A.8 as amended by 2015 Iowa Acts, Senate File 257.

[ARC 2247C, IAB 11/25/15, effective 12/30/15; ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—68.5(452A) Tax returns—computations.**68.5(1) Supplier—nexus.**

a. The fuel tax liability for a supplier is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the supplier within the state or by the supplier with an Iowa nexus from a terminal outside the state during the preceding calendar month, less deductions for fuel exported in the case of in-state withdrawals and the distribution allowance provided for in Iowa Code section 452A.5.

Tax shall not be paid when the sale of ethanol occurs within a terminal from an ethanol manufacturer to a licensed supplier. The tax shall be paid by the licensed supplier when the invoiced gross gallonage of the ethanol or the ethanol part of the ethanol blended gasoline is withdrawn from a terminal for delivery in this state. This makes the licensed supplier responsible for the tax on both the ethanol and the gasoline portions of the ethanol blended gasoline and for the reporting and accounting of this fuel as ethanol blended gasoline on the supplier report.

b. If fuel is withdrawn by a supplier with no nexus in Iowa, but who voluntarily agrees to collect and report the tax, from a terminal outside of Iowa for importation into Iowa, the tax liability is computed in the same manner as in paragraph “a” with the exception that no deduction is allowable for exports.

68.5(2) The fuel tax liability for a restrictive supplier is to be computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the preceding calendar month.

68.5(3) The fuel tax liability for an importer is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the applicable reporting period.

68.5(4) The tax liability for a nonlicensee is computed the same as a restrictive supplier. If motor fuel or undyed special fuel is exported from this state with no tax paid and subsequently returned to this state because all or a portion of it was not delivered where destined, the tax must be paid to the department by the nonlicensee.

All gallon entries on the return for determining the tax liability must be rounded to the nearest whole number.

This rule is intended to implement Iowa Code section 452A.3 as amended by 2001 Iowa Acts, House File 736, and sections 452A.5, 452A.8, and 452A.9.

[ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—68.6(452A) Distribution allowance. The tax computation for a supplier includes a distribution allowance of 1.6 percent of the motor fuel gallonage and 0.7 percent of the undyed special fuel gallonage removed from the terminal during the reporting period. The distributor purchasing the fuel from the supplier is entitled to 1.2 percent of the motor fuel distribution allowance. The distributor or dealer purchasing fuel from a supplier is entitled to 0.35 percent of the undyed special fuel distribution allowance. The distribution allowance does not apply to fuel exported.

This rule is intended to implement Iowa Code sections 452A.5 and 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.7(452A) Supplier credit—uncollectible account. A licensed supplier who is unable to recover the tax from an eligible purchaser or end user is not liable for the tax and may credit the amount of unpaid tax against a later remittance of tax.

68.7(1) To qualify for the credit, the supplier must notify the department in writing of the uncollectible account no later than ten calendar days after the due date for payment of the tax.

Notification is to be sent to the Iowa Department of Revenue, Compliance Section - Business, P.O. Box 10465, Des Moines, Iowa 50306-0465.

68.7(2) A supplier does not qualify for the credit if the purchaser did not elect to apply for the eligible purchaser or end user status or did not qualify to be an eligible purchaser. Likewise, the credit does not apply if the supplier sells additional fuel to a delinquent eligible purchaser or end user after notifying the department that the supplier has an uncollectible debt with an eligible purchaser.

68.7(3) Upon notification from the supplier that an eligible purchaser is in default of the tax payment, that person's eligible purchaser or end user status will be canceled by the department. The eligible purchaser or end user status will not be reinstated until such time as the purchaser posts securities to guarantee future tax payments as provided in 701—paragraph 67.21(1)“d.”

68.7(4) Eligible purchaser. Any distributor of motor fuel or special fuel or end user of special fuel who requests authorization to make delayed payments of the motor vehicle fuel tax must first register with the department to obtain the eligible purchaser status.

The eligible purchaser must pay the tax to the supplier by electronic funds transfer one business day prior to the date the tax is to be paid by the supplier.

Once approved, the eligible purchaser status is valid until voluntarily canceled by the eligible purchaser or canceled by the department of revenue. See 701—subrule 67.23(4).

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

[ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—68.8(452A) Refunds. Refunds are allowable for the tax paid on motor fuel and undyed special fuel in the following situations:

68.8(1) Federal government. Fuel sold to the United States or to any agency or instrumentality of the United States. The tax is subject to refund regardless of how the fuel is used.

a. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (a) whether it was created by the federal government, (b) whether it is wholly owned by the federal government, (c) whether it is operated for profit, (d) whether it is “primarily” engaged in the performance of some “essential” government function, and (e) whether the tax will impose an economic burden upon the federal government or serve to materially impair the usefulness and efficiency of the organization or to materially restrict it in the performance of its duties if it were imposed.

b. The American Red Cross, Project Head Start, Federal Land Banks and Federal Land Bank Associations, among others, have been determined to be instrumentalities of the federal government. Receivers or trustees appointed in the federal bankruptcy proceedings are subject to the excise tax.

The refund is not available to employees of the federal government who purchase fuel individually and are later reimbursed by the federal government. The name of the federal agency must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

68.8(2) Transit systems. Fuel sold to an Iowa urban transit system as defined in 701—67.1(452A) or a company operating a taxicab service under contract with an Iowa urban transit system which is used for a purpose specified in Iowa Code section 452A.57(6) and fuel sold to a regional transit system as defined in 701—67.1(452A) which is used for a purpose specified in Iowa Code section 452A.57(11).

68.8(3) The state and political subdivisions. Fuel sold to the state of Iowa or any political subdivision of the state which is used for public purposes.

a. The refund is not available to agencies or instrumentalities of a political subdivision, but rather only to the state of Iowa, agencies of the state of Iowa, and political subdivisions of the state of Iowa. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are: (a) the entity has a specific geographic area, (b) the entity has public officials elected at public elections, (c) the entity has taxing power, (d) the entity has a general public purpose or benefit, and (e) the foregoing attributes, factors or powers were delegated to the entity by the state of Iowa.

b. The refund is also not available to employees of a governmental unit who purchase fuel individually and are later reimbursed by the governmental unit. The name of the governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

68.8(4) Contract carriers.

a. Motor fuel and undyed special fuel sold to a contract carrier who has a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school is refundable. If the contract carrier also uses fuel for purposes other than the transportation of pupils, the refund will be based on that percentage of the total amount of fuel purchased which reflects the pupil transportation usage.

b. A refund requested by contract carriers will be reduced by the applicable sales tax unless otherwise exempt. The name of the contract carrier must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

68.8(5) Fuel used in unlicensed vehicles, stationary engines, machinery and equipment used for nonhighway purposes, implements used in agricultural production, and fuel used for home heating.

68.8(6) Fuel used for producing denatured ethanol.

68.8(7) Fuel used in the watercraft of a commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to Iowa Code section 482.4.

68.8(8) Fuel placed in motor vehicles, whether registered or not registered, not operated on public highways, and used in the extraction and processing of natural deposits.

68.8(9) Idle time. Persons who wish to claim a refund for idle time (the engine is running but not propelling the vehicle) must first apply to the department and provide statistical information on how the refund amount will be calculated. Normally, to qualify for a refund the vehicle must be equipped with an on-board monitoring device which will record the actual time the engine is idling and the amount of fuel consumed while idling. If the device only records the idle time and not fuel used, the refund amount will be calculated at one-half gallon of fuel consumed per one hour of idle time. The computation must also consider the miles driven in Iowa versus total miles driven. The department will require a review of interstate carrier reports before approval of the computation method.

68.8(10) Power takeoff. Persons operating vehicles which have auxiliary equipment that is powered by the power takeoff may apply for a refund for that portion of the fuel used for powering the auxiliary equipment.

The person requesting the refund must furnish the department with statistical information on how the exempt percentage is established. The percentage can be established by using the following noninclusive methods.

- Determine the actual fuel usage by the hour while the auxiliary equipment is in use compared to total hours the engine is running.
- Establish total miles per gallon for the vehicle when auxiliary equipment is not in use compared to miles per gallon while the equipment is in use.
- Other computation methods to be reviewed by the department prior to approval.

It has been predetermined that tax on fuel used in the mixing of cement into concrete, the off-loading of the concrete, and the loading and off-loading of solid waste will be refunded on the basis of 30 percent

of the fuel placed in the fuel supply tank of the vehicle provided proper records are maintained. Proper records shall consist of records of fills for each vehicle from tax-paid bulk storage tanks or sales tickets where fuel is purchased directly from a service station. Each vehicle must be identifiable by a unit number so the department can trace fuel usage to specific vehicles. An additional allowance will be granted where it can be substantiated through the use of separate meters which operate to measure the fuel when the vehicle is stationary or the use of separate tanks which fuel the vehicle only when the vehicle is stationary that the actual nonhighway fuel usage exceeds 30 percent.

68.8(11) Refrigeration units (reefers). Tax paid on motor fuel and undyed special fuel is subject to refund. The person must maintain records of fuel purchases to substantiate the tax-paid purchases. Invoices must meet the criteria set forth in rule 701—67.12(452A). In addition, the invoices must separately state fuel purchased and placed in the reefer unit. Liquefied petroleum gas may be purchased tax-free for use in reefer units. See rule 701—69.10(452A).

68.8(12) Pumping credits. A refund will be allowed for taxes paid on fuel once that fuel has been placed in the fuel supply tank of a motor vehicle when the motor of that vehicle is used as a power source for off-loading procedures. Meter readings from the pump used in the off-loading procedure or the invoice, manifest or bill of lading number covering the product off-loaded must be retained. The claims for refund, unless a different amount can be proven, will be (a) one-half gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using motor fuel or special fuel (diesel) to power the motor and (b) one gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using special fuel (L.P.G.) to power the motor.

68.8(13) Transport diversions. When a transport load of motor fuel or undyed special fuel is sold tax-paid with a destination in this state and later diverted to a destination outside the state, the person who actually paid the Iowa tax is entitled to a refund. To secure a refund, the person must file a completed claim form provided by the department with supporting documentation including a copy of the bill of lading, invoices or document showing where and to whom the fuel was delivered, a copy of the reporting form and evidence of payment to the state where the fuel was actually delivered.

68.8(14) Casualty loss. In the event fuel is lost or destroyed through fire, explosion, lightning, flood, storm, earthquake, terrorist attack, or other casualty, the taxpayer must inform the department in writing of such loss within 10 days of the loss; and the notification must contain the amount of gallonage lost or destroyed which must be in excess of 100 gallons. An application for refund must be submitted to the department within 60 days of the notification and contain a notarized affidavit sworn to by the person having immediate custody of the fuel at the time of the loss or destruction setting forth, in full detail, the circumstances of the loss or destruction and the number of gallons. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty was a part of the last delivery into the storage just prior to the loss. No refund is allowable for fuel lost through evaporation, theft, normal leakage, or unknown causes. Leakage resulting from a major accident or catastrophe is subject to refund.

68.8(15) Exports by eligible purchasers (distributors). Distributors who have purchased tax-paid motor fuel or undyed special fuel and sell the fuel to consumers outside the state may apply for a refund of the Iowa tax paid. The distributor must retain records as provided in rule 701—67.3(452A) to support the request for refund.

68.8(16) Blending errors for special fuel. Dyed special fuel commingled with undyed special fuel and motor fuel commingled with special fuel. If dyed special fuel is inadvertently mixed with tax-paid undyed special fuel to the extent that the undyed fuel must have additional dye added to meet federal dyeing requirements to qualify as exempt dyed fuel, the tax is refundable on the undyed special fuel. The refund request must contain the number of gallons of undyed fuel lost through the mixing error and documentation as to how the gallonage was determined. If motor fuel is blended in error with dyed special fuel to produce a commingled product that must be destroyed or refined for subsequent use, the tax-paid fuel is subject to refund. The request for refund must contain documentation that the commingled product was destroyed or sold for purposes of refinement at a terminal.

68.8(17) Watercraft. Special fuel used in watercraft. This subrule is retroactive to July 1, 1996.

68.8(18) Refund of tax—Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. However, Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 452A. The fuel must be purchased by the Indian seller with the tax included in the purchase price, unless the seller's status as a particular licensee authorizes the seller to purchase fuel tax-free. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or the tribe of which the Indian purchaser is a member filing a claim for refund of the tax paid by the tribe on fuel sold to the Indian purchaser.

68.8(19) Racing fuel.

68.8(20) Benefited fire districts if the fuel is used for public purposes.

This rule is intended to implement Iowa Code section 452A.17 as amended by 2005 Iowa Acts, House File 216, and Iowa Code section 452A.71.
[ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—68.9(452A) Claim for refund—payment of claim. In order to receive a refund, the claimant must hold a refund permit.

68.9(1) Persons requesting a refund for fuel used for any exempt purpose will do so by providing all or a portion of the following: (a) refund permit number, (b) type of fuel, (c) total number of gallons/tons of fuel used to calculate the refund amount, (d) the beginning and ending dates of the tax period, (e) net cost of fuel, (f) Iowa sales tax due (net cost of fuel times sales tax rate), (g) other items depending on the type of permit and claim type, (h) the total amount of refund claimed, and (i) additional information as required.

Persons requesting a refund for casualty loss, transport diversions, blending errors of motor fuel and ethanol, and blending errors of special fuel must file in writing on the forms provided by the department and must attach supporting documents explaining why a refund is due.

68.9(2) Refunds are made and the amount of the refund is paid to the person who actually paid the tax with the following exception: Persons requesting a refund for idle time, power takeoff, reefer units, pumping credits, or transport diversions may designate another person as an agent to file the claim and receive the refund. The person acting as an agent for others must provide the department with the following information including, but not limited to, the name, address, and federal identification number or social security number of the person on whose behalf they are requesting the refund. Once a person is designated as an agent, this designation remains in force until the department is notified in writing the agency agreement no longer exists. A governmental agency may designate another governmental agency as an agent for filing and receiving any tax refund authorized in Iowa Code section 452A.17.

68.9(3) Deposit of refund. If the person so designates on the application, the department will direct deposit the refund in the person's designated bank account. If this option is selected on the application, additional forms will be provided to secure the needed information for direct deposit. In lieu of direct deposit, the permit holder will receive a state warrant.

68.9(4) A claim for refund will not be allowed unless the claimant has accumulated \$60 in credits for one calendar year. A claim for refund may be filed any time the \$60 minimum has been met within the calendar year. If the \$60 minimum has not been met in the calendar year, the credit must be claimed on the claimant's income tax return unless the claimant is not required to file an income tax return in which case a refund will be allowed. An income tax credit may not be claimed for any year in which a claim for refund was filed. Once the \$60 minimum has been met, the claim for refund must be filed within three years.

68.9(5) A refund will not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or any undyed special fuel taken out of this state in aircraft or motor vehicles.

68.9(6) Rescinded IAB 11/3/99, effective 12/8/99.

This rule is intended to implement Iowa Code sections 452A.17, 452A.19, 452A.21, and 452A.72 as amended by 2002 Iowa Acts, Senate File 2305.

[ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—68.10(452A) Refund permit. To obtain the refund provided for in Iowa Code chapter 452A and rule 701—68.8(452A), the claimant must have an uncanceled refund permit. The application for a refund permit is provided by the department and will contain, but not be limited to, the following information: (1) the name and location of the business and the mailing address if different, (2) the type of ownership, (3) the social security number or federal identification number of the applicant, and (4) the type of refund requested. The refund permit is issued without cost and remains in effect until revoked, canceled or until the permit becomes invalid. All refund permit holders are required to keep invoices and copies of returns if filed, supporting schedules and studies for documentation to support the refund.

This rule is intended to implement Iowa Code section 452A.18 as amended by 1995 Iowa Acts, chapter 155.

701—68.11(452A) Revocation of refund permit. The following violations will result in the revocation of the permit: (1) using a false or altered invoice in support of a claim, (2) making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund, (3) refusal to submit the claimant's books and records for examination by the department, and (4) nonuse for a period of three years. If the permit is revoked for reason (1), (2), or (3) above, the permit will not be reissued for a period of at least one year. If the permit is revoked for reason (4) above, the permit will be reissued upon proper application. (See rule 701—7.23(17A) for revocation procedure.)

This rule is intended to implement Iowa Code section 452A.19.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—68.12(452A) Income tax credit in lieu of refund. In lieu of applying for a refund permit, a person or corporation may claim the refund allowable under Iowa Code section 452A.17 as an income tax credit. If a person or corporation holds a refund permit and elects to receive an income tax credit, the person or corporation must cancel the refund permit within 30 days after the first day of its year or the permit becomes invalid and application must be made for a new permit. Once the election to receive an income tax credit has been made, it remains in effect until the election is changed. The income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, exports by distributors, and excess tax paid on ethanol blended gasoline.

This rule is intended to implement Iowa Code sections 422.110, 452A.17(2), and 452A.21 as amended by 1999 Iowa Acts, Senate File 136.

701—68.13(452A) Reduction of refund—sales and use tax. Under Iowa Code section 423.3(56), the sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid, and no refund has been or will be allowed, is exempt from Iowa sales and use tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 423.3 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales and use tax. See sales tax rule 701—18.37(422,423). The sales price upon which the sales and use tax will be applied shall include all federal excise taxes, but will not include the Iowa fuel tax.

This rule is intended to implement Iowa Code section 452A.17.

[ARC 2247C, IAB 11/25/15, effective 12/30/15; ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—68.14(452A) Terminal withdrawals—meters. Any refinery or terminal within this state must be fixed with meters which totalize the gross gallons withdrawn. All bills of lading or manifests must show the gross gallons withdrawn. A temperature-adjusted or other method shall not be used except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All fuel withdrawn from a refinery or terminal within this state must pass through these meters.

This rule is intended to implement Iowa Code sections 452A.2, 452A.8, 452A.15(2), and 452A.59 as amended by 1995 Iowa Acts, chapter 155.

701—68.15(452A) Terminal and nonterminal storage facility reports and records. Each terminal and nonterminal storage facility operating in Iowa must file a monthly inventory report with the department. The report shall include, but not be limited to, the following information:

1. The name and license number of the company that owns and operates the terminal or nonterminal storage facility.
2. The location of the terminal or nonterminal storage facility.
3. The month and year covered by the report.
4. The terminal code assigned by the Internal Revenue Service or the storage facility license number assigned by the department.
5. The beginning inventory.
6. The total receipts for the month including for each receipt: (a) the gross gallons received by schedule code, by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of receipt, (d) the seller, (e) the carrier, (f) the mode of transportation, and (g) the destination state.
7. The total withdrawals for the month, including for each withdrawal: (a) the gross gallons withdrawn by schedule code and by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of withdrawal, (d) the consignor, (e) the consignee, (f) the mode of transportation, (g) the destination state, (h) the origin state, and (i) the carrier.
8. The actual ending inventory and any gains or losses.
9. The signature or electronic signature of the person responsible for preparing the report.
10. Such additional information as the department may require.

For periods beginning on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be \$100 for the first violation and shall increase by \$100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission. All licensees must file reports by electronic transmission beginning September 1, 2006.

This rule is intended to implement Iowa Code section 452A.15(2).

701—68.16(452A) Method of reporting taxable gallonage. The exclusive method of determining gallonage of any purchase or sale of motor fuel or special fuel and distillate fuel is to be on gross-volume basis. A temperature-adjusted or other method cannot be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refineries.

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

701—68.17(452A) Transportation reports. The reports required under Iowa Code section 452A.15(1) are to be filed by railroad carriers, common carriers, contract carriers, distributors transporting fuel for others, and anyone else transporting fuel from without the state and unloading it at other than terminal storage within the state. The report must include all fuel which was imported into Iowa and unloaded at other than terminal storage, all fuel withdrawn from Iowa terminal storage and delivered in Iowa, and all fuel withdrawn from Iowa terminal storage and exported from Iowa. These reports must be filed monthly and show as to each delivery:

1. The name, address, and federal identification number or social security number of the person to whom actually delivered.
2. The name, address, and federal identification number or social security number of the originally named consignee, if delivered to anyone other than the originally named consignee.
3. The point of origin, the point of delivery, and the date of delivery.
4. The number and initials of each tank car and the number of gallons contained therein, if shipped by rail.
5. The name of the boat, barge, or vessel, and the number of gallons contained therein, if shipped by water.

6. The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.

7. The manner, if delivered by other means, in which the delivery is made.

8. Such additional information relative to shipments of motor fuel or special fuel as the department may require.

For periods on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be \$100 for the first violation and shall increase by \$100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission.

This rule is intended to implement Iowa Code section 452A.15 as amended by 2002 Iowa Acts, House File 2622 and Senate File 2305.

701—68.18(452A) Bill of lading or manifest requirements. Whenever a bill of lading or manifest is required to be issued, carried, retained, or submitted by these rules, it shall meet the following minimum requirements:

1. Contain the name and address of the refinery, terminal, ethanol plant, biodiesel plant or point of origin.

2. Contain the date of withdrawal or import.

3. Contain the name of the shipper-supplier-consignor.

4. Contain the name of the purchaser-consignee.

5. Contain the place of actual destination.

6. Contain the name of the transporter.

7. Contain the gross gallons by fuel type.

8. Contain the designation for ethanol blended gasoline or biodiesel blended fuel as provided in Iowa Code section 214A.2.

9. Contain a statement designating whether diesel fuel is dyed or undyed.

10. Have machine printed thereon a serial number of not less than four digits.

This rule is intended to implement Iowa Code sections 452A.10, 452A.12, 452A.60, and 452A.76. [ARC 8225B, IAB 10/7/09, effective 11/11/09]

701—68.19(452A) Right of distributors and dealers to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel using a biofuel.

68.19(1) A dealer or distributor may blend a conventional blendstock for oxygenate blending, gasoline, or diesel fuel using the appropriate biofuel, or sell unblended or blended gasoline or diesel fuel on any premises in this state. This subrule does not apply to the extent that the use of the premises is restricted by federal, state, or local law.

68.19(2) A refiner, supplier, terminal operator, or terminal owner who in the ordinary course of business sells or transports a conventional blendstock for oxygenate blending, gasoline unblended or blended with a biofuel, or diesel fuel unblended or blended with a biofuel shall not refuse to sell or transport to a distributor or dealer any conventional blendstock for oxygenate blending, unblended gasoline, or unblended diesel fuel that is at the terminal, based on the distributor's or dealer's intent to use the conventional blendstock for oxygenate blending, or blend the gasoline or diesel fuel with a biofuel.

68.19(3) This rule shall not be construed to do any of the following:

a. Prohibit a distributor or dealer from purchasing, selling or transporting a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

b. Affect the blender's license requirements under Iowa Code section 452A.6.

c. Prohibit a dealer or distributor from leaving a terminal with a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

d. Require a nonrefiner biofuel manufacturer to offer or sell a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

68.19(4) A refiner, supplier, terminal operator, or terminal owner who violates this rule is subject to a civil penalty of not more than \$10,000 per violation. Each day that a violation continues is deemed a separate offense. For more information on enforcement of this penalty, see 701—subrule 10.71(8).

This rule is intended to implement Iowa Code section 452A.6A.

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CHAPTER 69
LIQUEFIED PETROLEUM GAS—
COMPRESSED NATURAL GAS—LIQUEFIED NATURAL GAS

[Prior to 1/1/96, see 701—Ch 65]

701—69.1(452A) Definitions. For the purpose of this chapter, the following definitions shall govern:

“*C.N.G.*” shall mean compressed natural gas.

“*Department*” means the department of revenue.

“*Director*” means the director of the Iowa department of revenue or the director’s authorized representative.

“*Distributor*” means any person who sells compressed natural gas or liquefied petroleum gas in bulk for highway use.

“*Gallon,*” with respect to compressed natural gas, means a gasoline gallon equivalent. A gasoline equivalent of compressed natural gas is five and sixty-six hundredths pounds or one hundred twenty-six and sixty-seven hundredths cubic feet measured at a base temperature of 60 degrees Fahrenheit and a pressure of fourteen and seventy-three hundredths pounds per square inch absolute. “*Gallon,*” with respect to liquefied natural gas, means a diesel gallon equivalent. A diesel gallon equivalent of liquefied natural gas is six and six hundredths pounds.

“*Invoiced gallons*” means gross gallons as shown on the bill of lading or invoice. A temperature-adjusted method may be used as it applies to liquefied petroleum gas.

“*Licensed compressed natural gas, liquefied natural gas, and liquefied petroleum gas dealer*” means a person in the business of handling untaxed compressed natural gas, liquefied natural gas, or liquefied petroleum gas who delivers any part of the fuel into a fuel supply tank of any motor vehicle.

“*Licensed compressed natural gas, liquefied natural gas, and liquefied petroleum gas user*” means a person licensed by the department who dispenses compressed natural gas, liquefied natural gas, or liquefied petroleum gas, upon which the special fuel tax has not been previously paid, for highway use from fuel sources owned and controlled by the person into the fuel supply tank of a motor vehicle, or commercial vehicle owned or controlled by the person.

“*Licensed metered pumps or metered pumps*” shall mean pumps which have been metered, inspected, tested for accuracy, sealed and licensed by the state department of agriculture pursuant to Iowa Code section 452A.8(2)“*e.*”

“*Licensed metered storage or metered storage*” shall mean storage facilities which are fixed with “licensed metered pumps.”

“*L.N.G.*” shall mean liquefied natural gas.

“*L.P.G.*” shall mean liquefied petroleum gas.

“*Owner*” shall mean and include the owner or the employees, agents, or persons under the control of the owner.

“*Special fuel*” means liquefied petroleum gas, liquefied natural gas, or compressed natural gas.

“*Use*” means the receipt, delivery, or placing of liquefied petroleum gas by a licensed liquefied petroleum gas user into a fuel supply tank of a motor vehicle while the vehicle is in the state, except that with respect to natural gas used as a special fuel, “use” means the receipt, delivery, or placing of the natural gas into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

In addition to the preceding definitions, applicable definitions contained in Iowa Code section 452A.2 and rule 701—67.1(452A) shall govern the rules in this chapter where applicable.

This rule is intended to implement Iowa Code chapter 452A.

[ARC 1805C, IAB 1/7/15, effective 2/11/15]

701—69.2(452A) Tax rates—time tax attaches—responsible party—payment of the tax. See 701—subrule 68.2(1) for tax rates. The excise tax on L.P.G. attaches when the special fuel is placed in a fuel supply tank of a motor vehicle. The excise tax on C.N.G. and L.N.G. attaches at the time of delivery into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

69.2(1) The person responsible for the tax must collect the tax from the purchaser and remit the tax to the department. The person responsible for the tax is:

- a. The licensed L.P.G., L.N.G., or C.N.G. dealer, or
- b. The licensed L.P.G., L.N.G., or C.N.G. user.

69.2(2) The person responsible for placing L.P.G. into the fuel supply tank of a vehicle and the person responsible for placing C.N.G. or L.N.G. into compressing equipment must hold a license as a dealer or user as defined in Iowa Code section 452A.4.

69.2(3) The return and tax are due no later than the last day of the month following the month the L.P.G. was placed in a vehicle or C.N.G. or L.N.G. was placed into compressing equipment. The tax must be remitted by means of electronic funds transfer, unless the licensee can show that this method of payment would cause undue hardship on the licensee. The return must be remitted by means of electronic transmission.

This rule is intended to implement Iowa Code section 452A.8.

[ARC 1805C, IAB 1/7/15, effective 2/11/15; ARC 5842C, IAB 8/11/21, effective 9/15/21]

701—69.3(452A) Penalty and interest. See rules 701—10.6(421) and 701—10.2(421) for failure to timely file a return or for failure to timely pay the tax. See rule 701—10.8(421) for penalty exceptions. See rule 701—10.72(452A) for interest on refunds.

701—69.4(452A) Bonding procedure.

69.4(1) When required, classes of business and new applications for fuel tax permit. See 701—subrule 67.21(1), paragraphs “a” and “b.”

69.4(2) Existing license holders. Existing license holders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or filing returns timely during the past 12 months when filing returns on a monthly basis. The bond or security will be an amount sufficient to cover 12 months’ fuel tax liability or \$500, whichever is greater. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27 (penalty waiver). For waiver of bond see 701—paragraph 67.21(1) “e.”

69.4(3) Type of security. See 701—subrule 67.21(2).

701—69.5(452A) Persons authorized to place L.P.G., L.N.G., or C.N.G. in the fuel supply tank of a motor vehicle. The only persons authorized to place L.P.G., L.N.G., or C.N.G. into the fuel supply tank of a motor vehicle are: licensed L.P.G., L.N.G., or C.N.G. dealers, or licensed L.P.G., L.N.G., or C.N.G. users.

69.5(1) *L.P.G., L.N.G., or C.N.G. dealer’s license.* Anyone who delivers L.P.G. into the fuel supply tank of a motor vehicle or places C.N.G. or L.N.G. into compression equipment which tank is owned by some other person must be licensed as an L.P.G., L.N.G., or C.N.G. dealer. A dealer may also fuel the dealer’s own vehicles under this license.

69.5(2) *L.P.G., L.N.G., or C.N.G. user’s license.* Anyone who delivers L.P.G., L.N.G., or C.N.G. into the fuel supply tank of a motor vehicle, which tank is owned or leased by the person delivering it, must be licensed as an L.P.G., L.N.G., or C.N.G. user. If that same person delivers the fuel into tanks owned by others, that person must be licensed as a dealer in lieu of being licensed as a user.

69.5(3) *L.P.G. “mobile” tank exemption.* When a person has an L.P.G. storage tank which is “mobile” and the storage is moved from location to location, that person may be issued an L.P.G. user’s license. This licensee will be allowed to move the storage tank to a new location without procuring a new license for each new location. The issuance of this license is discretionary with the director, and the license will be issued only when the person requesting the license shows a need for mobile storage. The license will be issued to the licensee at the licensee’s principal place of business, and each mobile storage tank is deemed a separate pump at that location.

The operation of such licensed mobile storage shall be subject to the following conditions:

- a. Each mobile storage tank must be fixed with licensed, metered pumps.
- b. Each mobile storage tank shall be assigned a separate number, and the gallonage shall be reported on a per-tank basis.
- c. Each mobile storage tank shall have printed thereon, in strokes not less than six inches in height and three-fourths inches in width, the unit number and licensee's license number.
- d. There may be a total of only nine mobile storage tanks operated under a single license. If the licensee operates more than nine such storage tanks, the licensee must obtain a separate license for each multiple of nine or fraction thereof.
- e. When a licensee changes the licensee's principal place of business, the license shall be canceled and the person must apply for a new license.
- f. All records required to be kept shall be maintained at the licensee's principal place of business.
- g. Except for the requirement of having a separate license for each location where L.P.G. is used, the licensee shall be subject to all the requirements of other licensed L.P.G. users.

69.5(4) Exemption for emergency filling by distributors. Upon request from a stranded motorist, an L.P.G. distributor may place up to 20 gallons of L.P.G. into the fuel supply tank of the stranded vehicle without being considered by the department in violation of Iowa Code section 452A.74(5) (acting as an L.P.G. dealer without a license); however, the distributor must remit the tax thereon on a licensed dealer form and pay the tax before the last day of the month following the month of the emergency fill.

This rule is intended to implement Iowa Code section 452A.8.
[ARC 1805C, IAB 1/7/15, effective 2/11/15]

701—69.6(452A) Requirements to be licensed. To become licensed as an L.P.G., L.N.G., or C.N.G. user or dealer, a person must file with the department a completed application form for the appropriate license. A separate license is required for each place of business or location where L.P.G., L.N.G., or C.N.G. is regularly delivered or placed into the fuel supply tank of motor vehicles. See Iowa Code section 452A.4 and 701—subrule 67.23(1) for licensing requirements.

This rule is intended to implement Iowa Code section 452A.8.
[ARC 1805C, IAB 1/7/15, effective 2/11/15]

701—69.7(452A) Licensed metered pumps. Before an L.P.G., L.N.G., or C.N.G. dealer's or user's license can be issued, all pumps designed to fuel motor vehicles at the location to be licensed must be (1) metered, (2) inspected, (3) tested for accuracy, (4) sealed, and (5) licensed by the department of agriculture and land stewardship. (See 1970 O.A.G. 2.) If there is more than one pump at a location to be licensed, each pump will be assigned a separate pump number, and the licensee shall report the gallonage each month with reference to such number.

Each special fuel L.P.G. distributor, dealer, or user may elect to measure L.P.G. for the tax purposes either temperature compensated to 60° F, or without temperature compensation. If the special fuel L.P.G. distributor, dealer or user elects to measure L.P.G. temperature compensated to 60° F for tax purposes, the L.P.G. distributor, dealer or user must use meters which are of an automatic temperature compensating type which shall compute gross gallons corrected to 60° F.

This rule is intended to implement Iowa Code section 452A.8.
[ARC 1805C, IAB 1/7/15, effective 2/11/15]

701—69.8(452A) Single license for each location. A single license is required for each separate place of business or location where L.P.G., L.N.G., or C.N.G. is delivered into the fuel supply tank of a motor vehicle. For reporting purposes (see rule 701—69.2(452A)), a licensee may file a separate return for each license; or, if arrangements have been made with the department, the licensee may file a consolidated return reporting all sales made at all locations for which a license is held. However, a consolidated return may not be used to combine dealer and user operations. All working papers used in the preparation of the information required must be available for examination by the department. All dealer or user operations at that location will be conducted under that license. A licensee may have a different type of license (dealer, user) for each separate location where L.P.G., L.N.G., or C.N.G. is dispensed. For instance, if a licensee holds an L.P.G., L.N.G., or C.N.G. dealer's license for location A and an L.P.G., L.N.G.,

or C.N.G. user's license for location B, the licensee may sell fuel to others or fuel the licensee's own vehicles at location A, but may only fuel the licensee's own vehicles at location B.

This rule is intended to implement Iowa Code section 452A.8.
[ARC 1805C, IAB 1/7/15, effective 2/11/15]

701—69.9(452A) Dealer's and user's license nonassignable. An L.P.G., L.N.G., or C.N.G. dealer's license or user's license cannot be assigned. The following nonexclusive situations will be considered an assignment:

1. A change in the name under which the licensee conducts business.
2. A change in the location where the business is conducted.
3. A sale of the business (even if the new owner(s) operates under the same business name).
4. A merger or other business combination which results in a new or different entity.

This rule is intended to implement Iowa Code section 452A.8.
[ARC 1805C, IAB 1/7/15, effective 2/11/15]

701—69.10(452A) Separate storage—bulk sales—highway use. If a person is operating as an L.P.G. dealer's or user's licensee and also makes bulk sales for nonhighway use, there must be separate storage for bulk sales and sales for highway. If any amount of L.P.G. in a storage facility is to be used directly from that storage for highway purposes or if the storage is connected to a device which is designed in such a way as to be able to fuel motor vehicles, all fuel dispensed from the storage shall be dispensed through licensed metered pumps. Tax will be paid on the fuel dispensed which is not exempt as evidenced by exemption certificates.

This rule is intended to implement Iowa Code section 452A.8.

701—69.11(452A) Combined storage—bulk sales—highway sales or use. If a person is operating as an L.P.G. dealer's or user's licensee, L.P.G. may be dispensed for bulk nontaxable sales and for taxable highway sales from the same storage if, and only if, the following requirements are complied with:

1. All pumps which are of such a design to be able to fuel motor vehicles must be licensed, sealed, metered, and inspected as provided in rule 701—69.5(452A).
2. All fuel passing through the pumps is taxed unless supported by exemption certificates.
3. All pumps which are not licensed, sealed, metered, and inspected must be of such a design that it is impossible to use them to place fuel into the fuel supply tank of a motor vehicle.
4. Accurate records must be kept showing all purchases of fuel and all nontaxable bulk sales of fuel.

All L.P.G. which is placed in this combined storage is presumed to be for highway use and taxable unless supported by exemption certificates (for fuel passing through the licensed pumps) or detailed records showing bulk sales for nonhighway use or to other users or dealers (for fuel passing through the nonlicensed pumps). (See 1968 O.A.G. 592.) If at any time the licensee fails to comply with the requirements of this rule, separate storage for taxable sales and nontaxable bulk sales will be required under rule 701—69.10(452A).

This rule is intended to implement Iowa Code section 452A.8.

701—69.12(452A) Exemption certificates. If L.P.G. is dispensed from metered highway storage for other than highway purposes, an exemption certificate must be completed by the seller and signed by the purchaser. The certificate is to be retained by the dealer or user. The exemption certificate must include, but not be limited to, the following information: the date, the seller's name, the seller's dealer (user) license number, the invoice number covering the fuel sold (if sold by a dealer), an indication of the use to which the fuel will be put, and the name, address, and signature of the purchaser (user). The exemption certificate will be provided by the department or a dealer or user may provide the exemption certificate provided it contains all information required by the director.

These exempt sales of L.P.G. from metered highway storage shall be limited to the following uses:

1. Placed directly into a fuel supply tank which is connected to the heating or cooling unit installed on a highway “reefer” unit, provided the fuel supply tank is not connected nor has provisions for connection directly or indirectly to the power source of the highway motor vehicle.

2. Placed directly into the fuel supply tank of a nonhighway motor vehicle.

3. L.P.G. placed into carry-out containers.

All other sales for other than highway use must be from bulk storage and not from metered highway storage. (See rule 701—68.13(452A), sales tax.)

This rule is intended to implement Iowa Code section 452A.8.

701—69.13(452A) L.P.G. sold to the state of Iowa, its political subdivisions, contract carriers under contract with public schools to transport pupils or regional transit systems.

69.13(1) If L.P.G. is sold to the state of Iowa, its agencies, a political subdivision of the state, or a regional transit system for public use, or a use specified in Iowa Code section 452A.57(11), and placed in storage, it may be sold tax-free. Fuel sold by a dealer and delivered directly into the fuel supply tank of a motor vehicle must be sold tax-paid. Since the L.P.G. delivered into storage is not subject to tax, the governmental unit or regional transit system need not be licensed as a special fuel user. However, if the L.P.G. is used by a governmental unit or regional transit system for other than “public purposes,” or a purpose specified in Iowa Code section 452A.57(11), it must obtain a user’s license and pay the tax on all highway L.P.G. used from the storage.

69.13(2) L.P.G. sold to a contract carrier under contract with public schools to transport pupils. When special fuel is sold directly to contract carriers who have a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school, the fuel shall be sold tax-paid.

If the contract carrier is licensed as an L.P.G. fuel dealer or user, the licensee may buy the fuel tax-free, but the tax must be remitted on the monthly dealer or user return.

Any contract carrier who has paid the tax is entitled to a refund. A refund requested by contract carriers will be reduced by the applicable sales tax, unless otherwise exempt. All contract carriers must apply to the department for a refund registration even if they currently hold a motor fuel tax license.

The refund will be allowed pursuant to the provisions of 701—subrule 68.8(4).

This rule is intended to implement Iowa Code sections 452A.3 and 452A.17.

701—69.14(452A) Refunds. Refunds of taxes paid on L.P.G. used for other than highway use are available. See rule 701—68.8(452A). The refunds are available if the tax has been paid, the L.P.G. is used other than to propel motor vehicles, the person requesting the refund has a refund permit, and the claim is filed within the appropriate time and in the appropriate manner. The income tax credit set forth in rule 701—68.12(452A) shall apply equally to special fuel.

This rule is intended to implement Iowa Code section 452A.17.

701—69.15(452A) Notice of meter seal breakage. Whenever a meter is required under Iowa Code chapter 452A, pursuant to the director’s power granted under Iowa Code section 452A.59, and said meter is required to be sealed by Iowa Code chapter 452A, (C.N.G. or L.P.G. dealer and user meters) the department must be notified within 24 hours of the breaking of the seal for any reason. Notice shall contain, but not be limited to, the following information:

1. The name, address, and license number of the person who controls the meter.
2. The meter number.
3. The type of fuel pumped through the meter.
4. The date of seal breakage.
5. The name and address of the person(s) responsible for the seal breakage.
6. The reason for seal breakage.
7. The meter reading before seal breakage.
8. The meter reading after the meter is resealed.
9. The signature of the person who controls the meter.

For reporting purposes, the meter shall be considered two meters, one before the seal breakage and one after, and should be reported on that basis, noting the seal breakage on the return. The meter readings of the meter before the seal breakage shall be reported by meter number as usual. The meter readings after the meter was resealed shall be reported by using the meter number plus the letter "A." The two readings must appear on the same return schedule.

This rule is intended to implement Iowa Code sections 452A.3 and 452A.8 as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code sections 452A.59 and 452A.62.

701—69.16(452A) Location of records—L.P.G. or C.N.G. users and dealers. The records required to be prepared and kept by L.P.G. or C.N.G. dealers and users under Iowa Code section 452A.10 and 701—subrule 67.3(5) must be maintained at the location that appears on the license unless the following conditions are met:

69.16(1) If the licensee has more than one license, all of the records for each separate license may be kept at a central location so long as the records for each license are kept separated.

69.16(2) The central location where the records are kept is within the state unless:

a. The licensee agrees to bring the records back into the state when requested to do so by the department for purposes of audit, or

b. The licensee agrees to pay the cost (as defined in rule 701—67.4(452A)) of an out-of-state audit. This rule is intended to implement Iowa Code sections 452A.10 and 452A.74(2).

All rules in 701—Chapters 67 and 68 apply if not specifically stated in this chapter.

The rules in 701—Chapters 67, 68, and 69 are effective for periods beginning on or after January 1, 1996.

See 701—Chapters 63, 64 and 65 for rules in effect on or prior to December 31, 1995.

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CHAPTER 230
EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND
OTHER PERSONS ENGAGED IN PROCESSING

Rules in this chapter include cross references to provisions in 701—Chapters 15, 18 and 26 that were applicable prior to July 1, 2004.

701—230.1 Reserved.

701—230.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing. An expanded definition of “processing” is allowed to manufacturers of food products for human consumption using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services. For the purposes of this rule, the rental or leasing of tangible personal property is treated as the furnishing of a taxable service and not as the sale of tangible personal property.

230.2(1) Rescinded IAB 1/2/19, effective 2/6/19.

230.2(2) The following activities constitute processing when performed by a manufacturer to create food products for human consumption. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

a. Treatment of material that changes its form, context, or condition in order to produce a marketable food product for human consumption. “Special treatment” of the material to change its form, context, or condition is not necessary to lawfully claim the exemption. Examples of “treatment” which would not be “special” are the following: the washing, sorting and grading of fruits or vegetables; the washing, sorting, and grading of eggs; and the mixing or agitation of liquids. By way of contrast, sterilization would be “special treatment.”

b. Maintenance of the quality or integrity of the food product and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating which holds the food product at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or to hold the food product in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food. Also, processing of food products for human consumption does not cease when the food product is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to maintain or to change a temperature necessary to keep the product marketable is exempt from tax.

c. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food product is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

d. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of a food product. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any taxable service used to power equipment which cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food samples for testing would be exempt from tax. Finally, electricity used to power “bug lights” or other insect-killing equipment used in areas where food products are manufactured or stored would be exempt from tax.

e. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in the formation of packaging for marketable food products for human consumption is exempt from tax. For example, electricity used in plastic bottle-forming machines by a food manufacturer is exempt from

tax if the plastic bottles will be used to hold a marketable food product, such as milk. Any electricity, steam, or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

f. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in placement of the food product into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food products into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

g. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to move material which will become a marketable food product or used to move the marketable food product itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or food product and taxable services used in door openers which open doors for forklifts or other devices moving the material or product. Any loading dock which is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food products to a loading dock is exempt from tax. If a food product is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

This rule is intended to implement Iowa Code section 423.3(49).
[ARC 4218C, IAB 1/2/19, effective 2/6/19; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.3(423) Services used in processing. Electricity, steam, or any taxable service is used in processing only if the service is used in any operation which subjects raw material to some special treatment which changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing:

230.3(1) The sales price from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The sales price is to be distinguished from that of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants, warehouses, or offices. The latter sales price would be taxable.

230.3(2) The sales price from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax. See *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission*, 81 N.W.2d 437 (Iowa 1957).

230.3(3) Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be “used in processing” and, therefore, its sales price would be subject to tax. See *Fischer Artificial Ice, supra*.

Measurement of taxable and nontaxable use of electricity and steam. The exemption provided in the case of electricity or steam applies only upon the sales price from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam which is consumed for taxable purposes. When practical, electricity or steam consumed as power or used directly in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam which is consumed for purposes or under conditions in which the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. Reference 701—subrule 15.3(2). The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser.

When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code section 423.3(50).
[ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.4(423) Chemicals, solvents, sorbents, or reagents used in processing. Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail shall be exempt from sales and use tax. For the purpose of this processing exemption rule, free newspapers and shoppers' guides are considered to be retail sales. See 701—Chapter 211 for definition of the words “chemicals,” “solvents,” “sorbents,” and “reagents.”

For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction and, as such, is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property intended to be ultimately sold at retail.

To qualify for this exemption, all of the following conditions must be met:

1. The item must be a chemical, solvent, sorbent, or reagent.
2. The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing as defined in referenced rule 701—18.29(422,423).
3. The processing must be performed on tangible personal property intended to be sold ultimately at retail.
4. The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

This rule is intended to implement Iowa Code section 423.3(51).
[ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases that are similar to argon. An “inert gas” is any gas that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases that are not inert. These sales are exempt only if the gas is purchased by a “manufacturer,” for use in “processing,” as those terms are defined in subrules 230.15(3) and 230.15(4).

This rule is intended to implement Iowa Code section 423.3(52).
[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter; ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.6(423) Sale of electricity to water companies. The sales price from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, which is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, “river” means a natural body of water or waterway that is commonly known as a river. “Well,” for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain oil, water, gas, etc.; or a shaft or excavation in the earth, in mining, from which run branches. *Pacific Gas and Electric Company v. Hufford*, 319 P.2d 1033, 1040 (Calif. 1957), citing Webster's New International Dictionary, 2nd ed., unabridged.

This rule is intended to implement Iowa Code section 423.3(53).
[ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.7(423) Wind energy conversion property. The sales price from the sale of property used to convert wind energy to electrical energy or the sales price from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy is exempt from tax.

For the purposes of this rule, “property used to convert wind energy to electrical energy” means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 423.3(54).
[ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.8(423) Exempt sales or rentals of core making and mold making equipment, and sand handling equipment. This rule is applicable to the period beginning on or after July 1, 2004.

230.8(1) Exempt sales and rentals of machinery and equipment. The sales price from sales or rentals of core making, mold making, and sand handling machinery and equipment directly and primarily used by a foundry in the mold making process is exempt from tax. For the purposes of this rule, a “foundry” is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment which may be exempt under this rule includes sand storage tanks, conveyers, patterns, mallor controllers, and sand mixers. A nonexclusive list of items which would not be exempted by this rule includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold making process are not exempted from tax by this rule. For the purposes of this rule, core making, mold making, and sand handling equipment also include replacement parts necessary for the operation of the equipment which is used directly and primarily by a foundry in the mold making process. See subrule 230.14(2) for definitions of “directly used,” “equipment,” and “machinery,” and see Iowa Code section 423.3(47) “d” for definitions of “replacement part” and “supplies.”

230.8(2) Exempt sales of fuel and electricity. The sales price from sales of fuel used in creating heat, power, or steam for, or used for generating electric current for, or electric current sold for use in machinery or equipment the sale or rental of which is exempt under subrule 230.8(1) is exempt from tax.

230.8(3) Exempt design and installation services. The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule 230.8(1) is exempt from tax. Reference rule 701—26.16(422) for characterizations of the words “installation” and “electronic installation.”

This rule is intended to implement Iowa Code section 423.3(82).
[ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.9(423) Chemical compounds used to treat water. Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds which are used to treat water that is not sold at retail or which are not used directly in processing shall be subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and also becomes a part of the finished product, shall be exempt from tax.

This rule is intended to implement Iowa Code section 423.3(51).
[ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.10(423) Exclusive web search portal business and its exemption. Effective on or after July 1, 2007, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

230.10(1) Definitions. For the purpose of this exemption, the following definitions apply:

a. “Affiliate” means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

b. "Control" means any of the following:

(1) In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.

(2) In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.

(3) In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

c. "Web search portal business" means an entity among whose primary businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; and to provide internet access, navigation, and search functionalities.

230.10(2) Criteria to claim exemption. The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the internet, including but not limited to research and development to support capabilities to organize information and to provide internet access, navigation, and search.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

b. Aggregation to meet requirements. A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.10(2)"a"(1) to (4) above, by aggregating various Iowa investments and other requirements with its business affiliates.

c. Failure to meet investment qualifications. If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

230.10(3) Exempt purchases. Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph "b" above;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal. This equipment includes, but is not limited to, exterior dedicated business-owned power substations, backup power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the web search portal business that is used in the backup power generation system and in all items listed in paragraphs “*a*” to “*f*.” This provision includes the fuel used in backup generators that may be located outside of the building that are used if power is interrupted to ensure the web search portal continues operation; and

h. Electricity purchased for use in operating the web search portal.

230.10(4) *Limitation of exemption.* The purchases or leases of the items listed in subrule 230.10(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose not related to operations or maintenance. Examples of items included in this limitation include but are not limited to:

a. Electricity not used for operation or maintenance, such as in the office or employee break room;

b. Tangible personal property used in areas of the web search portal facility that is not used for operation or maintenance, such as cleaning equipment and supplies;

c. Building materials that become part of real property, such as concrete, steel or roofing; and

d. Tangible personal property that becomes part of real property, such as a dishwasher.

230.10(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3(92).

[ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.11(423) Web search portal business and its exemption. Effective on or after July 1, 2008, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

230.11(1) *Definitions.* For the purpose of this exemption, the following definitions apply:

“*Affiliate*” means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

“*Control*” means any of the following:

1. In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.

2. In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.

3. In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

“*Web search portal business*” means an entity whose business among other businesses is to provide a search portal to organize information; to access, search, and navigate the Internet, including research and development to support capabilities to organize information; or to provide Internet access, navigation, or search functionalities.

230.11(2) *Criteria to claim exemption.* The following governs whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. Requirements. All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the Internet, including but not limited to research and development to support capabilities to organize information and to provide Internet access, navigation, and search functionality.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

b. Aggregation to meet requirements. A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.11(2)“a”(1) to (4) by aggregating various Iowa investments and other requirements with its business affiliates.

c. Failure to meet investment qualifications. If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

230.11(3) Exempt purchases. Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “b”;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal business;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations; and back-up power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs “a” to “f.” This includes the fuel used in the back-up generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and

h. Electricity purchased for use in operating the web search portal business.

230.11(4) Limitation of exemption. The purchase or lease of the items listed in subrule 230.11(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be

built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

230.11(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1.

701—230.12(423) Large data center business exemption. Effective on or after July 1, 2009, a data center business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the data center business.

230.12(1) *Definitions.* For the purpose of this rule, the following definitions apply:

“*Data center*” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge.

“*Data center business*” means an entity whose business, among other businesses, is to operate a data center.

230.12(2) *Criteria to claim exemption.* The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a data center business:

a. Requirements. All of the following requirements must be met by a data center business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a data center.

(2) The data center business shall have a physical location in Iowa that is, in the aggregate, at least 5,000 square feet in size used for the operation and maintenance of the data center.

1. A data center facility includes, but is not limited to, the centralization, storage, management and dissemination of data and information.

2. The physical location shall include the mechanical and electrical systems, redundant or backup power supplies, redundant data communications connections, environmental controls, and fire suppression systems for the data center business. The data center business’s physical location may also include a restricted access area employing advanced physical security measures such as video surveillance systems and card-based security or biometric security access systems.

(3) The data center business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The data center business shall comply with the applicable sustainable design and construction standards in Iowa Administrative Code 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

b. Failure to meet investment qualifications. If a data center business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the data center business, the data center business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the data center business is required to pay all sales and use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

230.12(3) *Exempt purchases.* Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying data center business:

- a. Computers and equipment that are necessary for the maintenance and operation of the data center business;
- b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the data center business;
- c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “b”;
- d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the data center business;
- e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the data center business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations and backup power generation systems, battery systems, and related infrastructure;
- f. All equipment used in the racking system, including cabling and trays;
- g. Fuel purchased by the data center business that is used in the backup power generation system and in all items listed in paragraphs “a” to “f.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the data center business continues operation; and
- h. Electricity purchased for use in operating the data center business.

230.12(4) *Limitation of exemption.* The purchase or lease of the items listed in subrule 230.12(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example:

- a. The purchase of electricity for use in the office portion of the data center business facility would not be exempt.
- b. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not exempt from Iowa sales and use tax.

230.12(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2009 Iowa Acts, Senate File 478, sections 197 through 202.

[ARC 8602B, IAB 3/10/10, effective 4/14/10]

701—230.13(423) Data center business sales and use tax refunds. Effective on or after July 1, 2009, data center businesses in Iowa meeting certain criteria may make an annual application to the department for a refund of 50 percent of the sales and use tax paid on the sales price of certain computers, equipment, fuel, and electricity used in the operation of the data center business.

230.13(1) *Definitions.* For the purpose of this rule, the following definitions apply:

“*Data center*” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge.

“*Data center business*” means an entity whose business, among other businesses, is to operate a data center.

“*Refund year*” means the year beginning with the date of initial site preparation of the data center facility.

“*Rehabilitation*” means a process of substantial repair, remodeling, or alteration, which may include but is not limited to upgrading mechanical systems, plumbing, roofing, wiring, windows, and heating and cooling systems, and performing significant interior or exterior structural modification. Although

they may be included as part of an overall rehabilitation project, singular actions such as the installation of a new information system or cosmetic changes to the interior or exterior appearance of a building do not, in and of themselves, constitute a rehabilitated building.

230.13(2) Basis and criteria for refunds. The amount, type, and length of refunds available to data center businesses depend upon the dollar amount of investment made, the type of construction undertaken, and the size in square feet of the facility.

a. Investment of \$136 million to \$200 million. Data center businesses which make investments in an Iowa facility of \$136 million to \$200 million in the first six years of operations and which facility contains at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first seven years of operation.

b. Investment of \$10 million to \$136 million—new construction. Data center businesses which make investments of \$10 million to \$136 million in the first six years of operations in the new construction of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

c. Investment of \$5 million to \$136 million—rehabilitation. Data center businesses which make investments of \$5 million to \$136 million in the first six years of operations in the rehabilitation of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

d. Investment of \$1 million to \$10 million—new construction. Data center businesses which make investments of \$1 million to \$10 million in the first three years of operations in the new construction of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

e. Investment of \$1 million to \$5 million—rehabilitation. Data center businesses which make investments of \$1 million to \$5 million in the first three years of operations in the rehabilitation of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

230.13(3) Purchases eligible for refunds. Sales and leases of the following are eligible for a refund of 50 percent of the sales and use tax paid when sold or leased to a qualifying data center business:

a. Computers and equipment that are necessary for the maintenance and operation of the data center business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the data center business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “b”;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the data center business;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the data center business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations and backup power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the data center business that is used in the backup power generation system and in all items listed in paragraphs “a” to “f.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the data center business continues operation; and

h. Electricity purchased for use in operating the data center business.

230.13(4) Sustainable design standards. In order to claim the refunds detailed in subrule 230.13(3), paragraphs “a” through “h,” data center businesses must comply with the sustainable design and

construction standards as required by Iowa Administrative Code 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

230.13(5) Failure to meet investment qualifications. If a data center business claiming a refund of sales and use tax under this rule fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the data center business, the data center business will lose the right to claim the refund of sales and use tax. Immediately following the loss of the right to claim the refund of sales and use tax, the data center business is required to return the refund of sales and use tax paid on qualifying computers, equipment, fuel, and electricity, plus any and all applicable statutory penalty and interest due on the tax.

230.13(6) Limitation of refunds.

a. Use in operation or maintenance. The purchase or lease of the items listed in subrule 230.13(3) is only eligible for a refund of sales and use tax if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be eligible for a refund of sales and use tax if the item is to be used in the business for another purpose. For example:

(1) The purchase of electricity for use in the office portion of the data center business facility would not be eligible for a refund.

(2) The purchase of building materials that become real property would not be eligible for a refund. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be eligible for a refund of tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not eligible for a refund of Iowa sales and use tax.

b. State sales tax only. Refunds issued under this rule may not exceed 5 percent of the sales price of computers and equipment listed in subrule 230.13(3) and the fuel used to create heat, power and steam for processing or generating electrical current or from the sales price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility. The refund will not include any local option sales and services taxes.

c. Qualifying dates for fuel and electricity refund. To qualify for the 50 percent refund, the following must be on or after the first day of the first month through the last day of the last month of the refund year:

(1) The dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity;

(2) The dates of the sale or furnishing of fuel for purposes of commercial energy; and

(3) The delivery of the fuel used for purposes of commercial energy.

230.13(7) Form and filing requirements.

a. Form. The owner of a data center business seeking a refund of sales and use tax imposed upon the sale or lease of any qualifying computers, equipment, fuel, and electricity must complete and file with the department Form IA 843, Claim for Refund. All of the information on the Claim for Refund must be completed.

b. Due date. The refund request form must be filed with the department no later than one year after the purchase of the qualifying computers, equipment, fuel, or electricity and within three months after the end of the refund year. The refund for sales and use tax begins with purchases made on and after July 1, 2009, or on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

c. Date required. The refund request must include detailed schedules of the items being claimed including dates of purchase of tangible personal property, amount of purchase, and tax paid. The purchase of fuel and electricity must be computed and documented separately from other purchases.

d. Affidavit. In addition to completing and filing Form IA 843, Claim for Refund, the owner of a data center business seeking a refund as specified in this rule must also complete and file with the department an affidavit certifying that qualifications for the refund have been met. The affidavit must be approved by the department before a refund claim can be reviewed. The following format must be used for the affidavit:

Sales Tax Refund Affidavit

NAME OF AFFIANT

ADDRESS OF AFFIANT



AFFIDAVIT FOR DATA CENTER BUSINESS

The undersigned duly swears that the named data center business complies with criteria to be entitled to refund of sales tax as required in Iowa Code section 423.4 as follows:

1. The facility is a data center business as defined by Iowa Code section 423.4(8) or 423.4(9);
2. The data center business facility will be a minimum of 5,000 square feet, as applicable, located upon Iowa land; and located at _____; with total square footage of _____;
3. The data center business will make an investment of (check only one):
 - \$136 million to \$200 million within the first six years of operation (refund available for first seven years).
 - \$10 million to \$136 million for new construction within the first six years of operation (refund available for first ten years).
 - \$5 million to \$136 million for rehabilitation of an existing facility within the first six years of operation (refund available for first ten years).
 - \$1 million to \$10 million for new construction within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
 - \$1 million to \$5 million for rehabilitation of an existing facility within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
4. The data center business facility will be constructed in accordance with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 and established by the building code commissioner pursuant to Iowa Code section 103A.8B;
5. Construction of the data center business facility was commenced on or after July 1, 2009; and the date of the initial site preparation or building rehabilitation was _____; and
6. Purchases of qualifying computers, equipment, fuel or electricity were made on or after July 1, 2009.

The undersigned duly swears that he or she is the owner of the qualifying data center business or that the undersigned is the authorized representative of the qualifying data center business and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the qualifying data center business has met all of the requirements as contained herein.

Name of Affiant

Date

Position of Affiant

This rule is intended to implement Iowa Code section 423.4 as amended by 2009 Iowa Acts, Senate File 478, sections 198 through 202.

[ARC 8602B, IAB 3/10/10, effective 4/14/10; ARC 5840C, IAB 8/11/21, effective 9/15/21]

701—230.14(423) Exemption for the sale of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies used for certain manufacturing purposes. Rules 701—230.14(423) to 701—230.20(423) exempt the sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies when used in an exempt manufacturing purpose. Rule

701—230.21(423) exempts the purchase of fuel used in such computers, computer peripherals, machinery, and equipment. Rule 701—230.22(423) exempts the service of designing or installing new industrial machinery and equipment.

230.14(1) *Generally.* The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax if the property is any of the following:

- a. Directly and primarily used in processing by a manufacturer (see rule 701—230.15(423)).
- b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (see rule 701—230.16(423)).
- c. Directly and primarily used in research and development of new products or processes of processing (see rule 701—230.17(423)).
- d. Computers or computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise (see rule 701—230.18(423)).
- e. Directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).
- f. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (see rule 701—230.20(423)).
- g. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, computer peripherals, machinery, or equipment used in an exempt manner described in paragraph “a,” “b,” “c,” “e,” or “f” (see rule 701—230.21(423)).

230.14(2) *Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.*

a. *Computers and computer peripherals.* “Computer” and “computer peripheral” mean the same as defined in Iowa Code section 423.1.

b. *Machinery.* “Machinery” is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. Machinery also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery.

c. *Equipment.* In general usage, “equipment” refers to devices or tools used to produce a final product or achieve a given result. Exempt “equipment” under these rules includes tables on which property is assembled on an assembly line, if those tables are directly and primarily used in processing by a manufacturer.

d. *Replacement parts.* “Replacement part” means the same as defined in Iowa Code section 423.3(47)“d.”

e. *Supplies.* “Supplies” means the same as defined in Iowa Code section 423.3(47)“d.”

f. *Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.* “Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies” means tangible personal property that is incorporated into a computer, computer peripheral, machinery, equipment, replacement part, or supply when the computer, computer peripheral, machinery, equipment, replacement part, or supply is constructed or assembled.

g. *Exclusions.* Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—230.14(423) to 701—230.20(423) regardless of how the property is used.

- (1) Land.
- (2) Intangible property.
- (3) Hand tools. “Hand tool” means a tool that can be held in the hand or hands and is powered by human effort.

(4) Point-of-sale equipment, computers, and computer peripherals. “Point-of-sale equipment, computers, and computer peripherals” means input, output, and processing equipment, computers, and computer peripherals used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs. Point-of-sale equipment, computers, and computer peripherals do not include equipment, computers, and computer peripherals used primarily for depositing or withdrawing funds from financial institution accounts.

(5) Certain centrally assessed industrial machinery, equipment, computers, and computer peripherals. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423).

(6) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—230.14(423) to 701—230.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

h. Examples. When used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423), the following items may be exempt computers, computer peripherals, machinery, equipment, replacement parts, or supplies. This list is not all-inclusive.

- (1) Coolers, including coolers that do not change the nature of materials stored in them.
- (2) Equipment that eliminates bacteria.
- (3) Palletizers.
- (4) Storage bins.
- (5) Property used to transport raw, semifinished, or finished goods.
- (6) Vehicle-mounted cement mixers.
- (7) Self-constructed machinery and equipment.
- (8) Packaging and bagging equipment, including conveyer systems.
- (9) Equipment that maintains an environment necessary to preserve a product’s integrity.
- (10) Equipment that maintains a product’s integrity directly.
- (11) Quality control equipment.
- (12) Water used for cooling.

230.14(3) *Leased and rented property.* The exemptions under rules 701—230.14(423) to 701—230.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, computer peripherals, machinery, equipment, replacement parts, or supplies may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—230.14(423) to 701—230.20(423). Additionally, a lessor’s purchase of computers, computer peripherals, machinery, equipment, replacement parts, or supplies for lease or resale may be an exempt sale for resale under Iowa Code section 423.3(2).

230.14(4) *Record keeping.* Individuals claiming an exemption must always be able to prove they qualify for the exemption. To claim the exemptions described in this rule, purchasers must be able to prove that computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423). When both exempt and nonexempt machinery and equipment are used in the same facility, replacement parts and supplies used in the machinery and equipment are exempt under these rules only to the extent the purchaser can prove which replacement parts

and supplies were used in the exempt machinery and equipment. Detailed, contemporaneous records should be maintained to verify that qualifying property is used for an exempt purpose. The precise records required may vary from purchaser to purchaser. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are not exempt under rules 701—230.14(423) to 701—230.20(423) if the property is not used for an exempt purpose.

This rule is intended to implement Iowa Code section 423.3(47) as amended by 2020 Iowa Acts, House File 2641.

[ARC 2768C, IAB 10/12/16, effective 11/16/16; see Rescission note at end of chapter; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer.

230.15(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));
- b. Directly used (see subrule 230.15(2));
- c. Primarily used (see subrule 230.15(2));
- d. Used in processing (see subrule 230.15(3)); and
- e. Used by a manufacturer (see subrule 230.15(4)).

230.15(2) Directly and primarily used.

a. *Directly used.*

(1) Generally. Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;
2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and
3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.
2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.
3. Property used by administrative, accounting, or personnel departments.
4. Property used by security, fire prevention, first aid, or hospital stations.
5. Property used in communications or safety.

b. *Primarily used.* The primary use of property is the activity or activities for which the property is used more than half of the time.

230.15(3) Processing.

a. *Generally.* “Processing” and “receipt or producing of raw materials” mean the same as defined in Iowa Code section 423.3(47) “d.” With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

b. The beginning of processing. Processing begins with a processor's receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. The completion of processing. Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor's packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. Examples of the beginning, intervening steps, and the ending of processing. Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A's employees cut the trees, transport the logs to Company A's facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A's sawmill. The walnut trees are real property while they are growing. Thus, no "production of raw materials" has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A's factory. However, if the transport vehicles are "vehicles subject to registration," the vehicles are not exempt from the fee for new registration under this rule (see subparagraph 230.14(2) "g"(6)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C's customers by a common carrier that picks up the beer at Company C's facility. Company C's activities of placing the beer into bottles, cans, and kegs, storing the beer after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are part of processing.

230.15(4) Manufacturer.

a. Generally. Iowa Code section 423.3(47) "d"(4) abrogates *The Sherwin-Williams Company v. Iowa Department of Revenue*, 789 N.W.2d 417 (Iowa 2010).

b. Definitions.

"Construction contracting" means engaging in or performing a construction contract as defined in rule 701—219.8(423).

"Manufacturer" means the same as defined in Iowa Code section 423.3(47).

"Transporting for hire" means the service of moving persons or property for consideration, including but not limited to the use of a "personal transportation service" as that term is described in Iowa Code section 423.2(6) and rule 701—26.80(422,423).

c. Primarily engaged in an excluded activity. A person is not considered a manufacturer if the person is "primarily engaged" in any of the activities listed in Iowa Code section 423.3(47) "d"(4)(c). A person is "primarily engaged" in an activity if the person generates more than 50 percent of the person's gross revenue from its operating business from, or spends more than 50 percent of the person's time engaging in, any combination of those activities during the 12-month period after the date the person engages in one of the listed activities.

EXAMPLE 1: Company A makes widgets and repairs widgets damaged during use by its customers. Company A generates 70 percent of its revenue making widgets, and its employees spend 80 percent of their time making widgets. The remainder of its revenue and time are attributed to widget repair. Company A is not primarily engaged in “repairing tangible personal property or real property” (Iowa Code section 423.3(47) “d”(4)(c)(ii)) or any of the other enumerated activities from Iowa Code section 423.3(47) “d”(4)(c) because only 30 percent of its revenue and 20 percent of employee time are attributed to widget repair.

EXAMPLE 2A: Company B makes concrete and sells it for resale or directly to individual consumers without entering into a construction contract. Company B generates 100 percent of its revenue from such sales of concrete, and its employees spend 95 percent of their time making concrete during the 12-month period after it claims to be a manufacturer. Company B is not excluded from being considered a manufacturer because Company B’s production and sale of concrete are not part of construction contracting (Iowa Code section 423.3(47) “d”(4)(c)(i)).

EXAMPLE 2B: Company B begins construction contracting to sell its concrete. After 12 months of construction contracting (Iowa Code section 423.3(47) “d”(4)(c)(i)), Company B generates 55 percent of its revenue from construction contracting and 45 percent from resale sales or sales directly to consumers and spends 40 percent of its time performing construction contracts. Company B is no longer considered a manufacturer starting 12 months from the date it began construction contracting because it generates more than 50 percent of its gross revenue from construction contracting.

230.15(5) Manufacturing.

a. Activities commonly understood to be manufacturing. “Manufacturing” means the same as defined in Iowa Code section 423.3(47).

b. Premises primarily used to make retail sales.

(1) A person engaged in activities on a premises primarily used to make retail sales is not engaged in manufacturing at that premises and cannot claim this exemption for items used at that premises.

(2) The following are “premises primarily used to make retail sales”:

1. Restaurants.
2. Mobile food vendors, vehicles, trailers, and other facilities used for retail sales.
3. Retail bakeries.
4. Prepared food retailers establishments.
5. Bars and taverns.
6. Racing and gaming establishments.
7. Racetracks.
8. Casinos.
9. Gas stations.
10. Convenience stores.
11. Hardware and home improvement stores.
12. Grocery stores.
13. Paint or paint supply stores.
14. Floral shops.
15. Other retail stores.

c. Rebuttable presumption. In addition to the premises listed in paragraph 230.15(5) “b,” a premises shall be presumed to be “primarily used to make retail sales” when more than 50 percent of the gross sales of a business and its affiliates attributable to the premises are retail sales sourced to the premises under Iowa Code section 423.15(1) “a.”

(1) For purposes of paragraph 230.15(5) “c”:

“Attributable to the premises” means sales of tangible personal property at the premises or shipped from the premises to another location for sale or eventual sale.

“Premises” means any contiguous parcels, as defined in Iowa Code section 426C.1, which are owned, leased, rented, or occupied by a business or its affiliates and are operated by that business or its affiliates for a common business purpose. A “common business purpose” means the participation in any stage of manufacturing, production, or sale of a product. Whether a business is operating for a

common business purpose is a fact-based determination that will depend on the individual circumstances at issue.

(2) Calculation. If a business seeking to claim this exemption makes retail sales sourced to a premises under Iowa Code section 423.15(1)“a” and the location is not one of those listed in paragraph 230.15(5)“b,” the business shall determine whether a specific premises are primarily used to make retail sales by determining the amount of retail sales sourced to the premises under Iowa Code section 423.15(1)“a” during the 12-month period after the date the tangible personal property claimed to be exempt is used at the premises. The calculation should be done as follows:

$$\frac{\text{Retail sales sourced to the premises}}{\text{Gross sales attributable to the premises}}$$

If the result is less than or equal to 0.5 (or 50 percent), the premises is not primarily used to make retail sales. If the result is greater than 0.5, the premises is presumed to be primarily used to make retail sales.

(3) Rebutting the presumption. If a premises is presumed to be primarily used to make retail sales under subparagraph 230.15(5)“c”(2), a manufacturer may prove to the department the premises is not primarily used to make retail sales by providing information regarding the following nonexclusive list of factors to support its assertion:

1. The square footage of the premises allocated to the manufacturing process.
2. The number of employees or employee work hours allocated to the manufacturing process.
3. The wages and salaries of employees working at the premises allocated to the manufacturing process.
4. The cost of operating the premises attributable to the manufacturing process.

The department’s determination shall be a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE 1: Company A owns a centralized facility where it makes widgets and distributes them to several of its own retail stores for retail sale. The retail stores are not contiguous to the centralized facility. Company A purchases a widget maker for its centralized facility and seeks to claim this exemption. Because the widgets sold are sold at the retail stores, the sales of those widgets are sourced to the retail stores where the sales occur. Therefore, none of the sales are retail sales sourced to the centralized facility. Because Company A does not make retail sales sourced to the centralized facility, the centralized facility is not primarily used to make retail sales.

EXAMPLE 2A: Company A makes widgets at its premises in Iowa, known as Location 1. Company A sells its widgets to retailers for resale and also makes some retail sales that are sourced to Location 1.

Twelve months ago, Company A purchased and put into use at Location 1 a new molding machine for making new widgets. Company A paid tax on the sales price of the molding machine at the time of purchase. During the 12-month period after Company A first used the molding machine, 2 percent of the gross sales attributable to Location 1 were from retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to retailers.

Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was first used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales. Therefore, if Company A’s use of the molding machine satisfies all other requirements of the exemption, Company A’s activities occurring on the premises constitute manufacturing.

EXAMPLE 2B: Same facts as in Example 2A, except that Company A also owns a second, noncontiguous premises in Iowa, known as Location 2. At Location 2, Company A operates a factory that makes the same types of widgets as Location 1. Company A also makes substantial retail sales that are sourced to Location 2.

Twelve months ago, Company A purchased new molding machines for Location 1 and Location 2. Company A paid tax on the sales price of the molding machines. During this 12-month period, 2 percent

of the gross sales attributable to Location 1 were retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to distributors. Also during this 12-month period, 60 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2 and 40 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

With respect to Location 1, the outcome is the same as in Example 1A. Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales.

However, Location 2 is presumed to be primarily used to make retail sales because more than half of the gross sales attributable to Location 2 are from retail sales sourced to Location 2.

EXAMPLE 2C: Same facts as in Example 2B. Company A decides to purchase new molding machines for both Location 1 and Location 2. Relying on the exemption determinations for the prior year, Company A pays sales tax on the purchase price of the molding machine for Location 2 but tenders an exemption certificate for the purchase of the molding machine for Location 1 and does not pay sales tax on that transaction.

Twelve months pass since the new molding machines were used at their respective locations. At Location 1, the gross sales attributable to the premises and retail sales sourced to the premises remained the same. However, at Location 2, Company A experienced a decrease in on-site retail sales and an increase in distribution sales. Because of a shift in sales, 45 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2, and 55 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

Therefore, this year, Location 2 is no longer presumed to be primarily used to make retail sales because in the 12 months after the machine was used at Location 2, less than half of the gross sales attributable to Location 2 were from retail sales sourced to Location 2.

EXAMPLE 3A: Company A owns a premises on which it makes baseball bats. A portion of the premises is leased to Company B, which operates a retail store on the premises that sells clothing and is not commonly understood to be a manufacturer. Company A and Company B are unaffiliated entities.

Company A is seeking to purchase several new lathes to use in its bat production. In the last year, 95 percent of Company A's gross sales attributable to the premises came from selling bats to distributors, and 5 percent of Company A's gross sales attributable to the premises were from retail sales at a small on-site location. Also in the last year, 100 percent of Company B's gross sales attributable to the premises were from on-site retail sales.

Because Company A and Company B are not affiliated in any way, none of Company B's sales are attributable to Company A. Therefore, for purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3B: Same facts as in Example 3A, except that Company B is an affiliate of Company A.

The result is the same; while Company B is an affiliate of Company A, the premises are not being operated for a common business purpose because Company B is not selling any of the bats manufactured by Company A. Therefore, none of Company B's business is attributable to Company A. For purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3C: Same facts as in Example 3A, except that Company B is an affiliate of Company A and instead of operating a clothing store, Company B operates a sporting goods store where it sells some of the bats manufactured by Company A.

In this case, Company B's sales are attributable to Company A because both companies use the premises for a common business purpose: the sale of baseball bats manufactured by Company A. Therefore, the gross sales attributable to the premises of both Company A and Company B must be included in Company A's gross sales attributable to the premises. The premises will be presumed to be

primarily used to make retail sales if the combined retail sales by Company A and Company B that are sourced to the premises exceed 50 percent of the gross sales attributable to the premises.

EXAMPLE 4: Company A owns a premises not included in the list above at which it makes widgets. Company A sells 15 percent of its widgets by delivery to customers' homes, 30 percent to wholesalers, and the remaining 55 percent directly to customers who pick up widgets at the premises. Company A's premises is presumed to be primarily used to make retail sales.

Company A dedicates 75 percent of the square footage of the premises to the production of widgets, 20 percent to storage, and 5 percent to a loading dock. Company A employs a total of 50 people, 40 of whom work on the production floor making widgets. Company A's production staff accounts for 80 percent of its total wages and salaries paid to all employees. The cost of operating the widget production area accounts for 90 percent of Company A's total expenses. Upon claiming this exemption, Company A provides information satisfactory to the department to demonstrate these facts. Company A qualifies for the exemption.

230.15(6) *Replacement parts and supplies.*

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

This rule is intended to implement Iowa Code section 423.3(47) "a"(1).
[ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 4218C, IAB 1/2/19, effective 2/6/19; ARC 5099C, IAB 7/15/20, effective 8/19/20; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

230.16(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

- a.* Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));
- b.* Directly used (see subrule 230.15(2));
- c.* Primarily used (see subrule 230.15(2));
- d.* Used by a manufacturer (see subrule 230.15(4)); and
- e.* Used to maintain:
 - (1) A manufactured product's integrity;

- (2) Unique environmental conditions required for a manufactured product; or
- (3) Unique environmental conditions required for other computers, computer peripherals, machinery, equipment, replacement parts, or supplies directly and primarily used in processing by a manufacturer.

230.16(2) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47)“d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47)“d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

230.16(3) Example of property directly and primarily used to maintain integrity or unique environmental conditions. A manufacturer purchases a cooling system or heating system that qualifies as machinery. The manufacturer uses the system to directly and primarily maintain the proper temperature of other machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. The system is not used for the comfort of the workers. Because the system directly and primarily maintains the environmental conditions necessary for machinery and equipment directly and primarily used in processing, the system is exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47)“a”(2).

[ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing.

230.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a.* Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));
- b.* Directly used (see subrules 230.15(2) and 230.17(3));
- c.* Primarily used (see subrule 230.15(2)); and

d. Used in research and development (see subrule 230.17(2)) of:

- (1) New products; or
- (2) Processes of processing.

230.17(2) “Research and development” means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

230.17(3) Property is used “directly” in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

230.17(4) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “*d.*” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “*d.*” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing, or an exempt supply must itself be directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

230.17(5) Examples.

EXAMPLE A: Company A is a hybrid seed producer. Company A maintains a research and development laboratory for use in developing new varieties of corn seed. Company A purchases the following items for use in its research and development laboratory: a laboratory computer for processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and office furniture for use in the laboratory offices. The laboratory computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the office furniture are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the office furniture are not exempt from tax under this rule.

EXAMPLE B: Company B is a manufacturer of agricultural equipment. Company B is researching and developing a new tractor. Company B purchases materials to produce a prototype of its new tractor. The prototype tractor will be tested in various settings, including a laboratory and actual agricultural production. The materials used to produce the prototype tractor are exempt supplies directly and primarily used in research and production of new products. The sales price for the materials is exempt regardless of whether Company B sells the prototype tractor after testing, or if it scraps the prototype tractor after testing.

This rule is intended to implement Iowa Code section 423.3(47) “*a*”(3).

[ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.18(423) Exemption for the sale of computers and computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise. The sales price of computers and computer peripherals is exempt from sales and use tax when the computers and computer peripherals are used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise. The sales price of machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct

computers, computer peripherals, machinery, equipment, replacement parts, and supplies is not exempt under this rule.

230.18(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Computers or computer peripherals (see Iowa Code section 423.1);
- b. Used in processing or storage of data or information (see subrule 230.18(2)); and
- c. Used by:
 - (1) An insurance company (see subrule 230.18(3));
 - (2) A financial institution (see subrule 230.18(3)); or
 - (3) A commercial enterprise (see subrule 230.18(3)).

230.18(2) Processing or storage of data or information. All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be eligible for exemption from tax under this rule.

230.18(3) Insurance company, financial institution, or commercial enterprise.

a. *Insurance company.* “Insurance company” means the same as defined in Iowa Code section 423.3(47)“d.” Excluded from the definition of “insurance company” are benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

b. *Financial institution.* “Financial institution” means the same as defined in Iowa Code section 527.2.

c. *Commercial enterprise.* “Commercial enterprise” means the same as defined in Iowa Code section 423.3(47)“d.”

230.18(4) Exempt property. To qualify for exemption under this rule, tangible personal property must satisfy the definition of “computers” or “computer peripherals” contained in Iowa Code section 423.1. Other property, including machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies, is not exempt under this rule, even if the property is used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

230.18(5) Examples of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise. A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company’s building. Computer A transmits messages to the building’s heating and cooling systems, which tell the systems when to raise or lower the level of heating or air conditioning. Computer B is used to store patient records and to recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company’s employees to perform various additional tasks or to better perform work the employees can already do. Computer D uses various canned programs to accomplish this function. The final output of Computer A is neither stored nor processed information. Therefore, Computer A does not meet the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sales prices of Computers B, C, and D are exempt from sales and use tax as computers used in processing or storage of data or information by an insurance company.

This rule is intended to implement Iowa Code section 423.3(47)“a”(4).

[ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products.

230.19(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. Directly used (see subrule 230.15(2));

c. Primarily used (see subrule 230.15(2)); and

d. Used in:

(1) Recycling of waste products (see subrule 230.19(2)); or

(2) Reprocessing of waste products (see subrule 230.19(2)).

230.19(2) Recycling and reprocessing.

a. “Recycling” is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes, but is not limited to, the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

b. “Reprocessing” is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

c. Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another non-waste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

230.19(3) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “*d.*” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “*d.*” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products, or an exempt supply must itself be directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

230.19(4) Examples.

a. Computers, computer peripherals, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

c. A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

d. A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly

and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code sections 321.105A(2) “c”(24) and 423.3(47) “a”(5).
[ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.20(423) Exemption for the sale of pollution-control equipment used by a manufacturer. The sales price of pollution-control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer. Other equipment, and computers, computer peripherals, machinery, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies are not exempt from sales and use tax under this rule.

230.20(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Pollution-control equipment (see subrule 230.20(2)); and
- b. Used by a manufacturer (see subrule 230.15(4)).

230.20(2) “Pollution-control equipment” is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Other property, including replacement parts and supplies, is not exempt under this rule. Pollution-control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” Pollution-control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution-control equipment. However, pollution-control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility diverts wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an energy source in its manufacturing facility. The sales price of the pollution-control equipment used in the wastewater treatment facility is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “a”(6).
[ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.21(423) Exemption for the sale of fuel or electricity used in exempt property. The sales price of fuel or electricity consumed by computers, computer peripherals, machinery, or equipment that is exempt from sales and use tax under rule 701—230.14(423), 701—230.15(423), 701—230.16(423), 701—230.17(423), 701—230.19(423), or 701—230.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by replacement parts, supplies, computers, or computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such property is exempt under rules 701—230.14(423) to 701—230.20(423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer's power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) "b."
 [ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5798C, IAB 7/28/21, effective 9/1/21]

701—230.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment. The sales price from the services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

230.22(1) Required elements. To qualify for the exemption, the purchaser must prove the service is:

- a. A design or installation service (see subrule 230.22(2));
- b. Of new (see subrule 230.22(3)); and
- c. Industrial machinery or equipment (see subrule 230.22(4)).

230.22(2) Design or installation services include electrical and electronic installation. "Design or installation" services do not include any repair service.

230.22(3) "New" means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

230.22(4) Industrial machinery or equipment.

a. *Generally.* "Industrial machinery or equipment" means machinery or equipment, as defined in subrule 230.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer (see rule 701—230.15(423)).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer's product or to maintain unique environmental conditions for computers, computer peripherals, machinery, or equipment (see rule 701—230.16(423)).

(3) Property used directly and primarily in research and development of new products or processes of processing (see rule 701—230.17(423)).

(4) Property used directly and primarily in recycling or reprocessing of waste products (see rule 701—230.19(423)).

(5) Pollution-control equipment used by a manufacturer (see rule 701—230.20(423)).

b. *Exclusions.* The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

(1) Computers or computer peripherals (see Iowa Code section 423.1).

(2) Replacement parts (see Iowa Code section 423.3(47) "d").

(3) Supplies (see Iowa Code section 423.3(47) "d").

(4) Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see paragraph 230.14(2) "f").

230.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where the machine is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where the machine is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt

from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

[ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 5798C, IAB 7/28/21, effective 9/1/21]

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¹ Amendments to 230.5 (ARC 2349C, Item 7) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

² 230.14 to 230.22 (ARC 2349C, Items 8 to 16) rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. Rules removed IAC Supplement 4/27/16.

³ Paragraph 230.14(2)“a” rescinded by 2020 Iowa Acts, House File 2641, section 97, effective July 1, 2020.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

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751—9.1(8D) Request for waiver. A certified user is entitled to file a request for a waiver pursuant to Iowa Code section 8D.9(2). For the purposes of this chapter, “certified user” means an area education agency or community college that has certified with the commission that it is or will be a part of the network.

9.1(1) Conditions.

a. One of the following conditions shall be satisfied in the request:

(1) The costs to the certified user for services provided by the network are not competitive with the same services available from another provider.

(2) The certified user is under contract with another provider for such services, provided the contract was entered into prior to April 1, 1994. The certified user shall use the network for video, data, and voice requirements that are not provided pursuant to such contract.

b. A certified user shall have the burden of proof regarding the question of whether the services provided by the network are not competitive with the same services available from another provider.

9.1(2) Waiver submission. A request for waiver must be received at the ICN main office location as listed in 751—subrule 1.6(1) not less than 15 days prior to the next regularly scheduled commission meeting. A request for waiver renewal must be submitted not less than 15 days prior to the next scheduled commission meeting preceding the expiration of the current waiver. A listing of certified users not meeting this submission requirement shall be included in the commission’s annual report related to the network.

[ARC 0409C, IAB 10/17/12, effective 11/21/12; ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—9.2(8D) Request for proposal, direct negotiation. A certified user may issue a request for proposals (RFP) or a request for information (RFI) or negotiate directly with public and private vendors for the provision of telecommunication services.

If a certified user seeks a waiver and is unable to supply the information necessary for the commission to make a determination as to the competitiveness of its services and the services provided by the certified user’s proposed vendor, for whatever reason, including but not limited to restrictions imposed by a nondisclosure agreement, the commission may deny the request for a waiver. An affidavit from the certified user indicating that the commission’s services are not competitive will not be sufficient to support a grant of waiver under these rules or Iowa Code section 8D.9.

751—9.3(8D) Contents for waiver petition. Upon receipt of a request for a waiver pursuant to Iowa Code section 8D.9(2), commission staff members will forward a copy of the request to the commission members along with any supplemental information filed by the petitioner. The petitioner shall specifically address each reason for which it is seeking a waiver, and recite any facts supporting its response. The petitioner shall enclose copies of all related letters, records, or other documents in support of its request. Filing a request for a waiver shall not commence a contested case proceeding.

751—9.4(8D) Waiver investigation, limited discovery. The commission staff shall commence a waiver investigation upon receipt of the petition for a waiver. The commission staff may make requests for supporting data from the petitioner or propound interrogatories to the petitioner or conduct depositions of relevant persons regarding information possessed by the petitioner relative to the waiver petition. Data requests or interrogatories served by commission staff shall either be responded to or objected to, with a concisely stated ground for relief, within seven days of receipt. The commission chair shall rule on all objections. Depositions of relevant persons must be conducted within 30 days after the petition for waiver is filed unless the parties agree otherwise.

751—9.5(8D) Notice of hearing and discovery. Within 20 days after the petition for a waiver has been filed with the commission, the staff will notify the petitioner of the time and place for a hearing before the commission. Any information the staff has assembled for the commission to consider shall be made available to the petitioner at least 30 days before a meeting of the commission where the petitioner's request for waiver will be considered. The petitioner shall have the right to pose interrogatories or depose staff members involved in the development of any information for the commission to consider. The hearing to consider the waiver shall be held within 90 days after receipt of the request for the waiver unless the parties agree otherwise.

751—9.6(8D) Hearing. At the commission meeting where the petition is considered, the petitioner and the commission staff will have an opportunity to present any relevant evidence to the commission bearing on the appropriateness of the petition. The hearing will be informal. The hearing will be mechanically recorded. The recording shall constitute the official record of the hearing. Either party may at its own expense have a certified court reporter present to record the hearing. In the event of an appeal, the appealing party shall, at its cost, be responsible for transcribing the record of the meeting for judicial review.

9.6(1) Official record and in camera requests. All of the information received by the commission from the staff and the petitioner including the petition and attachments will be included in the record of the hearing. The petitioner may ask the commission to examine any proprietary information in camera and in conformance with Iowa Code chapter 22. The tape recording for the hearing and the evidence presented to the commission will constitute the record of the proceeding.

9.6(2) Decision. The commission members, the petitioner and the staff will be afforded an opportunity to ask questions regarding the information presented at the time of the meeting. At the close of the meeting, the commission will issue a decision that is dictated into the record or the matter will be taken under advisement to be discussed and decided at a subsequent public meeting. The commission's decision shall be reduced to writing and shall constitute final agency action.
[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—9.7(8D) Evaluation criteria. In considering the evidence regarding competitive service, the commission may consider any of the following:

9.7(1) The type of third-party service being offered to the petitioner versus the type of service the commission can offer.

9.7(2) The direct costs of service being offered to the petitioner versus the direct cost of the service offered by the commission, including but not limited to the following:

- a. The unit cost of individual services;
- b. The cost for bundled services;
- c. The costs of leased lines to access an individual service;
- d. The cost of installation charges;
- e. The cost of coordination fees;
- f. The costs of equipment necessary to access a service;
- g. The costs of setup fees;
- h. Any other direct cost related to the service sought by the certified user and identified in the evidence presented to the commission.

9.7(3) The indirect costs of service being offered to the petitioner versus the indirect cost of service offered by the commission, including but not limited to the following:

- a. Service availability;
- b. Protection from fraudulent use of the service;
- c. Availability of advanced billing services;
- d. Response time to service outages;
- e. Redundancy to ensure continuous service;
- f. Disaster recovery plan;

g. Any other indirect cost related to the service sought by the certified user and identified in the evidence presented to the commission.

9.7(4) Any discounts the petitioner has been offered versus the discounts the commission can offer.

9.7(5) Any other enhanced value items included in the offer of service by a service provider selected by the petitioner versus the enhanced value items the commission can offer including but not limited to the entire range of services the commission offers to an authorized user.

9.7(6) Any other relevant information included in the evidence before the commission regarding the petition for waiver.

751—9.8(8D) Voluntary decertification. A certified user may voluntarily withdraw its certification to use the services of the commission. The certified user must give the commission 60 days' prior written notice before the withdrawal will take effect. In the event the commission has property located on the property of the certified user, the commission and the certified user may enter into an agreement allowing the property to remain in place to serve the network. In the event the certified user decides to apply for certification after a voluntary withdrawal, the certified user will have to seek permission of the general assembly to recertify or as otherwise provided by law.

This chapter is intended to implement Iowa Code sections 8D.3(3) "b" and 8D.9(2) "b."

[Filed 3/21/97, Notice 1/15/97—published 4/9/97, effective 5/14/97]

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[Filed ARC 5828C (Notice ARC 5635C, IAB 5/19/21), IAB 8/11/21, effective 9/15/21]

CHAPTER 16
UNIFORM WAIVER RULES

751—16.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers from rules adopted by the commission. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the commission. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

16.1(1) Definitions.

“*Commission*” or “*Iowa telecommunications and technology commission*” means the Iowa telecommunications and technology commission established by Iowa Code chapter 8D operating the Iowa Communications Network.

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

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

16.1(2) Authority.

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

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

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.2(17A,ExecOrd11) Commission discretion. The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the commission upon consideration of all relevant factors.

16.2(1) Criteria for waiver. The commission may, in response to a completed petition, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specified situation if the commission finds each of the following:

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

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

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

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

In determining whether a waiver should be granted, the commission shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

16.2(2) Special waiver rules not precluded. These uniform waiver rules shall not preclude the commission from granting waivers in other contexts including those described in Iowa Code section 8D.9 or on the basis of other standards if a statute or other commission rule authorizes the commission to do so and the commission deems it appropriate to do so.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.3(17A,ExecOrd11) Requester’s responsibilities in filing a waiver petition.

16.3(1) Application. All petitions for waiver must be submitted in writing to the ICN main office location as listed in 751—subrule 1.6(1). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

16.3(2) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver is requested.
- b. The specific waiver requested, including the precise scope and operative period that the waiver will extend.
- c. The relevant facts that the petitioner believes would justify a waiver.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
- e. A history of any prior contacts between the commission and the petitioner relating to the use of the network, other regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver, including a description of each use of the network, license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the affected use of the network, regulated activity, license, grant or loan within the last five years.
- f. Any information known to the requester regarding the commission's treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

16.3(3) Burden of persuasion. When a petition is filed for a waiver from a commission rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant the petitioner a waiver.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.4(17A,ExecOrd11) Notice. The commission shall acknowledge a petition upon receipt. The commission shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been provided.

751—16.5(17A,ExecOrd11) Commission responsibilities regarding petition for waiver.

16.5(1) Additional information. Prior to issuing an order granting or denying a waiver, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting or a meeting over the network operated by the commission, between the petitioner and the commission's designee, a committee of the commission, or a quorum of the commission.

16.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver of rule filed within a contested case; (b) when the commission so provides by rule or order; or (c) when a statute so requires.

16.5(3) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of

the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

16.5(4) Conditions. The commission may condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

16.5(5) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

16.5(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

16.5(7) Time for ruling. The commission shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

16.5(8) When deemed denied. Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

16.5(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the commission shall maintain a record of all orders granting or denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the ICN main office location as listed in 751—subrule 1.6(1).

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.7(17A,ExecOrd11) Voiding or cancellation. A waiver issued by the commission pursuant to this chapter may be withdrawn, canceled, modified, declared void or revoked if, after appropriate notice and hearing, the commission issues an order finding any of the following:

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

or

4. The waiver is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.9(17A,ExecOrd11) Defense. After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.
[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.11(17A,ExecOrd11) Submission of waiver information. Within 60 days of granting or denying a waiver, the commission shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.
[ARC 5828C, IAB 8/11/21, effective 9/15/21]

Exhibit A

Sample Petition (Request) for Waiver

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

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

}

PETITION FOR
WAIVER

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

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

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

Petitioner's signature

Date

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

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

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

3. All petitions for waiver must be submitted in writing to the ICN main office location as listed in 751—subrule 1.6(1). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

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[Filed 9/20/07, Notice 6/20/07—published 10/10/07, effective 11/14/07]

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GENERAL

CHAPTER 1

ORGANIZATION OF THE DEPARTMENT OF TRANSPORTATION

[Prior to 6/3/87, Transportation Department[820]—(01.A)Ch1]

761—1.1(307) Definitions.

“*Commission*” means the state transportation commission.

“*Department*” means the Iowa department of transportation.

“*Director*” means the director of transportation or the director’s designee.

761—1.2(17A) Mission. The department is responsible for the planning, development, regulation and improvement of transportation in Iowa. The mission of the department is “getting you there safely, efficiently and conveniently.”

[ARC 2889C, IAB 1/4/17, effective 2/8/17]

761—1.3(17A) Location and business hours. The department’s main office is located at 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1101. The department’s business hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

[ARC 2889C, IAB 1/4/17, effective 2/8/17]

761—1.4(17A) Information and forms. Information, applications and forms may be obtained from the department or from the division or office which is responsible for the area of concern. Specific instructions may also be given in administrative rules. The department’s website at www.iowadot.gov provides additional information about departmental organizational units, services and forms.

[ARC 2889C, IAB 1/4/17, effective 2/8/17; Editorial change: IAC Supplement 8/11/21]

761—1.5(307) History. The Sixty-fifth General Assembly created the department as of July 1, 1974, and transferred to it the duties and responsibilities formerly administered by the state highway commission; the Iowa aeronautics commission; the Iowa reciprocity board; the department of public safety relating to motor vehicle registration, motor vehicle dealer licensing, and operator and chauffeur licensing; and the Iowa state commerce commission relating to the regulation of railroads and motor carrier transportation. Certain duties and responsibilities relating to river transportation and public transit were also assigned to the department.

761—1.6(17A,307A) Commission. A seven-member transportation commission develops a comprehensive transportation policy and plan for the state, approves the five-year transportation improvement program, and is responsible for other statutory duties listed in Iowa Code section 307A.2. Inquiries and requests may be submitted to the commission at the address given in rule 761—1.3(17A).

[ARC 2889C, IAB 1/4/17, effective 2/8/17]

761—1.7(17A,307) Director of transportation. The director of transportation is based in Ames and serves as the chief administrative officer of the department. The director is responsible for the management of the department and for statutory duties including but not limited to those listed in Iowa Code section 307.12.

[ARC 7909B, IAB 7/1/09, effective 7/1/09; ARC 2889C, IAB 1/4/17, effective 2/8/17]

761—1.8(17A,307) Divisions. The department shall operate under the following divisions, which report to the director:

1.8(1) Highway division.

a. The highway division’s headquarters are located in Ames; the telephone number is (515)239-1124.

b. The highway division manages the preservation and operation of the transportation system to ensure safe travel and is responsible for maintenance and construction of the interstate and primary highway systems. The division is responsible for preliminary engineering, environmental clearances

and permits; design and plan development for roadways, structures and other transportation mode improvements; acquisition of right-of-way; letting and awarding of contracts; contract administration and material compliance for highway projects; statewide maintenance and emergency operations; research and higher level technology (such as intelligent transportation systems); and local systems support and oversight.

c. Responsibilities for highway division operations are divided among six districts. Each district has maintenance garages, maintenance offices and construction offices, which are listed in local telephone directories. The six district offices are as follows:

- (1) District 1, 1020 S. Fourth Street, Ames, Iowa 50010; telephone (515)239-1635.
- (2) District 2, 428 43rd Street SW, Mason City, Iowa 50401; telephone (641)423-7584.
- (3) District 3, 2800 Gordon Drive, P.O. Box 987, Sioux City, Iowa 51102-0987; telephone (712)276-1451.
- (4) District 4, 2210 E. Seventh Street, Atlantic, Iowa 50022; telephone (712)243-3355.
- (5) District 5, 307 W. Briggs Avenue, P.O. Box 587, Fairfield, Iowa 52556-0587; telephone (641)472-4171.
- (6) District 6, 5455 Kirkwood Boulevard SW, Cedar Rapids, Iowa 52404; telephone (319)364-0235.

1.8(2) Information technology division.

a. The information technology division is based in Ames; the telephone number is (515)239-1284.

b. The information technology division provides internal support services, automation support, and facilities and equipment support. The division assists internal and external customers in applying technology to meet the business needs of the department; collects, processes, and disseminates information throughout the department; monitors the constantly changing business and information environment; maximizes current investments in technology; implements new technologies and new directions; and coordinates information sharing.

1.8(3) Motor vehicle division.

a. The motor vehicle information center telephone number is 1-800-532-1121. The motor vehicle division's headquarters are located at 6310 SE Convenience Boulevard, Ankeny, Iowa; the telephone number is (515)244-8725. The mailing address is P.O. Box 9204, Des Moines, Iowa 50306-9204.

b. The motor vehicle division administers and enforces federal and state motor vehicle laws and regulations. The division issues driver's licenses and nonoperator's identification cards; suspends, revokes or disqualifies the driving privileges of drivers as required by state and federal law; lifts suspension or revocation of driving privileges when compliance is achieved; and administers the commercial driver, graduated driver, driver education, driver improvement, and motorcycle rider programs. The division administers the titling and registration of noncommercial motor vehicles and intrastate commercial motor vehicles; the production and issuance of license plates, including specialty and personalized license plates; and the issuance of parking permits for persons with disabilities. The division administers fuel tax and unified carrier registration for Iowa-based carriers that operate in interstate commerce and administers financial responsibility laws applicable to motor carriers. The division titles and registers vehicles which operate interstate and routes over-dimension vehicles on Iowa's primary and interstate highways. The division issues intrastate authority to for-hire carriers and trip permits for temporary travel in Iowa. The division enforces federal motor carrier safety standards and hazardous materials regulations and size, weight, authority, fuel, and registration laws. The division investigates title and odometer fraud, fraud in driver's license and vehicle title applications, and identity crimes and theft. The division performs salvage and vehicle theft examinations; regulates transportation network companies conducting business with the state; and regulates all dealer, manufacturer, wholesaler, recycler, and leasing licensing programs.

1.8(4) Operations and finance division.

a. The operations and finance division is based in Ames; the telephone number is (515)239-1340.

b. The operations and finance division provides internal support services for the department. The division is responsible for facilities management, procurement and distribution activities, equipment and supplies management, federal and state legislative coordination, and human resource management. The

division administers the internal and external civil rights program and disadvantaged business enterprise program. The division provides financial management including budget development, monitoring and presentation of the budget to the commission and conducts external and motor carrier audits.

1.8(5) *Performance and technology division.*

a. The performance and technology division is based in Ames; the telephone number is (515)239-1124.

b. The performance and technology division provides services focused on analysis of department performance and management of transportation assets, facilitates the coordination and management of departmental research activities in collaboration with others, guides the process improvement and strategic planning initiatives, and provides media and marketing services including, but not limited to, media relations and development of marketing and communications plans.

1.8(6) *Planning, programming and modal division.*

a. The planning, programming and modal division is based in Ames; the telephone number is (515)239-1664.

b. The planning, programming and modal division develops both long- and short-range transportation system plans, the Iowa statewide transportation improvement program, and the department's five-year transportation improvement program; administers economic development and modal funding programs; manages the traffic count program; and develops city, county and state transportation maps. The division serves as an aviation, transit and rail advocate and as liaison to the Federal Aviation Administration, Federal Transit Administration and Federal Railroad Administration. The division delivers programs and services to promote a safe and efficient multimodal transportation system, promotes transportation on Iowa's navigable rivers, and represents Iowa's navigation interests with other state and federal agencies.

[ARC 7909B, IAB 7/1/09, effective 7/1/09; Editorial change: IAC Supplement 2/23/11; ARC 2889C, IAB 1/4/17, effective 2/8/17]

These rules are intended to implement Iowa Code sections 17A.3 and 307A.2 and chapter 307.

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[Editorial change: IAC Supplement 8/11/21]

CHAPTER 28
IOWA TRANSPORTATION MAP

761—28.1(307) Definition.

“Iowa Transportation Map” is the multicolored official map that is produced by the department to provide the motoring public with basic information on the location of cities and the highways connecting them.

[ARC 2983C, IAB 3/15/17, effective 4/19/17]

761—28.2(307) Information. Information regarding map use, content and production may be obtained from the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664.

[ARC 2983C, IAB 3/15/17, effective 4/19/17]

761—28.3(307) Policy. The Iowa Transportation Map is to be distributed to the public without charge at department offices, at rest areas and on the department’s website at www.iowadot.gov. The map is not to be sold or used for purposes of personal or professional gain. The paper version or the electronic version of the map is not to be altered for distribution in any way, including adding a name or address of an individual, business or organization.

1. This policy applies to but is not limited to candidates running for political office.

2. It is not a violation of this policy for the pictures of the governor and lieutenant governor and a personal message to appear on the map.

[ARC 2983C, IAB 3/15/17, effective 4/19/17; Editorial change: IAC Supplement 8/11/21]

These rules are intended to implement Iowa Code sections 307.12 and 307.14.

[Filed 9/24/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]

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[Editorial change: IAC Supplement 8/11/21]

CHAPTER 101
FARM-TO-MARKET REVIEW BOARD

761—101.1(306) Purpose. The purpose of these procedural rules is to formalize the process by which the farm-to-market review board, created by Iowa Code section 306.6, will administer its duties.

101.1(1) Iowa Code section 306.6 requires the farm-to-market review board to make final administrative decisions based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

101.1(2) Iowa Code section 306.6A requires the farm-to-market review board to adopt procedural rules for modifications to the existing farm-to-market road system and designation of farm-to-market routes on new alignment. These rules implement this requirement.

101.1(3) Iowa Code section 306.5 states that the farm-to-market road system shall be a continuous, interconnected system and that provision shall be made for continuity by the designation of extensions within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas.

761—101.2(306) Definitions.

“Area service roads” or *“local roads”* or *“local road system”* means those secondary roads that are not a part of the farm-to-market road system.

“Board” means the farm-to-market review board.

“Executive board” means the Iowa county engineers association executive board.

“Farm-to-market extensions” means extensions of the farm-to-market road system within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of these extensions of the system shall be included in the total mileage of the farm-to-market road system.

“Farm-to-market roads” or *“farm-to-market road system”* means those county jurisdiction intracounty and intercounty roads which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed 35,000 miles.

“President” means the president of the Iowa county engineers association.

761—101.3(306) Composition and membership of the farm-to-market review board.

101.3(1) The farm-to-market review board shall be composed of 12 county engineers selected by the Iowa county engineers association. Two members shall be selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members shall serve six-year terms. Rotations shall be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members shall further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. Board rotation shall be as follows and shall be extended in future years in the same pattern:

Year	Rotation	
2015	District 1 Representative A	District 4 Representative A
2016	District 2 Representative A	District 5 Representative A
2017	District 3 Representative A	District 6 Representative A
2018	District 1 Representative B	District 4 Representative B
2019	District 2 Representative B	District 5 Representative B
2020	District 3 Representative B	District 6 Representative B

101.3(2) Members shall be nominated by their districts and approved by the executive board. A county engineer may serve multiple, consecutive terms if so nominated by the county engineer’s district.

If a county engineer is unable to complete a term for any reason, the president shall select another county engineer within the district to serve the balance of the term.

101.3(3) The farm-to-market review board shall select from its membership a chair and a vice-chair to serve one-year terms. The chair serves at the pleasure of the board and may be elected to multiple terms as deemed appropriate by the board. The vice-chair shall preside at a meeting in the absence of the chair.

[ARC 2392C, IAB 2/3/16, effective 3/9/16]

761—101.4(306) Collection of system modification requests and frequency of meetings.

101.4(1) The department of transportation will collect applications for modifications to the farm-to-market road system. The board chair shall schedule meetings of the board. In general, the farm-to-market review board shall meet in conjunction with statewide meetings of the Iowa state association of counties and Iowa county engineers association to review accumulated applications for farm-to-market road system modifications. Applications must be filed no less than 30 days prior to each scheduled board meeting. Additional board meetings shall be called as determined by the chair.

101.4(2) The farm-to-market review board is required to follow the provisions of Iowa Code chapter 21 with regard to open meetings. The chair shall post a meeting agenda on the Iowa County Engineers Association Service Bureau website and send copies of the agenda to all counties.

101.4(3) Minutes of each meeting shall be kept; the chair shall be responsible for the minutes. Meetings may be recorded to facilitate the preparation of meeting minutes, but any recordings made shall not be retained after the minutes have been completed.

[ARC 2392C, IAB 2/3/16, effective 3/9/16; Editorial change: IAC Supplement 8/11/21]

761—101.5(306) Procedure for requesting modifications to the farm-to-market road system. To apply for a modification to the farm-to-market road system, a county must file an application through the department of transportation.

101.5(1) The application must include the following:

a. A copy of a resolution of the county board of supervisors requesting the modification to the existing farm-to-market road system. Farm-to-market modifications may include proposed roads, redesignation of area service roads, or transfers of jurisdiction.

b. A report of the county engineer explaining and justifying the addition of new mileage to the farm-to-market road system or the change in the route or farm-to-market classification proposed by the county.

101.5(2) In the case of intercounty routes, joint applications may be filed. Resolutions shall be required of each county.

761—101.6(306) Review criteria for determining eligibility for inclusion of additional roads into the farm-to-market road system.

101.6(1) The farm-to-market review board shall make final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

101.6(2) The board shall consider the following factors in making decisions to modify the farm-to-market road system:

- a.* Intracounty and intercounty continuity of systems.
- b.* Properly integrated systems.
- c.* Existing and potential traffic.
- d.* Land use.
- e.* Location of the route.
- f.* Equitable distribution of farm-to-market mileage.

761—101.7(306) Voting and approval of requested modifications. Each member is a voting member and is eligible to vote at every meeting at which that member is in attendance. Attendance may include

members being present at the meeting through a conference telephone call, Iowa communications network connection, or other electronic means deemed appropriate by the chair.

101.7(1) *Determination of a quorum.* A minimum of eight board members is required for a quorum. If a quorum is not present at a meeting, the meeting shall be rescheduled.

101.7(2) *Number of votes needed to approve or deny a modification.* For a requested modification to the farm-to-market road system to be approved, it must receive a minimum of seven affirmative votes; in other words, a majority of the entire board. A motion to deny a requested modification need only receive six votes for the denial to be approved.

761—101.8(306) Report of board decision to applicant county. Within 30 calendar days after a board meeting, the chair shall send a letter to each county whose request was acted upon by the board at the meeting. The letter shall apprise each applicant of the decision of the farm-to-market review board, briefly explain the reasons for the board's decision, and explain the reapplication and judicial review processes.

761—101.9(306) Reapplication for modification. A county may reapply for a modification to the farm-to-market road system if its initial request is denied. The county must again follow all provisions for requesting a modification and should be prepared to present additional information in support of the requested change. Any requested system modification that receives two denials may not be resubmitted for consideration for a minimum of three years.

761—101.10(306) Judicial review. Any county that is aggrieved or adversely affected by a decision of the farm-to-market review board may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

761—101.11(306) Adoption and modification of rules. The chair shall direct the board to review these rules annually. Board members may recommend changes to these rules.

761—101.12(306) Severability clause. If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication shall not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement Iowa Code sections 306.6 and 306.6A.

[Filed 1/21/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]

[Filed ARC 2392C (Notice ARC 2248C, IAB 11/25/15), IAB 2/3/16, effective 3/9/16]

[Editorial change: IAC Supplement 8/11/21]

CHAPTER 102
SECONDARY ROAD FUND DISTRIBUTION COMMITTEE

761—102.1(312) Purpose. The purpose of these rules is to adopt the formulas to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund and to formalize the process by which the secondary road fund distribution committee will administer its duties.

102.1(1) Iowa Code section 312.3C creates a secondary road fund distribution committee and requires the committee to be comprised of representatives appointed by the president of the Iowa County Engineers Association, the president of the Iowa State Association of County Supervisors, and the department of transportation.

102.1(2) Iowa Code section 312.3C requires the secondary road fund distribution committee to:

a. Determine the methodology to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund.

b. Adopt rules to govern the determination and modification of the methodology to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund.

102.1(3) Iowa Code section 312.3B requires the Iowa County Engineers Association Service Bureau to annually compute secondary road fund and farm-to-market road fund distributions using the methodology determined by the secondary road fund distribution committee.

[ARC 2232C, IAB 11/11/15, effective 12/16/15]

761—102.2(312) Formulas.

102.2(1) Definitions. As used in this chapter:

“Bridges” means those structures under the jurisdiction of a county secondary roads department which are included in the National Bridge Inventory System.

“Daily vehicle miles of travel” means the product of a road segment’s length, in miles, multiplied by the daily traffic count thereon, in vehicles per day, reported for that segment by the Iowa department of transportation, based on the most recent counts available.

“Earth surfaced” means roads under the jurisdiction of a county secondary roads department which are not surfaced.

“Formula” means the appropriate secondary road fund distribution formula or farm-to-market road fund distribution formula as defined in subrules 102.2(2) and 102.2(3).

“Granular surfaced” means roads under the jurisdiction of a county secondary roads department which have crushed rock, gravel, or oiled earth surfaces.

“Paved surfaced” means roads under the jurisdiction of a county secondary roads department with hot mix asphalt, Portland cement concrete, or stabilized base with waterproof surfacing.

“Rural population” means the count, taken from the most recently certified decennial federal census, of persons who reside in the unincorporated areas of a county.

102.2(2) Formula for determining secondary road fund allocation factors. The Iowa County Engineers Association Service Bureau shall annually compute percentage allocation factors for the allocation of secondary road fund revenues among the counties by calculating and summing the following percentage subtotals for each county:

a. Thirty percent times the ratio that the total area of each county bears to the total area of the state.

b. Ten percent times the ratio that the rural population of each county bears to the total rural population of the state.

c. Twelve and one-half percent times the ratio that the total daily vehicle miles of travel on each county’s secondary roads bears to the total daily vehicle miles of travel on all secondary roads in the state.

d. One-half percent times the ratio that the earth-surfaced miles of secondary roads of each county bears to the total miles of earth-surfaced secondary roads in the state.

e. Twenty percent times the ratio that the granular-surfaced miles of secondary roads of each county bears to the total miles of granular-surfaced secondary roads in the state.

f. Thirteen percent times the ratio that the paved-surfaced miles of secondary roads of each county bears to the total miles of paved-surfaced secondary roads in the state.

g. Fourteen percent times the ratio that the length, in lineal feet, of secondary road bridges of each county bears to the total length of secondary road bridges in the state.

102.2(3) Formula for determining farm-to-market road fund allocation factors. The Iowa County Engineers Association Service Bureau shall annually compute percentage allocation factors for the allocation of farm-to-market road fund revenues among the counties by calculating and summing the following percentage subtotals for each county:

a. Thirty percent times the ratio that the total area of each county bears to the total area of the state.

b. Fifteen percent times the ratio that the rural population of each county bears to the total rural population of the state.

c. Ten percent times the ratio that the total daily vehicle miles of travel on each county's farm-to-market roads bears to the total daily vehicle miles of travel on all farm-to-market roads in the state.

d. Nine percent times the ratio that the granular-surfaced miles of farm-to-market roads of each county bears to the total miles of granular-surfaced farm-to-market roads in the state.

e. Twenty-three percent times the ratio that the paved-surfaced miles of farm-to-market roads of each county bears to the total miles of paved-surfaced farm-to-market roads in the state.

f. Thirteen percent times the ratio that the length, in lineal feet, of farm-to-market road bridges of each county bears to the total length of farm-to-market road bridges in the state.

[ARC 2232C, IAB 11/11/15, effective 12/16/15]

761—102.3 and 102.4 Reserved.

761—102.5(312) Composition and membership of the secondary road fund distribution committee.

102.5(1) The secondary road fund distribution committee shall be composed of six county engineers, six county supervisors, two representatives of the department of transportation, and the executive director of the Iowa County Engineers Association Service Bureau.

102.5(2) The county engineers shall be appointed by the president of the Iowa County Engineers Association, the county supervisors shall be appointed by the president of the Iowa State Association of County Supervisors, and the department of transportation representatives shall be appointed by the department of transportation.

102.5(3) The county engineer members and the county supervisor members shall be selected according to the population of their counties, as follows:

a. Two county engineers and two county supervisors from large counties.

b. Two county engineers and two county supervisors from medium counties.

c. Two county engineers and two county supervisors from small counties.

102.5(4) To the extent possible, the committee shall be geographically diverse, and no county may have both an engineer and a supervisor as members simultaneously.

102.5(5) All county members shall be voting members. The department of transportation representatives and the executive director of the Iowa County Engineers Association Service Bureau shall be nonvoting members.

[ARC 2232C, IAB 11/11/15, effective 12/16/15]

761—102.6(312) Terms of office and rotation of seats.

102.6(1) Committee members shall serve six-year terms. Terms of office shall begin on January 1 in the year of appointment and expire on December 31 in the year of expiration. Members may be reappointed to serve consecutive terms.

102.6(2) Rotations shall be staggered so that no more than two county members are rotated off the committee in any single year.

102.6(3) As terms expire, the incumbents may be reappointed or replaced.

102.6(4) If a committee member is unable to complete a term of office for any reason, a replacement member of the same class (county engineer or county supervisor) and from the same group (a large, medium or small county) shall be appointed to serve the balance of the term.

102.6(5) The committee shall select from its membership a chair and a vice-chair to serve one-year terms. The chair and vice-chair serve at the pleasure of the committee and may be elected to multiple terms as the committee deems appropriate. The vice-chair shall preside at a meeting in the absence of the chair.

[ARC 2232C, IAB 11/11/15, effective 12/16/15]

761—102.7(312) Committee meetings. Committee meetings shall be held at the call of the chair or when two committee members so request. Committee meetings shall be conducted in accordance with Iowa Code chapter 21. Committee meetings may be held electronically, in accordance with Iowa Code section 21.8. The committee shall meet at least once annually.

102.7(1) Each county member is a voting member and is eligible to vote at every committee meeting the member attends. Attendance may include members who are present at the meeting electronically through a telephone conference call, an Iowa communications network connection or other electronic means deemed appropriate by the chair.

102.7(2) A minimum of eight voting members is required for a quorum. If a quorum is not present at a meeting, the meeting shall be rescheduled.

102.7(3) A majority of voting members shall be required to pass ordinary items of business.

102.7(4) A resolution to propose a new or modified secondary road fund distribution formula or farm-to-market road fund distribution formula shall require ten affirmative votes.

102.7(5) A resolution to adopt, amend or rescind administrative rules shall require ten affirmative votes.

102.7(6) In addition to the requirements of Iowa Code chapter 21, the chair shall post meeting agendas on the Iowa County Engineers Association website and the Iowa State Association of County Supervisors website and shall send copies of agendas to all county engineers and to all county auditors for distribution to supervisors.

102.7(7) Minutes of each meeting shall be kept; the presiding chair shall be responsible for the minutes. Minutes of a meeting shall be presented to the committee for approval at its next meeting. The chair shall post approved minutes on the Iowa County Engineers Association website and the Iowa State Association of County Supervisors website and shall file the minutes with the office of systems planning of the department of transportation.

[ARC 2232C, IAB 11/11/15, effective 12/16/15; Editorial change: IAC Supplement 8/11/21]

761—102.8 and 102.9 Reserved.

761—102.10(312) Considerations for a new or modified distribution formula. A distribution formula that is proposed in accordance with rule 761—102.11(312) should substantially meet the following objectives:

1. Funding levels to counties should be relatively stable, with only small changes occurring from year to year.

2. The formula should be able to factor in changes in population, mileages, the centerline lineal feet of bridges, and traffic levels as they occur over time, without needing to be revised.

761—102.11(312) Process for approval of a new or modified distribution formula.

102.11(1) Proposals to adopt a new or modified distribution formula may be initiated by the committee itself or by the executive board of either the Iowa County Engineers Association or the Iowa State Association of County Supervisors upon request to the committee.

102.11(2) When a formula change has been initiated or requested, the committee shall meet, establish a work plan, and set up a work schedule.

102.11(3) The committee shall conduct such studies, research, development, and testing as are required to evaluate the proposal and shall, within 18 months after initiation or receipt of the proposal, publish an official report outlining the committee's findings and recommendations.

102.11(4) If the official report recommends adoption of a new or modified distribution formula, the chair shall communicate the details of the committee's recommendations to all county engineers, all county supervisors and the department of transportation in such a manner as the committee deems appropriate. This communication shall solicit comments on the committee's recommendations.

102.11(5) After receipt and consideration of comments from counties, the committee may adopt a resolution that formally proposes a distribution formula and places it into official consideration.

102.11(6) The chair shall forward the resolution to the executive boards of both the Iowa County Engineers Association and the Iowa State Association of County Supervisors, with a request for endorsement of the proposed distribution formula.

102.11(7) If both executive boards endorse the proposed distribution formula, the chair shall request each individual county to consider and adopt a resolution in favor of or in opposition to the proposed distribution formula.

102.11(8) If at least 66 counties adopt resolutions in favor of the proposed distribution formula, the distribution formula is adopted without further committee action.

102.11(9) The chair shall notify the following organizations and groups when the distribution formula has been adopted:

- a.* The executive board of the Iowa County Engineers Association.
- b.* The executive board of the Iowa State Association of County Supervisors.
- c.* The office of systems planning of the department of transportation.
- d.* The office of the treasurer of state.
- e.* All county engineers and county supervisors.
- f.* The Iowa County Engineers Association Service Bureau.

761—102.12(312) Judicial review. Any county that is aggrieved or adversely affected by a decision of the secondary road fund distribution committee may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

761—102.13(312) Severability clause. If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication shall not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement Iowa Code sections 312.2, 312.3, 312.3B, 312.3C and 312.5.

[Filed 3/27/06, Notice 2/15/06—published 4/26/06, effective 5/31/06]

[Filed ARC 2232C (Notice ARC 2126C, IAB 9/2/15), IAB 11/11/15, effective 12/16/15]

[Editorial change: IAC Supplement 8/11/21]

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 website 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; Editorial change: IAC Supplement 8/11/21]

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[Editorial change: IAC Supplement 8/11/21]

CHAPTER 132
IOWA BYWAYS PROGRAM

761—132.1(306D) Purpose, overview and information.

132.1(1) Purpose. The purpose of the Iowa Byways program is to designate qualifying Iowa roads as byways on the basis of scenic byway, heritage byway, or a combination of scenic and heritage byway qualities. These designations are intended both to preserve the state's scenic, natural, and historic resources and to support economic development through travel and tourism.

132.1(2) Overview. Under the Iowa Byways program, proposed routes are identified via an application process. The department inventories and evaluates the proposed routes. The advisory council recommends the routes to be designated by the department. The department provides identifying signs for the designated routes. Routes designated as an Iowa Byway are part of Iowa's scenic byway program and are therefore subject to the prohibition set forth in 23 U.S.C. Section 131(s).

132.1(3) Information and forms. Information, instructions and application forms may be obtained from the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664; or through the department's website at www.iowadot.gov.
[ARC 3298C, IAB 8/30/17, effective 10/4/17; Editorial change: IAC Supplement 8/11/21]

761—132.2(306D) Definitions.

"Advisory council" means the Iowa Byways advisory council. This group is responsible for recommending routes for Iowa Byways designation. It is comprised of representatives from the state agencies with jurisdiction over transportation, tourism, cultural resources, historic resources and natural resources.

"Department" means the Iowa department of transportation.

"Designation" means department approval of a route as an Iowa Byway.

"Heritage byway" means a route that has historic or cultural significance along its length or connects various areas or sites of historic or cultural significance along its length.

"Scenic byway" means a route that has naturally scenic features visible along its length.

[ARC 3298C, IAB 8/30/17, effective 10/4/17]

761—132.3(306D) General requirements.

132.3(1) A route eligible for designation as an Iowa Byway must meet the definition of either a heritage byway or a scenic byway. A route may also be eligible for designation if segments of the route meet a combination of either a heritage byway or a scenic byway along its entire length.

132.3(2) Primary roads, secondary roads and city streets are eligible for designation as Iowa Byways.

132.3(3) A route eligible for designation as an Iowa Byway should be continuous and at least 20 miles in length.

132.3(4) The governing body of each city and county through which a route passes must pass a formal resolution endorsing the application for Iowa Byway designation and agreeing to the responsibilities of having jurisdiction over a portion of a designated route.

132.3(5) The initial installation of signs identifying an Iowa Byway including the accompanying posts and hardware necessary for installation shall be paid for and furnished by the department. Each roadway jurisdiction is responsible for the inventory, maintenance, and reinstallation of signs provided by the department following the initial installation.

[ARC 3298C, IAB 8/30/17, effective 10/4/17]

761—132.4(306D) Application and approval process.

132.4(1) Program cycle. The Iowa Byways program shall operate on a four-year cycle, with applications due by October 1, 2020, and every fourth year thereafter. Field inventories, evaluation, and rating of proposed routes will follow with designation of any new routes completed by the next application deadline.

132.4(2) Application. Application to designate a route as an Iowa Byway or to propose an extension or loop to an existing route shall be on a form provided by the department and shall be received by

the department by the stated application deadline. The application must be accompanied by a formal resolution described in subrule 132.3(4). Applications must provide some discussion of the planned administration and governance of the proposed Iowa Byway as well as how the byway will be marketed to visitors.

132.4(3) *Initial review.* Applications shall be reviewed by the advisory council to acquaint the council members with the proposed routes and to allow the members an opportunity to provide the department with information from their areas of expertise. Such input may provide details related to the existence and quality of scenic, archaeological, cultural, historic, natural, and recreational resources along a proposed route.

132.4(4) *Field inventory.* The department shall conduct a field inventory of proposed routes which will address the following qualities:

a. Scenic value. Types and qualities of views along the proposed route contributing to the scenic quality of the route shall be identified as well as views that distract from or negatively affect the scenic quality of the route. The field inventory will provide an assessment of the visual character of the proposed route along its length.

b. Cultural and historic resources. Known cultural and historic resources will be identified along the length of the proposed route. Such resources may include archaeological, architectural, historical or other cultural sites of national or state significance and may also include interesting or unique local cultures or architecture that may appeal to visitors.

c. Natural resources. Resources including but not limited to agricultural lands, forests, river basins, and other distinctive landforms will be identified.

d. Recreational resources. Public lands and facilities providing opportunities for organized sport, outdoor recreation, or other recreation will be identified.

e. Transportation. An assessment will be made of existing and future traffic conditions, planned improvements to the proposed route, and any safety concerns whether existing or anticipated. If the route is being considered for heritage byway designation, historic elements specific to transportation will be identified.

132.4(5) *Evaluation and rating.* The department shall compile and evaluate the field inventory data for each proposed route, calculate an overall quality rating for each proposed route, and prepare a written report documenting these findings. The written report shall also consider the sustainability of the proposed route based on the information provided in the application for planned governance and marketing plans as well as how the proposed route will complement the existing Iowa Byways.

132.4(6) *Selection.* The advisory council shall review the evaluations and recommend routes to be designated as Iowa Byways based on this information and any other information the council may have obtained regarding the routes.

132.4(7) *Designation.* The department will consider designating routes recommended by the advisory council as Iowa Byways.

132.4(8) *Signing.* Upon the designation of Iowa Byways, the department will proceed with the initial design and installation of signage identifying new Iowa Byways.

[ARC 3298C, IAB 8/30/17, effective 10/4/17]

761—132.5(306D) *Reevaluation.* At its discretion, the department may inventory and evaluate designated Iowa Byways or portions of byways to determine their continued eligibility for the program. The department reserves the right to remove a route or portion of a route from the program if the route no longer meets the designating criteria or if the route signage has not been maintained. The department may modify an existing route if an alternative route would better benefit the traveling public in cases of poor road conditions, closures or changes in available amenities.

[ARC 3298C, IAB 8/30/17, effective 10/4/17]

761—132.6(306D) *Promotional and tourism efforts.* The department is not responsible for economic development, promotional, or other tourism efforts for Iowa Byways.

[ARC 3298C, IAB 8/30/17, effective 10/4/17]

These rules are intended to implement Iowa Code chapter 306D.

[Filed 8/26/98, Notice 7/1/98—published 9/23/98, effective 10/28/98]

[Filed 5/8/01, Notice 2/7/01—published 5/30/01, effective 7/4/01]

[Filed 8/7/02, Notice 6/26/02—published 9/4/02, effective 10/9/02]

[Filed ARC 3298C (Notice ARC 3130C, IAB 6/21/17), IAB 8/30/17, effective 10/4/17]

[Editorial change: IAC Supplement 8/11/21]

CHAPTER 151
CITY REQUESTS FOR CLOSURE OF
PRIMARY ROAD EXTENSIONS

[Prior to 4/24/85, (06,J) Ch 1]

[Prior to 6/3/87, Transportation Department[820]—(06,L) Ch 2]

761—151.1(321) Closing primary road extensions. The purpose of this rule is to establish requirements and procedures for the closing of primary road extensions for reasons other than fire, construction or repair in accordance with Iowa Code section 321.348.

151.1(1) Definitions. The following terms shall have these meanings unless the context indicates a different meaning.

“*Adequate detour*” shall mean an alternate route which, based on the engineering judgment of the district engineer, has the operational capability to handle the increased traffic for the specified period of the detour.

“*Local enforcement officers*” shall mean city police, town marshals, or other entities legally granted police power for control of traffic.

“*Primary road extensions*” shall mean the extension of any primary road into or through the corporate limits of a city.

“*Primary stub*” shall mean the extension of any primary road that crosses the corporate limits and terminates at the central business district of a city.

151.1(2) Requirements.

a. Adequate detour over paved roads shall be provided with traffic controls as prescribed in the “Manual on Uniform Traffic Control Devices,” as adopted in rule 761—130.1(321). City officials shall secure the written approval of the county board of supervisors to use any county road as a detour.

b. The city shall be responsible for maintenance and restoration of the detour, and shall accept responsibility for any damages that may occur to the closed section of the primary extension. The city shall accept full liability for conditions and operations of the detour.

c. The closed streets shall be used only for a civic purpose; no closing for promotion of commercial activities shall be allowed.

d. The benefit to the community must outweigh the temporary inconvenience to motorists.

e. The city shall request the Iowa state patrol to review the proposed detour for safety. During use, traffic shall be policed by local enforcement officers.

151.1(3) Arterial system. Rescinded IAB 4/3/02, effective 5/8/02.

151.1(4) Arterial connector system. Rescinded IAB 4/3/02, effective 5/8/02.

151.1(5) Procedures. Procedures for closing primary road extensions shall be as follows:

a. Cities shall file a “Request for Closing Primary Road Extension,” Form 810030, available from district offices. The request shall include the name of the city, period that the covered route is to be closed, the precise section involved, the proposed detour and the purpose for the closure. If the proposed detour involves any part of a county road, the written approval of the county board of supervisors must be submitted with the request.

b. The request shall be signed by the city officials, be reviewed by the Iowa state patrol, and submitted to the district engineer 45 days prior to the first day of closure. The department shall respond to the city in 20 days from the date the request is received. If all requirements in this rule are met, the department may approve the request.

c. The department shall erect any necessary signs on the detour.

151.1(6) Primary stub routes. The city may close a section of a primary stub route for a municipal celebration without obtaining department approval if substitute traffic arrangements are provided. The requirements set out in subrules 151.1(2) to 151.1(5) shall not apply.

This rule is intended to implement Iowa Code section 321.348.

[Editorial change: IAC Supplement 8/11/21]

[Filed 7/22/77, Notice 5/4/77—published 8/10/77, effective 9/14/77]

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[Filed 3/13/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]
[Editorial change: IAC Supplement 8/11/21]

CHAPTER 163
RISE PROGRAM

[Prior to 6/3/87, Transportation Department[820]—(06,Q) Ch 4]

761—163.1(315) Definitions. When used in this chapter, unless the context otherwise requires:

“*Brownfield site*” means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination.

“*Commission*” means the state transportation commission.

“*Department*” means the Iowa department of transportation.

“*Direct jobs created*” refers to jobs new to the state in firms, developments, or sites specifically assisted by a RISE project.

“*Direct jobs retained*” refers to existing Iowa jobs that would otherwise be lost in firms, developments, or sites specifically assisted by a RISE project.

“*Economic development*” means private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost. For the purposes of this program, economic development shall be viewed from a statewide perspective rather than a local or substate, regional perspective and shall result in a net gain to the state.

“*Funding commitment*” means commission approval of the use of RISE funds for a project.

“*Grant*” means funds received for a RISE project with no provision for applicant repayment of principal.

“*Immediate opportunity project,*” one of the two types of RISE projects, is a roadway project that needs a funding commitment within a short time period and meets the threshold criteria in subrule 163.10(6). The project primarily provides improved access to a single economic unit, such as a county, a city, an industrial park, a plant or other business, a development site or a tourist attraction.

“*Import substitution*” means replacing inputs, products or services from out-of-state firms or locations with Iowa inputs, products or services.

“*Jurisdiction*” means the state, county, or city having legal authority over a road or street.

“*Loan*” means funds received for a RISE project with provision for applicant repayment of principal. A loan may or may not involve the payment of interest charges.

“*Local development project,*” one of the two types of RISE projects, is a roadway project which is programmed through a semiannual competitive rating procedure. The project primarily provides improved access to either a single economic unit, such as a county, a city, an industrial park, a plant or other business, a development site or a tourist attraction, or to a portion of a metropolitan area.

“*Project*” means an eligible activity or cost or set of eligible activities or costs funded with RISE program funds. The two types of projects which may be funded under the RISE program are immediate opportunity projects and local development projects.

“*RISE*” means revitalize Iowa’s sound economy.

“*RISE fund*” means the fund created in Iowa Code section 315.2.

“*Total capital investment*” means the economic value of all permanent purchases, donations, or improvements directly associated with an economic development activity but not funded with RISE moneys, including land; improvements to land; buildings; equipment; furnishings; electric, gas, telephone, and other utilities; sanitary sewer and storm sewer extensions and hookups; and railroad spurs, access roads, parking lots, and other transportation facilities.

“*Transportation justification*” means the reasons given for a project from a transportation planning and engineering standpoint. The justification should address the current condition of existing roadways or bridges, the relationship of the project to connecting roads, anticipated total traffic, anticipated large truck traffic, proposed major design features, roadway function, and the reasons the proposed alternative was selected over other available alternatives.

“*Value-adding activities*” means activities which, through the employment of knowledge or labor, add value to a product, process or service that results in the creation of new wealth to the state.

[ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.2(315) Information and forms. Information, instructions and application forms may be obtained from the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664; or through the department's website at www.iowadot.gov. [ARC 3299C, IAB 8/30/17, effective 10/4/17; Editorial change: IAC Supplement 8/11/21]

761—163.3(315) Purpose of RISE program. The purpose of the RISE program is to promote economic development in Iowa through the establishment, construction, improvement, and maintenance of roads and streets. The RISE program shall be targeted toward value-adding activities to provide maximum economic impact to the state. Value-adding activities feed new dollars into the economy. As these dollars are circulated, the state experiences economic growth. Tourism activities that result in the attraction of out-of-state dollars to the state economy may also be targeted by the program. Residential development, local government facilities, local public schools, locally oriented business services and personal services are generally not value-adding activities and will rarely meet the intent of the program.

The RISE program shall also be administered to encourage economic diversification, new business opportunities, small business development, exporting, import substitution and tourism in Iowa. [ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.4(315) Administration of RISE program.

163.4(1) The RISE program shall be administered by the department as a statewide program, with projects evaluated primarily on the basis of economic development criteria rather than solely on the basis of transportation criteria. In carrying out its program responsibilities, the department shall:

- a. Involve local officials in program development and periodic program review and evaluation, including evaluation of the accomplishments and effectiveness of the RISE program. However, all project funding decisions shall be the responsibility of the commission.
- b. Simplify application processes and administrative procedures to the maximum practicable extent.
- c. Design the RISE program administrative procedures so that they are flexible enough to meet county and city needs.
- d. Ensure neutrality and fairness in the treatment of all applications submitted for funding under the RISE program.
- e. Promote intergovernmental cooperation on economic development.
- f. Promote the use of innovative financing mechanisms for RISE projects.

163.4(2) The commission shall be responsible for all RISE project funding commitments. All project funding commitments are made subject to the availability of RISE funds.

163.4(3) The department shall annually prepare a written report indicating the amount and percentage of funds expended during the previous year on primary roads, secondary roads, city streets, state park roads and county conservation parkways. [ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.5(315) Source, allocation, and use of RISE funds.

163.5(1) Source. The RISE program is funded with dedicated state motor fuel and special fuel tax revenues as set out in Iowa Code section 312.2 and chapter 315.

163.5(2) Allocation and use.

a. *Allocation among roadway jurisdictions.* The RISE fund shall be allocated as specified in Iowa Code section 315.4.

b. *Funding restricted to public roads.* The use of RISE funds is restricted to construction or improvement of primary roads, secondary roads, city streets, state park roads and county conservation parkways presently open to public use or ones which will be dedicated and open to public use in the future. RISE funds may not be used for private road projects or for any other private purpose. Project activities which may and may not be funded under the RISE program are listed in rule 163.7(315).

c. *Use of county or city RISE funds on primary road projects.* Counties or cities may at their option make application to the department to apply RISE funds allocated for use on secondary road or city street

projects toward primary road projects. Use of county or city RISE funds on primary road projects shall be approved by the commission.

d. Type of projects. The two types of projects which may be funded under the RISE program are immediate opportunity projects and local development projects. The requirements and procedures specifically applicable to the two project types are located in the following rules of this chapter:

(1) Immediate opportunity projects: Rule 761—163.10(315).

(2) Local development projects: Rule 761—163.11(315).

e. Relationship of project. The demonstrated relationship of a project to economic development shall generally be the main criterion employed in determining the priority for funding. The department is required to assign the lowest priority to a project if it involves a business with wages substantially below other area businesses or with a consistent record of law violations. In terms of project type, an immediate opportunity project shall have first priority for all available RISE funds.

f. Use of repaid funds. RISE funds repaid to the department for any reason may be used for other projects or carried over to the next programming cycle. RISE funds repaid shall be credited to the share of the fund from which the project was originally funded.

g. Carryover of funds. The commission need not commit the spending of all RISE funds available during a programming cycle. Uncommitted funds may be carried over to the next programming cycle or used for immediate opportunity projects. On June 30 of each year, all uncommitted county funds shall be credited to the secondary road fund.

h. Reserve for future needs and contingencies. The commission shall monitor RISE fund commitments and expected RISE fund cash flow and take actions necessary to ensure that funds remain available for anticipated present and future immediate opportunity project needs and other contingencies. Such actions may include placing a moratorium on the receipt and award of local development RISE applications, placing a limit on RISE dollars awarded to each project, or taking other actions at the discretion of the commission.

[ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.6(315) Project financing and funding shares.

163.6(1) *Financing.* Applicants may choose to propose grant financing for any RISE project. Applicants are encouraged but not required to propose below market rate interest loan, no interest loan, or partial principal payback rather than grant financing for RISE projects. The extent to which a project will return moneys to the RISE fund shall be considered in project evaluation processes. Final financial terms for all RISE projects are subject to negotiation between the department and the applicant and approval by the commission.

163.6(2) *Funding shares.* Applicants may propose the proportions and sources of RISE and non-RISE funds to be used for a project. Use of RISE funds is subject to commission approval.

[ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.7(315) Eligibility of applicants and joint applications.

163.7(1) *Applicant eligibility.* All incorporated cities and all counties in the state of Iowa are eligible to apply for and receive funds under the RISE program. The department is also eligible to initiate projects and receive funds under this program but need not formally apply for funds. Private firms or developers or other agencies may not apply directly for funds but are encouraged to work with county or city governments in seeking funding for projects. In any case, all projects must be let by the applicant or through the department's office of contracts and in accordance with all applicable laws and rules.

163.7(2) *Joint applications.* Joint applications from two or more counties or cities are encouraged when mutual action is required to support economic development. Joint applications shall designate a lead county or city to serve as a principal contact point for the department.

[ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.8(315) Project activities eligible and ineligible for RISE funds.

163.8(1) Eligible activities. Project activities or costs eligible for RISE funding, and which may be counted as part of the non-RISE participation in immediate opportunity and local development roadway projects, include only the following:

- a. Roadway resurfacing, rehabilitation, modernization, upgrading, reconstruction or initial construction, including grading and drainage, paving, erosion control, pavement overlays, and shoulder widening and stabilization.
- b. Bridge and culvert repair, modernization, replacement or initial construction.
- c. Roadway intersection and interchange improvements including warranted traffic signalization when it is integral to the improvement.
- d. Public transportation system improvements, including but not limited to bus shelters, bus turnouts, and passenger information signage, when they are integral to the roadway improvement.
- e. Bicycle and pedestrian infrastructure improvements, including but not limited to sidewalks, at-grade pedestrian crossings, bike lanes, and separated bike lanes, when they are integral to the roadway improvement.
- f. Right-of-way acquisition costs, including but not limited to appraisals, negotiation, compensation, and cultural resources surveys necessary to comply with applicable local, state and federal laws, rules and regulations.
- g. Construction or improvement of motorist rest areas, welcome centers, and information centers.
- h. Design engineering costs leading to construction plan development and construction inspection costs associated with RISE-financed projects.
- i. County and city bond principal and interest payments associated with RISE projects. No financing expenses incurred prior to funding commitment shall be eligible.
- j. Storm drainage and storm sewer costs to the extent needed for draining the roadway.
- k. Reconstruction or adjustment of utilities, including but not limited to water, sanitary sewer, electric, telephone, and natural gas, when utilities are located on private property and require replacement or relocation due to project construction; or said utilities are located in the public right-of-way and the utility is not required to relocate at its own expense.
- l. Costs associated with the acquisition of local, state and federal permits required for roadway construction.

163.8(2) Ineligible activities. Activities or costs ineligible for RISE funding, and which may not be counted as part of the non-RISE participation in immediate opportunity or local development roadway projects, include but are not limited to the following:

- a. Any and all costs incurred prior to a funding commitment by the commission notwithstanding rule 761—163.9(315).
- b. Routine roadway, bridge and culvert maintenance, including but not limited to pothole filling, crack sealing, seal coating, patching, shoulder maintenance, gravel or earth roadway maintenance, and bridge painting.
- c. Winter roadway and bridge maintenance, including but not limited to snow plowing, sanding, and salting.
- d. Overhead and operating costs associated with eligible project activities, including auditing.
- e. Expenses associated with the preparation and submission of applications for RISE funding.
- f. Predesign engineering, feasibility or alignment studies, and other planning expenses.
- g. Traffic signalization, except as an integral part of a roadway project.
- h. Pavement marking and traffic signs, except as an integral part of a roadway project.
- i. Utility construction, reconstruction or adjustment except for those activities or costs described in subrule 163.8(1).
- j. Safety appurtenances, except as an integral part of a roadway project.
- k. Lighting, except as an integral part of a roadway project.
- l. Lighting energy and maintenance costs.
- m. Sidewalks, bicycle paths, and railroad-highway crossings, except when replacing those facilities in service and affected by the project, or as an integral part of a roadway project.

- n.* Parking expenditures, including those for structures, lots, meters, paving, and marking whether for on-street or off-street parking.
 - o.* Nonroadway transportation expenditures, including those for railway, aviation, public transportation, and inland waterway facilities and equipment.
 - p.* Purchase of furnishings, construction equipment, and personal property.
 - q.* General government expenses and expenses associated with the provision of any public service which are not eligible for RISE program assistance.
 - r.* Donated right-of-way.
- [ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.9(315) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

163.9(1) *Need for advance eligibility.* If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a RISE funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with RISE funding without jeopardizing the project's eligibility for funding approval, but does not imply or guarantee that the commission will commit RISE funding to a subsequent application.

163.9(2) *Request, justification and review.* The request must be received by the department prior to the expenditure and must include justification regarding the extreme urgency and necessity to incur costs prior to a RISE funding commitment. A request for land acquisition must also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests must include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant must be submitted which includes the scope of services to be rendered. Costs for RISE application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 163.8(2) "e" and "f" remain ineligible for RISE funding and shall not be included in a request for determination of advance eligibility. The department will review the submittal. If the requirements of this rule are met, the department will provide written confirmation of the determination of advance eligibility.

163.9(3) *Requirements.* Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility must be noted in the subsequent RISE funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with RISE funds if the property acquired or design work completed is not necessary to construct the proposed RISE project included in the subsequent application. Design costs receiving a determination of advance eligibility may not exceed 10 percent of the total construction costs for the project. An application for funding which includes the expenditure must be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for RISE funding.

[ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.10(315) Immediate opportunity projects.

163.10(1) *General provisions.* The following provisions are applicable to immediate opportunity projects:

- a.* Immediate opportunity projects may be located on primary roads, secondary roads, city streets, state park roads or county conservation parkways.
- b.* There is no restriction on the number of applications per county or city that will be considered for RISE funding.
- c.* Counties and cities may apply for single-year or multiyear funding. Multiyear funding shall be limited to funding commitments from no more than three program years' allocations.

d. Applicants may use staff from other counties or cities, areawide planning organizations, areawide economic development organizations, or other jurisdictions to prepare application materials or administer projects.

e. There must be an adequate transportation justification for the roadway project. The proposed improvement need not be designed prior to project application, but the concept must generally be reasonable from a transportation planning and engineering standpoint and detailed enough to enable project cost estimates to be developed.

163.10(2) Contents of applications. Each application for an immediate opportunity project must contain the following:

a. General information, including applicant name, contact person, mailing address, telephone number, and other information of a general nature about the project proposal and the associated economic development activity.

b. Cost information, including the estimated total capital investment involved with the associated economic development activity, the estimated total cost of the roadway project, the amount of RISE funds requested for the roadway project, and the amount of non-RISE funds to be used to match or supplement RISE funding. Itemized breakdowns (showing the item, cost, and funding source) must be included for the total capital investment, the total roadway project cost, the RISE funds requested, and the non-RISE funds to be used to match or supplement RISE funding.

c. Data showing the impact of the associated economic development activity, including the number of direct jobs created or retained. Jobs created as a result of jobs being displaced elsewhere in the state shall not be considered direct jobs created for the purpose of evaluating the application.

(1) To expedite the review, the applicant shall provide the following data for each business included in the project justification: a list of in-state competitors; a list of in-state suppliers; the percentage of out-of-state sales; the effect on import substitution; long-range growth potential; and a list of all current and anticipated employment positions, both full- and part-time, the hourly wage for each, and the turnover rate.

(2) The applicant shall certify that each business will give hiring preference to residents of the state or local area, except for out-of-state employees offered a transfer to Iowa.

d. A preliminary project concept statement for the roadway project, including a location map, a sketch plan and a justification for the transportation improvement. In most cases, a sketch plan should include a simple plan and profile defining the horizontal and vertical geometrics and a typical roadway cross section defining pavement, shoulders, foreslope, and backslope or border treatment.

e. A time schedule for the total development, including the roadway project and the associated economic development activity.

f. A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The resolution shall state that the project will be adequately maintained and dedicated to public use for a minimum of 20 years after completion of the project. The resolution must also certify that the project meets the threshold criteria cited in paragraph 163.10(6) "a."

g. Documentation showing that the threshold criteria of subrule 163.10(6) have been met.

163.10(3) Submission of applications. An original and one copy of each completed application shall be submitted to the department. Applications may be submitted at any time.

Once an application has been submitted, no further information concerning that application shall be accepted by the department from the applicant unless specifically requested by the department. Applications may be withdrawn by the applicant and resubmitted at any time. Resubmitted applications shall be dated accordingly.

163.10(4) Incomplete applications. An applicant must satisfy the application requirements outlined in this chapter and must fully complete the official application form before the application will be considered by the commission.

163.10(5) Verification of application materials. Complete applications shall be reviewed to verify the figures or statements in the applications. This may include site visits. If inaccuracies, omissions, or errors are found, the commission may rescind the commitment of funds or reevaluate the application

based on the correct information. If an applicant loses funding through this process, the commission shall have complete discretion concerning the disposition of those funds, including awarding them to other applicants or carrying them over to the next programming cycle.

163.10(6) *Threshold criteria.* Funding commitment decisions for immediate opportunity projects shall be made on an individual basis. There is no competitive ranking of project applications. In order to gain a funding commitment, an application must meet all of the following threshold criteria:

a. The project must be related to an immediate, nonspeculative opportunity for permanent job creation or retention. The applicant county or city (or its agent) should be in the process of negotiating a location or retention decision with a developer or firm.

b. The applicant must demonstrate that an immediate funding commitment is essential to influence the job location or retention decision.

c. The applicant must demonstrate that necessary arrangements have been made for nonroadway factors (e.g., labor force training, zoning, sewer, water, police and fire protection, financing, and permits) essential for the proposed job creation or job retention activity.

d. There must be at least 20 percent non-RISE financial participation in the roadway project, except the commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.

e. There must be a strong likelihood that the total development, including the roadway project, can be completed in a timely manner. It is up to the applicant to identify a time schedule and maintain it. This time schedule may be adjusted for such reasons including but not limited to the project involves unusually complex engineering studies, extensive real estate negotiations, extensive analysis for environmental clearances, or unusually complex planning for associated development. The commission may withdraw funding if time schedules have been misrepresented or have not been maintained.

163.10(7) *Review and funding of applications.*

a. The staff of the department shall review complete immediate opportunity project applications and may consult with other organizations with economic development responsibilities. As part of the review, the staff shall evaluate the effect of the proposed project on the state economy using the following factors: consistency with the state economic development plan; diversification of the state economy; the impact on in-state suppliers, competitors, and import substitution; percentage of out-of-state sales; the quality of employment positions; and the record of law violations. This review shall be performed within a reasonable period of time after receipt of the application. Following this review, complete applications meeting the threshold criteria of subrule 163.10(6) shall be forwarded to the commission for action at its next meeting.

b. The commission may fund all or any part of an application and may make a conditional funding commitment. In making its decision, the commission will consider the amount of total capital investment per RISE dollar requested, and the amount of RISE dollars requested per job created or retained.

c. The commission may deny funding for projects which will not result in net job creation or job retention from a statewide point of view, for instance, projects which simply involve the relocation of jobs or other economic activity within Iowa.

d. Immediate opportunity project applications may, at the discretion of the commission, be considered as applications for local development projects. These applications shall be included in the current round of local development project programming, regardless of the deadlines stated in subrule 163.11(3). However, immediate opportunity project applications submitted solely to circumvent the deadlines for local development project applications shall not be considered in this manner.

[ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.11(315) Local development projects.

163.11(1) *General provisions.* The following provisions are applicable to local development projects:

a. Local development projects may be located on primary roads, secondary roads, city streets, state park roads or county conservation parkways.

b. There is no restriction on the number of applications per county or city that will be considered for RISE funding.

c. Counties and cities may apply for single-year or multiyear funding. Multiyear funding shall be limited to funding commitments from no more than three program years' allocations.

d. Applicants may use staff from other counties or cities, areawide planning organizations, areawide economic development organizations, or other jurisdictions to prepare application materials or administer projects.

e. There must be an adequate transportation justification for the roadway project. The proposed improvement need not be designed prior to project application, but the concept must generally be reasonable from a transportation planning and engineering standpoint and detailed enough to enable project cost estimates to be developed.

163.11(2) Contents of applications. Each application for a local development project must contain the following:

a. General information, including applicant name, contact person, mailing address, telephone number, and other information of a general nature about the project proposal and the associated economic development activity.

b. Cost information, including the estimated total capital investment involved with the associated economic development activity, the estimated total cost of the roadway project, the amount of RISE funds requested for the roadway project, and the amount of non-RISE funds to be used to match or supplement RISE funding. Itemized breakdowns (showing the item, cost and funding source) must be included for the total capital investment, the total roadway project cost, the RISE funds requested, and the non-RISE funds to be used to match or supplement RISE funding.

c. Data showing the impact of the associated economic development activity, including the number of direct jobs created or retained. Jobs created as a result of jobs being displaced elsewhere in the state shall not be considered direct jobs created for the purpose of evaluating the application.

(1) To expedite the review, the applicant shall provide the following data for each business included in the project justification: a list of in-state competitors; a list of in-state suppliers; the percentage of out-of-state sales; the effect on import substitution; long-range growth potential; and a list of all current and anticipated employment positions, both full- and part-time, the hourly wage for each, and the turnover rate.

(2) The applicant shall certify that each business will give hiring preference to residents of the state or local area, except for out-of-state employees offered a transfer to Iowa.

d. A preliminary project concept statement for the roadway project, including a location map, a sketch plan and a justification for the transportation improvement. In most cases, a sketch plan should include a simple plan and profile defining the horizontal and vertical geometrics and a typical roadway cross section defining pavement, shoulders, foreslope, and backslope or border treatment.

e. A time schedule for the total development, including the roadway project and the associated economic development activity.

f. A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The resolution shall state that the project will be adequately maintained and dedicated to public use for a minimum of 20 years after completion of the project.

163.11(3) Submission of applications. An original and one copy of each completed application shall be submitted to the department.

a. Applications may be submitted at any time. However, in order to be considered in the current round of programming, complete applications must be received by the department or postmarked no later than February 1 or September 1.

b. Once an application has been submitted, no further information concerning that application shall be accepted by the department from the applicant unless specifically requested by the department. Applications may be withdrawn by the applicant and resubmitted at any time. Resubmitted applications shall be dated accordingly.

163.11(4) *Incomplete applications.* An applicant must satisfy the application requirements outlined in this chapter and must fully complete the official application form before the application will be considered by the commission. An applicant shall be notified if an application is incomplete.

163.11(5) *Verification of application materials.* Complete applications shall be reviewed to verify the figures or statements in the applications. This may include site visits. If inaccuracies, omissions, or errors are found, the commission may rescind the commitment of funds or reevaluate the application based on the correct information. If an applicant loses funding through this process, the commission shall have complete discretion concerning the disposition of those funds, including awarding them to other applicants or carrying them over to the next programming cycle.

163.11(6) *Rating factors.* The following factors and potential rating points shall be used in assessing applications for local development projects. Assessment of these factors shall be the responsibility of the department.

a. Development potential. This factor measures the degree of certainty involved in the economic development activity to be supported by the proposed RISE project and the potential for future job growth. Maximum points: 35.

b. Economic impact. This factor measures the economic impact of the development activity to be supported by the proposed RISE project, including the number of direct jobs assisted, investment leveraging, the percentage of out-of-state sales and in-state suppliers, the impact on competition and diversification, and the quality of job factors. Maximum points: 20.

c. Local commitment and initiative. This factor measures the level of effort being put forth by the applicant to attract economic development and the adequacy of the supporting infrastructure. Maximum points: 35 (includes 5 points for the remediation or redevelopment of a brownfield site).

d. Transportation need. This factor measures the condition and quality of existing road or street service. Maximum points: 4.

e. Area economic need. This factor measures the economic condition of the area. Maximum points: 6.

163.11(7) *Review and funding of applications.*

a. The staff of the department shall review and rate complete local development project applications and may consult with other organizations with economic development responsibilities. As part of the review, the staff shall evaluate the effect of the proposed project on the state economy using the following factors: consistency with the state economic development plan; diversification of the state economy; the impact on in-state suppliers, competitors, and import substitution; percentage of out-of-state sales; the quality of employment positions; and the record of law violations. Complete applications shall be forwarded to the commission for a funding commitment action within a reasonable period of time after the application deadline. An application considered but not funded in one programming cycle must be resubmitted by the applicant if it is to be considered in a subsequent cycle.

b. The commission may fund all or any part of an application and may make a funding commitment conditional upon adherence to a specific time schedule, realization of a development prospect, or fulfillment of other agreements.

[ARC 3299C, IAB 8/30/17, effective 10/4/17]

761—163.12(315) Project administration.

163.12(1) *Agreement.* After a funding commitment has been made for a project, the department shall enter into a project agreement with the applicant. The agreement shall delineate responsibilities for project planning, design, right-of-way, contracting, construction and materials inspection, and documentation. The agreement shall require that a business assisted by the project which acquires or merges with an Iowa corporation within three years following the RISE application shall make a good-faith effort to hire the workers of the merged or acquired company. The agreement shall require the applicant to comply with all local, state, and federal laws, rules and regulations that may apply to the project.

163.12(2) *Project payments.* Payments from the RISE fund to counties or cities shall be made on a cost reimbursement basis, and financial participation shall be limited to the maximum percentage

allowed by the funding commitment. The non-RISE financial participation shall include only those items listed as eligible for RISE funding and may be in the form of cash, the value of design engineering and construction inspection services, or the cost of eligible advance right-of-way acquisitions or preliminary design pursuant to rule 761—163.9(315). Grants from other state agencies or programs may also contribute to the non-RISE financial participation if their laws and rules allow. The applicant shall provide documentation to the department supporting the value of any noncash contribution to the project. The department has the sole authority to determine the value of noncash contributions. Contributions made by a third party may be allowed.

163.12(3) *Project expenditures incurred prior to agreement.* Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, are eligible for reimbursement if a project agreement is subsequently executed. However, under no circumstances shall any reimbursement be paid until the agreement has been executed.

163.12(4) *Remedies for noncompliance with project agreement.* The commission may revoke funding commitments, require repayment of RISE funds loaned or granted, or take both actions when the county or city has not fulfilled the terms of the project agreement.

163.12(5) *Cost overruns.* RISE funds committed for projects are for a maximum dollar amount. Cost overruns shall be the responsibility of the administering jurisdiction.

163.12(6) *Audit.* The department may audit all project costs incurred for compliance with the agreement, including costs that are part of the matching contribution. All force account work performed by a county or city on the project shall be audited.

[ARC 3299C, IAB 8/30/17, effective 10/4/17]

These rules are intended to implement Iowa Code section 312.2 and chapter 315.

[Filed emergency 10/10/85—published 11/6/85, effective 10/11/85]

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[Editorial change: IAC Supplement 8/11/21]

CHAPTER 165
RECREATIONAL TRAILS PROGRAM

761—165.1(465B) Definitions.

“*Authority*” means a state or local government agency, municipal corporation, county or nonprofit organization having authority and responsibility for a trail.

“*Commission*” means the state transportation commission.

“*Department*” means the Iowa department of transportation.

“*Recreational trail*” means a thoroughfare or track across land or snow, used for recreational purposes such as pedestrian activities including wheelchair use; skating or skateboarding; equestrian activities, including carriage driving; nonmotorized snow trail activities, including skiing; bicycling or use of other human-powered vehicles; providing access to aquatic or water activities; and motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

“*Recreational trails funds*” means funds appropriated for the acquisition, construction, and improvement of recreational trails.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.2(465B) Information and forms. Information, instructions and application forms may be obtained from the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664; or through the department’s website at www.iowadot.gov.
[ARC 3300C, IAB 8/30/17, effective 10/4/17; Editorial change: IAC Supplement 8/11/21]

761—165.3 and 165.4 Reserved.

761—165.5(465B) Program administration.

165.5(1) Purpose. The recreational trails program provides funds to establish recreational trails in Iowa for the use, enjoyment and participation of the public. The department shall administer the recreational trails fund as a statewide program.

165.5(2) Funding.

a. The commission is solely responsible for all funding commitments and shall determine the projects to be funded, subject to the availability of recreational trails funds. The commission may approve, modify, or deny an application. The commission may fund all or part of a project and may make funding conditional upon adherence to a time schedule or to fulfillment of an agreement.

b. The commission need not commit all funds available during a programming cycle. The commission may reserve unexpended or repaid funds for the next programming cycle or for anticipated present and future project needs and other contingencies.

c. Project costs that exceed the commission’s funding commitment shall not be eligible for reimbursement from the recreational trails fund. Reimbursement for project costs shall be limited to the percentage match approved by the commission and actual eligible project costs incurred.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.6 to 165.8 Reserved.

761—165.9(465B) Applicant eligibility.

165.9(1) A state or local government agency, a municipal corporation, a county or a nonprofit organization is eligible to apply for and receive funds from the recreational trails program.

165.9(2) A private business or developer is not eligible to apply directly for funds from the recreational trails program.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.10 and 165.11 Reserved.

761—165.12(465B) Project eligibility.

165.12(1) Public use. The recreational trails program is restricted to the acquisition, construction or improvement of recreational trails open for public use or trails which will be dedicated to public use upon completion. A private trail project or a project for a private purpose is not eligible for funding under this program.

165.12(2) Criteria. A proposed recreational trails project shall meet all of the following requirements:

- a. The project must be part of a local, areawide, regional or statewide plan.
- b. The trail route shall be designed to allow enjoyment of scenic views or points of historical interest and to maximize safety. The route may use existing roads, streets or parkways, if the normal flow of motor vehicle traffic will not be hindered, abandoned railroad corridors, utility corridors, or new right-of-way as necessary.
- c. The project shall include a contribution of at least 25 percent matching funds.
- d. Matching funds may include grants from other state agencies or programs if their laws and rules allow and the donation of in-kind labor, materials, equipment, and services from a third party. The department has the sole authority to determine the value of noncash contributions. The value of donated land may be an eligible matching contribution if:

- (1) The land is donated after the commission's funding commitment, and
- (2) The value is based on a real estate appraisal acceptable to the department. The appraisal is subject to review and approval by the department after a funding commitment has been made.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.13 and 165.14 Reserved.

761—165.15(465B) Eligible project costs.

165.15(1) Land. Land acquisition costs including, but not limited to, appraisals, negotiation, compensation and cultural resources surveys necessary to comply with applicable local, state and federal laws, rules and regulations are eligible project costs. Land may be acquired by lease, easement or fee simple and as allowed by Iowa Code section 6A.21. The performance of land negotiation and acquisition activities shall not be the responsibility of the department although the department may provide advisory services.

165.15(2) Other eligible costs. Other project costs that are eligible for funding are limited to the following:

- a. Trail surfacing, resurfacing, rehabilitation, modernization, upgrading and reconstruction, including pavement repairs and overlays and shoulder widening and stabilization; or initial trail construction including grading, drainage, paving and erosion control.
- b. Bridge and culvert repair, modernization, replacement or initial construction.
- c. Roadway intersection and interchange improvements, including warranted traffic signalization that is an integral part of the project.
- d. Construction or improvement of rest areas, information centers, waysides, permanent interpretive displays, lighting and rest rooms, including the costs of utility connections that are an integral part of the project.
- e. Design engineering costs leading to construction plan development and construction inspection costs directly associated with the project.
- f. Storm drainage and storm sewer costs to the extent needed for draining the trail.
- g. Reconstruction or adjustment of utilities including but not limited to water, sanitary sewer, electric, telephone, and natural gas when utilities are located on private property and require replacement or relocation due to project construction; or said utilities are located in the public right-of-way and the utility is not required to relocate at its own expense.
- h. Trail signs, fencing, landscaping, parking areas, and walkways.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.16 Reserved.

761—165.17(465B) Ineligible project costs.

165.17(1) *Before commission approval.* Any and all costs incurred prior to a funding commitment by the commission are ineligible for funding notwithstanding rule 761—165.19(465B).

165.17(2) *Other ineligible costs.* Other project costs that are ineligible for funding include, but are not limited to, the following:

a. Routine maintenance of a trail, bridge, culvert, fence or sign; winter maintenance of a trail or bridge, including but not limited to snow plowing, sanding, and salting.

b. Overhead and operating costs associated with a project, such as auditing, legal and administrative costs.

c. Expenses associated with the preparation and submission of a project application.

d. Predesign engineering, feasibility, or alignment studies and other planning expenses.

e. Utility construction, reconstruction or adjustment except for those activities or costs described in subrule 165.15(2).

f. Pavement markings, traffic signs, safety appurtenances or lighting except as an integral part of a trail project.

g. Purchases of office furnishings or equipment, construction or maintenance equipment, or personal property.

h. General government expenses and expenses associated with the provision of any public service that are not otherwise eligible for project funding.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.18 Reserved.

761—165.19(465B) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

165.19(1) *Need for advance eligibility.* If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a recreational trails program funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with recreational trails program funding without jeopardizing the project's eligibility for funding approval, but does not imply or guarantee that the commission will commit recreational trails program funding to a subsequent application.

165.19(2) *Request, justification and review.* The request must be received by the department prior to the expenditure and must include justification regarding the extreme urgency and necessity to incur costs prior to a recreational trails program funding commitment. A request for land acquisition must also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests must include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant must be submitted which includes the scope of services to be rendered. Costs for recreational trails program application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 165.17(2) "c" and "d" remain ineligible for recreational trails program funding and shall not be included in a request for determination of advance eligibility. The department will review the submittal. If the requirements of this rule are met, the department will provide written confirmation of the determination of advance eligibility.

165.19(3) *Requirements.* Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility must be noted in the subsequent recreational trails program funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with recreational trails program funds if the property acquired or design work

completed is not necessary to construct the proposed recreational trails program project included in the subsequent application. Design costs receiving a determination of advance eligibility may not exceed 10 percent of the total construction costs for the project. An application for funding which includes the expenditure must be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for recreational trails program funding.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.20 and 165.21 Reserved.

761—165.22(465B) Application.

165.22(1) *Submission.* An eligible applicant shall complete and submit an application on a form and in the quantity prescribed by the department.

- a. An eligible applicant may submit more than one application in a funding cycle.
- b. Two or more eligible applicants may submit a joint application and are encouraged to do so when a project requires mutual action. A joint application shall designate a lead applicant to serve as the principal contact with the department.
- c. The application deadline shall be on the first day of the fiscal year for which funding has been provided to the program and any additional stated deadline as deemed necessary by the department to fully award program funding.
- d. Applications shall be received by the department or postmarked by the stated application deadline.

165.22(2) *Contents of application.* Each application shall contain the following:

- a. The applicant's name, mailing address and telephone number, and the contact person who will serve as liaison with the department.
- b. A project concept statement including a location map, a cross section and a sketch of the project intended to be constructed with program funds. The proposed project need not be designed before applying, but the concept must be reasonable from a transportation engineering standpoint and detailed enough to generate project cost estimates.
- c. An itemized cost estimate for the total project to be constructed showing for each item the cost and funding source. When a project is part of a larger multiphase project, the application shall differentiate the costs and scope of the proposed construction project from the costs and scope of the overall multiphase project.
- d. A time schedule for project completion. A time schedule adjustment may be approved by the department if the project involves unusually complex studies, extensive real estate negotiations, extensive analyses for environmental clearances, complex planning for associated developments, or another compelling reason.
- e. An adequate justification for the recreational trails project based on the project eligibility criteria in subrule 165.12(2) and the evaluation criteria in subrule 165.26(2).
- f. A formal resolution passed by the governing body of the responsible authority endorsing the application and the timeline for project completion provided therein. The resolution shall also state that the proposed trail project will be adequately maintained and made available for the intended public use for a minimum of 20 years after completion of the project.

165.22(3) *Funding requests.* An applicant shall specify in the application the amount of grant funding requested from the recreational trails program and may offer a matching fund contribution larger than is required.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.23(465B) Application procedure.

165.23(1) All applications for funding shall be complete. The department reserves the right to return an incomplete application to the applicant without further consideration for funding. An applicant may then submit a completed application for the next available funding cycle.

165.23(2) An application that is considered but not funded in one funding cycle may be resubmitted by the applicant for consideration in the next cycle.

165.23(3) An applicant may withdraw an application at any time.
[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.24 and 165.25 Reserved.

761—165.26(465B) Evaluation and approval.

165.26(1) The department shall review each application, may verify the contents and may visit the trail site.

165.26(2) The department shall evaluate each complete application primarily on the basis of whether the predicted use of the trail justifies the construction and maintenance costs including, but not limited to, the following criteria:

- a. Need, in terms of the population to be served and existing trails in the area (25 points).
- b. Compatibility with local, areawide, regional or statewide plans (15 points).
- c. Benefits of multiple uses and recreational opportunities (20 points).
- d. Quality of the site (25 points).
- e. Economic benefits to the local area (10 points).
- f. Special facilities for persons with disabilities (5 points).
- g. Project is shovel-ready and planned to be completed within three years of award of funding (25 points).
- h. Projects with cash match (5 points).

165.26(3) Completed applications shall be reviewed by a committee composed of one representative from state agencies with jurisdiction over transportation, tourism, cultural resources and natural resources. The committee shall recommend applications to the department by ranking them in order of funding priority.

165.26(4) The department shall prepare a list of applications and funding recommendations and present it to the commission for final approval and award of funding.
[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.27 to 165.29 Reserved.

761—165.30(465B) Project agreement.

165.30(1) After the commission has approved funding for a recreational trails project, the department and the applicant shall execute a project agreement.

a. The agreement shall specify the responsibilities for project planning, design, land acquisition, contracting, construction and materials inspection, and documentation and the criteria for each. The agreement shall also specify the overall funding level approved and contain an estimated budget for eligible work items.

b. The agreement shall require the applicant to comply with all local, state and federal laws, rules and regulations that may apply to the project.

165.30(2) The department shall reimburse the authority for actual eligible project costs incurred as specified in the agreement, not to exceed the amounts authorized by the project agreement.

165.30(3) Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, are eligible for reimbursement if a project agreement is subsequently executed. However, under no circumstances shall any reimbursement be paid until the project agreement has been executed.

165.30(4) The department may audit all project costs incurred for compliance with the agreement, including costs that are part of the matching contribution. All force account work performed by a county or city on the project shall be audited.

[ARC 3300C, IAB 8/30/17, effective 10/4/17]

761—165.31 and 165.32 Reserved.

761—165.33(465B) Noncompliance. The department may revoke funding commitments, seek repayment of funds already reimbursed, or take both actions if:

165.33(1) The terms of the project agreement have not been fulfilled.

165.33(2) An agreement has not been signed within six months after the project sponsor receives the signature copy.

165.33(3) The department finds that the application contained inaccuracies, omissions, errors or misrepresentations.

165.33(4) The time schedule for project completion was misrepresented or has not been maintained.

165.33(5) The authority fails to comply with subrule 165.22(2), paragraph “f.”
[ARC 3300C, IAB 8/30/17, effective 10/4/17]

These rules are intended to implement Iowa Code chapter 465B.

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[Filed ARC 3300C (Notice ARC 3132C, IAB 6/21/17), IAB 8/30/17, effective 10/4/17]

[Editorial change: IAC Supplement 8/11/21]

CHAPTER 172
AVAILABILITY OF INSTRUCTIONAL MEMORANDUMS
TO LOCAL PUBLIC AGENCIES

[Prior to 6/3/87, Transportation Department[820]—(06,Q) Ch 1]

761—172.1(307) Purpose. The purpose of these rules is to establish requirements for instructional memorandums, in accordance with Iowa Code section 307.24.

[ARC 2425C, IAB 3/2/16, effective 4/6/16]

761—172.2(307) Contact information. Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

[ARC 2425C, IAB 3/2/16, effective 4/6/16]

761—172.3(307) Instructional memorandums to local public agencies. The department shall produce instructional memorandums that communicate instructions, requirements, and guidance information on a variety of transportation-related topics to local public agencies. The instructional memorandums and updates shall be available electronically, at no cost, to all local public agencies on the department's website, www.iowadot.gov.

[ARC 2425C, IAB 3/2/16, effective 4/6/16; Editorial change: IAC Supplement 8/11/21]

These rules are intended to implement Iowa Code section 17A.3 and section 307.24.

[Filed 7/1/75]

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[Editorial change: IAC Supplement 8/11/21]

VEHICLES

CHAPTER 400

VEHICLE REGISTRATION AND CERTIFICATE OF TITLE

[Prior to 6/3/87, Transportation Department[820]—(07.D)Ch 11]

761—400.1(321) Definitions. The definitions in Iowa Code section 321.1 are hereby made part of this chapter. In addition, the following words and phrases, when used in Iowa Code chapter 321 or this chapter, shall have the meanings respectively ascribed to them, except when the context otherwise requires.

“Certificate of title” means a document issued by the appropriate official which contains a statement of the owner’s title, the name and address of the owner, a description of the vehicle, a statement of all security interests and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms “title certificate,” “title only,” and “title” shall be synonymous with the term “Certificate of title.”

“Dealer’s or manufacturer’s stock or inventory” means a vehicle owned by a dealer which is being held for sale or trade and for which the dealer has a duly assigned ownership document as required by Iowa Code section 321.45.

“Electric vehicle annual registration fee” means an annual registration fee for a battery electric or plug-in hybrid electric motor vehicle as provided in Iowa Code sections 321.116 and 321.117. Unless otherwise provided, for purposes of this chapter, any reference to a registration fee shall also include an annual registration fee for a battery electric or plug-in hybrid electric motor vehicle if that vehicle is a battery electric or plug-in hybrid electric motor vehicle as defined in Iowa Code sections 321.116 and 321.117.

“Electronic” means as defined in Iowa Code section 554D.103.

“Electronic record” means as defined in Iowa Code section 554D.103.

“Electronic signature” means as defined in Iowa Code section 554D.103.

“End user” means a person or entity that directly uses the services of an electronic registration and titling (ERT) service provider to submit an electronic application for certificate of title or registration of a vehicle.

“ERT service provider” means a person or entity authorized by the department under subrule 400.3(16) to submit electronic applications for certificate of title or registration of a vehicle on behalf of an end user to a county treasurer.

“Farm trailer” means a trailer used exclusively by a farmer in the conduct of the farmer’s agricultural operation. The term shall not include a “semitrailer.”

“Final-stage manufacturer” means as defined in Iowa Code section 322.2.

“Half-year fee” means the first semiannual installment of an annual registration fee but does not include an electric vehicle annual registration fee. The term “half-year registration” shall be synonymous with the term “half-year fee.”

“Hearse” means a motor vehicle used exclusively to transport a deceased person.

“Lien” means an interest in a vehicle which secures payment or performance of an obligation. The term “security interest” shall be synonymous with the term “lien.”

“Manufacturer’s certificate of origin” means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named and that the transfer is the first transfer of the vehicle in ordinary trade and commerce.

1. The terms “manufacturer’s statement,” “importer’s statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer’s certificate of origin.”

2. In addition to the requirements of Iowa Code subsection 321.45(1), the certificate shall contain a description of the vehicle which includes the make, model, style and vehicle identification number. The description of a motorized bicycle shall also specify the maximum speed.

3. For 1992 and subsequent model year vehicles, the form used for manufacturers’ certificates of origin shall be the universal form adopted in 1990 by the American Association of Motor Vehicle

Administrators (AAMVA). This requirement does not apply to trailer-type vehicles. A copy of this universal form may be obtained from the vehicle and motor carrier services bureau at the address in subrule 400.6(1).

“*Model year*,” except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For purposes of titling and registration, the model year shall advance one year each January 1.

“*Registered*” means that the appropriate registration fee has been paid for a vehicle and a registration card evidencing payment has been issued to the owner.

“*Registration card*” means a document issued to the owner of a vehicle by the appropriate agency whose duty it is to register vehicles, which contains the name and address of the owner and a description of the vehicle, and which is issued to the owner when the vehicle has been registered. The terms “registration certificate,” “registration receipt” and “registration renewal receipt” are synonymous with the term “registration card.”

“*Security interest*” means an interest in a vehicle which secures payment or performance of an obligation. The term “lien” shall be synonymous with the term “security interest.”

“*Social security number*” means a social security number issued by the United States government.

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23, 321.24, 321.40, 321.45, 321.50, 321.116, 321.117, 321.123, 321.134, 321.157 and 322.2.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3449C, IAB 11/8/17, effective 12/13/17; ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4343C, IAB 3/13/19, effective 4/17/19; ARC 4960C, IAB 3/11/20, effective 4/15/20; ARC 5178C, IAB 9/9/20, effective 10/14/20]

761—400.2(321) Vehicle registration and certificate of title—general provisions.

400.2(1) *Vehicles subject to registration.* A vehicle subject to registration under the laws of Iowa shall be required to be registered at the time the vehicle is first operated or moved upon a highway in this state.

400.2(2) *Vehicles exempt from titling or registration.* A certificate of title shall not be issued for a vehicle which is exempt from the titling or registration provisions of Iowa Code chapter 321, unless issuance of a certificate of title is specifically authorized in chapter 321.

400.2(3) *Issuance of a certificate of title upon payment of registration fees.* Except as otherwise provided in Iowa Code chapter 321 or this chapter of rules, the current year registration fee and any delinquent registration fees and penalties, if any, shall be paid prior to issuance of a certificate of title.

400.2(4) *Trailers with an empty weight of 2000 pounds or less.* Certificates of title shall not be issued for trailers with an empty weight of 2000 pounds or less. However, these trailers shall be subject to the registration fees provided in Iowa Code section 321.123.

400.2(5) *Vehicles owned by the government.* A certificate of title shall be issued for a vehicle owned by the government when the vehicle is first registered. However, vehicles owned by the government shall be exempted from registration and titling fees. Also, a certificate of title shall not be issued for a government-owned vehicle if a certificate of title would not be issued if the vehicle were owned by someone other than the government.

400.2(6) *Vehicles leased by the government.* Vehicles leased by the government for a period of 60 days or more are exempted from payment of registration fees. A copy of the lease agreement, certificate of lease, or other evidence that the vehicle is being leased by the government shall be required in order to obtain this exemption. However, the lessor is not exempted from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321 and these rules, including payment of the appropriate certificate of title fee.

400.2(7) *Special mobile equipment.* Rescinded IAB 3/7/90, effective 4/11/90.

400.2(8) *Private school buses, fire trucks, authorized emergency vehicles, and transit buses.* In accordance with Iowa Code sections 321.18, 321.19 and 321.22, private school buses, fire trucks not owned or operated for a pecuniary profit, certain authorized emergency vehicles owned and operated by nonprofit organizations, and urban and regional transit system buses are exempt from the payment of registration fees. However, these vehicles are not exempt from the requirements for obtaining a

certificate of title as set out in Iowa Code chapter 321, including payment of the appropriate certificate of title fee.

400.2(9) Towable recreational vehicles. For purposes of registration and titling under Iowa Code chapter 321 and this chapter, a towable recreational vehicle as defined in Iowa Code section 322C.2 shall be considered a travel trailer or fifth-wheel travel trailer, as those terms are defined in Iowa Code section 321.1, as applicable.

This rule is intended to implement Iowa Code sections 321.18 to 321.22, 321.24, 321.123 and 322C.2(19).

[ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.3(321) Application for certificate of title or registration for a vehicle.

400.3(1) Application form. To apply for a certificate of title or registration for a vehicle, the owner of the vehicle shall complete an application form prescribed by the department, which may be electronic. Application shall be made in accordance with Iowa Code chapter 321, these rules, and other applicable provisions of law.

400.3(2) Full legal name. Full legal names shall be given on the application. Civilian or military titles and nicknames shall not be used.

400.3(3) Information about owner, lessee and primary user.

a. Iowa Code sections 321.20 and 321.109 list the information that must be disclosed by the owner, lessee and primary user on the application.

b. A firm, association, corporation, or trust that is not required to have a federal employer identification number shall disclose the social security number, Iowa driver's license number or Iowa nonoperator's identification card number of an authorized representative of the firm, association, corporation, or trust. The authorized representative of a trust is the trustee unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604.

400.3(4) Plate number and validation number. If the owner has registration plates that have been assigned to the owner and affixed to the vehicle, the owner shall list the plate number on the application form. The validation number from the validation sticker shall also be listed.

400.3(5) Birth or registration month. If the vehicle is owned by one individual, the individual's month of birth shall be listed on the application form and shall determine the registration year. If the vehicle is owned by two or three individuals, the month of birth of one of the individuals shall be listed and shall determine the registration year. If the vehicle is owned by a partnership, corporation, association, or governmental subdivision, the birth or registration month shall be left blank on the application; the county treasurer shall determine the month of registration.

400.3(6) Model year. The application shall include the model year of the vehicle.

400.3(7) Purchase information. The application shall include the date of purchase or acquisition and, if the vehicle was not purchased from a dealer, the purchase price.

400.3(8) Vehicle color. The application shall include the vehicle color.

400.3(9) Foreign registered vehicle. If the vehicle is registered in a foreign jurisdiction, the application shall include the date the vehicle was brought into Iowa.

400.3(10) Signature of applicant. The owner shall sign the application form in ink, unless submitted electronically.

400.3(11) Dealer certification.

a. If the vehicle is a new vehicle which has been sold to the owner by a dealer, as defined in Iowa Code section 321.1, the dealer shall certify the following on the application form: sale price of the vehicle, the amounts allowed for property traded in, nontaxable charges and rebates, the tax price of the vehicle, the date that a "Registration Applied For" card was issued, and the registration fee collected.

b. The certification shall include the dealer's number and name and shall be signed by the dealer or an authorized representative of the dealer. The signature may be electronic when the application form is submitted electronically in a manner approved by the department.

400.3(12) *Weigh ticket.* If application is being made to lower the tonnage on any motor truck, bus or truck tractor, the county treasurer may require a copy of a stamped weigh ticket issued by any public scale.

400.3(13) *Credits.* See rule 761—400.60(321) for:

Credit for unexpired registration fee.

Credit for transfer to spouse, parent or child.

Credit from/to apportioned registration.

Assignment of credit and registration plates from lessor to lessee.

400.3(14) *Leased vehicle.* As required by Iowa Code section 423.26, the lessor shall list the lease price of the vehicle on the application form.

400.3(15) *Affidavit of correction.* As provided in Iowa Code section 321.23A, the county treasurer or the department may accept an affidavit of correction on a form prescribed by the department.

a. The affidavit may be used only to correct those errors, erasures or alterations listed on the affidavit.

b. The affidavit must contain the signatures of all parties to the original error, erasure or alteration.

c. Only an original, notarized affidavit shall be accepted.

d. The affidavit must be surrendered with the document that contains the error, erasure or alteration to be corrected.

e. The affidavit may be accepted to correct errors, erasures or alterations on either an Iowa title or a foreign title.

400.3(16) *Electronic applications.*

a. Applications for certificate of title or registration of a vehicle may be submitted electronically via web-based services offered and maintained by ERT service providers authorized by the department. To be authorized to serve as an ERT service provider, the ERT service provider must establish to the satisfaction of the department that the ERT service provider has the technical, financial, legal, and administrative capacity to meet the department's requirements for submission of electronic applications and must execute an agreement, in a form and content determined by the department, that authorizes and permits the ERT service provider to interact with the department's vehicle title and registration system via an application program interface established by the department and to submit electronic applications on behalf of end users that choose to use the ERT service provider's services to submit an application electronically. Agreements executed by ERT service providers under this paragraph shall include provisions that address security, financial responsibility, privacy, termination, and any other matters deemed appropriate by the department.

b. An agreement executed by an ERT service provider is a condition of authorization and permission only. An ERT service provider authorized by the department is not a contractor, vendor, employee, or agent for the department, the state of Iowa, or any county treasurer accepting electronic applications, and shall not be entitled to compensation from the department, the state of Iowa, or any county treasurer for any service, transaction, or other act rendered as an ERT service provider. The ERT service provider remains solely liable and responsible for the ERT service provider's services and activities as an ERT service provider and shall defend, indemnify and hold harmless the department, any county treasurer, the state of Iowa, and its, or their agents, officers, heirs, assigns, and employees of and from any and all damages, claims, penalties, debts owed, or any other form of liability arising from or related to the ERT service provider's service, performance, errors, acts, or omissions. An ERT service provider that chooses to provide service under the department's permission and authorization does so at the ERT service provider's sole risk and has no claim or right against the department, any county treasurer, or the state of Iowa for fees, costs, profits, loss of profits, interruption of business, or any other form of compensation, remuneration, liability, or damages arising from or related to the ERT service provider's activity as an ERT service provider or inability to serve as an ERT service provider.

c. An ERT service provider authorized by the department may establish web-based services to allow end users to submit applications via an electronic interface established and maintained by the ERT service provider and to submit the applications on behalf of the end user to county treasurers via the department's vehicle title and registration system and application program interface established by the department. In doing so, the ERT service provider is acting as a contractor or vendor for the end user and not the department, any county treasurer, or the state of Iowa, and remains solely responsible to the end user for any failure to perform or breach of performance or agreement. When the end user is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C, "end user" includes the motor vehicle dealer and any person with an interest in the vehicle that is the subject of the application. The ERT service provider may charge the end user a fee for services rendered as an ERT service provider.

d. In addition to the documentary fee authorized under Iowa Code section 322.19A, an end user that is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C may pass and charge to a customer the fees or costs incurred by the motor vehicle dealer to submit the customer's application through an ERT service provider's services as a third-party cost or fee under Iowa Code section 322.19A(1), provided that the motor vehicle dealer discloses the charge to the customer before submitting the application. The documentary fee charged by the motor vehicle dealer shall not exceed the amount authorized by Iowa Code section 322.19A(3). Neither the ERT service provider nor the motor vehicle dealer shall charge a customer for creation or delivery of a "registration applied for" card.

e. An ERT service provider authorized by the department has no authority to approve or deny applications. Acceptance of an application by an ERT service provider is not approval of the application. An application is not considered to be formally submitted until it is electronically transmitted by the ERT service provider to the county treasurer via the department's vehicle title and registration system and the application program interface established by the department. The county treasurer remains responsible for approving or denying the application and may reject the application for any reason permitted or required by state or federal law or regulation.

f. An authorized ERT service provider is responsible for the ERT service provider's payment solution and for all payment transaction security and compliance with all applicable standards associated with the payment solution or solutions offered by the ERT service provider. The ERT service provider shall transfer title and registration fees collected by the ERT service provider directly to an account designated by the county treasurer responsible for the transaction via automated clearing house (ACH) transfer and the fees shall be available to the county treasurer no later than three business days following the submission of a transaction for which the fees were paid. Funds received by the ERT service provider shall be held until transfer to the county treasurer's account in a bank insured by the Federal Deposit Insurance Corporation. The ERT service provider shall be responsible for reconciling insufficient funds from an end user.

g. Fees submitted electronically are not deemed to be received until deposited into the county treasurer's account via completion of the ACH transfer. The end user remains responsible for fees submitted via an ERT service provider and the end user's responsibility for payment of any required fees is not waived or excused by the ERT service provider's failure to complete the transfer. As a condition of authorization and permission to serve as an ERT service provider and before the ERT service provider may offer services, the ERT service provider shall furnish a surety bond executed by the ERT service provider as principal and executed by a corporate surety company, licensed and qualified to do business within the state of Iowa. The bond shall run to the state of Iowa, be in the amount of \$150,000 and be conditioned upon the faithful compliance by the ERT service provider of all obligations imposed upon the ERT service provider by any applicable state or federal law or regulation, including the terms of this chapter, the authorizing agreement executed by the ERT service provider under this chapter, and any terms or conditions existing between the ERT service provider and any end user using the ERT service provider's services. The ERT service provider shall indemnify any end user that uses the ERT service provider's services of and from any loss or damage occasioned by the failure of the ERT service provider to so comply, including but not limited to the complete and timely submission to the county treasurer of the title and registration fees required for a given transaction. The bond shall be filed with the department

before the ERT service provider may begin or offer services as an ERT service provider. The aggregate liability of the surety shall not exceed the amount of the bond.

h. The ERT service provider shall provide accounting reports of all fees received and transferred to each respective county treasurer, in a manner determined by the department.

i. The ERT service provider shall submit to audits by the department and the state auditor, which shall be at least yearly but may be more frequently if determined necessary by the department or the state auditor.

j. An application submitted electronically must meet all legal requirements for the transaction in question, and no requirement shall be excused or waived as a result of submitting the transaction electronically. However, wherever a signature is required, the signature may be an electronic signature, as determined by the department and according to methods approved by the department. Wherever an electronic solution approved by the department requires the submission of scanned documents, the scanned documents shall be of a quality and resolution determined by the department, which shall at a minimum meet any applicable state or federal standard or requirement, and shall completely capture and represent the original document. The department and any county treasurer processing an application retain the right under Iowa Code section 321.13 to determine the genuineness, regularity, and legality of the application and any scanned document submitted as part of the application and may withhold approval of the application and require presentation of the original document whenever the scanned document is of insufficient quality, content, or appearance to determine the same. An end user that submits a scan of an original document as part of an electronic application shall retain the original document for a period of six months. An end user shall make all such original documents available for inspection by the department at the department's request. An end user that is a business entity shall retain the documents at the end user's principal place of business in Iowa. Anything in this paragraph notwithstanding, lessors required to retain a damage disclosure statement under Iowa Code section 321.69(4), and authorized vehicle recyclers licensed under Iowa Code chapter 321H and motor vehicle dealers licensed under Iowa Code chapter 322 required to retain damage disclosure statements under Iowa Code section 321.69(6) shall retain the original document for a period of five years from the date of the statement, as required therein.

k. An end user that is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C and that electronically submits an application on behalf of the person to whom the dealer is transferring the vehicle shall disclose to the person that the application will be submitted electronically and shall obtain the person's written authorization to submit the application on the person's behalf. The written authorization shall be retained at the motor vehicle dealer's principal place of business for a period of six months from the date of application and shall be available for inspection by the department at the department's request. The motor vehicle dealer shall also review with and disclose to the person all details of the application, before submitting the application, and shall provide a complete, true, and accurate copy of the application to the person immediately after submitting the application. The written authorization shall be submitted electronically as a scanned document with the electronic application.

l. An authorized ERT service provider shall retain all data, information, records, and electronic records associated with an electronic application or transaction submitted or transacted through the ERT service provider for a period of at least six months, or longer as required by applicable state or federal law or regulation, and shall make all such data, information, and records available to the department at the department's request. This includes but is not limited to the identity of the end user that initiated the electronic application or transaction. Identity information for end users shall be maintained at the entity and individual level, meaning that the ERT service provider must implement and maintain secure profile management that is capable of authenticating and verifying the identity of any entity that initiated the application or transaction and the individual officer, employee, or agent within the entity that was authorized by the entity to initiate the application or transaction.

m. The ERT service provider shall hold and protect all personal information as required by Iowa Code section 321.11 and the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 et seq. (the DPPA), shall only use or release such personal information for purposes necessary to perform services as an ERT service provider, and shall release such personal information for no other purposes or use except as required to comply with legal or administrative matters as permitted under the DPPA. The ERT service

provider shall immediately advise the department of any suspected or actual unauthorized release of personal information or highly restricted personal information and shall notify the entity and individual whose personal information or highly restricted personal information was released in an unauthorized manner.

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23 to 321.26, 321.31, 321.34, 321.46, 321.105A, 321.109, 321.122, 322.19A and 423.26.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3449C, IAB 11/8/17, effective 12/13/17; ARC 3999C, IAB 9/12/18, effective 10/17/18]

761—400.4(321) Supporting documents required. This rule describes the basic supporting documents to be submitted by an applicant for a certificate of title or registration.

400.4(1) *New vehicle.* If application is made for a new vehicle, a manufacturer's certificate of origin, properly assigned to the applicant, shall be submitted. A manufacturer's certificate of origin shall not be accepted if the assignment to the applicant is made by any person other than the manufacturer, importer or distributor, a licensed motor vehicle dealer franchised to sell that line-make of vehicle, or a final-stage manufacturer motor vehicle dealer licensed under rule 761—425.11(322).

a. The first person, including a dealer not franchised to sell that line-make of vehicle, who is assigned the manufacturer's certificate of origin shall obtain a certificate of title and register the vehicle.

b. An uncanceled security interest noted on the reverse side of a manufacturer's certificate of origin (MCO) shall be noted as a separate security interest on the certificate of title, in addition to any security interest acknowledged by the applicant, unless the applicant indicates in the security interest area on the title application that the security interest is the same as the one noted on the reverse side of the MCO.

c. If a 1980 or subsequent model year vehicle is manufactured by a person other than the original manufacturer, both the original manufacturer's certificate of origin and the final-stage manufacturer's certificate of origin shall be submitted if the vehicle's original line-make is changed by the final-stage manufacturer. All assignments or reassignments of ownership of the vehicle shall be made on the final-stage manufacturer's certificate of origin. The face of the original manufacturer's certificate of origin shall be stamped in bold type with the statement: "Final-stage manufacturer's MCO has been issued on this vehicle." The original manufacturer's vehicle identification number shall be listed on the final-stage manufacturer's certificate of origin.

d. If a final-stage manufacturer is a motor vehicle dealer licensed under rule 761—425.11(322), the final-stage manufacturer may reassign the original manufacturer's certificate of origin to the retail buyer.

400.4(2) *Used vehicle registered or titled in this state.* The last issued certificate of title, properly assigned to the applicant, shall be submitted, unless the applicant is an insurer applying for a salvage certificate of title under Iowa Code section 321.52(4). An uncanceled security interest noted on the face of the certificate of title shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant. If the vehicle is not subject to titling provisions, the last issued registration receipt or bill of sale, properly assigned to the applicant, shall be submitted.

400.4(3) *Used vehicle from a foreign jurisdiction.* If the vehicle was subject to the issuance of a certificate of title in the foreign jurisdiction, the certificate of title issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted, unless the applicant is an insurer applying for a salvage certificate of title under Iowa Code section 321.52(4).

a. A security interest, noted on the face of the foreign certificate of title, which has not been canceled, shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant.

b. A certificate of title issued in a foreign jurisdiction may be assigned to a motor vehicle dealer in another jurisdiction, and the dealer may reassign the certificate of title to the applicant. An assignment or reassignment form issued by a foreign jurisdiction may be used with a foreign title to complete an assignment or reassignment of ownership from a foreign motor vehicle dealer to the applicant, provided the ownership chain is complete.

c. An Iowa licensed motor vehicle dealer who acquires a vehicle registered in another state or country may reassign the foreign certificate of title to the applicant, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

d. A person who registers a foreign vehicle under Iowa Code subsection 321.23(3) shall be issued a nontransferable-nonnegotiable registration. To transfer ownership of the vehicle, the owner must first obtain an Iowa certificate of title except as follows: If ownership is transferred to an Iowa licensed motor vehicle dealer as provided in Iowa Code subsection 321.23(3), the foreign certificate of title may be assigned to the dealer; the owner is not required to obtain an Iowa title. The dealer may then reassign the foreign title, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

e. If the vehicle was not subject to the issuance of a certificate of title in the foreign jurisdiction, the registration document issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted.

(1) If the foreign registration document is not issued in the applicant's name and does not contain an assignment of ownership form, a bill of sale conveying ownership from the owner as listed on the foreign registration document to the applicant shall be submitted with the foreign registration document.

(2) Upon receipt of the foreign registration document, the county treasurer shall issue a nontransferable—nonnegotiable registration unless the foreign registration document has been approved by the department.

(3) Acceptance of the foreign registration document shall be determined by the department on an individual basis, if the county treasurer of the county where the certificate of title is to be issued cannot determine whether the document is acceptable.

f. If a trailer weighing 2000 lbs. or less is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, a bill of sale conveying ownership to the applicant, if acquired by a resident from a nonresident, or an affidavit of ownership signed by the applicant, if the applicant is establishing residence in this state, shall be submitted.

g. If a motor vehicle is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, the bonding procedures as provided in Iowa Code section 321.24 shall be followed.

400.4(4) *Used vehicle acquired by a resident of this state from a government agency.* If the vehicle was acquired from an agency of the federal government, the applicant shall surrender the government bill of sale, General Services Administration Form 97, or Internal Revenue Service Form 2435, properly assigned to the applicant. If the vehicle was acquired from the state of Iowa or a subdivision of government, the applicant shall surrender the Iowa certificate of title issued in the name of the agency, properly assigned to the applicant.

400.4(5) *Manufactured or mobile home.* If the vehicle described on the application is a manufactured or mobile home with an Iowa title, the applicant shall submit a tax clearance form to show that no taxes are owing, unless the title has been issued to a manufactured or mobile home retailer licensed under Iowa Code chapter 103A. The form may be obtained by any owner of record of the manufactured or mobile home from the county treasurer.

400.4(6) *Vehicle acquired by a resident of this state by operation of law.* If the vehicle was acquired by the applicant by operation of law as specified in Iowa Code section 321.47, the last issued certificate of title shall be submitted by the applicant, or when that is not possible, presentation of satisfactory proof of the applicant's ownership and right of possession to the vehicle shall be submitted by the applicant. Proof of ownership may consist of a foreclosure sale affidavit, artisan's or storage lien affidavit, affidavit of death intestate, abandoned vehicle sales receipt, peace officers bill of sale or court order. See also subrules 400.14(4) and 400.14(5).

400.4(7) *Foreign ownership document issued in a language other than English.* A foreign ownership document issued in a language other than English may be required to be reproduced in writing in English and certified to be a correct translation by a person qualified to translate that particular language. The English translation and certification shall be submitted with the foreign ownership document.

400.4(8) *Titles from foreign jurisdictions.*

a. Except as provided in paragraph "b" of this subrule, a certificate of title issued by a foreign jurisdiction shall not be accepted if the title contains an alteration or erasure.

b. An affidavit of correction form issued by a foreign jurisdiction that corrects the certificate of title issued by the foreign jurisdiction shall be accepted only for the reason listed on the affidavit of correction form. However, acceptance of an affidavit of correction form that corrects an odometer statement or a designation shall be determined by the department on an individual basis.

400.4(9) *Applications in the name of trusts.* An application in the name of a trust shall be accompanied by a copy of all documents creating or otherwise affecting the trust or by the certification of trust as defined in Iowa Code section 633A.4604. The certification of trust may be signed by any trustee or the attorney for any trustee. The application shall be signed by the number of trustees as specified in the trust agreement or the certification of trust and the applicant shall provide the department with the document specifying the required signatories for the trust. If neither the trust nor the certification of trust specifies the required signatories, the application may be signed by any trustee or attorney for the trustee. Each signature on the application shall be followed by the words “as trustee” or “as attorney for the trustee.”

400.4(10) *Supporting document retained by county treasurer.* All supporting documents, except those submitted pursuant to subrule 400.3(16), shall be retained by the county treasurer.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.30, 321.31, 321.45 to 321.50, 321.67 and 322.3.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3449C, IAB 11/8/17, effective 12/13/17; ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4343C, IAB 3/13/19, effective 4/17/19; ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.5(321) Where to apply for registration or certificate of title.

400.5(1) Except as otherwise provided, application for the registration of a vehicle or a certificate of title for a vehicle, or transfers thereof, shall be made to the county treasurer as described in Iowa Code chapter 321. When none of the primary users of a non-resident-owned vehicle are located in Iowa, the vehicle may be registered by the county treasurer of any county.

400.5(2) Application shall be made to the department’s vehicle and motor carrier services bureau for the following:

a. Titling and registration of vehicles owned by the government. This requirement does not apply to manufactured or mobile homes subject to a public bidder sale as explained in Iowa Code subsection 321.46(2).

b. Registration of vehicles leased by the government for a period of 60 days or more.

c. Registration of urban and regional transit system buses.

d. Registration of fire trucks not owned and operated for a pecuniary profit.

e. Registration of certain authorized emergency vehicles owned and operated by nonprofit organizations.

f. Registration of private school buses.

g. Registration of vehicles under the provisions of Iowa Code subsection 321.23(4), relating to restricted-use vehicles.

400.5(3) Application for a certificate of title for a vehicle subject to apportioned registration under Iowa Code chapter 326 may be made to either the county treasurer or to the department’s vehicle and motor carrier services bureau.

400.5(4) Application for apportioned registration shall be made to the department’s vehicle and motor carrier services bureau. See 761—Chapter 500.

This rule is intended to implement Iowa Code sections 321.18 to 321.23, 321.46(2), and 321.170.
[ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.6(17A) Addresses, information and forms. Assistance under this chapter is available as follows:

400.6(1) Information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 to 321.173 may be obtained from the county treasurer or by mail from the Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at Iowa Department of Transportation, 6310

SE Convenience Blvd., Ankeny, Iowa 50021; by telephone at (515)237-3264; or on the department's website at www.iowadot.gov.

400.6(2) Information for investigations under this chapter may be obtained from the Bureau of Investigation and Identity Protection, Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021; by telephone at (515)237-3050; or on the department's website at www.iowadot.gov.

This rule is intended to implement Iowa Code section 17A.3.
[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.7(321) Information appearing on title or registration. In addition to the requirements of Iowa Code sections 321.24, 321.52, 321.69, 321.71 and 322G.12, a certificate of title or registration receipt or both shall contain the following information when applicable:

- 400.7(1)** Registration expiration date.
- 400.7(2)** Registration month, as explained in rule 761—400.3(321).
- 400.7(3)** Name and address of last titled owner.
- 400.7(4)** Description of the vehicle, including the following items. These items may be represented on the title and registration by code letters or numbers.
 - a. Vehicle identification number.
 - b. Type, such as automobile, trailer, truck, etc.
 - c. Style.
 - d. Make, model, and model year.
 - e. Number of engine cylinders.
 - f. Color.
 - g. Weight and registered gross weight.
 - h. The square footage of floor space of a manufactured or mobile home or travel trailer, as determined by measuring the exterior.
 - i. The odometer mileage and whether the mileage is “actual,” “not actual,” or “exceeds mechanical limits.”
- 400.7(5)** Previous Iowa title number or the name of the foreign jurisdiction if the previous title is a foreign title.
- 400.7(6)** Plate number and previous registration number.
- 400.7(7)** List price or value.
- 400.7(8)** Penalties and title, registration and security interest receipt numbers.
- 400.7(9)** The following phrase stamped on the reassignment portion of a manufactured or mobile home title: “Dealer reassignment not authorized on this certificate of title.”
- 400.7(10)** The designation required by 761—Chapter 405. A vehicle may have no more than one designation. The referenced rules explain which designation takes precedence when more than one designation could apply.
- 400.7(11)** Full legal name of owner.
 - a. When the name of an owner changes from that which is printed on the title or registration issued to the owner, the owner shall submit to the county treasurer one of the following documents:
 - (1) Court order for a name change. The court order must contain the full name, date of birth, and court seal.
 - (2) Divorce decree.
 - (3) Marriage certificate.
 - b. This subrule does not apply to owners that are firms, associations, corporations, or trusts.
 - c. When the name of an owner changes from that which is printed on the registration card, the owner shall apply for a replacement registration card.

This rule is intended to implement Iowa Code sections 321.24, 321.31, 321.40, 321.45, 321.52, 321.69, 321.71, 321.124 and 322G.12.
[ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3999C, IAB 9/12/18, effective 10/17/18]

761—400.8(321) Release form for cancellation of security interest.

400.8(1) A secured party may use a form prescribed by the department to note the cancellation of a security interest.

400.8(2) The secured party may also note the cancellation in a statement written on the secured party's letterhead if the statement is notarized and contains the following information: county that issued the title; title number; security interest number; vehicle identification number; vehicle owner's name; secured party's name, street address, city, state and ZIP code; date the security interest was canceled; and signature of an authorized representative of the secured party.

400.8(3) The secured party shall forward the original cancellation form or statement to the department or to the county treasurer of the county where the title was issued. Facsimiles and photocopies are not acceptable.

400.8(4) The secured party shall note the cancellation on the face of the title, attach a copy of the release form to the title as evidence of cancellation, and forward the title to the next secured party or, if there is no other secured party, to the person designated by the owner or, if there is no person designated, to the owner.

This rule is intended to implement Iowa Code section 321.50.
[ARC 4343C, IAB 3/13/19, effective 4/17/19]

761—400.9(321) Security interest notation, 30-day limit. Rescinded IAB 11/23/05, effective 12/28/05.

761—400.10(321) Assignment of security interest. A security interest noted on a certificate of title may be assigned to another secured party without losing the seniority of the security interest by complying with the procedure in Iowa Code section 321.50 or with the following procedure:

400.10(1) Notice of assignment. The secured party listed on the title certificate shall make the following notation in the cancellation portion of the certificate of title where security interest is noted "Assigned to (name of assignee)." The date, name of secured party and signature of the person noting the assignment shall be completed in the cancellation portion pertaining to the security interest.

400.10(2) Application for notation of security interest. The assignee shall complete an application for notation of a security interest on the form provided by the department. The application form shall be signed by the assignee in the space where the signature of the owner is ordinarily required. The signature of the owner shall not be required on an assignment of a security interest.

400.10(3) Submission of documents to county treasurer. The certificate of title, application for notation of security interest and appropriate notation fee shall be submitted to the county treasurer of the county where the certificate of title was issued or will be issued.

a. If there are additional security interests noted on the certificate of title, the seniority of the assignee's security interest may be preserved by issuance of a certificate of title in lieu of the original, on which the assignee's security interest shall be noted in the same seniority as the assignor's.

b. A receipt for notation of security interest form shall be processed and the new receipt number shall be listed in the appropriate space provided. The original notation date shall also be listed and the words "by assignment" shall be listed following the name of the assignee.

This rule is intended to implement Iowa Code section 321.50.

761—400.11(321) Sheriff's levy, restitution lien, and forfeiture lien noted as security interests.

400.11(1) A sheriff's levy may be noted as a security interest on a certificate of title if the sheriff so desires. To apply for a notation of a security interest, the sheriff or the sheriff's deputy shall complete an application form prescribed by the department. The sheriff or sheriff's deputy shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner is not required. The appropriate notation fee shall be submitted with the application form to the county treasurer of the county where the certificate of title was issued. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

400.11(2) A restitution or forfeiture lien may be noted as a security interest on a certificate of title if the county attorney so desires. To apply for a notation of a security interest, the county attorney or designee shall complete an application form prescribed by the department. The county attorney or designee shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner is not required. A lien notation fee is not required. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

This rule is intended to implement Iowa Code section 321.50 and chapter 809A.
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—400.12(321) Replacement certificate of title.

400.12(1) When a certificate of title is lost, destroyed or altered, the owner or lienholder shall apply for a replacement certificate of title. If a security interest noted on the certificate of title was released by the secured party on a separate form, but the secured party has not delivered the original certificate of title to the appropriate party, the owner may apply for a replacement certificate of title as provided in Iowa Code section 321.42.

400.12(2) Application for a replacement certificate of title shall be made on a form prescribed by the department. All owners of the vehicle as listed on the certificate of title shall sign the application form. If an owner is deceased, the signatures and documents specified in subrules 400.14(4) and 400.14(5) shall be required in lieu of the deceased owner's signature. A person entitled to vehicle ownership under the laws of descent and distribution shall sign the required forms and shall insert the words "heir at law" following the signature.

This rule is intended to implement Iowa Code section 321.42.

761—400.13(321) Bond required before title issued. An applicant for a certificate of title who cannot provide the supporting documents required in rule 761—400.4(321) shall be required to file a bond as a condition to obtaining a title and registration plates.

400.13(1) Procedures. This subrule describes the procedures to be followed to obtain a "bonded" certificate of title. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

a. The applicant shall submit a bond application to the vehicle and motor carrier services bureau on a form prescribed by the department. The application shall be accompanied by evidence of ownership of the vehicle.

b. The department shall search the state files to determine if there is an owner of record for the vehicle and if the vehicle has been reported stolen or embezzled.

(1) If a record is found, the applicant shall complete a request for release of personal information form explaining that the applicant is the current owner and is requesting a duplicate title. The department shall mail the release by first-class mail to the owner of record, at the owner's last-known address.

(2) If the department receives no response from the owner of record within ten days after the date of mailing or the owner of record does not want the owner's personal information released, the department will continue processing the bond application.

c. If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall determine the current value of the vehicle and notify the applicant to deposit cash or file a surety bond with the department in an amount equal to one and one-half times the current value of the vehicle.

d. After the cash deposit or surety bond has been deposited, a motor vehicle investigator of the department may examine the vehicle to verify the information submitted on the application is correct. The owner of the vehicle may drive or tow the vehicle to and from the examination location after completing an affidavit to drive on a form provided by the department. The form shall state that the vehicle is reasonably safe for operation, and the form must be signed by the owner. After verifying the information, the investigator shall authorize the county treasurer to issue a title for and register

the vehicle. Should the vehicle not meet the equipment requirements of Iowa Code chapter 321, the investigator shall authorize the county treasurer to issue a title and registration but instruct the county treasurer to immediately suspend the registration until such time as the vehicle meets these equipment requirements. If applicable, the investigator shall also affix an assigned vehicle identification number to the vehicle.

e. The applicant shall then make application for a certificate of title and registration.

400.13(2) Disapproval. If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, or that there is an unsatisfied security interest, then the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

400.13(3) Junked vehicle. A certificate of title shall not be reinstated for a vehicle that has been issued a junking certificate unless the junking certificate was issued in error, as explained in rule 761—400.23(321), or the vehicle qualifies as an antique vehicle under Iowa Code subsection 321.115(1).

This rule is intended to implement Iowa Code sections 321.24 and 321.52.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.14(321) Transfer of ownership. The following procedures shall apply for all titling and registration purposes:

400.14(1) Transfer of vehicle owned by two or three persons.

a. If the names of the owners of a vehicle on the certificate of title or on the manufacturer's certificate of origin are joined by the word "or," as in "John Doe, Jane Doe or Mary Doe," then the signature of any of these owners is sufficient to transfer title or to junk the vehicle.

b. If ownership of a vehicle is stated as a name or names followed by the words "Doing Business As" or the initials "DBA" and another name, only the name of an owner followed by the signature of an authorized representative of an owner is required to transfer title or to junk the vehicle.

EXAMPLE: Ownership is stated as "John Smith and Mary Smith DBA Smith Repair." Jane Doe is an authorized representative of John Smith and Mary Smith. To transfer ownership, Jane Doe may sign as "John Smith and Mary Smith DBA Smith Repair, by Jane Doe," "John Smith and Mary Smith by Jane Doe," or Smith Repair by Jane Doe."

c. In all other cases the signature of each named owner is required.

400.14(2) Assignment of title to two or three persons. If a certificate of title or a manufacturer's certificate of origin is assigned to two or three persons with their names joined by the word "or," as in "John Doe, Jane Doe or Mary Doe," then a certificate of title may be issued to any one of these persons, or to any two or all three of these persons with their names joined by the word "or." However, a certificate of title shall only be issued to persons who have signed the application for title.

400.14(3) Organizational ownership.

a. When a vehicle is owned by a partnership, corporation, association, governmental unit, or private organization, the signature of its authorized representative is required.

b. When a vehicle is owned by a trust, the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or by the certification of trust as defined in Iowa Code section 633A.4604. The certification of trust may be signed by any trustee or the attorney for any trustee. The title shall be signed by the number of trustees as specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604 and the transferor shall provide the department with the document specifying the required signatories for the trust. If neither the trust nor the certification of trust specifies the required signatories, the title may be signed by any trustee or attorney for the trustee. Each signature on the title shall be followed by the words "as trustee" or "as attorney for the trustee."

400.14(4) Death with a will. When ownership is transferred according to a decedent's will, a certified copy of the court order or the letter of appointment appointing the person assigning the title as executor of the will shall be required.

400.14(5) *Death without a will.* When ownership is transferred from a decedent without a will and there is no administration of the estate, an affidavit of death intestate form signed by the clerk of court shall be required. When ownership is transferred from a decedent without a will but there is an administration of the estate, a copy of the court order or the letter of appointment appointing the person assigning the title as administrator shall be required.

400.14(6) *Power of attorney.* An attorney in fact may act for the owner(s) if the appointment is shown on a power of attorney form. Power of attorney forms are available from the department but other forms may be accepted if they contain all necessary information. The power of attorney form or a certified true copy shall be kept by the county treasurer and attached to the document to which it applies.

This rule is intended to implement Iowa Code sections 321.20, 321.24, 321.45, 321.47, 321.49, and 321.67.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.15(321) Cancellation of a certificate of title.

400.15(1) The department shall cancel a certificate of title when authorized by any provision of law or when it has reasonable grounds to believe that the title has not been surrendered to the county treasurer as provided in Iowa Code section 321.52 or when the vehicle has been stolen or embezzled from the rightful owner or seized under the provisions of Iowa Code section 321.84, and the person holding the certificate of title, purportedly issued for the vehicle, has no immediate right to possession of the vehicle.

400.15(2) The decision to issue a new certificate of title or to allow the previous title to be reinstated through a replacement title application process or to take any other action regarding ownership of the vehicle for which the current title has been canceled shall be determined after an investigation and recommendation by a motor vehicle investigator of the department.

This rule is intended to implement Iowa Code section 321.101.

761—400.16(321) Application for certificate of title or original registration for a specially constructed, reconstructed, street rod or replica motor vehicle.

400.16(1) *Definitions applicable to this rule.*

a. “*Ownership document for the vehicle*” means the certificate of title, the manufacturer’s certificate of origin, the junking certificate, or other evidence of ownership acceptable to the department.

b. “*Ownership documents for essential parts*” means bills of sale for all essential parts used to construct or reconstruct the vehicle. Each bill of sale shall contain a description of the part, the manufacturer’s identification number of the part, if any, and the name, address, and telephone number of the seller.

400.16(2) *Procedures.* This subrule describes the procedures for obtaining department approval to title and register a specially constructed, reconstructed, street rod or replica motor vehicle. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

a. The applicant shall apply to the county treasurer for a certificate of title and registration. The county treasurer, upon receiving an application that indicates the vehicle is a specially constructed, reconstructed, street rod or replica motor vehicle, shall forward the application to a motor vehicle investigator of the department.

b. The investigator shall contact the applicant and schedule a time and place for an examination of the vehicle and the ownership documents. The owner of the vehicle may drive or tow the vehicle to and from the examination location by completing an affidavit to drive on a form provided by the department. The form shall state that the vehicle is reasonably safe for operation and must be signed by the owner. The applicant, when appearing with the vehicle for the examination, shall submit to the investigator the ownership document for the vehicle, the ownership documents for essential parts, and a weigh ticket indicating the weight of the vehicle. However, a weigh ticket is not required for motorcycles, autocycles, trucks, truck tractors, road tractors or trailer-type vehicles.

c. If the investigator determines that the vehicle complies with 761—Chapter 450, that the integral parts and components have been identified as to ownership, and that the application has been completed properly:

(1) The investigator shall approve the application, affix to the vehicle an assigned vehicle identification number, and return the application and ownership documents to the applicant. The investigator shall authorize the county treasurer to issue a title and registration for the vehicle.

(2) If the vehicle is a passenger-type motor vehicle, the department shall determine its weight and value. The department shall also determine if the vehicle is subject to the electric vehicle annual registration fee. The vehicle weight shall be fixed at the next even 100 pounds above the actual weight of the vehicle fully equipped, as provided in Iowa Code section 321.162. The weight and value shall constitute the basis for determining the annual registration fee under Iowa Code section 321.109, except as provided in Iowa Code section 321.113.

(3) The applicant shall then submit the ownership document for the vehicle to the county treasurer and continue with the regular title and registration process.

400.16(3) *Disapproval.* If the department determines that the vehicle does not comply with 761—Chapter 450, that the integral parts or components have not been identified as to ownership, or that the application has not been completed properly, then the department shall not approve the vehicle for titling and registration.

400.16(4) *Model year.* The model year of a specially constructed or reconstructed motor vehicle is the year the vehicle is approved by the department as a specially constructed or reconstructed motor vehicle.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.52, 321.109, 321.116, 321.117 and 321.162.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 2985C, IAB 3/15/17, effective 4/19/17; ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 5178C, IAB 9/9/20, effective 10/14/20]

761—400.17(321) Remanufactured vehicle. Rescinded IAB 11/23/05, effective 12/28/05.

761—400.18(321) Rescinded IAB 3/26/97, effective 4/30/97.

761—400.19(321) Temporary use of vehicle without plates or registration card.

400.19(1) *Temporary use of vehicle without plates.* A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who does not possess registration plates which may be assigned to and displayed on the vehicle may operate or permit the operation of the vehicle not to exceed 30 days from the date of purchase or transfer without registration plates displayed thereon, if ownership evidence is carried in the vehicle.

400.19(2) *Temporary use of vehicle without registration card.* A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who has possession of plates which may be attached to the vehicle acquired may operate or permit the operation of the vehicle not to exceed 45 days from the date of purchase or transfer without a registration card, if ownership evidence is carried in the vehicle.

400.19(3) *Ownership evidence.* Ownership evidence under this rule shall consist of the certificate of title or registration receipt, or a photocopy thereof, properly assigned to the person who has acquired the vehicle, or a bill of sale conveying ownership of the vehicle to the person who has acquired the vehicle. The ownership evidence shall be shown to any peace officer upon request.

This rule is intended to implement Iowa Code sections 321.25, 321.33 and 321.46.

761—400.20(321) Registration of motor vehicle weighing 55,000 pounds or more. When applying for registration or renewal of registration for a motor vehicle weighing 55,000 pounds or more, the owner shall present to the department or to the county treasurer proof of compliance with the federal heavy vehicle use tax required by 26 U.S.C. Section 4481 and 26 CFR Part 41.

400.20(1) If the motor vehicle is used exclusively in the transportation of harvested forest products, the owner may present a written statement certifying that usage and the usage will be recorded.

400.20(2) If the motor vehicle is used primarily for farming purposes, the owner may present a written statement certifying that usage and the usage will be recorded.

This rule is intended to implement Iowa Code sections 307.30 and 321.20.

761—400.21(321) Registration of vehicles on a restricted basis. The department may register a vehicle which does not meet the equipment requirements of Iowa Code chapter 321, due to the particular use for which it is designed or intended. Registration may be accomplished upon payment of the appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition.

400.21(1) Operation of the vehicle may be restricted to a roadway to which a specific lawful speed limit applies, as specified in Iowa Code section 321.285, if the maximum speed of the vehicle is such that the operation of the vehicle would impede or block the normal and reasonable movement of traffic.

400.21(2) The department may also restrict the operation of the vehicle to daylight hours if operation of the vehicle during hours other than daylight would create a hazard.

400.21(3) A certificate of restriction shall be issued in conjunction with registration of the vehicle, listing the restrictions that apply to the operation of the vehicle.

a. Registration laws applicable to motor vehicles in general shall also apply to vehicles registered under a restricted registration.

b. The department may approve exceptions to those equipment requirements of Iowa Code chapter 321 which cannot be met due to the particular use for which the vehicle is designed or intended.

400.21(4) The department shall not register an all-terrain vehicle. The department shall not register a vehicle built on or after January 1, 1968, unless it was manufactured primarily for use on public streets, roads and highways except a vehicle operated exclusively by a person with a disability, which may be registered if the department, in its discretion, determines that the vehicle is not in an unsafe condition. This subrule does not apply to a specially constructed, reconstructed, street rod or replica motor vehicle as defined in Iowa Code section 321.1.

This rule is intended to implement Iowa Code sections 321.1 and 321.234A and subsections 321.23(4), 321.30(2), and 321.101(1).

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—400.22(321) Transfers of ownership by operation of law. When ownership of a vehicle is transferred by operation of law under Iowa Code section 321.47, the following, in addition to rule 761—400.4(321), shall apply:

400.22(1) The new certificate of title and registration shall be issued, upon receipt of the proper documentation, by the county treasurer of the county where the transferee resides.

400.22(2) If the vehicle is not currently registered in this state, the registration fee and penalties due shall be computed in accordance with the following:

a. If the vehicle is ordered confiscated or forfeited by a court under a judgment or forfeiture, the fee shall be computed on the remaining unexpired months in the registration year from the date of the court order.

b. If the vehicle is sold on a peace officer's bill of sale as an unclaimed, stolen, embezzled or abandoned vehicle, or as a vehicle seized under Iowa Code section 321.84, the fee shall be computed on the remaining unexpired months in the registration year from the date of the sale.

c. If the vehicle is sold or transferred under a judgment or order entered by a court in a civil action or proceeding, or is transferred under any provision of Iowa Code section 321.47 which is not covered in this subrule, the fee shall include any delinquent fees which have accrued during previous registration periods and accrued penalties. Penalties shall continue to accrue until paid.

d. If the vehicle was last titled or registered in a foreign state, the fee shall be based on the month the vehicle becomes subject to registration in this state, except as provided in paragraphs 400.22(2) "a" and "b" above.

This rule is intended to implement Iowa Code sections 321.47, 321.105, 321.106, 321.134, and 321.135.

761—400.23(321) Junked vehicle.

400.23(1) Junking certificate. The owner of a vehicle that is to be junked or dismantled shall obtain a junking certificate in accordance with Iowa Code subsection 321.52(3).

400.23(2) Retitling a junked vehicle. The department may authorize issuance of a new certificate of title to the vehicle owner named on the junking certificate only if the department determines that the junking certificate was issued in error.

a. The reasons a junking certificate was issued in error include but are not limited to the following:

(1) The owner inadvertently surrendered the wrong certificate of title. The owner shall submit to the department a photocopy of the ownership document for each vehicle and a signed statement explaining the circumstances that resulted in the error.

(2) A junking certificate was obtained in error and the vehicle continues to be registered. The owner shall submit to the department a photocopy of the current registration and a signed statement explaining the circumstances that resulted in the error.

(3) The owner intended to apply for a salvage title under Iowa Code subsection 321.52(4) but inadvertently submitted an application for a junking certificate. The owner shall submit to the department a bill of sale or other documentation from the previous owner stating that the vehicle was rebuildable when purchased and a signed statement explaining the owner's original intention to obtain a salvage title. The department shall inspect the vehicle to verify the rebuildable condition.

b. If the department determines that the junking certificate was issued in error, the department shall authorize the proper county treasurer to issue a certificate of title for the vehicle after payment by the owner of appropriate fees and taxes, including the return of any credit or refund for registration fees paid to the owner because of the error.

c. If the department determines that the junking certificate was not issued in error and denies the application for reinstatement of the certificate of title for the vehicle, the owner may apply for a certificate of title under the bonding procedure in rule 761—400.13(321) if the vehicle qualifies as an antique vehicle under Iowa Code subsection 321.115(1).

This rule is intended to implement Iowa Code subsection 321.52(3).

761—400.24(321) New vehicle registration fee. The registration fee shall be computed on the month of purchase of a new vehicle, except that the registration fee on a new vehicle acquired outside of this state shall be based on the month that the vehicle was brought into Iowa.

This rule is intended to implement Iowa Code sections 321.105 and 321.135.

761—400.25(321) Fees established by the department. If the department cannot obtain the retail list price and weight for a particular motor vehicle model registered under Iowa Code subsection 321.109(1), the department shall determine a list price and weight.

This rule is intended to implement Iowa Code sections 321.109, 321.157 and 321.159.

761—400.26(321) Anatomical gift. Voluntary contributions collected by the county treasurer or the department to the anatomical gift public awareness and transplantation fund shall be in whole dollar amounts. The county treasurer and the department shall remit contributions collected to the department of public health quarterly.

This rule is intended to implement Iowa Code section 321.44A.

761—400.27(321,322) Vehicles held for resale or trade by dealers. A motor vehicle dealer, as defined in Iowa Code section 321.1, is authorized to hold a motor vehicle for resale or trade under the following conditions.

400.27(1) Assignment to dealer. The certificate of title or manufacturer's certificate of origin for the vehicle shall be assigned to the dealer by the seller. The seller shall complete the assignment portion of the form, including the date of sale or trade and the name and address of the dealer, and shall sign the form. The date of the sale or trade shown in the assignment portion of the form shall be the date the dealer acquired the vehicle.

400.27(2) New certificate of title and registration not required.

a. A motor vehicle currently registered in Iowa may be held by a dealer without obtaining a new certificate of title or a new registration if the dealer holds for that vehicle a certificate of title or a manufacturer's certificate of origin properly assigned to the dealer.

b. A motor vehicle may also be held by a dealer without obtaining a new certificate of title or a new registration if the dealer has a title from a state that permits its titles to be reassigned by Iowa dealers and if a vacant reassignment space is available on the title.

400.27(3) *New certificate of title required.* A dealer shall obtain a new certificate of title, but is not required to pay registration fees for a vehicle if:

a. The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers.

b. The vehicle was assigned to the dealer using an affidavit of foreclosure form prescribed by the department or issued by a foreign jurisdiction.

c. The reassignment area of the certificate of title has been used.

d. Reserved.

e. The vehicle registration fee was delinquent in Iowa at the time the vehicle was acquired by the dealer. The delinquent fees and penalty shall be paid by the dealer from the first day the registration was due to the month the application for title is submitted.

f. In accordance with 761—Chapter 405, the dealer is required to obtain a salvage certificate of title.

400.27(4) *New certificate of title and registration fee required.* A dealer shall obtain both a new certificate of title and pay a registration fee for a vehicle if:

a. The vehicle has a foreign certificate of title but has never been registered and the dealer is not licensed under Iowa Code chapter 322 to sell that line-make of vehicle. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

b. The vehicle was placed in storage by the previous owner. The registration fee due shall be a full registration year fee.

c. The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers or all reassignment spaces on the title are full and the application for a new certificate of title is submitted more than 30 days after the date the vehicle entered Iowa. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

d. The vehicle was in the dealer's inventory and the dealer's license was revoked as provided in Iowa Code chapter 322 or 322C or surrendered in lieu of revocation. The dealer shall obtain title and registration within 30 days from the date of revocation or surrender of the license. The registration fee due shall be prorated for the remaining unexpired months of the registration year.

400.27(5) *Registration fee required.* A vehicle owned by a dealer and used as a work or service vehicle, or offered for lease, rent or hire, shall become subject to a registration fee in the month that the vehicle is first used for that purpose. The registration fee shall be due annually unless the vehicle is transferred to the dealer's inventory. To transfer the vehicle, the dealer shall surrender the registration plates that were issued for the vehicle.

400.27(6) *Violations.*

a. Failure to comply with this rule is a violation of Iowa Code subsection 321.104(2).

b. Failure to obtain a certificate of title when required shall result in a title penalty of \$10, as specified in Iowa Code subsection 321.49(1).

This rule is intended to implement Iowa Code sections 321.45, 321.46, 321.48, 321.49, 321.67, 321.70, 321.104 and chapter 322.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—400.28(321) Special trucks. The owner of a truck tractor registered as a special truck shall certify to the owner's county treasurer annually at the time of renewal that the truck tractor is not operated more than 15,000 miles annually.

This rule is intended to implement Iowa Code sections 321.1(75) and 321.121.

[ARC 3999C, IAB 9/12/18, effective 10/17/18]

761—400.29(321) Vehicles previously registered under Iowa Code chapter 326. Rescinded IAB 11/23/05, effective 12/28/05.

761—400.30(321) Registration of vehicles registered in another state or country.

400.30(1) The registration fee for a vehicle from another state or country shall be due in the month that the vehicle becomes subject to registration in Iowa.

400.30(2) A vehicle registered in another state or country shall become subject to registration in Iowa and payment of the Iowa registration fee in:

a. The month of sale or transfer to an Iowa resident, or

b. The month that a nonresident owner establishes Iowa residency or accepts employment in Iowa of 90 days duration or longer. The county treasurer or the department may require from the applicant a written statement giving the date that the applicant established residency in Iowa.

400.30(3) Rescinded IAB 2/6/02, effective 3/13/02.

This rule is intended to implement Iowa Code sections 321.18, 321.20, 321.53 to 321.55, 321.101 and 321.135.

761—400.31 Rescinded, effective 12/1/83.

761—400.32(321) Vehicles owned by nonresident members of the armed services.

400.32(1) A vehicle owner who is a nonresident and a member of the armed services shall not be required to register the vehicle in Iowa if it is properly registered in the person's state of residence.

400.32(2) A vehicle owner who is a nonresident and a member of the armed services may register the vehicle in Iowa under the following conditions:

a. The vehicle is owned entirely by nonresidents.

b. The fee for a passenger-type vehicle registered under Iowa Code section 321.109 shall be based only on the weight of the vehicle; the part of the fee based on value shall be excluded. The fees for all other vehicles shall be determined as specified in Iowa Code chapter 321. The registration fee under Iowa Code sections 321.116 and 321.117 shall apply.

c. The application for vehicle registration shall include a certification by the person's commanding officer of the person's state of residence and assignment to Iowa.

400.32(3) If ownership of a passenger-type vehicle is transferred to another person, the vehicle shall be subject to registration in Iowa.

This rule is intended to implement Iowa Code sections 321.53 to 321.55, 321.109, 321.116 and 321.117.

[ARC 5178C, IAB 9/9/20, effective 10/14/20]

761—400.33(321) Disabled veterans exemption from payment of registration fees. Rescinded IAB 11/23/05, effective 12/28/05.

761—400.34(321) Multipurpose vehicle registration fee. Rescinded IAB 11/7/07, effective 12/12/07.

761—400.35(321) Registration of vehicles equipped for persons with disabilities. The registration fee shall be reduced for an automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less with permanent equipment for assisting a person with a disability or for an automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less used by a person who uses a wheelchair as the person's only means of mobility. To qualify for the reduction, the owner of the vehicle must provide a written self-certification at the first registration and at each renewal:

400.35(1) That the automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less has permanently installed equipment manufactured for and necessary to assist a person with a disability, as defined in Iowa Code section 321L.1, to enter or exit the vehicle, or

400.35(2) That the owner or a member of the owner's household uses a wheelchair as the person's only means of mobility.

This rule is intended to implement Iowa Code sections 321.109, 321.124 and 321L.1.
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

761—400.36(321) Land and water-type travel trailers registration fee. The registration fee for trailer-type vehicles designed to be used as a travel trailer and for use upon water shall be registered as a travel trailer. The exterior measurements used to determine the registration fee shall not include any pen deck area or area occupied by a trailer hitch.

This rule is intended to implement Iowa Code sections 321.1 and 321.123.

761—400.37(321) Motorcycle or autocycle primarily designed or converted to transport property. A motorcycle or autocycle primarily designed or converted to transport less than 1000 pounds of property shall be registered as a motorcycle or autocycle. A motorcycle or autocycle primarily designed or converted to transport 1000 pounds of property or more shall be registered as a motor truck.

This rule is intended to implement Iowa Code sections 321.1 and 321.117.
[ARC 2985C, IAB 3/15/17, effective 4/19/17]

761—400.38(321) Rescinded IAB 3/26/97, effective 4/30/97.

761—400.39(321) Conversion of motor vehicles.

400.39(1) An automobile converted to a truck with a carrying capacity of 1000 pounds or more shall be registered as a reconstructed motor vehicle.

400.39(2) A vehicle manufactured as a truck tractor or motor truck shall not be registered as a motor home unless the vehicle has been substantially altered to change its type and mode of operation so that it is a reconstructed vehicle as defined in Iowa Code section 321.1.

This rule is intended to implement Iowa Code sections 321.23, 321.111 and 321.124.
[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3999C, IAB 9/12/18, effective 10/17/18]

761—400.40(321) Manufactured or mobile home converted to or from real property.

400.40(1) Conversion to real property. When a manufactured or mobile home is converted to real property under Iowa Code section 435.26, the assessor shall collect its vehicle certificate of title. The assessor shall note the conversion on the face of the certificate of title above the assessor's signature, date the notation and deliver the title to the county treasurer. The county treasurer shall note the conversion on the vehicle record and then cancel and retain the certificate of title.

400.40(2) Reconversion from real property.

a. When a manufactured or mobile home is reconverted from real property by adding a vehicular frame, the owner may apply to the county treasurer for a certificate of title.

b. The owner shall submit a record of existing liens obtained from a local abstractor. The record shall identify the owner of the property, list all liens and encumbrances against the property, and shall be signed by the abstractor.

c. The owner shall also submit written consent to the reconversion from any person holding a mortgage on the real property (mortgagee). An existing mortgage shall be noted as a security interest on the certificate of title.

d. The county treasurer shall submit written notice of the reconversion to the county assessor's office.

This rule is intended to implement Iowa Code sections 321.1, 435.1, 435.26, 435.26A and 435.27.
[ARC 3999C, IAB 9/12/18, effective 10/17/18]

761—400.41(321) Special registration plates. Rescinded IAB 3/1/95, effective 4/5/95.

761—400.42(321) Church bus registration fee. The church bus registration fee shall not apply if the bus is used in a manner other than provided by law or if ownership of the bus is transferred to a person who is not entitled to register the vehicle as a church bus.

400.42(1) When the church bus registration fee does not apply, the bus shall be registered under the provisions of Iowa Code section 321.122.

400.42(2) When Iowa Code section 321.122 applies and the bus is currently registered as a church bus, the registration fee shall be prorated for the remaining unexpired months of the registration year.

This rule is intended to implement Iowa Code sections 321.119 and 321.122.

761—400.43(321) Storage of vehicles.

400.43(1) The owner of a vehicle upon which the registration fee is not delinquent may surrender all registration plates for the vehicle to the county treasurer where the vehicle is registered and shall have the right to register the vehicle later upon payment of the annual registration fee due at the time of removal of the vehicle from storage. Payment of a registration fee shall not be required when the vehicle is removed from storage within the current registration year provided that registration fees have not been refunded. Plates that have been surrendered shall be destroyed. When a vehicle is removed from storage, the fee is \$5 for a set of replacement plates.

400.43(2) The owner of a motor vehicle which is placed in storage when the owner enters the military service of the United States shall comply with Iowa Code section 321.126, and subrule 400.43(1) does not apply.

This rule is intended to implement Iowa Code sections 321.126 and 321.134.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3999C, IAB 9/12/18, effective 10/17/18]

761—400.44(321) Penalty on registration fees.

400.44(1) Monthly basis. The penalty on the delinquent payment of a registration fee shall be computed on a monthly basis, rounded to the nearest whole dollar. If multiple penalties are assessed, the penalties shall be first added together and then the sum shall be rounded to the nearest whole dollar.

400.44(2) Vehicle purchased. The penalty on the registration fee shall accrue from the first day of the month following the date of purchase, unless the application for a certificate of title is submitted within 30 days after the date of purchase.

400.44(3) Vehicle moved into Iowa. The penalty on the registration fee shall accrue on the first day of the month following 30 days from the date a vehicle is moved into Iowa.

400.44(4) When delinquency extends beyond the current year. When the penalty on a delinquent registration fee extends beyond the current year, the penalty shall continue to accrue until paid. Penalty shall only accrue on the fee applicable at the time the delinquency accrued and shall not be applicable to subsequent registration fees which have not been paid.

400.44(5) Statement of nonuse. If the owner of a vehicle, on which the registration fees have not been paid for more than three complete registration years, certifies to the county treasurer of the owner's residence that the vehicle has not been moved or operated upon the highway since the year it was last registered, the county treasurer may register the vehicle upon payment of the current year's registration fee.

400.44(6) Waiver of penalties for military members. Registration penalties shall be waived as provided in Iowa Code section 321.134, subsection 5, if the owner provides a copy of an official government document verifying that the applicant is in the military service of the United States and has been relocated as a result of being placed on active duty on or after September 11, 2001.

This rule is intended to implement Iowa Code sections 321.39, 321.46, 321.47, 321.49, 321.134 and 321.135.

[ARC 5178C, IAB 9/9/20, effective 10/14/20]

761—400.45(321) Suspension, revocation or denial of registration.

400.45(1) The department shall suspend or revoke registration and plates under Iowa Code section 321.101 when a written request is received from a peace officer or the county treasurer's office that issued the registration and plates.

- a. A request from a peace officer shall be submitted on a form prescribed by the department.
- b. A request from a county treasurer's office shall be signed by the county treasurer or designee.

400.45(2) When the registration of a vehicle has been revoked as provided in Iowa Code sections 321.101 and 321.101A, the registration fee and penalty shall accrue as if the plates had never been issued, unless waiver of registration fees and penalties is specifically provided for in Iowa Code chapter 321.

400.45(3) In accordance with Iowa Code section 252J.8, the department shall suspend or deny the issuance or renewal of registration and plates upon receipt of a certificate of noncompliance from the child support recovery unit.

- a. The suspension or denial shall become effective 30 days after notice to the vehicle owner and continue until the department receives a withdrawal of the certificate of noncompliance from the child support recovery unit.

- b. If a person who is the named individual on a certificate of noncompliance subsequently purchases a vehicle, the vehicle shall be titled and registered, but the registration shall be immediately suspended.

This rule is intended to implement Iowa Code sections 252J.1, 252J.8, 252J.9, 321.101, 321.101A and 321.127.

[ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4758C, IAB 11/6/19, effective 12/11/19]

761—400.46(321) Termination of suspension of registration. Upon termination of the suspension of registration of a vehicle, the county treasurer shall issue new plates for the vehicle. If the new plates replace a current series of plates, there shall be a replacement fee as provided in Iowa Code section 321.42. If the vehicle is not currently registered at the time the suspension is lifted, the registration fee and penalties due shall be determined as follows:

400.46(1) If the registration fee was delinquent at the time that the suspension became effective, the penalty shall continue to accrue on the registration fee until the suspension became lifted and the registration fee is paid. In addition, if the suspension was for failure to pay an additional registration fee, the additional registration fee shall be paid before the suspension is lifted.

400.46(2) If the registration fee was not delinquent when the suspension became effective and the suspension is lifted after the beginning of another registration year, the annual registration fee for that year shall be due in the month the suspension is lifted. The penalty shall accrue on the registration fee the first day of the month following the month that the suspension was lifted. The annual registration fee on a recovered stolen vehicle for which the registration has been suspended shall be prorated for the remaining unexpired months of the registration year.

400.46(3) If the registration fee was not delinquent at the time that the suspension became effective and the suspension is lifted during the same registration period, no additional registration fees shall be due unless the suspension was for failure to pay an additional registration fee, in which event the additional registration fee shall be paid before the suspension is lifted.

This rule is intended to implement Iowa Code sections 321.42, 321.105 and 321.134.

761—400.47(321) Raw farm products. A vehicle may be operated with a gross weight of 25 percent in excess of the gross weight for which it is registered when transporting a load of raw farm products or soil fertilizers under Iowa Code section 321.466 except that nothing in this rule shall be construed to allow operation of a special truck on the public highways with a gross weight exceeding the maximum gross weight allowed under Iowa Code section 321.463(6). In addition, the following products shall be considered raw farm products. This list shall not be deemed conclusive and shall not exclude other commodities which might be considered raw farm products:

Animals which are dead	Hides
Berries, fresh	Honey, comb or extracted
Blood	Melons
Corn, ear corn including hybrids	Milk, raw
Corn, shelled	Nursery stock
Corn, cobs	Potatoes
Cream, separated	Peat
Eggs, fresh or frozen in shell	Poultry, live
Flax	Saw logs
Flaxseed	Sod
Fodder	Soybeans
Fruit, fresh	Straw, baled or loose
Grain, threshed or unthreshed	Vegetables, fresh
Hair	Wood, cord or stove wood
Hay, baled or loose	Wool

This rule is intended to implement Iowa Code sections 321.466(4) and 321.466(5).
[ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.48(321) Special mobile equipment. Rescinded IAB 3/7/90, effective 4/11/90.

761—400.49(321) Special mobile equipment transported on a registered vehicle. Rescinded IAB 3/7/90, effective 4/11/90.

761—400.50(321,326) Refund of registration fees.

400.50(1) Vehicles registered by county treasurer.

a. The department shall refund fees for vehicles registered by the county treasurer pursuant to Iowa Code section 321.126.

b. A claim for refund shall be made on a form prescribed by the department. Except as provided in Iowa Code section 321.126, the claim may be submitted to the county treasurer's office in any county.

c. Registration plates shall be submitted with the claim if the vehicle is placed in storage or registered for apportioned registration, if the owner of the vehicle moves out of state, or if the plates have not been assigned to a replacement vehicle. If one or both plates have been lost or stolen, the claimant shall certify this fact in writing.

d. For a vehicle that was junked, the date on the junking certificate shall determine the date the vehicle was junked.

e. If the claim for refund is for excess credit or no replacement vehicle:

(1) The county treasurer shall enter into the state motor vehicle computer system the information required to process the refund. The information shall be entered within three days of receipt of the claim for refund.

(2) The claim for refund shall be approved or denied by the vehicle and motor carrier services bureau.

f. All other claims for refund shall be forwarded to the vehicle and motor carrier services bureau for processing.

400.50(2) Vehicles registered by department. Forms and instructions for claiming a refund on apportioned registration fees under Iowa Code section 326.15 may be obtained from the vehicle and motor carrier services bureau at the address in subrule 400.6(1). The claim for refund shall be filed at the same address.

This rule is intended to implement Iowa Code sections 25.1, 321.126 to 321.128 and 326.15.
[ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.51(321) Assigned identification numbers. The department is authorized to issue to the owner an assigned vehicle identification number for a vehicle, an assigned component part number for a component part, and an assigned product identification number for a fence-line feeder, grain cart, or tank wagon. An identification number shall be assigned only if the department is satisfied as to the true identity and ownership of the vehicle, component part, fence-line feeder, grain cart or tank wagon. When an assigned vehicle identification number has been issued for a vehicle, the vehicle shall be registered and titled under that number. An assigned component part number or an assigned product identification number shall be used only for identification purposes.

400.51(1) Issuance of an identification number. The department shall issue an assigned vehicle identification number, assigned component part number or assigned product identification number, as applicable, only if:

- a. The original number has been destroyed, removed or obliterated.
- b. The vehicle has had a cab, body, or frame change and the replacement cab, body, or frame is within the manufacturer's interchangeability parts specifications catalog and is compatible with the make, model, and year of the vehicle. If the replacement cab, body, or frame change is not within the manufacturer's interchangeability parts specifications catalog or is not compatible with the make, year, and model of the vehicle, the vehicle shall be considered reconstructed and subject to rule 761—400.16(321).
- c. The vehicle is a specially constructed, reconstructed, street rod or replica motor vehicle. See rule 761—400.16(321) for the requirements and procedures applicable to specially constructed, reconstructed, street rod or replica motor vehicles.

400.51(2) Procedures.

a. *Request.* Whenever an assigned identification number is required under subrule 400.51(1) and the request does not apply to a specially constructed, reconstructed, street rod or replica motor vehicle, the owner of the vehicle, component part, fence-line feeder, grain cart or tank wagon, or the person holding lawful custody, shall contact the department's bureau of investigation and identity protection at the address in subrule 400.6(2) and request the assignment of a number.

b. *Examination.* A motor vehicle investigator shall contact the owner and schedule a time and place for examination of the vehicle, component part, fence-line feeder, grain cart or tank wagon and ownership documents. The owner of the vehicle may drive or tow the vehicle to and from the examination location by completing the affidavit to drive section on the certification of compliance form. The affidavit shall state that the vehicle is reasonably safe for operation and must be signed by the owner.

If the vehicle has had a cab, body, or frame change, the owner shall have, for evidence of ownership for the replacement cab, body, or frame, a bill of sale with a description of the part, complete with the manufacturer's identification number, if any, and the name, address, and telephone number of the seller. The bill of sale, the vehicle, and the cab, body, or frame that has been replaced shall be made available for examination at the time and place scheduled.

c. *Assigned vehicle identification number.*

(1) The investigator upon approval of the request shall affix to the vehicle an assigned vehicle identification number and authorize the county treasurer to issue a title and registration for the vehicle.

(2) The owner shall submit the certificate of title and the registration receipt issued for the vehicle to the county treasurer. If the certificate of title is in the possession of a secured party, the county treasurer shall notify the secured party to return the certificate of title to the county treasurer for the purpose of issuing a corrected title. Upon receipt of the notification, the secured party shall submit the certificate of title within ten days. The county treasurer, upon receipt of the certificate of title and the registration receipt, shall issue a corrected title and registration receipt listing as the vehicle identification number the assigned vehicle identification number.

d. *Assigned component part number.* The investigator upon approval of the request shall affix to the component part an assigned component part number and give to the owner a component part form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

e. Assigned product identification number. The investigator upon approval of the request shall affix an assigned product identification number to the fence-line feeder, grain cart or tank wagon and give to the owner an assigned product identification number form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

400.51(3) Fees. A certificate of title fee and a fee for a notation of a security interest, if applicable, shall be collected by the county treasurer upon issuance of a corrected certificate of title. A corrected certificate of title shall not be required for a name change.

This rule is intended to implement Iowa Code sections 321.1, 321.43 and 321.92.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3999C, IAB 9/12/18, effective 10/17/18]

761—400.52(321) Odometer statement.

400.52(1) Pursuant to Iowa Code section 321.71 and 49 U.S.C. Section 32705, an odometer disclosure statement shall be submitted with an application for certificate of title for a motor vehicle. The statement shall provide a current odometer reading and reflect whether the mileage is “actual,” “not actual” or “exceeds mechanical limits.”

400.52(2) If the transferor failed to provide an odometer disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts on a form prescribed by the department. The sworn statement shall be accepted by the county treasurer or the department in lieu of the required odometer disclosure statement. The subsequent title issued from the sworn statement will record “not actual” mileage.

400.52(3) As required by 49 CFR Section 580.17, for vehicle transfers that occur through December 31, 2030, any vehicle that is model year 2011 or newer shall require an odometer disclosure statement. For vehicle transfers that occur on or after January 1, 2031, the model year formula for odometer disclosure statements shall be the current year minus 20. The resulting number represents the first model year for which a motor vehicle is exempt from the odometer statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.71.

[ARC 5829C, IAB 8/11/21, effective 9/15/21]

761—400.53(321) Stickers.

400.53(1) Placement of validation sticker. The validation sticker shall be affixed to the lower left corner of the rear registration plate. EXCEPTIONS: For motorcycle, autocycle and small trailer plates, the validation sticker shall be affixed to the upper left corner of the plate. For natural resources plates, the sticker may be affixed to the lower right corner of the rear plate.

400.53(2) Special fuel user identification sticker. If the vehicle uses a special fuel as defined in Iowa Code section 452A.2, a special fuel user identification sticker shall be issued. This sticker shall be displayed on the cover of the fuel inlet of the motor vehicle or on the outside panel of the motor vehicle within 3 inches of the fuel inlet so as to be in view when fuel is delivered into the motor vehicle.

400.53(3) Persons with disabilities parking sticker. A persons with disabilities special registration plate parking sticker shall be affixed to the lower right corner of the rear registration plate.

400.53(4) Special truck sticker. An owner of a special truck, registered pursuant to Iowa Code section 321.121, who has been issued either regular registration plates or special registration plates other than special truck registration plates must obtain from the county treasurer a sticker which distinguishes the vehicle as a special truck. The sticker shall be affixed to the lower right corner of the rear registration plate. EXCEPTION: If the vehicle displays front and rear plates, two stickers shall be issued with one sticker affixed to the lower right corner of the front plate and rear plate. For natural resources plates, the stickers must be affixed to the lower left corner of the front and rear plates.

This rule is intended to implement Iowa Code sections 321.34, 321.40, 321.41, 321.121 and 321.166.

[ARC 9833B, IAB 11/2/11, effective 12/7/11; ARC 2985C, IAB 3/15/17, effective 4/19/17; ARC 3999C, IAB 9/12/18, effective 10/17/18]

761—400.54(321) Registration card issued for trailer-type vehicles. The registration card issued for trailer-type vehicles shall be carried in the vehicle which is described on the card or the registration card may be carried in the driver's compartment of the towing vehicle. If the registration card is carried in the vehicle which is described on such card, the registration card shall be enclosed in a registration card holder and the holder shall be attached to the vehicle so that the registration card may be viewed by any peace officer upon request.

This rule is intended to implement Iowa Code section 321.32.

761—400.55(321) Damage disclosure statement.

400.55(1) If the transferor failed to provide a damage disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts. The transferee shall also complete section 2 of a separate damage disclosure statement and sign on the buyer's line. The sworn statement and damage disclosure statement completed by the transferee shall be accepted by the county treasurer or the department in lieu of the damage disclosure statement required from the transferor.

400.55(2) A model year formula for damage disclosure statements shall be the current year minus eight. The resulting number represents the first model year for which a motor vehicle is exempt from the damage disclosure statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.69.

761—400.56(321) Hearings. The department shall send notice by certified mail to a person whose certificate of title, vehicle registration, license, or permit is to be revoked, suspended, canceled, or denied. The notice shall be mailed to the person's mailing address as shown on departmental records and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the vehicle and motor carrier services bureau at the address in subrule 400.6(1). The request for a contested case shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation, or denial.

This rule is intended to implement Iowa Code sections 17A.10 to 17A.19, 321.101 and 321.102. [ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4960C, IAB 3/11/20, effective 4/15/20]

761—400.57(321) Non-resident-owned vehicles. Rescinded IAB 2/6/02, effective 3/13/02.

761—400.58(321) Motorized bicycles. The following rules shall apply to motorized bicycles.

400.58(1) Maximum speed. If the department has reasonable cause to believe that a particular vehicle or model is capable of speeds exceeding 39 miles per hour, the department may conduct independent tests to determine the maximum speed of the vehicle or model. If the department determines that the maximum speed of the particular vehicle or model exceeds 39 miles per hour, the vehicle or model shall not be registered as a motorized bicycle.

400.58(2) Identification of a vehicle as a motorized bicycle. Registration plates issued for motorcycles shall also be issued for motorized bicycles.

This rule is intended to implement Iowa Code sections 321.1 and 321.166. [ARC 2887C, IAB 1/4/17, effective 2/8/17]

761—400.59(321) Registration documents lost or damaged in transit through the United States postal service. To obtain without cost the reissuance of registration documents that were sent by the county treasurer to the owner through the United States postal service and which were lost or damaged in transit, the owner of the vehicle shall file application for reissuance within 60 days of the date the documents were issued by the county treasurer.

This rule is intended to implement Iowa Code section 321.42.

761—400.60(321) Credit of registration fees.

400.60(1) Credit for unexpired registration fee. The applicant may claim credit, as specified in Iowa Code section 321.46(3), toward the registration fee for one newly acquired replacement vehicle. No credit shall be given for an unexpired electric vehicle annual registration fee; however, an unexpired electric vehicle annual registration fee is eligible for a refund as provided in rule 761—400.50(321,326).

a. The credit may be claimed only when the owner of the newly acquired vehicle is applying for a certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) for the newly acquired vehicle.

b. For a junked vehicle, the date on the junking certificate shall determine the date the vehicle was junked.

c. Excess credit shall not be applied toward the registration fee for a second vehicle.

d. Credit shall be allowed for one or two vehicles which have been sold, traded or junked toward one replacement vehicle. Credit shall be based on the remaining unexpired months of the registration year(s) of the vehicle(s) sold, traded or junked.

400.60(2) Credit for transfer to spouse, parent or child. Credit shall be allowed toward a new registration for a vehicle being transferred to the applicant from the applicant's spouse, parent or child, or from a former spouse pursuant to a dissolution of marriage decree, if application for the certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) is made within 30 days after the date of transfer. If the owner is deceased, credit may be transferred under rule 761—400.14(321) of this chapter.

400.60(3) Credit from/to apportioned registration.

a. Pursuant to Iowa Code section 321.46A, an owner may claim credit toward the registration fees due when changing a vehicle's registration from apportioned registration under Iowa Code chapter 326 to registration under Iowa Code chapter 321. The owner shall surrender proof of apportioned registration to the county treasurer. Credit shall be allowed for the unexpired complete calendar months remaining in the registration year from the date the application is filed with the county treasurer.

b. Pursuant to Iowa Code sections 321.126 and 321.127, the owner or lessee of a motor vehicle may claim credit for the apportioned registration fees due when changing the vehicle's registration from registration by the county treasurer to apportioned registration. Application for apportioned registration shall be submitted to the department's vehicle and motor carrier services bureau; see 761—Chapter 500.

400.60(4) Assignment of credit and registration plates from lessor to lessee. When a lessee purchases the leased vehicle and within 30 days requests the assignment of the vehicle's fee credit and registration plates, the lessor shall assign the registration fee credit and registration plates for the purchased vehicle to the lessee.

This rule is intended to implement Iowa Code sections 321.46, 321.46A, 321.48, 321.116, 321.117, 321.126 and 321.127.

[ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4960C, IAB 3/11/20, effective 4/15/20; ARC 5178C, IAB 9/9/20, effective 10/14/20]

761—400.61(321) Reassignment of registration plates.

400.61(1) Registration plates may be reassigned if one of the owners listed on the registration receipt before the transfer is also a listed owner following the transfer.

400.61(2) Registration plates may be reassigned when credit is allowed toward a new registration for a vehicle being transferred to the owner's spouse, parent, or child, or to a former spouse pursuant to a dissolution of marriage decree. If the owner is deceased, plates may be transferred under rule 761—400.14(321).

400.61(3) Registration plates shall not be reassigned between a natural person or persons and a corporation, association, copartnership, company, or firm.

400.61(4) Registration plates may be reassigned and credit allowed if two or more corporations, associations, partnerships, or firms merge into one corporation, association, partnership or firm.

400.61(5) Registration plates may be assigned and credit allowed if an owner listed on the certificate of title and registration transfers ownership of the vehicle to a trust created by that owner.

This rule is intended to implement Iowa Code sections 321.34 and 321.46.

761—400.62(321) Storage of registration plates, certificate of title forms and registration forms. Registration plates, certificate of title forms and registration forms which are consigned to county treasurers by the department shall be stored in a secure location. The location may be within the office of the county treasurer which is accessible only to authorized persons or in a storage area located outside the general office area assigned to the county treasurer. Any storage area located outside the general office area assigned to the county treasurer shall be of the construction that it is accessible only to authorized persons, as designated by the county treasurer or department.

This rule is intended to implement Iowa Code sections 321.5, 321.8, and 321.167.

761—400.63(321) Disposal of surrendered registration plates. The county treasurer shall either destroy plates that have been surrendered to the county treasurer or return the surrendered plates to Iowa state industries for recycling.

This rule is intended to implement Iowa Code sections 321.5 and 321.171.

761—400.64(321) County treasurer's report of motor vehicle collections and funds. The county treasurer shall file the report provided for in Iowa Code section 321.153 in a manner prescribed by the department.

This rule is intended to implement Iowa Code section 321.153.

761—400.65 to 400.69 Reserved.

761—400.70(321) Removal of registration and plates by peace officer under financial liability coverage law. This rule applies to instances when a peace officer issues a citation and removes the registration receipt and registration plates of a motor vehicle registered in this state when the driver of the motor vehicle is unable to provide proof of financial liability coverage. This rule applies regardless of whether the vehicle was also impounded.

400.70(1) The peace officer shall forward the registration receipt and evidence of the violation to the county treasurer of the county in which the motor vehicle is registered. Evidence of the violation is one of the following:

a. A copy of the citation. The citation must either reference Iowa Code subparagraph 321.20B(4)“a”(3) or 321.20B(4)“a”(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded.

b. A written statement from the peace officer listing the plate number of the registration plate removed from the vehicle and the vehicle owner's name. The statement must either reference Iowa Code subparagraph 321.20B(4)“a”(3) or 321.20B(4)“a”(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded. The statement must be signed by the peace officer or an employee of the law enforcement agency.

400.70(2) The peace officer may either destroy removed plates or deliver the removed plates to the county treasurer for destruction.

This rule is intended to implement Iowa Code section 321.20B.

761—400.71(321) Lemon law designation. Rescinded IAB 11/7/07, effective 12/12/07.

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◊ Two or more ARCs

CHAPTER 540
TRANSPORTATION NETWORK COMPANIES

761—540.1(321N) Purpose and applicability. This chapter implements the permitting and regulation requirements of Iowa Code chapter 321N, and applies to transportation network companies and transportation network company drivers.

[ARC 2987C, IAB 3/15/17, effective 4/19/17]

761—540.2(321N) Definitions. The definitions in Iowa Code section 321N.1 are hereby made part of and fully incorporated in this chapter.

[ARC 2987C, IAB 3/15/17, effective 4/19/17]

761—540.3(321N) General information.

540.3(1) Information and location. Applications, forms, electronic or otherwise, and information regarding transportation network company permits are available by mail from the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3268; by email at omcs@iowadot.us; by facsimile at (515)237-3225; or on the department's website at www.iowadot.gov.

540.3(2) Complaints. Complaints against transportation network companies pertaining to the provisions of Iowa Code chapter 321N and this chapter that are within the regulation and jurisdiction of the department shall be submitted in writing to the office of vehicle and motor carrier services.

[ARC 2987C, IAB 3/15/17, effective 4/19/17; Editorial change: IAC Supplement 8/11/21]

761—540.4(321N) Application for transportation network company permit and supporting documents.

540.4(1) Application. An application for a transportation network company permit shall be made to the office of vehicle and motor carrier services on a form designated by the department, electronic or otherwise, and prescribed for that purpose. The form shall require all of the following:

- a. The transportation network company's full legal name and tax identification number.
- b. The address of the transportation network company's principal place of business.
- c. If incorporated or otherwise organized, the transportation network company's state of incorporation or organization.
- d. The name, address, telephone number and email address of the person submitting the application on behalf of the transportation network company.
- e. A statement confirming the transportation network company's agreement to comply with all applicable requirements of Iowa Code chapter 321N and this chapter, signed by the transportation network company's authorized representative.
- f. The name and address of the transportation network company's agent for service of process in the state of Iowa.
- g. The name by which the transportation network company will do business in the state of Iowa, if different from the transportation network company's full legal name.
- h. A description of the transportation network company's digital network and the means or manner by which it may be accessed by the transportation network company's drivers and riders. This paragraph is not intended to and shall not be construed as requiring the disclosure of information proprietary to the transportation network company.
- i. The name, address, telephone number and email address of the person through whom the department may coordinate examination of the transportation network company's records as required by Iowa Code section 321N.2(5).

540.4(2) Application fee. An application for a transportation network company permit shall be accompanied by the fee required by Iowa Code section 321N.2. The fee shall be made payable to the Iowa Department of Transportation by cash, check, money order, or other means acceptable to, and offered by, the department.

540.4(3) Supporting documents. An application for a transportation network company permit shall be accompanied by the following:

a. Proof of compliance with the financial responsibility requirements of Iowa Code section 321N.4. Proof of compliance shall be submitted by providing a valid certificate of coverage from an insurer governed by Iowa Code chapter 515, or by a surplus lines insurer governed by Iowa Code chapter 515I. The certificate of coverage shall demonstrate coverage in the amounts and circumstances required by Iowa Code section 321N.4, and shall certify that if insurance maintained by a transportation network company driver under Iowa Code chapter 321N lapses or does not provide coverage in the amounts or types required by Iowa Code section 321N.4, subsection 2 or 3, the insurance certified in the certificate of coverage shall provide coverage in the amounts and types required by Iowa Code section 321N.4, subsection 2 or 3, beginning with the first dollar of the claim, and the insurer providing such coverage shall defend the claim. The certificate of coverage shall also certify that the coverage therein is not dependent on the insurer of a transportation network company driver's personal vehicle first denying a claim, and does not require the insurer of a personal automobile insurance policy to first deny a claim to trigger coverage and defense under the coverage certified.

b. Proof that the transportation network company has established a zero tolerance policy for the use of drugs and alcohol as provided in Iowa Code section 321N.3(5). The transportation network company shall provide a written copy of the applicable policy and an explanation of the manner or means by which the policy is made known to transportation network company drivers and the manner or means by which the policy is enforced.

c. Proof that the transportation network company has adopted and is enforcing nondiscrimination and accessibility policies. As used herein, "nondiscrimination policy" means a policy that prohibits discrimination against transportation network company riders on the basis of race, age, disability, religion, color, sex, or national origin. "Accessibility policy" means a policy that prohibits discrimination against and assures equal opportunity and access to transportation network company riders who are persons with disabilities under the Americans with Disabilities Act of 1990 (ADA) as amended by the ADA Amendments Act of 2008 (P.L. 110-325) codified at 42 U.S.C. 12101 et. seq. The transportation network company shall provide a written copy of the applicable policy and an explanation of the manner or means by which the policy is made known to transportation network company drivers and the manner or means by which the policy is enforced.

d. Proof that the transportation network company has established record retention guidelines that comply with the requirements of Iowa Code section 321N.2(2). The transportation network company shall provide a written copy of the applicable policy and an explanation of the manner or means by which the policy is made known to the designated records retention officer or responsible staff and the manner or means by which the policy is enforced.

e. Proof that the transportation network company has established a means for informing persons seeking approval to serve as transportation network company drivers of their notification obligations under Iowa Code section 321N.3(2). The transportation network company shall provide a copy of the disclosure form used by the transportation network company to inform such persons of the notification obligations under Iowa Code section 321N.3(2) and an explanation of the manner or means by which the disclosure form is made known to and signed by such persons.

f. Proof that the transportation network company has established a means for making the automobile insurance disclosures required by Iowa Code section 321N.5 to persons serving as transportation network company drivers. The transportation network company shall provide a copy of the written disclosure used by the transportation network company and an explanation of the manner or means by which the written disclosure is made known to transportation network company drivers.

g. Proof that the transportation network company has established a means for making the driver and vehicle disclosures required by Iowa Code section 321N.7 to transportation network company riders. The transportation network company shall provide an explanation of the manner or means by which the disclosure is made known to transportation network company riders.

h. Proof that the transportation network company has established a means for transmitting an electronic receipt to transportation network company riders as required by Iowa Code section 321N.8.

The transportation network company shall include a sample, representative receipt and an explanation of the manner or means by which the receipt is delivered and the time frame within which the receipt is delivered.

i. If incorporated or organized, a copy of the transportation network company's certificate of good standing from the transportation network company's state of incorporation or organization.

j. Other such documents as requested by the department.

[ARC 2987C, IAB 3/15/17, effective 4/19/17; ARC 3688C, IAB 3/14/18, effective 4/18/18; Editorial change: IAC Supplement 8/11/21]

761—540.5(321N) Issuance of permit. A transportation network company shall not operate or conduct business in the state of Iowa without a valid permit issued under this chapter. Upon submission of a completed application package as set forth in rule 761—540.4(321N), the department shall process the package and shall inform the transportation network company of the package's status no later than 30 days after the department receives the package. Application package statuses for the purpose of this rule are as follows: "in process," "granted," and "denied." If the department informs a transportation network company that the application is "in process," then the department shall also inform the transportation network company of the reason for the status. If the department determines that the transportation network company is in compliance with the provisions of Iowa Code chapter 321N and this chapter, the department shall issue a permit to the transportation network company. A permit, when issued, shall be valid for one year. The department may deny issuance of the permit if the department determines, and evidence demonstrates, that the transportation network company is not in compliance or is not able to comply with the provisions of Iowa Code chapter 321N or this chapter.

[ARC 2987C, IAB 3/15/17, effective 4/19/17]

761—540.6(321N) Amendment to transportation network company permit. If during the period the permit is valid any information required and presented in the application under paragraph 540.4(1) "a," "b," "c," "f," "g" or "i" changes, the transportation network company shall notify the office of vehicle and motor carrier services of the change in writing, within 30 days after the change. Notification shall include the permit number and a recitation of the information that has changed and that should be updated in the department's records. Submission of amended information is not a request for a new permit or for permit approval and shall not extend the period the permit is valid. Upon determination that the information submitted is complete and correct, the department shall update its records and issue an amended permit, if the department determines it is necessary.

[ARC 2987C, IAB 3/15/17, effective 4/19/17]

761—540.7(321N) Suspension. If the department determines that the transportation network company has violated Iowa Code chapter 321N or this chapter and the violation is more than an isolated event and remains uncorrected, the department shall issue to the transportation network company a written notice of the violation. The written notice shall specify the violation and shall advise the transportation network company that failure to remedy the violation and to comply with the applicable requirements within 30 days shall result in the issuance of a written notice of suspension of the permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa. If the transportation network company fails to remedy the violation within 30 days, the department shall issue to the transportation network company a written notice of suspension of the permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa, which shall be effective 30 days after service of the written notice of suspension. Once effective, the suspension shall remain in effect until the transportation network company demonstrates to the department that it is in compliance with the applicable requirements or the permit is revoked or expires, whichever occurs first.

[ARC 2987C, IAB 3/15/17, effective 4/19/17]

761—540.8(321N) Revocation. If the department determines that the transportation network company is in continued noncompliance with Iowa Code chapter 321N or this chapter, the department shall revoke the transportation network company's permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa. Notice of revocation shall be in writing, shall

specify the continued noncompliance, and shall be effective 30 days after service of the written notice of revocation. The period of revocation shall be for at least 90 days, and shall continue thereafter until the following criteria are satisfied: (1) The transportation network company submits a new application, application fee, and supporting documents under rule 761—540.4(321N), and (2) the department determines a new permit should be issued, pursuant to rule 761—540.5(321N). As used in this rule, “continued noncompliance” means a violation of Iowa Code chapter 321N or this chapter for which a notice of suspension has become effective and has remained in effect for a period of at least 180 days. [ARC 2987C, IAB 3/15/17, effective 4/19/17]

761—540.9(321N) Appeal.

540.9(1) A transportation network company whose permit has been suspended, revoked, or denied may request an informal settlement or a contested case proceeding as provided in 761—Chapter 13 to contest said action.

540.9(2) The request shall be submitted in writing, to the director of the office of vehicle and motor carrier services, at the address indicated in subrule 540.3(1), and may be submitted electronically by facsimile, email or other means prescribed by the department. To be timely, the request must be submitted within 20 days of service of the notice of suspension, revocation, or denial. Failure to contest denial of a permit application does not preclude the transportation network company from submitting a new application for a permit at any time after the denial.

540.9(3) When the department receives a properly submitted, timely request for an informal settlement or contested case proceeding or an appeal of a presiding officer’s proposed decision regarding a suspension or revocation, the department shall stay the suspension or revocation pending resolution of the informal resolution, contested case, or appeal.

[ARC 2987C, IAB 3/15/17, effective 4/19/17; Editorial change: IAC Supplement 8/11/21]

761—540.10(321N) Renewal.

540.10(1) A transportation network company that has been issued and holds a valid permit may renew the permit by submitting, at minimum, the following: (1) the application, (2) the application fee and (3) the supporting documents as set forth in rule 761—540.4(321N). The application for renewal must be submitted no more than 60 days before the expiration date of the existing permit and no fewer than 30 days before the expiration date of the existing permit.

540.10(2) Pursuant to Iowa Code section 17A.18(2), when a transportation network company has made a timely and sufficient application for the renewal of a valid permit, the existing permit does not expire until the application has been finally determined by the department, and, in case the application is denied or the terms of the new permit are limited, until the last day for seeking judicial review of the department’s order or a later date fixed by order of the department or the reviewing court.

540.10(3) If the application for renewal is submitted fewer than 30 days before the expiration date of the existing permit, then the application shall be considered a new application and Iowa Code section 17A.18(2) shall not apply. If a transportation network company does not file a renewal application pursuant to this rule, then the original application shall expire on the expiration date set forth on the original permit.

540.10(4) If a transportation network company initiates an appeal, informal settlement, or contested case proceeding pursuant to rule 761—540.9(321N) and the original application expires pursuant to the expiration date of the application, then the transportation network company shall be required to submit a renewal application pursuant to subrule 540.10(1) if the transportation network company intends to hold a valid permit under this chapter once the appeal, informal settlement, or contested case proceeding has been finally determined.

[ARC 2987C, IAB 3/15/17, effective 4/19/17]

These rules are intended to implement Iowa Code chapter 321N.

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[Editorial change: IAC Supplement 8/11/21]

CHAPTER 641
FINANCIAL LIABILITY COVERAGE CARDS

761—641.1(321) Purpose and applicability.

641.1(1) The purpose of this chapter is to establish requirements for financial liability coverage cards.

641.1(2) This chapter applies to motor vehicles registered in Iowa or subject to registration in Iowa.

641.1(3) This chapter does not address proof of financial responsibility under Iowa Code chapter 321A except for the issuance of financial liability coverage cards.

641.1(4) Proof of financial liability coverage for motor vehicle dealers is addressed in 761—subrule 425.10(8).

761—641.2(321) Definitions.

“*Fleet*” means five or more motor vehicles covered under an insurance policy, or one or more motor vehicles covered by a bond filed under Iowa Code section 321A.24, a security certificate issued under section 321A.25, or a self-insurance certificate issued under section 321A.34.

“*Registration number*” as used in Iowa Code sections 321.20B, 321A.24(1) and 321A.25(1) means vehicle identification number.

[Editorial change: IAC Supplement 8/11/21]

761—641.3(321) Content of financial liability coverage card.

641.3(1) A financial liability coverage card issued by an insurance company for a motor vehicle that is not insured as a part of a fleet shall contain the following information:

- a. Either one of the following:
 - (1) Name and address of insurer.
 - (2) Name of insurer and name and address of insurance agency.
- b. Name of insured.
- c. Policy number.
- d. Vehicle identification number of the insured motor vehicle.
- e. Year and make of the insured motor vehicle.
- f. The statement, “Coverage provided by this policy meets the minimum liability limits prescribed by law,” or a statement that is substantially similar.
- g. Effective and expiration dates of coverage.
- h. The statement, “This card must be carried in the insured motor vehicle at all times,” or a statement that is substantially similar.
- i. An emergency telephone number of either the insurer or the insurance agency.

641.3(2) An insurance company shall issue a financial liability coverage card for each motor vehicle insured as a part of a fleet. The fleet owner shall maintain a card in each fleet vehicle. The card shall contain the following information:

- a. Either one of the following:
 - (1) Name and address of insurer.
 - (2) Name of insurer and name and address of insurance agency.
- b. Name of insured.
- c. Policy number.
- d. Either the vehicle identification number or the words “all owned vehicles” or the word “fleet.”
- e. The statement, “Coverage provided by this policy meets the minimum liability limits prescribed by law,” or a statement that is substantially similar.
- f. Effective and expiration dates of coverage.
- g. The statement, “This card must be carried in the insured motor vehicle at all times,” or a statement that is substantially similar.
- h. An emergency telephone number of either the insurer or the insurance agency.

641.3(3) One financial liability coverage card shall be issued by the department for each fleet covered by a bond filed under Iowa Code section 321A.24, a security certificate issued under section 321A.25, or a self-insurance certificate issued under section 321A.34. The fleet owner shall maintain a copy of the card in each fleet vehicle. The card shall contain the following information:

- a. Name, address and telephone number of person to whom the card is issued.
- b. Number assigned by the department.
- c. Either the vehicle identification number or the words “all owned vehicles” or the word “fleet.”
- d. The statement, “This card must be carried in the covered motor vehicle at all times.”

761—641.4(321) Responsibilities of insurer.

641.4(1) Each insurer issuing financial liability coverage in this state shall furnish a financial liability coverage card that complies with these rules to the named insured for each motor vehicle insured. The card shall be provided with every new policy and every policy renewal issued.

641.4(2) The insurer shall file a true and correct, sample copy of its financial liability coverage card with the Iowa insurance division.

761—641.5(321) Acquisition of additional or replacement motor vehicles.

641.5(1) A financial liability coverage card that provides coverage for a replacement motor vehicle may be used temporarily in a replacement motor vehicle for 30 days if ownership evidence as described in 761—subrule 400.19(3) is carried in the motor vehicle.

641.5(2) A copy of a financial liability coverage card that provides coverage for an additionally acquired motor vehicle may be used temporarily in an additionally acquired motor vehicle for 30 days if ownership evidence as described in 761—subrule 400.19(3) is carried in the motor vehicle.

761—641.6(321) New policies. On new policy applications, a binder of liability coverage issued by an insurance agent authorized to conduct insurance business in this state is acceptable proof of financial liability coverage for a period of 30 days from date of issue of the binder.

These rules are intended to implement Iowa Code sections 321.1, 321.20B, 321A.24, 321A.25, and 321A.34.

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CHAPTER 10
GENERAL INDUSTRY SAFETY AND HEALTH RULES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 10]

875—10.1(88) Definitions. As used in these rules, unless the context clearly requires otherwise:

“*Part*” means 875—Chapter 10, Iowa Administrative Code.

“*Standard*” means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

875—10.2(88) Applicability of standards.

10.2(1) None of the standards in this chapter shall apply to working conditions of employees with respect to which federal agencies other than the United States Department of Labor, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

10.2(2) If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same condition, practice, means, method, operation, or process.

10.2(3) However, any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for the industry, as in 1910.12, 1910.261, 1910.262, 1910.263, 1910.264, 1910.265, 1910.266, 1910.267, and 1910.268 of 29 CFR 1910, to the extent that none of such particular standards applies.

10.2(4) In the event a standard protects on its face a class of persons larger than employees, the standard shall be applicable under this part only to employees and their employment and places of employment.

10.2(5) An employer who is in compliance with any standard in this part shall be deemed to be in compliance with the requirement of Iowa Code section 88.4, but only to the extent of the condition, practice, means, method, operation or process covered by the standard.

875—10.3(88) Incorporation by reference. The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this chapter have the same force and effect as other standards in this chapter. Only mandatory provisions (i.e., provisions containing the word “shall” or other mandatory language) of standards incorporated by reference are adopted under the Act.

875—10.4(88) Exception for hexavalent chromium exposure in metal and surface finishing job shops. Rescinded ARC 5490C, IAB 3/10/21, effective 4/14/21.

875—10.5 and 10.6 Reserved.

875—10.7(88) Definitions and requirements for a nationally recognized testing laboratory. The federal regulations adopted at 29 CFR, Chapter XVII, Part 1910, regulation 1910.7 and Appendix A, as published at 53 Fed. Reg. 12120 (April 12, 1988) and amended at 53 Fed. Reg. 16838 (May 11, 1988), 54 Fed. Reg. 24333 (June 7, 1989) and 65 Fed. Reg. 46818 (July 31, 2000) are adopted by reference.

875—10.8 to 10.11 Reserved.

875—10.12(88) Construction work.

10.12(1) Standards. The standards prescribed in 875—Chapter 26 are adopted as occupational safety and health standards and shall apply, according to the provisions thereof, to every employment and place of employment of every employee engaged in construction work. Each employer shall protect the employment and places of employment of each employee engaged in construction work by complying with the provisions of 875—Chapter 26.

10.12(2) Definition. For the purpose of this rule, “*construction work*” means work for construction, alteration, or repair including painting and redecorating, and where applicable, the erection of new electrical transmission and distribution lines and equipment, and the alteration, conversion, and improvement of the existing transmission and distribution lines and equipment. This incorporation by reference of 875—Chapter 26 (Part 1926) is not intended to include references to interpretative rules having relevance to the application of the construction safety Act, but having no relevance to the application of Iowa Code chapter 88.

875—10.13 to 10.18 Reserved.

875—10.19(88) Special provisions for air contaminants.

10.19(1) Asbestos, tremolite, anthophyllite, and actinolite dust. Reserved.

10.19(2) Vinyl chloride. Rule 1910.1017 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to vinyl chloride in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to vinyl chloride which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(3) Acrylonitrile. Rule 1910.1045 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to acrylonitrile in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to acrylonitrile which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(4) Inorganic arsenic. Rule 1910.1018 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to inorganic arsenic in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to inorganic arsenic which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(5) Rescinded, effective 6/10/87.

10.19(6) Lead. Rescinded IAB 8/5/92, effective 8/5/92.

10.19(7) Ethylene oxide. Rule 1910.1047 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to ethylene oxide in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to ethylene oxide which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(8) Benzene. Rule 1910.1028 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to benzene in every place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to benzene which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(9) Formaldehyde. Rule 1910.1048 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to formaldehyde in every place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to formaldehyde which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(10) Methylene chloride. Rule 1910.1052 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to methylene chloride in every employment and place of employment covered by 875—10.12(88) in lieu of any different standard on exposure to methylene chloride which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

875—10.20(88) Adoption by reference. The rules beginning at 1910.20 and continuing through 1910, as adopted by the United States Secretary of Labor shall be the rules for implementing Iowa Code chapter 88. This rule adopts the Federal Occupational Safety and Health Standards of 29 CFR, Chapter XVII, Part 1910 as published at 37 Fed. Reg. 22102 to 22324 (October 18, 1972) and as amended at:

37 Fed. Reg. 23719 (November 8, 1972)

37 Fed. Reg. 24749 (November 21, 1972)

38 Fed. Reg. 3599 (February 8, 1973)

38 Fed. Reg. 9079 (April 10, 1973)
38 Fed. Reg. 10932 (May 3, 1973)
38 Fed. Reg. 14373 (June 1, 1973)
38 Fed. Reg. 16223 (June 21, 1973)
38 Fed. Reg. 19030 (July 17, 1973)
38 Fed. Reg. 27048 (September 28, 1973)
38 Fed. Reg. 28035 (October 11, 1973)
38 Fed. Reg. 33397 (December 4, 1973)
39 Fed. Reg. 1437 (January 9, 1974)
39 Fed. Reg. 3760 (January 29, 1974)
39 Fed. Reg. 6110 (February 19, 1974)
39 Fed. Reg. 9958 (March 15, 1974)
39 Fed. Reg. 19468 (June 3, 1974)
39 Fed. Reg. 35896 (October 4, 1974)
39 Fed. Reg. 41846 (December 3, 1974)
39 Fed. Reg. 41848 (December 3, 1974)
40 Fed. Reg. 3982 (January 27, 1975)
40 Fed. Reg. 13439 (March 26, 1975)
40 Fed. Reg. 18446 (April 28, 1975)
40 Fed. Reg. 23072 (May 28, 1975)
40 Fed. Reg. 23743 (June 2, 1975)
40 Fed. Reg. 24522 (June 9, 1975)
40 Fed. Reg. 27369 (June 27, 1975)
40 Fed. Reg. 31598 (July 28, 1975)
41 Fed. Reg. 11504 (March 19, 1976)
41 Fed. Reg. 13352 (March 30, 1976)
41 Fed. Reg. 35184 (August 20, 1976)
41 Fed. Reg. 46784 (October 22, 1976)
41 Fed. Reg. 55703 (December 21, 1976)
42 Fed. Reg. 2956 (January 14, 1977)
42 Fed. Reg. 3304 (January 18, 1977)
42 Fed. Reg. 45544 (September 9, 1977)
42 Fed. Reg. 46540 (September 16, 1977)
42 Fed. Reg. 37668 (July 22, 1977)
43 Fed. Reg. 11527 (March 17, 1978)
43 Fed. Reg. 19624 (May 5, 1978)
43 Fed. Reg. 27394 (June 23, 1978)
43 Fed. Reg. 27434 (June 23, 1978)
43 Fed. Reg. 28472 (June 30, 1978)
43 Fed. Reg. 28473 (June 30, 1978)
43 Fed. Reg. 31330 (July 21, 1978)
43 Fed. Reg. 35032 (August 8, 1978)
43 Fed. Reg. 45809 (October 3, 1978)
43 Fed. Reg. 49744 (October 24, 1978)
43 Fed. Reg. 51759 (November 7, 1978)
43 Fed. Reg. 53007 (November 14, 1978)
43 Fed. Reg. 56893 (December 5, 1978)
43 Fed. Reg. 57602 (December 8, 1978)
44 Fed. Reg. 5447 (January 26, 1979)
44 Fed. Reg. 50338 (August 28, 1979)
44 Fed. Reg. 60981 (October 23, 1979)
44 Fed. Reg. 68827 (November 30, 1979)

45 Fed. Reg. 6713 (January 29, 1980)
45 Fed. Reg. 8594 (February 8, 1980)
45 Fed. Reg. 12417 (February 26, 1980)
45 Fed. Reg. 35277 (May 23, 1980)
45 Fed. Reg. 41634 (June 20, 1980)
45 Fed. Reg. 54333 (August 15, 1980)
45 Fed. Reg. 60703 (September 12, 1980)
46 Fed. Reg. 4056 (January 16, 1981)
46 Fed. Reg. 6288 (January 21, 1981)
46 Fed. Reg. 24557 (May 1, 1981)
46 Fed. Reg. 32022 (June 19, 1981)
46 Fed. Reg. 40185 (August 7, 1981)
46 Fed. Reg. 2632 (August 21, 1981)
46 Fed. Reg. 42632 (August 21, 1981)
46 Fed. Reg. 45333 (September 11, 1981)
46 Fed. Reg. 60775 (December 11, 1981)
47 Fed. Reg. 39161 (September 7, 1982)
47 Fed. Reg. 51117 (November 12, 1982)
47 Fed. Reg. 53365 (November 26, 1982)
48 Fed. Reg. 2768 (January 21, 1983)
48 Fed. Reg. 9641 (March 8, 1983)
48 Fed. Reg. 9776 (March 8, 1983)
48 Fed. Reg. 29687 (June 28, 1983)
49 Fed. Reg. 881 (January 6, 1984)
49 Fed. Reg. 4350 (February 3, 1984)
49 Fed. Reg. 5321 (February 10, 1984)
49 Fed. Reg. 25796 (June 22, 1984)
50 Fed. Reg. 1050 (January 9, 1985)
50 Fed. Reg. 4648 (February 1, 1985)
50 Fed. Reg. 9800 (March 12, 1985)
50 Fed. Reg. 36992 (September 11, 1985)
50 Fed. Reg. 37353 (September 13, 1985)
50 Fed. Reg. 41494 (October 11, 1985)
50 Fed. Reg. 51173 (December 13, 1985)
51 Fed. Reg. 22733 (June 20, 1986)
51 Fed. Reg. 24325 (July 3, 1986)
51 Fed. Reg. 25053 (July 10, 1986)
51 Fed. Reg. 33033 (September 18, 1986)
51 Fed. Reg. 33260 (September 19, 1986)
51 Fed. Reg. 34560 (September 29, 1986)
51 Fed. Reg. 45663 (December 19, 1986)
52 Fed. Reg. 16241 (May 4, 1987)
52 Fed. Reg. 17753 (May 12, 1987)
52 Fed. Reg. 34562 (September 11, 1987)
52 Fed. Reg. 36026 (September 25, 1987)
52 Fed. Reg. 36387 (September 28, 1987)
52 Fed. Reg. 46291 (December 4, 1987)
52 Fed. Reg. 49624 (December 31, 1987)
53 Fed. Reg. 6629 (March 2, 1988)
53 Fed. Reg. 8352 (March 14, 1988)
53 Fed. Reg. 11436 (April 6, 1988)
53 Fed. Reg. 12120 (April 12, 1988)

53 Fed. Reg. 16838 (May 11, 1988)
53 Fed. Reg. 17695 (May 18, 1988)
53 Fed. Reg. 27346 (July 20, 1988)
53 Fed. Reg. 27960 (July 26, 1988)
53 Fed. Reg. 34736 (September 8, 1988)
53 Fed. Reg. 35625 (September 14, 1988)
53 Fed. Reg. 37080 (September 23, 1988)
53 Fed. Reg. 38162 (September 29, 1988)
53 Fed. Reg. 39581 (October 7, 1988)
53 Fed. Reg. 45080 (November 8, 1988)
53 Fed. Reg. 47188 (November 22, 1988)
53 Fed. Reg. 49981 (December 13, 1988)
54 Fed. Reg. 2920 (January 19, 1989)
54 Fed. Reg. 6888 (February 15, 1989)
54 Fed. Reg. 9317 (March 6, 1989)
54 Fed. Reg. 12792 (March 28, 1989)
54 Fed. Reg. 28054 (July 5, 1989)
54 Fed. Reg. 29274 (July 11, 1989)
54 Fed. Reg. 29545 (July 13, 1989)
54 Fed. Reg. 30704 (July 21, 1989)
54 Fed. Reg. 31456 (July 28, 1989)
54 Fed. Reg. 31765 (August 1, 1989)
54 Fed. Reg. 36687 (September 1, 1989)
54 Fed. Reg. 36767 (September 5, 1989)
54 Fed. Reg. 37531 (September 11, 1989)
54 Fed. Reg. 41364 (October 6, 1989)
54 Fed. Reg. 46610 (November 6, 1989)
54 Fed. Reg. 47513 (November 15, 1989)
54 Fed. Reg. 49971 (December 4, 1989)
54 Fed. Reg. 50372 (December 6, 1989)
54 Fed. Reg. 52024 (December 20, 1989)
55 Fed. Reg. 3146 (January 30, 1990)
55 Fed. Reg. 3300 (January 31, 1990)
55 Fed. Reg. 3723 (February 5, 1990)
55 Fed. Reg. 4998 (February 13, 1990)
55 Fed. Reg. 7967 (March 6, 1990)
55 Fed. Reg. 12110 (March 30, 1990)
55 Fed. Reg. 12819 (April 6, 1990)
55 Fed. Reg. 13696 (April 11, 1990)
55 Fed. Reg. 14073 (April 13, 1990)
55 Fed. Reg. 19259 (May 9, 1990)
55 Fed. Reg. 25094 (June 10, 1990)
55 Fed. Reg. 26431 (June 28, 1990)
55 Fed. Reg. 32014 (August 6, 1990)
55 Fed. Reg. 38677 (September 20, 1990)
55 Fed. Reg. 46053 (November 1, 1990)
55 Fed. Reg. 46949 (November 8, 1990)
55 Fed. Reg. 50686 (December 10, 1990)
56 Fed. Reg. 15832 (April 18, 1991)
56 Fed. Reg. 24686 (May 31, 1991)
56 Fed. Reg. 43700 (September 4, 1991)
56 Fed. Reg. 64175 (December 6, 1991)

57 Fed. Reg. 6403 (February 24, 1992)
57 Fed. Reg. 7847 (March 4, 1992)
57 Fed. Reg. 7878 (March 5, 1992)
57 Fed. Reg. 22307 (May 27, 1992)
57 Fed. Reg. 24330 (June 8, 1992)
57 Fed. Reg. 24701 (June 10, 1992)
57 Fed. Reg. 27160 (June 18, 1992)
57 Fed. Reg. 29204 (July 1, 1992)
57 Fed. Reg. 29206 (July 1, 1992)
57 Fed. Reg. 35666 (August 10, 1992)
57 Fed. Reg. 42388 (September 14, 1992)
58 Fed. Reg. 4549 (January 14, 1993)
58 Fed. Reg. 15089 (March 19, 1993)
58 Fed. Reg. 16496 (March 29, 1993)
58 Fed. Reg. 21778 (April 23, 1993)
58 Fed. Reg. 34845 (June 29, 1993)
58 Fed. Reg. 35308 (June 30, 1993)
58 Fed. Reg. 35340 (June 30, 1993)
58 Fed. Reg. 40191 (July 27, 1993)
59 Fed. Reg. 4435 (January 31, 1994)
59 Fed. Reg. 6169 (February 9, 1994)
59 Fed. Reg. 16360 (April 6, 1994)
59 Fed. Reg. 26115 (May 19, 1994)
59 Fed. Reg. 33661 (June 30, 1994)
59 Fed. Reg. 33910 (July 1, 1994)
59 Fed. Reg. 36699 (July 19, 1994)
59 Fed. Reg. 40729 (August 9, 1994)
59 Fed. Reg. 41057 (August 10, 1994)
59 Fed. Reg. 43270 (August 22, 1994)
59 Fed. Reg. 51741 (October 12, 1994)
59 Fed. Reg. 65948 (December 22, 1994)
60 Fed. Reg. 9624 (February 21, 1995)
60 Fed. Reg. 11194 (March 1, 1995)
60 Fed. Reg. 33344 (June 28, 1995)
60 Fed. Reg. 33984 (June 29, 1995)
60 Fed. Reg. 47035 (September 8, 1995)
60 Fed. Reg. 52859 (October 11, 1995)
61 Fed. Reg. 5508 (February 13, 1996)
61 Fed. Reg. 9230 (March 7, 1996)
61 Fed. Reg. 9583 (March 8, 1996)
61 Fed. Reg. 19548 (May 2, 1996)
61 Fed. Reg. 21228 (May 9, 1996)
61 Fed. Reg. 31430 (June 20, 1996)
61 Fed. Reg. 43456 (August 23, 1996)
61 Fed. Reg. 56831 (November 4, 1996)
62 Fed. Reg. 1600 (January 10, 1997)
62 Fed. Reg. 29668 (June 2, 1997)
62 Fed. Reg. 40195 (July 25, 1997)
62 Fed. Reg. 42018 (August 4, 1997)
62 Fed. Reg. 42666 (August 8, 1997)
62 Fed. Reg. 43581 (August 14, 1997)
62 Fed. Reg. 48175 (September 15, 1997)

62 Fed. Reg. 54383 (October 20, 1997)
62 Fed. Reg. 65203 (December 11, 1997)
62 Fed. Reg. 66276 (December 18, 1997)
63 Fed. Reg. 1269 (January 8, 1998)
63 Fed. Reg. 13339 (March 19, 1998)
63 Fed. Reg. 17093 (April 8, 1998)
63 Fed. Reg. 20098 (April 23, 1998)
63 Fed. Reg. 33467 (June 18, 1998)
63 Fed. Reg. 50729 (September 22, 1998)
63 Fed. Reg. 66038 (December 1, 1998)
63 Fed. Reg. 66270 (December 1, 1998)
64 Fed. Reg. 13700 (March 22, 1999)
64 Fed. Reg. 13908 (March 23, 1999)
64 Fed. Reg. 22552 (April 27, 1999)
65 Fed. Reg. 76567 (December 7, 2000)
66 Fed. Reg. 5324 (January 18, 2001)
66 Fed. Reg. 18191 (April 6, 2001)
67 Fed. Reg. 67961 (November 7, 2002)
68 Fed. Reg. 75780 (December 31, 2003)
69 Fed. Reg. 7363 (February 17, 2004)
69 Fed. Reg. 31881 (June 8, 2004)
69 Fed. Reg. 46993 (August 4, 2004)
70 Fed. Reg. 53929 (September 13, 2005)
70 Fed. Reg. 1140 (January 5, 2005)
71 Fed. Reg. 10373 (February 28, 2006)
71 Fed. Reg. 36008 (June 23, 2006)
71 Fed. Reg. 63242 (October 30, 2006)
72 Fed. Reg. 7190 (February 14, 2007)
72 Fed. Reg. 64428 (November 15, 2007)
72 Fed. Reg. 71068 (December 14, 2007)
73 Fed. Reg. 75583 (December 12, 2008)
68 Fed. Reg. 32638 (June 2, 2003)
74 Fed. Reg. 46355 (September 9, 2009)
74 Fed. Reg. 40447 (August 11, 2009)
75 Fed. Reg. 12685 (March 17, 2010)
76 Fed. Reg. 33606 (June 8, 2011)
76 Fed. Reg. 75786 (December 5, 2011)
77 Fed. Reg. 17764 (March 26, 2012)
76 Fed. Reg. 80738 (December 27, 2011)
77 Fed. Reg. 37598 (June 22, 2012)
77 Fed. Reg. 46949 (August 7, 2012)
78 Fed. Reg. 9313 (February 8, 2013)
78 Fed. Reg. 69549 (November 20, 2013)
79 Fed. Reg. 20629 (April 11, 2014)
79 Fed. Reg. 56960 (September 24, 2014)
80 Fed. Reg. 60036 (October 5, 2015)
81 Fed. Reg. 16090 (March 25, 2016)
81 Fed. Reg. 16861 (March 25, 2016)
81 Fed. Reg. 82981 (November 18, 2016)
82 Fed. Reg. 2735 (January 9, 2017)
83 Fed. Reg. 19948 (May 7, 2018)
84 Fed. Reg. 21457 (May 14, 2019)

84 Fed. Reg. 50755 (September 26, 2019)

84 Fed. Reg. 68795 (December 17, 2019)

85 Fed. Reg. 8731 (February 18, 2020)

86 Fed. Reg. 32620 (June 21, 2021)

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