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

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); 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) 281-8157

Insurance Division[191]

Replace Analysis
Remove Reserved Chapters 95 to 99
Insert Chapter 95 and Reserved Chapters 96 to 99

Real Estate Commission[193E]

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Insert Chapter 22
Insert Chapter 23

Utilities Division[199]

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Iowa Finance Authority[265]

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Replace Analysis
Remove Reserved Chapters 16 and 17
Insert Chapters 16 and 17
Replace Reserved Chapter 33 with Chapter 33

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Replace Analysis
Replace Chapter 5
Replace Chapter 210
Replace Reserved Chapters 276 to 290 with Reserved Chapter 276
Insert Chapter 277 and Reserved Chapters 278 to 290

Regents Board[681]

Replace Chapter 1

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Replace “A”

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[Prior to 10/22/86, see Insurance Department[510], renamed Insurance Division[191] under the "umbrella" of Department of Commerce by the 1986 Iowa Acts, Senate File 2175]

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DETERMINING RESERVE LIABILITIES FOR PRENEED LIFE INSURANCE

191—95.1(508) Authority. This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code sections 508.36 and 508.37.

191—95.2(508) Scope. These rules apply to preneed insurance, as defined in rule 95.4(508) of this chapter, and to similar policies and certificates.

191—95.3(508) Purpose. The purpose of this chapter is to establish for preneed insurance products minimum mortality standards for reserves and nonforfeiture values, and to require the use of the 1980 Commissioner Standard Ordinary (CSO) Life Valuation Mortality Table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed insurance products.

191—95.4(508) Definitions. For purposes of this chapter, the following definitions shall apply:

"2001 CSO Mortality Table" or *"2001 CSO"* means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

"Preneed insurance" means any life insurance policy or contract or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured. Goods and services may include, but are not limited to, embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased. The status of the policy or contract as preneed insurance is determined at the time of issue in accordance with the policy form filing.

"Ultimate 1980 CSO" means the Commissioners' 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.

191—95.5(508) Minimum valuation mortality standards. For preneed insurance contracts and similar policies and contracts, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insureds shall be the ultimate 1980 CSO.

191—95.6(508) Minimum valuation interest rate standards.

95.6(1) The interest rates used in determining the minimum standard for valuation of preneed insurance shall be the calendar year statutory valuation interest rates as described in Iowa Code section 508.36(5)*"b."*

95.6(2) The interest rates used in determining the minimum standard for nonforfeiture values for preneed insurance shall be the calendar year statutory nonforfeiture interest rates as described in Iowa Code section 508.37(6)*"i."*

191—95.7(508) Minimum valuation method standards.

95.7(1) The method used in determining the standard for the minimum valuation of reserves of preneed insurance shall be the method described in Iowa Code section 508.36.

95.7(2) The method used in determining the standard for the minimum nonforfeiture values for preneed insurance shall be the method described in Iowa Code section 508.37.

191—95.8(508) Transition rules.

95.8(1) For preneed insurance policies issued on or after January 1, 2009, and before January 1, 2012, the 2001 CSO may be used as the minimum standard for reserves and minimum standard for nonforfeiture benefits for both male and female insureds.

95.8(2) If an insurer elects to use the 2001 CSO as a minimum standard for any policy issued on or after January 1, 2009, and before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

a. A complete list of all preneed policy forms that use the 2001 CSO as a minimum standard;

b. A certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserves for the preneed policies issued on or after January 1, 2009, and using the 2001 CSO as a minimum standard, develops adequate reserves. For the purposes of this certification, the preneed insurance policies using the 2001 CSO as a minimum standard cannot be aggregated with any other policies; and

c. Supporting information regarding the adequacy of reserves for preneed insurance policies issued on or after January 1, 2009, and using the 2001 CSO as a minimum standard for reserves.

95.8(3) Preneed insurance policies issued on or after January 1, 2012, must use the ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

191—95.9(508) Effective date. This chapter is applicable to preneed insurance policies and certificates and similar contracts and certificates, as specified in rule 95.2(508) of this chapter, issued on or after January 1, 2009.

These rules are intended to implement Iowa Code sections 508.36 and 508.37.

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[Prior to 6/15/88, see Real Estate Commission[700]]

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CHAPTER 22
OPERATIONS OF GRANT COMMITTEE

193E—22.1(543B) Definitions. For the purposes of this chapter, the following definitions apply:

"Applicant" means an Iowa community college or other Iowa college or university that provides or intends to provide real estate education programs and that makes application for a grant.

"Commission" means the Iowa real estate commission.

"Committee" means the seven-member real estate education grant committee composed of two members of the Iowa real estate commission; four members of the Iowa Association of Realtors; and one member of the general public. The committee is responsible for reviewing grant applications and designating grant awards.

"Grantee" means an applicant who has been awarded a grant.

193E—22.2(543B) Scope. This chapter governs the conduct of business by the Iowa real estate education grant committee. The committee shall receive grant applications from and award grants to community colleges and other colleges and universities in the state that provide real estate education programs. The purpose of the grant is to help underwrite the cost of providing courses that use the curriculum maintained by the commission as provided by Iowa Code Supplement section 543B.54. The committee awards grants in its sole discretion by majority vote of the committee.

193E—22.3(543B) Membership. As provided by Iowa Code Supplement section 543B.54(2), the committee shall be composed of seven voting members: two must be members of the commission; four must be active members in good standing of the Iowa Association of Realtors (IAR); and one must be a member of the general public and not licensed under Iowa Code chapter 543B.

22.3(1) *Appointment.* Members of the committee shall be appointed by the following means:

a. Commission members. The commission shall appoint by majority vote two persons who are members of the commission.

b. IAR representative members. The IAR shall appoint through a procedure of its own choosing four persons who are members of the IAR. The IAR shall certify in writing to the real estate commission education director the names of its appointees to the committee.

c. Public member. The commission shall appoint by majority vote one person who is a member of the general public not licensed under Iowa Code chapter 543B.

22.3(2) *Term.* Members of the committee shall be appointed for three-year terms that shall commence at 12:01 a.m. on May 1 in the year of appointment and end at midnight on April 30 in the year of expiration. A member shall serve no more than three terms or nine years, whichever is less.

22.3(3) *Vacancies.* Vacancies on the committee shall be filled for the unexpired term in the same manner as provided in subrule 22.3(1).

22.3(4) *Committee officers.* The chair, vice-chair, and recording secretary of the committee shall be elected by majority vote of the committee.

193E—22.4(543B) Time and place of meetings. The committee shall meet at least annually if there are moneys in the fund for grants. All meetings of the committee are subject to Iowa Code chapter 21 (open meetings law). The real estate commission education director, in consultation with the committee chair, shall establish the date and proposed agenda for all meetings. All meetings of the committee shall be held at the office of the commission. When an in-person meeting is impossible or impractical, the committee may conduct a meeting by electronic means pursuant to Iowa Code section 21.8. The real estate commission education director shall provide notice of all meeting dates, locations, and agenda as required by Iowa Code chapter 21.

193E—22.5(543B) Notification of meetings. Notice of meetings will be given by the posting and distributing of the agenda. The agenda for each meeting will be posted at the office of the commission. The real estate commission education director shall be responsible for providing the agenda to those interested parties making written request.

193E—22.6(543B) Attendance and participation by the public. All meetings are open to the public. Persons who wish to address the committee about a matter on the agenda should notify the committee chair or the real estate commission education director at least three days before the meeting. Iowa Code section 21.4 requires a committee to give notice of its proposed agenda. Therefore, the committee chair shall discourage persons from raising matters not on the agenda. Persons who wish to address the committee on a matter not on the agenda should file a request with the committee chair or the real estate commission education director to place the matter on the agenda of a subsequent meeting.

193E—22.7(543B) Quorum and voting requirements.

22.7(1) *Quorum.* Four members shall constitute a quorum of the committee.

22.7(2) *Majority voting.* Unless otherwise provided by these rules, action by the committee must be approved by a simple majority of the committee members present.

22.7(3) *Voting procedures.* The committee chair shall rule as to whether the vote will be by voice vote or roll call. A roll-call vote shall be taken at the request of any member of the committee.

193E—22.8(543B) Minutes and recording of meetings.

22.8(1) *Recordings.* The committee shall record by electronic means closed sessions. The electronic record shall be sealed and retained by the real estate education director on behalf of the committee for at least one year.

22.8(2) *Minutes.* The committee shall keep minutes of each meeting. Minutes shall be reviewed and approved by the committee and retained by the real estate education director on behalf of the committee for at least three years.

These rules are intended to implement Iowa Code Supplement section 543B.54 as amended by 2008 Iowa Acts, Senate File 2250, section 4.

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CHAPTER 23
GRANT APPLICATIONS AND AWARDS

193E—23.1(543B) Scope. This chapter establishes the rules of the Iowa real estate education grant committee for the revenues collected pursuant to Iowa Code section 543B.14and distributed pursuant to Iowa Code Supplement section 543B.54.

193E—23.2(543B) Application process.

23.2(1) Notice. Upon request of the committee, the real estate education director shall announce the opening of the application process by public notice. All communications relating to the committee, the application process, and grants awarded shall be directed to the real estate education director or the director's designee.

23.2(2) Every Iowa community college, college, and university in the state that seeks grant funds must submit an application.

23.2(3) Contents.

a. Each application must contain the following:

(1) The name and address of the applicant and the telephone number of a contact person.

(2) A proposal summary that contains the reasons for the grant request, a plan of action which details how the awarded funds will be spent, and the results and benefits that are expected. The action plan must include:

1. The grant goals, objectives, time lines, responsible individuals, and methods of evaluation. The grant results shall be quantifiable and measurable.

2. The establishment of an end result which is beneficial to the real estate profession.

3. The number of projected real estate education courses/studies/projects to be promoted by the applicant.

(3) A budget detailing how the grant funds will be expended.

(4) Assurances that the applicant will comply with the conditions and procedures for grant administration, including a plan for project monitoring.

(5) A plan for evaluation.

(6) Assurance that the funds will not be used to retire preexisting financial obligations.

(7) Assurances that the applicant will comply with the conditions for financial management.

b. One original application and eight copies of the application shall be filed with the real estate education director or the director's designee, who shall provide a copy to each committee member.

23.2(4) The committee chair, designee, or a subcommittee appointed by the chair shall be responsible to determine which applications, if any, qualify for consideration. All applicants whose applications are rejected shall be notified of the rejection and why. The following are the reasons for which an application shall not be considered:

a. The application is received after the date and time specified in the notice.

b. The application does not contain the required information.

c. The application does not use the curriculum maintained by the commission.

23.2(5) The committee shall notify successful applicants and shall provide each successful applicant with a contract for signature. This contract shall be signed by the committee chair and an official with authority to bind the grantee. The original executed contract shall be returned to the real estate education director at the office of the commission prior to the disbursement of any funds under this program. Disbursement of funds will be processed by the professional licensing and regulation bureau within 60 days after the real estate education director has received the fully executed contract.

23.2(6) A grant shall be awarded for a 12-month period. The grant may be renewed for subsequent years by the grantee's making application as required.

23.2(7) If the applicant and the committee are unable to successfully negotiate a contract, the committee may withdraw the offer of the grant.

23.2(8) Applications that do not receive grants, or do not qualify, shall be retained for a period of six months from the date of the application deadline.

193E—23.3(543B) Selection of grant proposals. A majority vote of the committee as a whole is required to award any and all grants under this program. All votes of the committee to award any and all grants under this program shall be made in open session at a meeting of the committee.

23.3(1) Evaluation of proposals. All applications completed as directed and submitted within the time frames allowed will be evaluated by the committee. Each committee member will recommend and advise action on each application.

23.3(2) Final discretion. The committee shall have full and final discretion on the awarding of grants. The committee's decisions regarding grant applications are not appealable to the commission. The commission will not and is not authorized to consider committee award decisions.

23.3(3) Factors in selection. The following factors will be considered in selecting proposals for grant awards:

a. The demonstrated need for or value of the project.

b. The support of and coordination with the applicant's existing program.

c. The course/program structure, including how realistic goals and objectives are, likelihood of the anticipated impact on the area addressed, experience serving similar populations or providing similar services, administration of funds, stability of the organization and the overall quality of the proposal in comparison to other proposals submitted.

d. Plans for use of funds. Grant funds may not be used for construction, capital improvements, or purchase of real estate.

23.3(4) The sum total of the grant, or grants, awarded shall not exceed the amount of funds available in the grant account on the date the committee votes to award the funds.

23.3(5) Applying for a grant does not entitle the applicant to any funds. The committee shall have sole discretion to decide which, if any, application shall be funded and in what amount.

193E—23.4(543B) Evaluation. When requested by the committee, the grantee shall cooperate with the committee and shall provide information to determine how the goals and objectives of the project are being met. The committee shall evaluate the grantee at least once prior to the end of the contract period to determine whether the goals are being met and shall provide feedback to the grantee.

193E—23.5(543B) Termination.

23.5(1) *Cause.* The contract may be terminated in whole or in part at any time before the date of grant expiration, whenever the committee determines that the grantee has failed to comply substantially with the conditions of the contract or there is a lack of funds available for the contract. The grantee shall be notified in writing of the reasons for the termination and the effective date. The grantee shall not incur new obligations for the terminated portion of the contract after the effective date of termination and shall cancel outstanding obligations.

23.5(2) *Responsibility of grantee at termination.* Within 45 days of the termination, the grantee shall supply the committee with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends moneys other than for specified budget items approved by the committee, the grantee shall return moneys for the unapproved expenditures.

193E—23.6(543B) Financial management.

23.6(1) *Financial documents.* The grantee shall follow generally accepted accounting principles for financial records and procedures established.

23.6(2) *Financial reporting.* Within 90 days of the expiration or termination of a grant, the recipient shall submit to the committee a full disclosure of the status of grant expenditures compared to budgeted amounts on a line item basis. Expenditures shall be reported on a line item basis, and any expenditure exceeding 5 percent of the line item will require the grantee to submit an amended application to the committee for approval. This approval must accompany the close-out report to justify any positive 5 percent deviation.

23.6(3) *Retention of records.* All financial and program records, supporting documents, statistical records, and other records of the grantee which are relevant to this rule shall be maintained for three

years from the starting date of the grant agreement. This time period will be extended if any litigation, claim, negotiation, audit, investigation, or other action involving the records is initiated before the end of the three-year period. The extension will be for one year past the completion of all actions and the resolution of all issues which resulted in the extension of the period.

23.6(4) *Access to records.* The records required by this rule shall be accessible to the committee, the auditor of state, or their designees for the retention period established in this rule.

193E—23.7(543B) Adjustments and collections.

23.7(1) *Disallowances and adjustments.* The closeout of a grant does not affect the committee's right to disallow costs and recover funds on the basis of an audit or other postgrant period review or the grantee's obligation to return any funds due as a result of unexpended funds, refunds, corrections or other transactions.

23.7(2) *Collection.* Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be due under the terms of the award constitute a debt to the state of Iowa. Excess amounts are due within 30 days of demand.

These rules are intended to implement Iowa Code Supplement section 543B.54 as amended by 2008 Iowa Acts, Senate File 2250, section 4.

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UTILITIES AND
TRANSPORTATION DIVISIONS

CHAPTER 15
COGENERATION AND SMALL POWER PRODUCTION

[Ch 15 renumbered as Ch 7,10/20/75]
[Prior to 10/8/86, Commerce Commission[250]]

199—15.1(476) Definitions. Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601, et seq., shall have the same meaning for purposes of these rules as they have under PURPA, unless further defined in this chapter.

"AEP facility" means any of the following: (1) an electric production facility which derives 75 percent or more of its energy input from solar energy, wind, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or wood burning; (2) a hydroelectric facility at a dam; (3) land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility; or (4) transmission or distribution facilities necessary to conduct the energy produced by the facility to the purchasing utility.

"Alternate energy purchase (AEP) program" means a utility program that allows customers to contribute voluntarily to the development of alternate energy in Iowa.

"Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

"Backup power" means electric energy or capacity supplied by an electric utility to qualifying facilities and AEP facilities to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

"Board" means the Iowa utilities board.

"Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with qualifying facilities and AEP facilities, to the extent the costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

"Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

"Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of qualifying facilities and AEP facilities.

"Purchase" means the purchase of electric energy or capacity or both from qualifying facilities and AEP facilities by an electric utility.

"Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under 18 CFR Part 292, Subpart B.

"Rate" means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

"Sale" means the sale of electric energy or capacity or both by an electric utility to qualifying facilities and AEP facilities.

"Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by qualifying facilities and AEP facilities in addition to that which the facility generates itself.

"System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

199—15.2(476) Scope.

15.2(1) *Applicability.*

a. Subrule 15.2(2) and rule 199—15.10(476) of this chapter apply to all electric utilities, all qualifying facilities, and all AEP facilities.

b. Rule 199—15.3(476) of this chapter applies to electric utilities which are subject to rate regulation by the board.

c. Rules 199—15.4(476) and 199—15.5(476) of this chapter apply to qualifying facilities and electric utilities which are subject to rate regulation by the board.

d. Rules 199—15.6(476) to 199—15.9(476) of this chapter apply to all qualifying facilities and AEP facilities, and electric utilities which are subject to rate regulation by the board.

e. Rule 199—15.11(476) of this chapter lists additional requirements that apply to AEP facilities, and electric utilities which are subject to rate regulation by the board, pursuant to Iowa Code sections 476.41 to 476.45.

15.2(2) *Negotiated rates or terms.* These rules do not:

a. Limit the authority of any electric utility, any qualifying facility, or any AEP facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by these rules; or

b. Affect the validity of any contract entered into between an electric utility and a qualifying facility or AEP facility for any purchase.

199—15.3(476) Information to board. In addition to the information required to be supplied to the board under 18 CFR 292.302, all rate-regulated electric utilities shall supply to the board copies of contracts executed for the purchase or sale, for resale, of energy or capacity. If the purchases or sales are made other than pursuant to the terms of a written contract, then information as to the relevant prices and conditions shall be supplied to the board. All information required to be supplied under this rule shall be filed with the board by May 1 and November 1 of each year for all transactions occurring since the last filing was made.

199—15.4(476) Rate-regulated electric utility obligations under this chapter regarding qualifying facilities. For purposes of this rule, "electric utility" means a rate-regulated electric utility.

15.4(1) *Obligation to purchase from qualifying facilities.* Each electric utility shall purchase, in accordance with these rules, any energy and capacity which is made available from a qualifying facility:

a. Directly to the electric utility; or

b. Indirectly to the electric utility in accordance with subrule 15.4(4).

15.4(2) *Obligation to sell to qualifying facilities.* Each electric utility shall sell to any qualifying facility, in accordance with these rules and the other requirements of law, any energy and capacity requested by the qualifying facility.

15.4(3) *Obligation to interconnect.* Any electric utility shall make the interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under these rules. The obligation to pay for any interconnection costs shall be determined in accordance with rule 199—15.8(476). However, no electric utility is required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under Part II of the Federal Power Act.

15.4(4) *Transmission to other electric utilities.* If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from the qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which the energy or capacity is transmitted shall purchase the energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to the electric utility. The rate for purchase by the electric utility to which the energy is transmitted shall be adjusted up or down to reflect line losses and shall not include any charges for transmission.

15.4(5) *Parallel operation.* Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with these rules.

199—15.5(476) Rates for purchases from qualifying facilities by rate-regulated electric utilities. For purposes of this rule, "electric utility" or "utility" means a rate-regulated electric utility.

15.5(1) *Rates for purchases.* Rates for purchases shall:

a. Be just and reasonable to the electric consumer of the electric utility and in the public interest; and

b. Not discriminate against qualifying cogeneration and small power production facilities. Nothing in these rules requires any electric utility to pay more than the avoided costs, as set forth in these rules, for purchases.

15.5(2) *Relationship to avoided costs.* For purposes of this subrule, "new capacity" means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

A rate for purchases satisfies the requirements of this rule if the rate equals the avoided costs determined after consideration of the factors set forth in rule 15.6(476); except that a rate for purchases other than from new capacity may be less than the avoided cost if the board determines that a lower rate is consistent with subrule 15.5(1) and is sufficient to encourage cogeneration and small power production.

Unless the qualifying facility and the utility agree otherwise, rates for purchases shall conform to the requirements of this rule regardless of whether the electric utility making purchases is simultaneously making sales to the qualifying facility.

In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for purchases do not violate this rule if the rates for the purchases differ from avoided costs at the time of delivery.

15.5(3) *Standard rates for purchases.* Each electric utility shall file and maintain with the board tariffs specifying standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These tariffs may differentiate between qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies. All utilities shall include a seasonal differential in these rates for purchases to the extent avoided costs vary by season. All utilities shall make available time of day rates for those facilities with a design capacity of 100 kilowatts or less, provided that the qualifying facility shall pay, in addition to the interconnection costs set forth in these rules, all additional costs associated with the time of day metering.

The standard rates set forth in this rule shall indicate what portion of the rate is attributable to payments for the utility's avoided energy costs, and what portion of the rate, if any, is attributable to payments for capacity costs avoided by the utility. If no capacity credit is provided in the standard tariff, a qualifying facility may petition the board for an allowance of the capacity credit. The petition shall be handled by the board as a contested case proceeding, and the burden of proof shall be on the qualifying facility to demonstrate that capacity credit is warranted in the case in question.

The board may require utilities interconnected with qualifying facilities to provide metering and other equipment necessary for the collection test and monitoring of information concerning the time and conditions under which energy and capacity are available from the qualifying facility. The costs of such metering shall be treated by the utility in the same manner as any other research expenditure.

15.5(4) *Other purchases.* Rates for purchases from qualifying facilities with a design capacity of greater than 100 kilowatts shall be determined in contested case proceedings before the board, unless the rates are otherwise agreed upon by the qualifying facility and the utility involved.

15.5(5) *Purchases "as available" or pursuant to a legally enforceable obligation.* Each qualifying facility shall have the option either:

a. To provide energy as the qualifying facility determines the energy to be available for the purchases, in which case the rates for the purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

b. To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for the purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either: The avoided costs calculated at the time of delivery; or the avoided costs calculated at the time the obligation is incurred.

15.5(6) *Factors affecting rates for purchases.* In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:

a. The prevailing rates for capacity or energy on any interstate power grid with which the utility is interconnected.

b. The incremental energy costs or capacity costs of the utility itself or utilities in the interstate power grid with which the utility is interconnected.

c. The time of day or season during which capacity or energy is available, including:

(1) The ability of the utility to dispatch the qualifying facility;

(2) The expected or demonstrated reliability of the qualifying facility;

(3) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for noncompliance;

(4) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

(5) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation; and

(6) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system.

d. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself.

15.5(7) *Periods during which purchases not required.* Any electric utility will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make the purchases, but instead generated an equivalent amount of energy itself; provided, however, that any electric utility seeking to invoke this subrule must notify each affected qualifying facility within a reasonable amount of time to allow the qualifying facility to cease the delivery of energy or capacity to the electric utility.

a. Any electric utility which fails to comply with the provisions of this subrule will be required to pay the usual rate for the purchase of energy or capacity from the facility.

b. A claim by an electric utility that such a period has occurred or will occur is subject to verification by the board.

199—15.6(476) Rates for sales to qualifying facilities and AEP facilities by rate-regulated utilities. For purposes of this rule, "utility" means a rate-regulated electric utility. Rates for sales to qualifying facilities and AEP facilities shall be just, reasonable and in the public interest, and shall not discriminate against qualifying facilities and AEP facilities in comparison to rates for sales to other customers with similar load or other cost-related characteristics served by the utility. The rate for sales of backup or maintenance power shall not be based upon an assumption (unless supported by data) that forced outages or other reductions in electric output by all qualifying facilities and AEP facilities will occur simultaneously or during the system peak, or both, and shall take into account the extent to which scheduled outages of qualifying facilities and AEP facilities can be usefully coordinated with scheduled outages of the utility's facilities.

199—15.7(476) Additional services to be provided to qualifying facilities and AEP facilities by rate-regulated electric utilities. For purposes of this rule, "electric utility" or "utility" means a rate-regulated electric utility.

15.7(1) Upon request of qualifying facilities and AEP facilities, each electric utility shall provide supplementary power, backup, maintenance power, and interruptible power. Rates for such service shall meet the requirements of subrule 15.5(6), and shall be in accordance with the terms of the utility's tariff.

The board may waive this requirement pursuant to rule 199—1.3(17A,474) only after notice in the area served by the utility and an opportunity for public comment. The waiver may be granted if compliance with this rule will:

a. Impair the electric utility's ability to render adequate service to its customers, or

b. Place an undue burden on the electric utility.

15.7(2) Reserved.

199—15.8(476) Interconnection costs. For purposes of this rule, "utility" means a rate-regulated electric utility.

15.8(1) Qualifying facilities and AEP facilities shall be obligated to pay any interconnection costs, as defined in this chapter. These costs shall be assessed on a nondiscriminatory basis with respect to other customers with similar load characteristics.

15.8(2) Utilities shall be reimbursed by qualifying facilities and AEP facilities for interconnection costs at the time the costs are incurred. Upon petition by any party involved and for good cause shown, the board may allow for reimbursement of costs over a reasonable period of time and upon such conditions as the board may determine; provided, however, that no other customers of the utility shall bear any of the costs of interconnection.

199—15.9(476) System emergencies. For purposes of this rule, "electric utility" means a rate-regulated electric utility. Qualifying facilities and AEP facilities shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

15.9(1) Provided by agreement between the qualifying facility or AEP facility and the electric utility; or

15.9(2) Ordered under Section 202(c) of the Federal Power Act. During any system emergency, an electric utility may immediately discontinue:

a. Purchases from qualifying facilities and AEP facilities if purchases would contribute to the emergency; and

b. Sales to qualifying facilities and AEP facilities, provided that the discontinuance is on a nondiscriminatory basis.

199—15.10(476) Standards for interconnection, safety, and operating reliability. For purposes of this rule, "electric utility" or "utility" means both rate-regulated and non-rate-regulated electric utilities.

15.10(1) *Acceptable standards.* Qualifying facilities and AEP facilities shall meet the applicable provisions in the publications listed below in order to be eligible for interconnection to an electric utility system:

a. General Requirements for Synchronous Machines, ANSI C50.10-1990.

b. IEEE Standard for Salient-Pole 50 Hz and 60 Hz, Synchronous Generators and Generator/Motors for Hydraulic Turbine Applications Rated 5 MVA and above, IEEE C50.12-2005.

c. IEEE Standard for Cylindrical-Rotor 50 Hz and 60 Hz, Synchronous Generators Rated 10 MVA and above, IEEE C50.13-2005.

d. Iowa Electrical Safety Code, as defined in 199—Chapter 25.

e. National Electrical Code, ANSI/NFPA 70-2005.

f. IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE 519-1992.

g. Standard for Interconnecting Distributed Resources with Electric Power Systems, ANSI/IEEE 1547-2003.

For those facilities which are of such design as to not be subject to the standards noted in paragraphs 15.10(1)*"a"* through *"d,"* data on the manufacturer, type of device, and output current wave form (at full load) and output voltage wave form (at no load and at full load) shall be submitted to the utility

for review and approval prior to interconnection. A copy of the utility decision (whether approving or disapproving), including the data specified in paragraphs 15.10(1)*"a"* through *"d"* and the exact location of the facility, shall be filed with the board within one week of the date of the decision. The utility decision, or its failure to decide within a reasonable time, may be appealed to the board. The appeal shall be treated as a contested case proceeding.

15.10(2) *Modifications required.* Rescinded IAB 7/23/03, effective 8/27/03.

15.10(3) *Interconnection facilities.* Interconnections between qualifying facilities or AEP facilities and electric utility systems shall be equipped with devices, as set forth below, to protect either system from abnormalities or component failures that may occur within the facility or the electric utility system. Inclusion of the following protective systems shall be considered as a minimum standard of accepted good practice unless otherwise ordered by the board:

a. The interconnection must be provided with a switch that provides a visible break or opening. The switch must be capable of being padlocked in the open position.

b. The interconnection shall include overcurrent devices on the facility to automatically disconnect the facility at all currents that exceed the full-load current rating of the facility.

c. Facilities with a design capacity of 100 kilowatts or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.

d. Those facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

15.10(4) *Access.* Both the operator of the qualifying facility or AEP facility and the utility shall have access to the interconnection switch at all times.

15.10(5) *Inspections.* The operator of the qualifying facility or AEP facility shall adopt a program of inspection of the generator and its appurtenances and the interconnection facilities in order to determine necessity for replacement and repair. Representatives of the utility shall have access at all reasonable hours to the interconnection equipment specified in subrule 15.10(3) for inspection and testing.

15.10(6) *Emergency disconnection.* In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the qualifying facility or AEP facility by written notice and, where possible, verbal notice as soon as practicable after the disconnections. If the facility and the utility are unable to agree on conditions for reconnection of the facility, a contested case proceeding to determine the conditions for reconnection may be commenced by the facility or the utility upon filing of a petition.

199—15.11(476) Additional rate-regulated utility obligations regarding AEP facilities. For purposes of this rule, "MW" means megawatt, "MWH" means megawatt-hour, and "utility" means a rate-regulated electric utility.

15.11(1) *Obligation to purchase from AEP facilities.* Each utility shall purchase, pursuant to contract, its share of at least 105 MW of AEP generating capacity and associated energy production. The utility's share of 105 MW is based on the utility's estimated percentage share of Iowa peak demand, which is based on the utility's highest monthly peak shown in its 1990 FERC Form 1 annual report, and on its related Iowa sales and total company sales and losses shown in its 1990 FERC Form 1 and IE-1 annual reports. Each utility's share of the 105 MW is determined to be as follows:

	Percentage Share of Iowa Peak	Utility Share of 105 MW
Interstate Power and Light	47.43%	49.8 MW
MidAmerican Energy	52.57%	55.2 MW

A utility is not required to purchase from an AEP facility that is not owned or operated by an individual, firm, copartnership, corporation, company, association, joint stock association, city, town, or county that meets both of the following: (1) is not primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy other than electricity, gas, or useful thermal energy sold solely from AEP facilities; and (2) does not sell electricity, gas, or useful thermal energy to residential users other than the tenants or the owner or operator of the facility.

15.11(2) *Purchases pursuant to a legally enforceable obligation.* Each AEP facility shall provide electricity on a best-efforts basis pursuant to a legally enforceable obligation for the delivery of electricity over a specified contract term.

15.11(3) *Annual reporting requirement.* Beginning April 1, 2004, each utility shall file an annual report listing nameplate MW capacity and associated monthly MWH purchased from AEP facilities, itemized by AEP facility.

15.11(4) *Tariff filings.* The electric utility shall maintain a tariff schedule of standard AEP contract provisions offered. The initial tariffs and subsequent revisions shall be subject to board approval. Provisions of any individual AEP contract which differ from or exceed the utility tariff of standard AEP contract provisions shall also be subject to board approval, unless otherwise agreed upon by the individual AEP facility and utility.

15.11(5) *Net metering.* Each utility shall offer to operate in parallel through net metering (with a single meter monitoring only the net amount of electricity sold or purchased) with an AEP facility, provided that the facility complies with any applicable standards established in accordance with these rules.

In the alternative, by choice of the facility, the utility and facility shall operate in a purchase and sale arrangement whereby any electricity provided to the utility by the AEP facility is sold to the utility at the fixed or negotiated buy-back rate, and any electricity provided to the AEP facility by the utility is sold to the facility at the tariffed rate.

199—15.12(476) Rates for purchases from qualifying alternate energy and small hydro facilities by rate-regulated electric utilities. Rescinded IAB 7/23/03, effective 8/27/03.

199—15.13(476) Rates for sales to qualifying alternate energy production and small hydro facilities by rate-regulated utilities. Rescinded IAB 7/23/03, effective 8/27/03.

199—15.14(476) Additional services to be provided to qualifying alternate energy production and small hydro facilities. Rescinded IAB 7/23/03, effective 8/27/03.

199—15.15(476) Interconnection costs. Rescinded IAB 7/23/03, effective 8/27/03.

199—15.16(476) System emergencies. Rescinded IAB 7/23/03, effective 8/27/03.

These rules are intended to implement Iowa Code sections 476.1, 476.8, 476.41 to 476.45, and 546.7, Section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.

199—15.17(476) Alternate energy purchase programs.

Any consumer-owned utility, including any electric cooperative corporation or association or any municipally owned electric utility, may apply to the board for a waiver under this rule.

This rule shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

15.17(1) *Obligation to offer programs.*

a. Beginning January 1, 2004, each electric utility, whether or not subject to rate regulation by the board, shall offer an alternate energy purchase program that allows customers to contribute voluntarily to the development of alternate energy in Iowa, and allows for the exceptions listed in paragraph 15.17(1)*"c."*

b. Each electric utility subject to rate regulation by the board, except for utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall demonstrate on an annual basis that it produces

or purchases sufficient energy from program AEP facilities located in Iowa to meet the needs of its Iowa program. These Iowa-based AEP facilities shall not include AEP facilities for which the utility has sought cost recovery under rule 199—20.9(476) prior to July 1, 2001.

c. The electric utility may partially or fully base its program on energy produced by AEP facilities located outside of Iowa under any of the following circumstances:

(1) The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility.

(2) The electric utility has a financial interest, as of July 1, 2001, in an AEP facility that is located outside of Iowa or in an entity that has a financial interest in an AEP facility located outside of Iowa; or

(3) The energy is purchased by an electric utility that is not subject to rate regulation by the board, or which elects rate regulation pursuant to Iowa Code section 476.1A, and that is required to purchase all of its electric power requirements from one or more suppliers that are physically located outside of Iowa.

15.17(2) *Customer notification.*

a. Each electric utility shall notify eligible customer classes of its alternate energy purchase program and proposed program modifications at least 60 days prior to implementation of the program or program modification. The notification shall include, as applicable:

(1) A description of the availability and purpose of the program or program modification, clarifying that customer contributions will not involve the direct sale of alternate energy to individual customers;

(2) The effective date of the program or program modification;

(3) Customer classes eligible for participation;

(4) Forms and levels of customer contribution available to program participants;

(5) A utility telephone number for answering customers' questions about the program; and

(6) Customer instructions that explain how to participate in the program.

b. In addition to the notification requirements under paragraph 15.17(2)*"a,"* each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall:

(1) Include fuel report information described under subrule 15.17(5); and

(2) Submit the proposed notification to the board for approval at least 30 days prior to the proposed date of issuance of the notification.

15.17(3) *Program plan filing requirements for rate-regulated utilities.* On or before October 1, 2003, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a plan for the utility's alternate energy purchase program. Initial program plans and any subsequent modifications will be subject to board approval. Modification filings need only include information about elements of the program that are being modified. The initial program plan filing shall include:

a. The program tariff;

b. The program effective date;

c. A sample of the customer notification, including a description of the method of distribution;

d. Customer classes eligible for participation and the schedule for extending participation to all customer classes;

e. Identification of each AEP facility used for the program, including:

(1) Fuel type;

(2) Nameplate capacity;

(3) Estimated annual kWh output;

(4) Estimated in-service date;

(5) Ownership, including any utility affiliation;

(6) A copy of any contract for utility purchases from the facility;

(7) A description of the method or procedure used to select the facility;

(8) Facility location; and

(9) If the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1)*"c"*;

f. The forms and levels of customer contribution available to program participants, including, but not limited to:

(1) kWh rate premiums applied to percentages of participant kWh usage, with an explanation of how the kWh rate premiums are derived; or

(2) kWh rate premiums applied to fixed kWh blocks of participant usage, with an explanation of how the kWh rate premiums are derived; or

(3) Fixed contributions, with an explanation of how the fixed amounts are derived;

g. The maximum allowable time lag between the beginning of customer contributions and the in-service date for identified AEP facilities, and the procedures for suspending customer contributions if the maximum time lag is exceeded;

h. The intended treatment of program participants under 199—20.9(476) energy automatic adjustment and AEP automatic adjustment clauses;

i. An accounting plan for identifying and tracking participant contributions and program costs, including:

(1) Identification of incremental program costs not otherwise recovered through the utility's rates, including but not limited to: program start-up and administration costs; program marketing costs; and program energy and capacity costs associated with identified AEP facilities;

(2) Methods for quantifying, assigning, and allocating costs of the program and for segregating those costs in the utility's accounts; and

j. Marketing and customer information plan, including schedules and copies of all marketing and information materials, as available.

15.17(4) *Annual reporting requirements for rate-regulated utilities.* On or before April 1, 2005, and annually thereafter, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a report of program activity for the previous calendar year. The annual report shall include:

a. Program information including:

(1) The number of program participants, by customer class;

(2) Participant contribution revenues, by customer class, by form and level of contribution, and associated participant kWh sales;

(3) Program electricity generated from each program AEP facility and the associated costs; and

(4) Other program costs, by cost type.

b. An annual reconciliation of participant contributions and program costs.

(1) Program costs are incremental costs associated with the utility's alternate energy purchase program not otherwise recovered through the utility's base tariff rates, and electricity costs dedicated to the program and separated from the utility's 199—20.9(476) energy or AEP automatic adjustment clauses.

(2) The excess of participant contributions over program costs is an annual program surplus, and the excess of program costs over participant contributions is an annual program deficit.

(3) Annual program surpluses and deficits are cumulative over successive years.

(4) A program deficit may be recovered through the utility's 199—20.9(476) AEP automatic adjustment clause.

(5) Any program surplus shall be used to offset prior years' program deficits previously recovered through the AEP automatic adjustment clause, and the offset amount shall be credited through the utility's AEP automatic adjustment clause.

c. Identification of any other AEP or renewable energy requirements being met with program AEP facilities and identification of any revenues derived from the separate sale of the renewable energy attributes of program AEP facilities.

d. Documentation that shows the energy produced by the utility's program AEP facilities in Iowa (whether contracted, leased, or owned), not including AEP facilities for which the utility has sought cost

recovery under 199—20.9(476) prior to July 1, 2001, is sufficient to meet the requirement of the utility's Iowa alternate energy purchase program.

e. A description of program marketing and customer information activities, including schedules and copies of all marketing and information materials related to the program.

f. Program modifications and uses for any program surplus that are under consideration, including procurement or assignment of additional electricity from AEP facilities.

g. A copy of the utility's annual fuel report to customers under subrule 15.17(5).

15.17(5) *Annual fuel reporting requirements for rate-regulated utilities.*

a. Each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall annually report to all its Iowa customers its percentage mix of fuel and energy inputs used to produce electricity. The report shall, to the extent practical, specify percentages of electricity produced by coal, nuclear energy, natural gas, oil, AEP electricity produced for the utility's alternate energy purchase program, non-program AEP electricity, and resources purchased from other companies. The percentages for AEP electricity shall further specify percentages of electricity produced by wind, solar, hydropower, biomass, and other technologies.

b. The report shall include an estimate of sulfur dioxide (SO_2), nitrogen oxide (NOx), and carbon dioxide (CO_2) emissions for each known fuel and energy input type. The emission estimate shall be expressed in pounds per 1000 kWh.

15.17(6) *Tariff filing requirements for non-rate-regulated utilities.*

a. On or before January 1, 2004, each electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A shall file with the board a tariff for the utility's alternate energy purchase program. Initial tariff filings and any subsequent modifications shall be filed for informational purposes only. Tariff modification filings need only include information about elements of the program that are being modified. The initial tariff filings shall include, as applicable:

(1) The program tariff;

(2) The program effective date;

(3) A sample of the customer notification, including a description of the method of distribution;

(4) Customer classes eligible for participation;

(5) Identification of any specific AEP facilities to be included in the program, including: fuel type; nameplate capacity; estimated annual kWh output; estimated in-service date; ownership, including any utility affiliation; location; and, if the facility is located outside of Iowa, an explanation of how the facility qualifies under paragraph 15.17(1)*"c"*; and

(6) Forms and levels of customer contribution available to program participants.

b. Joint filings. An electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A may file its tariff jointly with other non-rate-regulated utilities or through an agent. A joint tariff filing shall contain the information required by paragraph 15.17(6)*"a,"* separately identified for each utility participating in the joint tariff. The information for each utility may be provided by reference to an attached document or to a section of the joint tariff filing. A joint tariff filing filed by an agent shall state the agent's relationship to each utility and include a document from each utility authorizing the agent to act on the utility's behalf.

199—15.18(476B) Certification of eligibility for wind energy tax credits under Iowa Code chapter 476B. Any person applying for certification of eligibility for state tax credits for wind energy pursuant to Iowa Code section 476B.5 as amended by 2005 Iowa Acts, chapter 179, section 166, is subject to this rule.

15.18(1) *Filing requirements.* Any person applying for certification of eligibility for wind energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner, and a statement attesting that owners meeting the eligibility requirements of Iowa Code Supplement section 476B.5 are not owners of more than two eligible renewable energy facilities. In determining whether the two-facility limit is exceeded, the Board will consider not only the legal entity that owns the utility, if other than a natural person, but the equity owners of the legal entity. If the owner of the facility is other than a natural person, information regarding the equity owners must be provided.

c. A description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a qualified facility as defined in Iowa Code Supplement section 476B.1);

(2) Total nameplate generating capacity rating. For applications filed on or after March 1, 2008, the facility must have a combined nameplate capacity of no less than 2 megawatts;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service (that is, placed in service on or after July 1, 2005, but before July 1, 2012, for eligibility under Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179).

d. A signed statement from the owner attesting that the owner intends to either sell all the electricity generated by the facility, consume all the electricity on site, or a combination of both. For purposes of this rule, electricity consumed on site means any electricity produced by the facility and not sold.

e. If the owner intends to sell electricity generated by the facility, a copy of the executed power purchase agreement or other agreement to purchase electricity. If the power purchase agreement has not yet been finalized and executed, the board will accept as an other agreement an executed agreement signed by at least two parties that includes both a commitment to purchase electricity from the facility upon completion of the project and most of the essential elements of a contract.

The board will also accept a copy of an executed interconnection agreement service agreement, in lieu of a power purchase agreement, if the facility owner has instead agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.

f. A statement indicating the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179 (1 cent per kWh, wind energy only tax credits).

15.18(2) *Review and notification.* Upon receipt of a complete application, the board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board will notify the applicant by letter of the approval or denial of the application within 30 days of the date the application was filed. If the board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within 30 days of the date of the denial, pursuant to the provisions of Iowa Code chapter 17A and Iowa Code Supplement section 476B.5. In the absence of a timely appeal, the preliminary determination shall be final.

15.18(3) *Incomplete application and additional information.* If an incomplete application is filed, the board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

15.18(4) *Loss of eligibility status.* Within 18 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 18 months of board approval, the facility will lose eligibility status.

However, if the facility is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the filing requirement, attesting to the unavailability of necessary equipment. After granting a 12-month extension, if the board determines

that the facility was not operational within 30 months of board approval, the facility will lose eligibility status. Otherwise,the facility may reapply to the board for new eligibility.

15.18(5) *Allocation of capacity among eligible applicants.* Iowa Code Supplement section 476B.5 establishes the maximum amount of nameplate generating capacity of facilities eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will allocate the final eligibility determinations proportionally among all applications received on that date. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with 199 IAC 15.18(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

15.18(6) *Waiting list for excess applications.* The board will maintain a waiting list of excess eligibility applications for facilities that might have received preliminary eligibility under 199 IAC 15.18(2), but for the maximum capacity and capability restrictions under 199 IAC 15.18(5). The priorities of the waiting list will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under 199 IAC 15.18(5), the board will review the applications on the waiting list based on their priorities, before reviewing new applications. Applications will be removed from the waiting list after they are either approved or denied. Beginning August 31, 2007, each applicant on the waiting list shall annually provide the board a statement of verification attesting that the information contained in the applicant's eligibility application remains true and correct, or stating that the information has changed and providing the new information.

This rule is intended to implement Iowa Code Supplement chapter 476B.

199—15.19(476C) Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C. Any person applying for certification of eligibility for state tax credits for wind energy or renewable energy pursuant to Iowa Code Supplement section 476C.3 is subject to this rule.

15.19(1) *Filing requirements.* Any person applying for certification of eligibility for wind energy or renewable energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner. The "legal status of each owner" refers to the ownership requirements of Iowa Code Supplement section 476C.1(6)*"b,"* which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

(1) A resident of Iowa;

(2) An authorized farm corporation, authorized limited liability company, or authorized trust, as defined in Iowa Code section 9H.1;

(3) A family farm corporation, family farm limited liability company, or family farm trust, as defined in Iowa Code section 9H.1;

(4) A revocable trust as defined in Iowa Code section 9H.1;

(5) A testamentary trust as defined in Iowa Code section 9H.1;

(6) A small business as defined in Iowa Code section 15.102;

(7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa or has one or more members organized pursuant to Iowa Code chapter 499;

(8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 9H; or

(9) A school district located in Iowa.

c. A statement attesting that each owner meeting the eligibility requirements of Iowa Code Supplement section 476C.1(6)*"b"* does not have an ownership interest in more than two eligible renewable energy facilities.

d. For any owner with an equity interest in the facility equal to or greater than 51 percent, a statement attesting that the owner does not have an equity interest greater than 10 percent in any other eligible renewable energy facility.

e. For any owner with an equity interest in the facility greater than 10 percent and less than 51 percent, a statement attesting that the owner does not have an equity interest equal to or greater than 51 percent in any other eligible renewable energy facility.

f. A description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility, or refuse conversion facility, as defined in Iowa Code Supplement section 476C.1);

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code Supplement section 476C.1;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service; that is, placed in service on or after July 1, 2005, but before January 1, 2012, for eligibility under Iowa Code Supplement chapter 476C; and

(5) For eligibility under Iowa Code Supplement chapter 476C, demonstration that the facility's combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in Iowa Code Supplement section 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code Supplement chapter 476C, equals no more than 2.5 MW of capacity per eligible owner.

g. A copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, which shall designate either the producer or the purchaser as eligible to apply for the renewable energy tax credit. If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; that designation shall not be subject to change.

h. A statement indicating the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code Supplement chapter 476C (1.5 cents per kWh, wind and other renewable energy tax credits).

15.19(2) *Review and notification.* Upon receipt of a complete application, the board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board will notify the applicant by letter of the approval or denial of the application within 30 days of the date the application was filed. If the board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within 30 days of the date of the denial, pursuant to the provisions of Iowa Code chapter 17A and Iowa Code Supplement section 476C.3(2). In the absence of a timely appeal, the preliminary determination shall be final.

15.19(3) *Incomplete application and additional information.* If an incomplete application is filed, the board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

15.19(4) *Loss of eligibility status.* Within 30 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 30 months of board approval, the facility will lose eligibility status. However, the facility may reapply to the board for new eligibility.

15.19(5) *Allocation of capacity among eligible applicants.* Iowa Code Supplement section 476C.3(4) establishes the maximum amounts of nameplate generating capacities and energy production capacity equivalents eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will allocate the final eligibility determinations proportionally among all applications received on that date. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with 199 IAC 15.19(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

15.19(6) *Waiting lists for excess applications.* The board will maintain waiting lists of excess eligibility applications for facilities that might have received preliminary eligibility under 199 IAC 15.19(2), but for the maximum capacity and capability restrictions under 199 IAC 15.19(5). The priorities of the waiting lists will be in the order the applications were received, based upon the dates of receipt. If additional capacity becomes available within the capacity restrictions under 199 IAC 15.19(5), the board will review the applications on the waiting lists based on their priorities, before reviewing new applications. Applications will be removed from the waiting lists after they are either approved or denied. Beginning August 31, 2007, each applicant on a waiting list shall annually provide the board a statement of verification attesting that the information contained in the applicant's eligibility application remains true and correct, or stating that the information has changed and providing the new information.

This rule is intended to implement Iowa Code Supplement chapter 476C.

199—15.20(476B) Applications for wind energy tax credits under Iowa Code chapter 476B. The wind energy tax credits equal one cent per kilowatt-hour of electricity generated by eligible wind energy facilities under 199 IAC 15.18(476B), which is sold or used for on-site consumption by the owner, for tax years beginning on or after July 1, 2006. The owners of an eligible facility may apply for wind energy tax credits for up to ten tax years following the date the facility is placed in service. Wind energy tax credits will not be issued for wind energy sold or used for on-site consumption after June 30, 2022. For purposes of this rule, wind energy used for on-site consumption means any electricity produced by an eligible facility and not sold.

For the first tax year for which tax credits can be claimed, the kilowatt-hours generated by and purchased from an eligible facility may exceed 12 months' production.

EXAMPLE: An eligible facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which tax credits can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credits for the 2007 tax year can include energy produced and purchased between April 1, 2006, and December 31, 2007.

15.20(1) *Application process for wind energy tax credits.* A wind energy facility must be approved as eligible by the board under 199 IAC 15.18(476B) in order to qualify for wind energy tax credits. The wind energy facility must also be approved by the board of supervisors of the county in which the facility is located, in accordance with Iowa Code section 476B.6(1). Once the owners receive approval from their board of supervisors, additional approval from the board of supervisors is not required for subsequent tax years.

Wind energy tax credits shall not be allowed for a facility for which the owners have claimed an exemption from property tax under Iowa Code sections 427B.26 or 441.21(8), or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with department of revenue rule 701 IAC 80.13(427B).

Tax credit applications for eligible facilities must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5)*"c"*) and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8)*"b"*(3). Accordingly, the applicant should mark each of the pages of the tax credit application "CONFIDENTIAL" in bold or large letters.

a. If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199 IAC 15.20(476B)), and the following 14 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199 IAC 15.18(476B), plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199 IAC 15.18(476B).

(3) A copy of the board of supervisors' approval, from the county in which the facility is located, issued pursuant to Iowa Code section 476B.6(1).

(4) A statement attesting that the owners have not claimed an exemption for the facility from property tax under Iowa Code section 427B.26 or 441.21(8), or from sales tax under Iowa Code section 423.3(54).

(5) A statement attesting that neither the owners nor the purchaser have received renewable energy tax credits for the facility under 199 IAC 15.21(476C).

(6) For any electricity sold, a copy of the executed power purchase agreement or other agreement to purchase electricity. Alternatively, a copy of an executed interconnection agreement or transmission service agreement is acceptable if the owners have elected to sell electricity from the facility directly or indirectly to a wholesale power pool market.

(7) For any electricity sold, the owner must provide a statement attesting that the electricity for which tax credits are sought has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the wind energy tax credits, the definition of "related person" is the same as specified in department of revenue subrules 701 IAC 42.25(2) and 52.26(2). That is, the definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

For any electricity used for on-site consumption, the owner must provide a signed statement attesting under penalty of perjury that the electricity for which tax credits are sought was generated by the eligible facility and not sold.

(8) The date that the eligible facility was placed in service (that is, between July 1, 2005, and July 1, 2012).

(9) The total number of kilowatt-hours of electricity generated by the facility during the tax year.

(10) For any electricity sold, invoices or other information that documents the number of kilowatt-hours of electricity generated by the eligible facility and sold to an unrelated purchaser during the tax year.

For any electricity used for on-site consumption, the number of kilowatt-hours of electricity generated by the eligible facility during the tax year and not sold.

(11) Information regarding the facility owners, including the name, address, and tax identification number of each owner, and the percentage of equity interest held by each owner during the period for which wind energy tax credits will be sought under Iowa Code chapter 476B. If an owner is other than a natural person, information regarding the equity owners must also be provided. This information shall be consistent with information provided in the original application for facility eligibility, as amended, under 199 IAC 15.18(476B).

(12) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

(13) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code. This identification should include a statement from the applicant attesting to the applicant's eligibility and any available supporting documentation.

(14) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro-rata share of earnings from the entity, for each of the partners, members, shareholders, or beneficiaries of the entity. The wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company, to receive the wind energy tax credits issued under Iowa Code chapter 476B, and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapter 423, 432, or 437A.

b. The board will forward the tax credit applications to the department of revenue for review and processing. Along with each forwarded application, the board will provide staff analysis and opinion regarding:

(1) The completeness of the application.

(2) The facility's eligibility status under 199 IAC 15.18(476B).

(3) Whether the reported kilowatt-hours of electricity generated by the facility and sold or used by the owner for on-site consumption during the tax year seem accurate and eligible for wind energy tax credits.

15.20(2) *Review process and computation of wind energy tax credits.* The department of revenue will review the applications and opinions forwarded by the board, calculate the tax credits, and issue wind energy tax credit certificates to the facility owners, in accordance with department of revenue requirements and procedures under rules 701 IAC 42.25(422,476B), 52.26(422,476B), and 58.15(422,476B).

199—15.21(476C) Applications for renewable energy tax credits under Iowa Code chapter 476C. The renewable energy tax credits equal 1.5 cents per kilowatt-hour of electricity, or 44 cents per 1,000 standard cubic feet of hydrogen fuel, or $4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose, generated by and purchased from eligible renewable energy facilities under 199

IAC 15.19(476C), for tax years beginning on or after July 1, 2006. Either the owners of an eligible facility or a designated purchaser of renewable energy from the facility may apply for renewable energy tax credits, for up to ten tax years following the date the facility is placed in service. Renewable energy tax credits will not be issued for renewable energy purchased after December 31, 2021.

For the first tax year for which tax credits can be claimed, the kilowatt-hours, standard cubic feet, or British thermal units generated by and purchased from an eligible facility may exceed 12 months' production.

EXAMPLE: An eligible facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which tax credits can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include renewable energy produced and purchased between April 1, 2006, and December 31, 2007.

15.21(1) *Application process for renewable energy tax credits.* A renewable energy facility must be approved as eligible by the board under 199 IAC 15.19(476C) in order to qualify for renewable energy tax credits. Tax credit applications must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5)*"c"*) and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8)*"b"*(3). Accordingly, the applicant should mark each of the pages of the tax credit application "CONFIDENTIAL" in bold or large letters.

a. Either the facility owners or the purchaser of renewable energy shall be eligible to apply for the tax credits, as designated under 199 IAC 15.19(1)*"g."* If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199 IAC 15.21(476C)), and the following 12 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199 IAC 15.19(476C), plus any subsequent amendments to the application.

(2) A copy of the board's determination approving the facility as eligible for tax credits under 199 IAC 15.19(476C).

(3) A statement attesting that the owners have not received wind energy tax credits for the facility under 199 IAC 15.20(476B).

(4) A copy of the power purchase agreement or other agreement to purchase from the facility electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose. The agreement shall designate whether the producer or purchaser of renewable energy will be eligible to apply for the tax credits and shall be consistent with the designation originally filed under 199 IAC 15.19(1)*"g."*

(5) A statement attesting that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, for which tax credits are sought, has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the renewable energy tax credits, persons are related to each other if either person owns an 80 percent or more equity interest in the other person.

(6) The date that the eligible facility was placed in service (that is, between July 1, 2005, and January 1, 2012).

(7) The total number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility during the tax year.

(8) Invoices or other information that documents the number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by the eligible facility and sold to an unrelated purchaser during the tax year.

(9) Information regarding the facility owners or designated eligible purchaser, including the name, address, and tax identification number of each owner or purchaser. If the application is filed by the facility owners, this shall also include the percentage of equity interest held by each owner during the period

for which renewable energy tax credits will be sought under Iowa Code chapter 476C. This information shall be consistent with ownership information provided in the original application for facility eligibility, as amended, under 199 IAC 15.19(476C).

(10) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

(11) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code. This identification should include a statement from the applicant attesting to the applicant's eligibility and any available supporting documentation.

(12) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro-rata share of earnings from the entity for each of the partners, members, shareholders, or beneficiaries of the entity. The renewable energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company to receive the renewable energy tax credits issued under Iowa Code chapter 476C and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the renewable energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapter 423, 432, or 437A.

b. The board will forward the tax credit applications to the department of revenue for review and processing. Along with each forwarded application, the board will provide staff analysis and opinion regarding:

(1) The completeness of the application.

(2) The facility's eligibility status under 199 IAC 15.19(476C).

(3) Whether the reported kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated by and purchased from the facility during the tax year seem accurate and eligible for renewable energy tax credits.

15.21(2) *Review process and computation of renewable energy tax credits.* The department of revenue will review the applications and opinions forwarded by the board, calculate the tax credits, and issue renewable energy tax credit certificates to the facility owners or designated purchaser, in accordance with department of revenue requirements and procedures under 701 IAC 42.26(422,476C), 52.27(422,476C), and 58.16(422,476C).

These rules are intended to implement Iowa Code sections 476.1, 476.8, 476.41 to 476.45, and 546.7, Section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.

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HISTORICAL DIVISION[223]

[Prior to 5/31/89, see Historical Department[490]
created under the "umbrella" of the Department of Cultural Affairs[221] by Iowa Code section 303.1]

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CHAPTER 50
HISTORIC SITE PRESERVATION GRANT PROGRAM

223—50.1(303) Purpose. The purpose of the historic site preservation grant program is to provide matching grants to nonprofit organizations, governmental bodies, and Indian tribes for the restoration, preservation, and development of historical sites.

The state historical society of Iowa, the historical division of the Iowa department of cultural affairs, shall administer the historic site preservation grant program.

223—50.2(303) Definitions.

"Administrator" means the administrator of the state historical society of Iowa, the historical division of the department of cultural affairs.

"Director" means the director of the department of cultural affairs.

"Emergency" means a threat to a historical resource that is not the result of delinquency by the current owner and that requires timely action to prevent immediate loss of the resource.

"Facility" means a site, structure, building, or object such as a sculpture or monument.

"Historical site" means a property that is listed or declared eligible by the state historic preservation officer for listing on the National Register of Historic Places, or a facility in which Iowa's history or the heritage of Iowa's people is interpreted. Historical sites shall relate to the human occupation of Iowa, but may be of prehistoric or historic age.

"Indian tribe" means any tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Infrastructure" is defined in Iowa Code section 8.57(5c) as "vertical infrastructure" and shall include only land acquisition for construction, major rehabilitation of buildings, all appurtenant structures, utilities, and site developments.

"Society" means the state historical society of Iowa, the historical division of the department of cultural affairs, established in Iowa Code section 303.1.

223—50.3(303) Application procedures.

50.3(1) *Eligible applicants.* Grants shall be awarded to any local political subdivisions of the state, state agency, Indian tribe, or nonprofit organization that is duly authorized and charged with responsibilities for construction, maintenance and operation of historical sites.

50.3(2) *Eligible projects.* Grants under this program shall be used for "vertical infrastructure" as defined in Iowa Code section 8.57(5c). Applicants shall submit only one grant application per funding cycle. Projects that received designated legislative earmarking of funds in the current fiscal year shall not be eligible for funding through this program. Projects that received funding from this program are ineligible to apply for three years from the date of grant award.

50.3(3) *Project requirements.* When applicable, all project work shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. All applicants shall submit project information to the society's community programs bureau for review as part of the application process. Successful applicants shall consult with the society's historic preservation staff to ensure that the standards are met. Failure to meet the standards shall result in cancellation of the grant.

50.3(4) *Form of application.* Grant applications shall be on forms provided by the society and shall follow all prescribed guidelines. Completed applications shall provide sufficient detail to clearly describe the scope of the project.

50.3(5) *Application timing.* Grant applications (1 original and 11 copies) shall be received by 4:30 p.m. in the program coordinator's office at the State Historical Society of Iowa, 600 East Locust, Des Moines, Iowa 50319-0290, on or before the deadline date, or shall have a United States Postal Service postmark, dated on or before the fourteenth day of September.

50.3(6) *Assistance ceiling and cost share.* Grants to any individual project shall not exceed $100,000. Project sponsors shall provide cash match at the rate of one dollar for each state grant dollar.

An applicant shall certify that it has committed its share of project costs by the time final payment is made. State funds shall not be used as cash match for this program. Indirect costs and staff salaries shall not be used as match.

50.3(7) *Minimum grant amount.* No application requesting less than $40,000 in grant funds shall be considered.

50.3(8) *Geographic distribution of funds.* No more than two projects may be awarded in any grant cycle within a single county.

223—50.4(303) Project review and selection.

50.4(1) *Staff review.* Applications shall be reviewed by society staff to ensure compliance with the program's administrative rules and guidelines. All applications meeting the requirements shall be forwarded to the review and selection panel. Ineligible applications shall not be considered.

50.4(2) *Review panel.* A review and selection panel, hereinafter referred to as the review panel, comprised of ten members appointed by the administrator, shall review and evaluate project applications and shall develop funding recommendations to be forwarded to the state historical society board of trustees for approval.

The review panel shall be comprised of the following members:

1. Panel chairperson, appointed by the administrator.
2. Five citizens, each with a background in archaeology, history, architectural history, architecture, museum studies, Iowa heritage, or a closely related field. Citizens serving on the committee shall be selected from a wide geographic area.
3. One member of the society's board of trustees.
4. One staff representative selected by the administrator of the Iowa division of tourism, Iowa department of economic development.
5. One staff representative selected by the administrator of the Iowa division of parks, recreation and preserves, Iowa department of natural resources.
6. One staff representative selected by the administrator of the division of project planning, Iowa department of transportation.

50.4(3) *Final review and selection of grants.* The society's board of trustees shall review the recommendations of the review panel and shall make recommendations to the administrator. The administrator shall make final funding decisions.

50.4(4) *Conflict of interest.* If a project is submitted by an eligible sponsor, one of whose members or employees is on the review panel, that panelist shall not participate in discussion and shall not vote on that particular project.

223—50.5(303) Application rating system. The review panel shall apply a numerical rating system to each grant application that is considered for funding assistance. The criteria, with a weight factor for each, shall include the following:

1. The historical or cultural significance of the project, and the degree to which the project is of regional, state, or national significance (30 percent);
2. The quality of the plans to interpret the historical resource (25 percent);
3. The extent to which the project will enhance educational opportunities for a broad and diverse audience (25 percent);
4. The degree to which the budget is reasonable and appropriate to the project (10 percent);
5. The degree to which the applicant demonstrates a commitment to the future viability of the resource by planning for the ongoing operation and maintenance of the project (10 percent).

Each criterion shall be given a score from 1 to 10, which is then multiplied by the weight factor.

223—50.6(303) Grant administration.

50.6(1) *Contract agreement.* Successful applicants shall enter into a contract agreement with the society.

50.6(2) *Timely commencement of projects.* Grant recipients are expected to carry out their projects in an expedient manner. Projects shall be under contract by February 1 in the year following their approval and shall be completed by the date specified in the contractual agreement. Failure to initiate projects in a timely manner may be cause for termination of the agreement and cancellation of the grant.

50.6(3) *Funding acknowledgement.* The grantee shall agree to include in all printed lists of contributors the following credit line: "State Historical Society of Iowa, Historic Site Preservation Grant Program."

50.6(4) *Disbursement of funds.* All project moneys, including grant funds and matching funds, shall be expended within the period established by legislation. Disbursement of grant funds shall be made on a schedule as determined in the contractual agreement.

50.6(5) *Record keeping and retention.* Grant recipients shall keep adequate records relating to the administration of a project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the society and the state auditor's office. All records shall be retained in accordance with state laws.

50.6(6) *Penalties.* During the contract period, whenever any property, real or personal, acquired or developed with grants under this program passes from the control of the grantee or is used for purposes other than the approved project purpose, it shall be considered an unlawful use of the funds.

50.6(7) *Remedy.* Funds used without authorization, for purposes other than the approved project purpose, or unlawfully, shall be returned to the society for deposit in the account supporting this program. In the case of diversion of personal property, the grantee shall remit to the department funds in the amount of the original purchase price of the property. The grantee shall have a period of two years after notification by the society in which to correct the unlawful use of funds. The remedies provided in this subrule are in addition to others provided by law.

50.6(8) *Ineligibility.* Whenever the administrator determines that a grantee is in violation of this rule, that grantee shall be ineligible to receive further grant funds until the matter has been resolved to the satisfaction of the state historical society board of trustees.

50.6(9) *Technical assistance.* The department may use up to 2 percent of the total appropriation for providing technical assistance to grant applicants and for administrative costs incurred in implementing the program.

223—50.7(303) Informal appeals. Eligible applicants or grantees may informally appeal a decision of the society not to grant historic site preservation grant funds on any of the following bases:

1. Action was outside statutory authority;
2. Decision was influenced by a conflict of interest;
3. Action violated state law, administrative rule, or written policy;
4. Insufficient public notice was given; and
5. Alteration of the review process was detrimental to the applicant.

Informal appeals in writing may be directed to the director within 15 days of the incident. All informal appeals shall be directed to the Director, Department of Cultural Affairs, Historical Building, 600 East Locust, Des Moines, Iowa 50319-0290. All informal appeals shall contain facts of the case, argument in favor of the appeal, and remedy sought.

The director shall consider and rule on the informal appeal after receiving all documentation from the appellant and shall notify the appellant in writing of the decision within 30 days. Decisions by the director may be appealed through the contested case process as set out in Iowa Code sections 17A.10 to 17A.19.

223—50.8(303) Emergency grants.

50.8(1) *Eligible applicants.*

a. Emergency grants may be awarded to any local political subdivision of the state, state agency, Indian tribe, individual or nonprofit organization that is duly authorized and charged with responsibilities for construction, maintenance and operation of historical sites, or to the owner of a historical site as defined in rule 50.2(303).

b. Emergency grants may be awarded for projects arising in counties for which a gubernatorial disaster emergency proclamation has been issued for natural disasters arising during the period of April 1, 2008, through June 30, 2008.

50.8(2) *Eligible projects.* Emergency grants may be awarded to projects for emergency stabilization of historical sites. All emergency grant projects shall meet the U.S. Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

50.8(3) *Grant amount.* Any application requesting less than $1,000 in grant funds or more than $50,000 in grant funds shall not be considered.

50.8(4) *Application deadline.* Applications (one original and four copies) will be received on a continuous basis and will be reviewed monthly.

50.8(5) *Review panel.* A review and selection panel, hereinafter referred to as the review panel, comprised of four members appointed by the administrator, shall review and evaluate emergency project applications and shall develop funding recommendations to be forwarded to the administrator of the historical division for approval.

50.8(6) *Application rating system.* The review panel shall apply a numerical rating system to each grant application that is considered for funding assistance. The criteria shall include all of the following:

a. The emergency status of the project as evaluated against the definition of emergency in rule 50.2(303) and eligibility criteria identified in subrule 50.8(1);

b. The historical or cultural significance of the project and the degree to which the project is of regional, state, or national significance;

c. The quality of the plans to stabilize the historical resource;

d. The degree to which the budget is reasonable and appropriate for the project; and

e. The degree to which the applicant demonstrates a commitment to the future viability of the resource by planning for the ongoing operation and maintenance of the project following stabilization.

These rules are intended to implement Iowa Code sections 303.1A and 303.2.

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IOWA FINANCE AUTHORITY[265]

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CHAPTER 8
PRIVATE ACTIVITY BOND ALLOCATION

265—8.1(7C) General. The governor has appointed the executive director of the Iowa finance authority as the governor's designee responsible for administration of the law which establishes procedures for allocation of private activity bonds as defined in Section 141 of the Internal Revenue Code. Procedures set out in the law and in these rules shall be followed in allocating the private activity bond state ceiling ("state ceiling") between cities, counties and the state of Iowa. For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes in the percentages set forth in Iowa Code section 7C.4A. The state ceiling shall be allocated among all issuers for those various purposes annually in accordance with Iowa Code chapter 7C and these rules. All applications received in any calendar year shall expire as of December 31 of that year.

265—8.2(7C) Forms. Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The telephone number of the authority is (515)725-4900.

265—8.3(7C) Formula for allocation.

8.3(1) The state ceiling shall be allocated among all issuers on the basis of chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor's designee.

8.3(2) All applications that are submitted for receipt pursuant to the provisions of subrule 8.4(2) shall be considered simultaneously received at the opening of business on the first business day of the calendar year, and the same date, hour and minute shall be stamped on each application so received.

a. If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek allocations of bonds for industries pursuant to Iowa Code subsection 7C.4A(5) exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3)*"a."*

b. If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek allocations of private activity bonds issued by public subdivisions, the proceeds of which are used by the issuing subdivision pursuant to Iowa Code section 7C.4A(6), exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3)*"b."*

8.3(3) Allocation process.

a. In order to determine the order of allocation of the state ceiling to each of the applications for industrial purposes that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

b. In order to determine the order of allocation of the state ceiling to each of the applications for state ceiling for political subdivisions that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so.

Applications shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

8.3(4) The governor's designee shall maintain one list of applications for private activity bonds for the purpose of industries and a separate list for applications for private activity bonds for the use of political subdivisions. The applications that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4) shall be listed in the order of preferences established pursuant to paragraphs 8.3(3)*"a"* and 8.3(3)*"b."* Applications received after the opening of the first day of business of a calendar year shall be added to the appropriate list depending upon the subject of the application in the chronological order received.

8.3(5) Formula for allocations following June 30 of each year. As permitted by Iowa Code section 7C.5, following June 30 of each year issuers which initially applied for state ceiling allocated under Iowa Code section 7C.4A(6) for bonds, the proceeds of which are to be used by the issuing political subdivision, shall be given priority over any applications received for state ceiling for bonds otherwise requiring an allocation under Section 146 of the Internal Revenue Code.

This rule is intended to implement Iowa Code sections 7C.4A(7)*"a"* and 7C.5.

265—8.4(7C) Application for allocation.

8.4(1) An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must make an application by filing the form available from the governor's designee entitled, "Application and Response," for the allocation of a portion of the private activity bond state ceiling.

8.4(2) Applications for any given calendar year may be submitted to the Iowa finance authority offices during the month of December of the previous year with a request that the application be treated as received when the authority opens for business on the first business day of the calendar year for which the application is made. Applications submitted in this manner must be contained in a sealed envelope that is clearly marked with words such as: "This application for private activity bond allocation for year 2001 is to be held for constructive delivery and receipt, and stamped 'received' by the Iowa Finance Authority upon the opening of business on the first business day of calendar year 2001." Applicants should also indicate on the outside of the sealed envelope the type of bond for which application is made and the amount requested. There may be only one application for each separate project. All applications so received will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day of the calendar year for which application is made. Expired applications made in previous years may be resubmitted to the authority pursuant to this procedure.

8.4(3) Applications for any given calendar year may be submitted to the Iowa finance authority offices at any time during the calendar year. Applications must be contained in a sealed envelope that is clearly marked with the year for which the application is made, the type of bond sought, and the amount of the state ceiling requested. Applications received during the calendar year will be immediately stamped with the day, hour and minute they are received by the authority.

8.4(4) All applications received pursuant to the provisions of subrule 8.4(2) will be deemed to have been received simultaneously on the date, hour and minute that the authority opens for business on the first business day of the year for which the applications are made.

This rule is intended to implement Iowa Code sections 7C.4A and 7C.5.

265—8.5(7C) Certification of allocation. This rule implements 2000 Iowa Acts, chapter 1166, section 8, providing that "for the calendar year beginning January 1, 2001, applications for the state ceiling allocation under [Iowa Code] section 7C.4A, subsection 5, shall not be approved prior to March 1." For

the calendar year beginning January 1, 2001, unless Iowa Code chapter 7C has been otherwise amended, upon receipt of a completed application, the governor's designee shall promptly, commencing March 1, 2001, certify to the issuer the amount of the state ceiling allocated to the bonds for the purpose of the project for which the application was submitted, in the order as determined by Iowa Code chapter 7C and rules 8.3(7C) and 8.4(7C). The governor's designee shall continue to allocate the state ceiling for each purpose separately until all the available state ceiling for that purpose is fully allocated. If there is not sufficient available state ceiling to fully fund an application which is next in order for allocation, the governor's designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor's designee of its decision to take the available allocation within five calendar days of receiving notice of that option, the available state ceiling shall be offered to the next application on the list under the same conditions, and the initial offeree will maintain its position on the list. If the partial allocation is accepted, the applicant shall submit a new application for additional state ceiling and that application will be added to the bottom of the list in the chronological order of its receipt.

If the bonds are issued and delivered prior to the expiration date of the allocation, then the issuer or the issuer's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee by filing the form captioned "Notice of Issuance and Delivery of Bonds." Upon receipt of the form the governor's designee shall return a time-stamped copy of the form to the issuer or issuer's attorney.

265—8.6(7C) State ceiling carryforwards. In the event the aggregate principal amount of bonds issued by all issuers in a calendar year is less than the state ceiling for that calendar year, then an issuer may apply to the governor's designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The application must be in writing and shall comply with the carryforward provisions of Section 103(n) of the Internal Revenue Code and regulations promulgated under that section. All applications for carryforward of state ceiling must be filed with the governor's designee by December 31 of the calendar year for which the allocation is to be carried forward from.

265—8.7(7C) Expiration dates. If the expiration date of either the 90-day period or any 30-day extension period is a Saturday, Sunday or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday or previously described day.

265—8.8(7C) Resubmission of expired allocations. If an allocation expires, the issuer may resubmit its application for the same project or purpose. However, the resubmitted application shall be treated as a new application, and preference, priority or prejudice shall not be given to the application or the issuer as a result of the prior application.

265—8.9(7C) Use by political subdivisions. With respect to the amount of the state ceiling allocated for the purpose of private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions, the political subdivision must use the proceeds to finance a project owned or utilized directly by the political subdivision, or finance a program of the political subdivision which the legislature by statute has authorized or directed the political subdivision to implement.

This rule is intended to implement Iowa Code section 7C.4A(6).

265—8.10(7C) Application and allocation fees. The Iowa finance authority may charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the private activity bond state ceiling in accordance with these rules. A fee of 1 basis point (.01%) of the amount of state ceiling for which application is made shall be paid by the applicant upon filing the application with the governor's designee. An additional fee of 1 basis point shall be paid by the applicant upon receipt of the certification by the governor's designee of the state ceiling allocated.

265—8.11(7C) Supplemental cap allocation for 2008. The supplemental state ceiling received by the state of Iowa in calendar year 2008 for housing purposes as a result of federal legislation known as the Housing and Economic Recovery Act of 2008 shall be allocated by the governor's designee to the Iowa finance authority for such single-family and multifamily uses as the authority deems necessary and appropriate to ensure full and efficient use of the supplemental state ceiling.

This rule is intended to implement Iowa Code section 7C.12 and the Housing and Economic Recovery Act of 2008, H.R. 3221.

These rules are intended to implement Iowa Code chapter 7C.

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CHAPTER 27
MILITARY SERVICE MEMBER HOME OWNERSHIP ASSISTANCE PROGRAM

265—27.1(16) Purpose. The purpose of the military service member home ownership assistance program is to help eligible members of the armed forces of the United States to purchase qualified homes in Iowa.

265—27.2(16) Definitions. As used in this chapter, unless the context otherwise requires:

"Closing agent" means the attorney, real estate firm, or closing company that is closing the cash sale qualifying purchase transaction and that prepares the cash sale settlement statement.

"Eligible service member" means a person purchasing his or her primary residence in the state of Iowa who, at the time of applying for a grant under the program, (1) is or was a member of the national guard, reserve, or regular component of the armed forces of the United States under Title 10 or Title 32 and has served at least 90 days of active duty service, other than training, beginning on or after September 11, 2001, and, if no longer in active service, was discharged in character other than dishonorable; (2) was honorably discharged due to injuries incurred while on active federal service beginning on or after September 11, 2001; or (3) is a surviving spouse of a service member who met the eligibility criteria of (1) or (2) above.

"Home ownership assistance" means the one-time grant of up to $5,000 per eligible service member that may be used toward down payment or closing costs, or both, in the purchase of a qualified home. This grant does not require repayment except pursuant to rule 265—27.4(16).

"Participating lender" means a lender approved for participation in the authority's first-time home buyer program that makes available the authority's first-time home buyer program to customers in the same manner as other mortgage loan programs. This requirement applies to branch and affiliate organizations that facilitate mortgage financing with the military grant. The authority may require participating lenders to provide evidence of proof of compliance, such as origination of the authority's first-time home buyer mortgages or mortgage rate sheets evidencing availability of the authority's mortgage program. The authority maintains a list of participating lenders on its Web site: www.iowafinanceauthority.gov.

"Program" or *"military grant"* means the military service member home ownership assistance program authorized by 2008 Iowa Acts, Senate File 2354.

"Qualified home" means a home that is located in the state of Iowa, that is purchased by an eligible service member as the eligible service member's primary residence on or after July 1, 2008, and that falls into one of the following categories:

1. Single-family residence, including "stick-built" homes, modular homes, or manufactured homes, provided the home is attached to a permanent foundation and is taxed as real estate;
2. Condominium;
3. Townhome;
4. A property containing two to four residential units, where one unit is to be occupied by the eligible service member as his or her primary residence.

The following categories of property shall not constitute a qualified home:

- Multifamily properties of five units or more;
- Commercial or nonresidential property;
- Farmland or other investment property;
- Recreational vehicles, mobile homes, or trailers not attached to a permanent foundation.

"Qualified mortgage" means a permanent mortgage loan made pursuant to the authority's first-time home buyer mortgage program for eligible first-time home buyers and targeted area home buyers or, in cases where the home buyer is not eligible for the authority's first-time home buyer mortgage program, any permanent mortgage loan with amortized payments and a maturity date of not less than five years made by a participating lender. First-time home buyer mortgage program information may be obtained on the authority's Web site at www.iowafinanceauthority.gov.

"Status documentation" means written documentation of the applicant's status with the armed forces of the United States, typically a copy of a valid DD Form 214, showing character of service other than dishonorable, most recent four months of leave and earnings statements, or other documentation satisfactory to the Iowa department of veterans affairs.

"Title guaranty certificate" means the certificate issued by the title guaranty division of the authority pursuant to Iowa Code section 16.92 to ensure marketable title to the lender or the homeowner, or both. Information about title guaranty may be obtained at: www.iowafinanceauthority.gov.

265—27.3(16) Application procedure and determination of eligibility.

27.3(1) *Prior approval.* Whether the purchase of a qualified home is by mortgage financing or cash, a determination of the service member's eligibility by the Iowa department of veterans affairs and prior approval of the grant by the authority are required. A minimum of one week should be allowed for approval response from the authority.

27.3(2) *Financed home purchases.* In the case of the purchase of a qualified home that is to be financed, the eligible service member must apply for a grant under the program through a participating lender. The mortgage financing provided shall be the authority's first-time home buyer mortgage if the service member qualifies for it or another permanent mortgage if the service member does not qualify for the first-time home buyer mortgage. To apply for the military grant, the eligible service member shall provide a participating lender with status documentation, submit a bona fide purchase agreement with any addenda or attachments for a primary residence, complete a loan application on Form 1003, submit a copy of a government-issued photo identification card, and assist the participating lender in completing a grant application on a form approved by the authority which states the amount of the grant being requested. In the event the applicant is not eligible for the authority's first-time home buyer mortgage program, information evidencing ineligibility and acceptable documentation to the authority must accompany the application. The participating lender shall then transmit copies of the loan application, the status documentation, the purchase agreement, any necessary supporting documentation, the photo ID, and the grant application to the authority.

27.3(3) *Cash home purchases.* In the case of a cash purchase of a qualified home, the eligible service member shall provide directly to the authority status documentation, a completed grant application form obtained from the authority, and a bona fide purchase agreement with any addenda or attachments for a primary residence.

27.3(4) *Referral of status documentation to Iowa department of veterans affairs.* Upon receipt of the completed grant application, the authority shall submit the status documentation to the Iowa department of veterans affairs for verification that the applicant's duty status is consistent with the definition of "eligible service member." The Iowa department of veterans affairs shall be the final authority as to whether an applicant's duty status is consistent with the definition of "eligible service member."

27.3(5) *Notice of grant approval.* Upon confirmation of the applicant's service record by the Iowa department of veterans affairs, provided that the information submitted on the grant application form complies with the requirements of this chapter, the authority shall notify the participating lender, or eligible service member in the case of a cash purchase, that the grant application has been approved.

27.3(6) *Gaps in funding.* In cases where the grant funds are unavailable during the home purchase process, approved transactions shall be placed on a waiting list. When funds are again available and where the home purchase closed without the benefit of military grant funds being applied toward closing costs or down payment, the proceeds of the grant shall be paid (1) directly to the participating lender/servicing lender to be applied toward the qualified mortgage loan's principal balance or to replenish the eligible service member's contribution toward home purchase, or (2) if the qualified home was purchased pursuant to a cash purchase transaction, directly to the eligible service member. Additional documentation required shall include a statement executed by the applicant authorizing the grant to be applied to the principal balance.

265—27.4(16) Grant award. Grants awarded hereunder shall be up to $5,000 toward the purchase of a qualified home and may be used for down payment or for closing costs, or for both. Grant funds must be

applied to the purchase of a qualified home and, in the case of mortgage financing, the mortgage must be a qualified mortgage. Any grant proceeds which are not used for down payment or closing costs toward the purchase of a qualified home which is financed by a mortgage must be returned to the authority.

27.4(1) *Grant reimbursement.* The participating lender or cash payment home buyer shall advance funds at closing in an amount equal to the amount of the grant on behalf of the eligible service member to be applied toward closing costs or the down payment. The participating lender or cash payment home buyer, as applicable, shall, within 30 days of closing, submit to the authority a copy of the executed HUD-1 Settlement Statement (or, if the transaction is a cash purchase, the eligible service member may use the settlement statement certified by a closing agent and the eligible service member), a copy of the deed conveying title to the qualified home, a copy of a title guaranty certificate issued for the qualified home, and the military grant agreement and certification (form obtained from the authority) for reimbursement for the amount of the grant. In the event the mortgage financing is not made pursuant to the authority's first-time home buyer program, reimbursement documentation shall include a certified copy of the promissory note and mortgage.

27.4(2) *Grant restrictions and limitations.* All grants under the program are subject to funding availability. Grants will be awarded in the order in which completed grant applications are received. Grants awarded pursuant to the program are personal to their recipients and may not be assigned. Only one grant shall be awarded per home purchase. An eligible service member shall receive only one grant award under the program. While program funds are available, the grant award shall be valid for 60 days in the case of purchases of existing or completed property and 120 days in the case of purchases of property being constructed or renovated. A reasonable extension may be granted with evidence of a purchase loan in progress which has been delayed due to circumstances beyond the service member's control.

265—27.5(16) Income, purchase price and qualified mortgage. There are no income or purchase price limits under the program except that eligible service members purchasing with mortgage financing who are eligible for the authority's first-time home buyer program, whether a first-time home buyer or non-first-time home buyer purchasing in a targeted area, must use the authority's first-time home buyer mortgage program. Service members who are not eligible for the authority's first-time home buyer mortgage program and are not purchasing on a cash basis, must use other permanent mortgages made by the participating lender. Service members may also, if eligible, use other grant funds from the authority, grant fund assistance available through other public agencies or nonprofit organizations, the service member's employer, or any forgivable, "soft second" lien subsidy. Information about the authority's first-time home buyer program or how to contact a participating lender may be obtained on the authority's Web site at www.iowafinanceauthority.gov.

These rules are intended to implement Iowa Code Supplement section 16.5(1)*"r"* and 2008 Iowa Acts, Senate File 2354.

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DIVISION I
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281—56.1(259) Responsibility of division. The division is responsible for providing services leading to employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations therefor.

281—56.2(259) Nondiscrimination. The division shall not discriminate on the basis of race, creed, color, sex, national origin, religion, duration of residency, or disability in the determination of a person's eligibility for rehabilitation services and in the provision of necessary rehabilitation services.

DIVISION II
DEFINITIONS

281—56.3(259) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

"Act" means the federal Rehabilitation Act of 1973, as amended and codified at 29 U.S.C. Section 701, et seq.

"Aggregate data" means information about one or more aspects of division clients, or from some specific subgroup of division clients, but from which personally identifiable information on any individual cannot be discerned.

"Assistive technology device" means any item, piece of equipment or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

1. Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
2. Aiding an individual with a disability in purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Providing training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with disabilities.

"Case record" means the file of personally identifiable information, whether written or electronic in form, on an individual that is collected to carry out the purposes of the division as defined in the Act and the Social Security Act. This information remains a part of the case record and is subject to these

rules even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

"Client" means an eligible individual receiving benefits or services from any part of the division and shall include former clients of the division whose files or records are retained by the division.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which the client is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

"Department" means the department of education.

"Designated representative" means anyone the client designates to represent the client's interests before and within the division. The term does not necessarily mean a legal representative. The designated representative may be a parent, guardian, friend, attorney, or other designated person.

"Division" means the division of vocational rehabilitation services of the department of education.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment, including self-employment, telecommuting, homemaking, other unpaid work within the individual's family, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Home modification" means the alteration of an already existing living unit to make it usable or more usable by a person with a disability who is involved with the independent living program or as necessary to achieve stable employment as part of an individual plan for employment.

"Impartial hearing officer" or *"IHO"* means a person who is not an employee of the division; is not a member of the state rehabilitation advisory council; has not been involved previously in the vocational rehabilitation of the applicant or client; has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state rules and regulations governing the provision of such services; has received training in the performance of the duties of a hearing officer; and has no personal or financial interest that would be in conflict with the person's objectivity.

"Independent living services" or *"IL services"* means those items and services provided to individuals who have a significant physical, mental, or cognitive impairment and whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited, and for whom the delivery of IL services will improve their ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

"Individual plan for employment" or *"IPE"* means a plan that specifies the services needed by an eligible individual and the involvement of other payers and must include the expected employment outcome and the timeline for achievement of the expected employment outcome.

"Individual with a most significant disability" means an individual who is seriously limited in three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome and includes an individual who, because of a disability, has been separated from employment or is in danger of becoming separated from employment.

"Individual with a significant disability" means an individual who has a significant physical or mental impairment that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome or who is a recipient of SSD/SSI.

"Integrated work setting" means job sites where most of the client's coworkers are not disabled and the client interacts on a regular basis, in the performance of job duties, with employees who are not disabled; or if the client is part of a distinct work group of only individuals with disabilities, the work group consists of no more than eight individuals; or the client has no coworkers; or if the only coworkers are part of a work group of eight or fewer individuals with disabilities, the client has regular contact with nondisabled individuals, other than the persons providing support service, including members of the general public.

"Maintenance" means monetary support provided to a client for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the client and that are necessitated by the client's participation in the program.

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

"Ongoing support services" means services that are needed to support and maintain individuals with the most significant disabilities in supported employment. Such services shall be specified in the IPE and include, at a minimum, twice-monthly monitoring at the work site to assess employment stability, unless it is determined in the IPE that off-site monitoring is more appropriate.

"Physical or mental impairment" means:

1. 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, or endocrine; or

2. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

3. Any impairment for which an individual has a documented history of receiving special education services in both elementary and secondary school.

"Physical or mental restoration services" means:

1. Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

2. Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws;

3. Dentistry;

4. Nursing services;

5. Necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinical services;

6. Drugs and supplies;

7. Prosthetic and orthotic devices;

8. Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

9. Podiatry;

10. Physical therapy;

11. Occupational therapy;

12. Speech and hearing therapy;

13. Mental health services;

14. Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;

15. Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

16. Other medical or medically related rehabilitation services.

"Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

"Residency requirement" is a condition of eligibility and is met by an individual who resides in the state of Iowa and is present and available for participation in a rehabilitation plan.

"Satisfactory employment" means stable employment consistent with an individual's IPE and acceptable to both the individual and the employer.

"Status" means the existing condition or position of a case. The specific case statuses are as follows:

00-0 Referral (individual has been referred to or personally contacted the division by any means);

02-0 Applicant (individual requests services and signs the rights and responsibilities form);

04-0 Accepted for services (eligible), but does not meet waiting list categories being served;

06-0 Trial work experiences/extended evaluation (individual's abilities, capabilities, and capacities are explored);

08-0 Closed before acceptance (eligibility criteria cannot be met or case is closed for some other reason);

10-__ Accepted for services (eligible); substatuses are:

10-0 Eligible individuals other than high school students;

10-1 Eligible high school students;

12-0 IPE developed, awaiting start of services;

14-0 Counseling and guidance only (counselor works with client directly to reach goals through counseling and placement);

16-0 Physical and mental restoration (when such services are the most significant services called for on the IPE);

18-__ Training (when training is the most significant service called for on the IPE); substatuses are:

18-1 Training in a workshop/facility;

18-2 On-the-job training;

18-3 Vocational-technical training;

18-4 Academic training;

18-5 Correspondence training;

18-6 Supported employment;

18-7 Other types of training not covered above (including nonsupported employment job coaching);

20-0 Ready for employment (IPE has been completed to extent possible);

22-0 Employed;

24-0 Service interrupted (IPE can no longer be continued for some reason and no new IPE is readily obvious);

26-0 Closed rehabilitated (can only occur from Status 22-0 when client has been employed in the job of closure for a minimum of 90 days);

28-0 Closed after IPE initiated (suitable employment cannot be achieved or employment resulted without benefit of services from the division);

30-0 Closed before IPE initiated (can only occur from either Status 10-__ or 12-0 when a suitable individual plan for employment cannot be developed or achieved or when employment resulted without benefit of services from the division);

32-0 Postemployment services;

33-__ Closed after postemployment services; substatuses are:

33-1 Individual is returned to suitable employment or employment is otherwise stabilized;

33-2 Case reopened for comprehensive vocational rehabilitation services;

33-3 Situation has deteriorated to the point that further services would be of no benefit to individual;

38-0 Closed from Status 04-0 (individual does not meet one of the waiting list categories and the individual no longer wants to remain on the waiting list or fails to respond when contacted because individual's name is at top of waiting list).

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capacities.

"Supported employment" means:

1. Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, with ongoing support services for individuals with the most significant disabilities:

- For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
- Who, because of the nature and severity of their disabilities, need intensive supported employment services from the division and extended services after transition to perform this work; or

2. Transitional employment, as defined herein, for individuals with the most significant disabilities due to mental illness.

"Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the division:

1. For a period of time not to exceed 18 months unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and

2. Following successful case closure, as postemployment services that are unavailable from an extended service provider and that are necessary for the individual to maintain or regain the job placement or to advance in employment.

"Transitional employment," as used in the definition of supported employment, means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Transition services" means a coordinated set of activities provided to a student and designed within an outcome-oriented process that promotes movement from school to postschool activities. Postschool activities include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's IPE.

"Trial work experiences" means an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations in an integrated work setting in order to determine whether there is clear and convincing evidence that the individual is too severely disabled to benefit from the division's services.

DIVISION III
ELIGIBILITY

281—56.4(259) Individuals who are recipients of SSD/SSI. Recipients of social security disability payments or supplemental security income payments are automatically eligible for vocational rehabilitation services and are determined automatically as being significantly disabled.

281—56.5(259) Eligibility for vocational rehabilitation services. Eligibility for vocational rehabilitation services shall be determined upon the basis of the following:

56.5(1) A determination by qualified personnel that the applicant has a physical or mental impairment;

56.5(2) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

56.5(3) A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

A presumption exists that the applicant can benefit, in terms of an employment outcome, from the provision of vocational rehabilitation services. This presumption may be overcome by the division if, based on clear and convincing evidence, the division determines that the applicant is incapable of benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the severity of the applicant's disability;

56.5(4) A determination that the individual meets the residency requirement.

281—56.6(259) Eligibility for specific services. Financial need must be established prior to provision of certain services at the division's expense. Applicants are eligible for physical restoration, occupational licenses, customary occupational tools and equipment, training materials, maintenance and transportation (except transportation for diagnosis, guidance or placement) only on the basis of financial need and when services are not otherwise immediately available. The following criteria are established for determination of eligibility of clients for the following services:

56.6(1) *Physical restoration.*

a. The service is necessary for the client's satisfactory occupational adjustment.

b. The condition causing disability is relatively stable or slowly progressive.

c. The condition is of a nature that treatment may be expected to remove, arrest, or substantially reduce the disability within a reasonable length of time.

d. The prognosis for life and employability are favorable.

56.6(2) *Training and training materials.*

a. The training and books and supplies are necessary for the client's satisfactory occupational adjustment.

b. The client has the mental and physical capacity to acquire a skill that the client can perform in an occupation commensurate with the client's abilities and limitations.

c. The client is not otherwise precluded by law from employment in the client's field of training.

d. The client meets the residency requirement.

56.6(3) *Occupational licenses and occupational tools and equipment.* The division may pay for occupational licenses and customary occupational tools and equipment when necessary for the client's entrance into, and successful performance in, a selected occupation.

56.6(4) *Transportation.* A client may be provided transportation in connection with securing medical or psychological examinations, physical restoration, training or placement, if such transportation is part of the client's IPE. A companion may be provided transportation at the division's expense if the client cannot travel alone.

56.6(5) *Maintenance.* A client is eligible for maintenance when it is necessary to the client's vocational rehabilitation and is an extra expense incurred due to the IPE.

281—56.7(259) Areas in which exceptions shall not be granted. Pursuant to federal law, an exception shall not be granted for any of the following requirements:

1. The eligibility requirements in rule 281—56.5(259) (i.e., presence of disability, substantial impediment to employment, need for vocational rehabilitation services).
2. The required use of trial work experiences prior to closure in Status 08-0 due to severity of disability.
3. The required contents of the IPE.
4. Identification of a long-term follow-up provider in supported employment cases.
5. Being in employment and in Status 22-0 for 90 days prior to Status 26-0 closure.
6. Status progression, restrictions, and time frames, such as the federal requirement that eligibility be determined within 60 days of an individual's application for services unless the individual has agreed to an extension.
7. Services may be provided only to individuals who are not on a waiting list, except for assessments which will help the division appropriately determine on which waiting list an individual belongs.

281—56.8(259) Waiting list. As required by the Act and 34 CFR 361.36, if the division cannot serve all eligible individuals who apply, the division shall develop and maintain a waiting list for services based on significance of disability. The three categories of waiting lists are as follows, listed in order of priority to be served:

1. Individuals with most significant disabilities;
2. Individuals with significant disabilities; and
3. Other individuals.

An individual's order of selection is determined by the waiting list and the date on which the individual was deemed eligible for services from the division. All waiting lists are statewide in scope; no regional lists are to be maintained.

Assessment of the significance of an applicant's disability is done during the process of determining eligibility but may continue after the individual has been placed on a waiting list.

281—56.9(259) Individuals who are blind. Pursuant to 111—10.4(216B), individuals who meet the department for the blind's definition of "blind" are to be served primarily by the department for the blind. Individuals with multiple disabilities who also are blind may receive technical assistance and consultation services while the department for the blind provides their rehabilitation plan.

281—56.10(259) Students in high school. The division may serve students in high school, provided the student demonstrates the maturity level, skills, and learning characteristics required to legally work in competitive environments for nonfamily members. If an applicant is in high school and is determined to be eligible for vocational rehabilitation services, such services may begin before the student exits the secondary school system. The services shall not supplant services for which the secondary school is responsible.

When the division determines that a student is eligible for services, the student's place on the waiting list under rule 281—56.8(259) shall be determined. If the waiting list category appropriate for the student is a category currently being served, the student's case shall be moved to Status 10-1. Otherwise the case is placed in Status 04-0, and the student's name is added to the waiting list for that category, based on the student's date of eligibility. An IPE may be written for a student in Status 10-1 at any time the student's vocational goal and the services necessary to reach that goal have been agreed upon by the student and the student's division counselor. The IPE must be in place when the student exits the secondary school system, unless the student has agreed to an extension or is on a waiting list or applied for services in the last quarter of the student's senior year.

The counselor assigned by the division to work with the student may participate in the student's individualized education program meetings to provide consultation and technical assistance if the student is on the waiting list for services. Once a student is removed from the waiting list, the counselor

may also provide vocational counseling and planning for the student and coordinate services with transition planning teams. When such services do not supplant services for which the secondary school is responsible, the division may begin to provide services specifically related to employment, such as supported employment or job coaching services, as early as the student's junior year of secondary school. Students in high school or in an alternative high school who have not yet met high school graduation requirements after four years of secondary enrollment may continue to receive said services that do not supplant the responsibilities of the high school. Students in their final year of high school who have made satisfactory progress and who have demonstrated skills to work in their trained profession may receive assistance in purchasing tools to be used on a job.

281—56.11(259) Establishment of financial need. The division establishes the client's financial need prior to providing physical restoration, including prostheses; transportation (for other than diagnostic, guidance or placement purposes); maintenance; and occupational licenses, tools and equipment. Recipients of SSD/SSI are not subject to a financial needs test for any services.

In determining financial need, the clients or, in the case of minors, the minors' parents or guardians are required to make a specific declaration regarding all family income from any source that may be applied toward the cost of rehabilitation services, except those of diagnosis, counseling, training and placement, which are provided without regard to financial need. The income should be available to the client; that is, actually on hand, free from prior obligations and ready when needed.

The division shall observe the following policies in making a determination of financial need based upon the findings:

56.11(1) All services requiring the determination of financial need are provided on the basis of supplementing the resources of the client or of those responsible for the client.

56.11(2) A supervisor may grant an exception in cases where the applicant's disability caused or is directly related to financial need and where all other sources of money have been exhausted by the applicant or the parents or guardians of a minor applicant.

56.11(3) Consideration shall be given to the client's responsibility for the immediate needs and maintenance of the client's dependents, and the client shall be expected to reserve sufficient funds to meet the client's family obligations and to provide for the family's future care, education and medical expenses.

56.11(4) Consideration shall also be given to factors such as prior obligations as well as to the desirability of conserving the client's own resources for future rehabilitation purposes, such as becoming established in business or providing a business automobile required for transportation or employment.

56.11(5) Income up to a reasonable amount should be considered from the standpoint of its conservation and its maximum utilization to the long-term interest of the client. Small casual earnings and unpredictable gifts of indeterminate value should not be counted as resources.

56.11(6) Financial aid from public assistance is disregarded as a resource.

56.11(7) Grants and scholarships, while not required to be searched for a comparable benefit, may be considered when determining financial support of a plan.

DIVISION IV
CASE MANAGEMENT

281—56.12(259) Case finding and intake. The division seeks to locate all disabled individuals of employable age who desire to be employed full- or part-time and may be eligible for vocational rehabilitation services. To that end, referrals are accepted from all sources, and the division has established working relationships with public and private agencies in the areas of health, welfare, compensation, education, employment, and other related services. All new cases, whether referred to a local worker or to the division, are checked for previous information and are acknowledged promptly by letter or a personal call.

281—56.13(259) Case diagnosis. The case diagnosis constitutes a comprehensive study of the client, including medical as well as a vocational diagnosis of the individual. Each case diagnosis is based on pertinent information, including the individual's health and physical status, intelligence, educational background and achievements, vocational aptitudes and interests, employment experience and opportunities, and personal and social adjustments.

56.13(1) *Medical diagnosis.*

a. As a basis for determination of eligibility and formulation of the individual's rehabilitation plan, the division secures competent medical diagnosis. When necessary, the diagnosis is, if at all practicable, secured from recognized specialists in specific fields indicated by the general medical diagnosis. Whenever possible the diagnosis is accompanied by recommendations as to the means and methods of restoration and by a statement of any physical or mental limitations that may exist.

b. The division accepts a medical report in lieu of securing a new examination when the report can be relied upon to provide a sound basis for diagnosis of the physical or mental condition of the individual and is from one of the following providers or sources:

(1) A licensed physician or surgeon;

(2) A licensed osteopathic physician or surgeon;

(3) A licensed doctor of chiropractic;

(4) A licensed psychologist;

(5) A licensed physician assistant;

(6) A licensed advanced registered nurse practitioner;

(7) A native healing practitioner recognized as such by an Indian tribe when services are being provided to American Indians with disabilities and the native healing practitioner services are necessary to achieve the individual's vocational rehabilitation objective;

(8) A licensed dentist;

(9) A licensed ophthalmologist;

(10) A licensed audiologist;

(11) A licensed independent social worker (LISW);

(12) A licensed mental health counselor;

(13) A certified school psychologist;

(14) A recent individualized education program (IEP) as recognized by the Iowa department of education which documents a history of special education programs or services; or

(15) An accredited or certified medical or treatment institution recognized by the state of Iowa or licensed by the department of public health or department of human services in any other state.

56.13(2) *Vocational diagnosis.* The methods of the vocational diagnosis include counseling interviews with the client; reports as may be needed, including when necessary in the individual case, reports from schools, employers, social agencies, and others; and psychological information.

56.13(3) *Recording case data.* The division maintains a record for each case. The case record contains pertinent case information including, as a minimum, the basis for determination of eligibility, the basis justifying the plan of services and the reason for closing the case together with a justification of the closure. A case record may not be destroyed until three years after the case has been closed.

281—56.14(259) Individual plan for employment (IPE).

56.14(1) *Content.* The IPE contains the client's expected employment goal, the specific vocational rehabilitation services needed to reach that goal, the entity or entities that will provide those services, the method by which satisfactory progress will be evaluated, and the methods available for procuring the services.

56.14(2) *Client's participation and approval.* The IPE is formulated with the client's participation and approval and provides for all rehabilitation services that are recognized to be necessary to fully accomplish the client's vocational rehabilitation whether or not services are at the expense of the division.

56.14(3) *Conditions for development of the IPE.* The basic conditions to be considered during the development of the IPE are:

a. The belief of the division that when concluded the IPE shall satisfactorily aid in the individual's achievement of vocational rehabilitation; and

b. That all services are to be carried to completion provided, however, that the division exercises its discretion in relation to the termination or revision of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed or when the financial condition of the individual or the division makes termination necessary.

56.14(4) *Cooperation by the client.* The division requires good conduct, regular attendance and cooperation of all individuals engaged in the rehabilitation plan's implementation. The division makes the following provisions for ensuring trainee cooperation: instruction, verbally or by pamphlet, emphasizing the importance of these factors to the success of the IPE; at the beginning of the program, advising each trainee about what is expected of the trainee and that services shall continue only if the trainee's progress, attitude and conduct are satisfactory; requiring periodic progress, grade and attendance reports from the training agency; promptly calling the trainee's attention to evidence of unsatisfactory progress or attendance before such conditions become serious; providing encouragement to the trainee to promote good work habits, with due commendation for effective effort; and maintaining good relationships with the training agency.

56.14(5) *Ticket to work.* The client's signature on the IPE verifies the ticket assignment to the division unless otherwise directed by the client.

DIVISION V
SERVICES

281—56.15(259) Scope of services. All necessary vocational rehabilitation services, including counseling, physical restoration, training, and placement, are made available to eligible individuals to the extent necessary to achieve their vocational rehabilitation. The division cooperates with federal and other state agencies providing vocational rehabilitation or similar services, and written agreements providing for interagency cooperation may be entered into as required by the Act at the discretion of the division. In selected instances, the division assumes responsibility for providing short periods of medical care for acute conditions arising in the course of the client's rehabilitation, which if not cared for would constitute a hazard to the achievement of the rehabilitation objective because of the client's limited funds and the unavailability of free medical services.

281—56.16(259) Training.

56.16(1) Duration of training. Rehabilitation training is provided according to the actual needs of the individual. It is designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

56.16(2) Types of training. The types of training programs available are as follows:

a. Postsecondary training, which is training in the arts and sciences for which postsecondary credit is given and which is generally considered to be applicable toward an associate's degree, bachelor's degree, or advanced degree.

b. Vocational training, which includes any organized form of instruction that provides the knowledge and skills essential for performing in a vocational-technical area. Such knowledge and skills may be acquired through training in an institution, on the job, by correspondence, by tutors, or through a combination of any or all of these methods.

c. Prevocational training, which includes any form of basic training given for the acquisition of background knowledge or skills prerequisite or preparatory to vocational training or to employment where the primary occupational knowledge and skills are learned on the job.

d. Work adjustment training, which includes any training given for any one or a combination of the following reasons:

(1) To assist individuals with disabilities, if needed, to acquire personal habits, attitudes and skills that will enable them to function effectively.

(2) To develop or increase work tolerance prior to engaging in prevocational or vocational training, or in employment.

(3) To develop work habits and to orient the individual to the world of work.

(4) To provide skills or techniques for the specific purpose of enabling the individual to compensate for the loss of the use of a member of the body or the loss of a functional capacity.

e. Job coaching, which includes, but is not limited to, intensive on-the-job training necessary to teach an employee both the job duties and job-related responsibilities.

f. Supported employment, which means competitive work in an integrated work setting with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment for individuals with chronic mental illness. Supported employment is limited to a period of 18 months unless a longer period is established in the IPE.

g. Customized training, which is a plan developed by the client's counselor in cooperation with the client and the employer-trainer whereby the employer-trainer accepts the client for training for a specific job or job family, paid or unpaid, that may or may not result in employment with the training employer.

56.16(3) Scope of training. The division may provide training services as long as those services are part of a client's IPE. Training facilities shall be selected to meet the client's health, disability, and program needs. Training facilities within the state are preferred; those outside Iowa shall not be used unless approved for use by the vocational rehabilitation agency in the state in which the facility is located.

56.16(4) Financial assistance for postsecondary training. Calculations of financial assistance for postsecondary training are based on tuition and fee amounts.

a. Tuition and fee-based general assistance.

(1) For community colleges, the division shall pay no less than 40 percent and no more than 60 percent of the per-credit-hour fee charged by the community college, with no limit as to the number of credit hours taken by the client.

(2) For all other colleges and universities, public and private, whether in Iowa or outside Iowa, the division shall pay no less than 40 percent and no more than 60 percent of the per-credit-hour fee charged by the college or university, limited to the amount charged by the least expensive Iowa regents institution.

(3) For other training programs that qualify for federal financial aid, the division shall pay no less than 40 percent and no more than 60 percent of the amount charged by the least expensive Iowa regents institution, limited to the full-time rate, prorated as necessary.

(4) For training programs that do not qualify for federal financial aid, the division shall pay no less than 40 percent and no more than 75 percent of the tuition and fees charged to the client.

(5) For continuing education courses, the division shall pay no less than 40 percent and no more than 75 percent of the tuition and fees charged to the client.

(6) For on-line courses, the level of support shall be determined on a case-by-case basis.

b. Support services for postsecondary training. Unless approved as an exception by the supervisor, the amounts authorized for the items listed herein cannot exceed the amounts that would otherwise be spent on tuition and fees.

(1) Transportation shall be provided only when and to the extent that the cost is caused by participation in a program of vocational rehabilitation services.

(2) Maintenance shall be provided only to support participation in a program of vocational rehabilitation services when the client has no resources to address basic living expenses.

(3) Books and supplies may be provided in lieu of tuition and fees, but the amount provided therefor shall be no less than 40 percent and no more than 60 percent of the amount based on tuition and fees.

(4) Tutoring shall be provided only for courses that are part of the actual degree requirements and only when this service is not available for free through the school attended by the client. Tutoring for

program entrance examinations, such as the GRE, LSAT, or MCAT, is not allowed without an exception approved by the supervisor.

(5) Unless approved as an exception, tools and equipment required for participation in a training program shall be provided in lieu of the tuition and fee amount.

(6) Unless approved as an exception, supplies for a course without which the course cannot be successfully completed shall be provided in lieu of the tuition and fee amount.

(7) Unless approved as an exception, fees for specialized equipment or computer programs needed to learn a subject or to access a course shall be provided in lieu of the tuition and fee amount.

(8) Fees for certification tests that are part of a course shall be paid pursuant to the 40 percent to 60 percent range established as the tuition and fees standard. For certifications and licensure fees that are not part of a course, the division shall use the financial needs assessment form to determine the level of division participation.

56.16(5) General guidance regarding postsecondary training is available from the division's case services manual.

281—56.17(259) Maintenance. The costs of maintenance shall not exceed the amount of increased expenses that the rehabilitation causes for the client or the client's family. Maintenance is not intended to provide relief from poverty or abject living conditions. Guidance regarding the financial support of maintenance is available from the division's case service manual.

281—56.18(259) Transportation. When necessary to enable an applicant or a client to participate in or receive the benefits of other vocational rehabilitation services, travel and related expenses, including expenses for training in the use of public transportation vehicles and systems, may be provided by the division. Transportation services may include the use of private or commercial conveyances (such as private automobile or van, public taxi, bus, ambulance, train, or plane) or the use of public transportation and coordination with a regional transit agency. The division shall not purchase or lease vehicles for a client. The division shall not pay for maintenance or repair of vehicles unless written approval of the supervisor allows for an exception.

281—56.19(259) Rehabilitation technology.

56.19(1) Rehabilitation technology services are available at any point in the rehabilitation process, except to those clients on the waiting list. Such services include, as appropriate, an evaluation of the ability of the individual to benefit from rehabilitation technology services. Areas in which rehabilitation technology services may be of assistance include seating and positioning, augmentative communication, computer access, environmental controls, mobility equipment, and modification of the job site or home.

56.19(2) Unless a written exception is approved by a supervisor, the following division contribution limits apply:

a. The division shall pay for no more than $2,000 for home modifications.

b. The division shall not pay anything toward the modification of a second living unit.

c. Rescinded IAB 8/15/07, effective 9/19/07.

281—56.20(259) Business initiatives. Rescinded IAB 8/27/08, effective 10/1/08.

281—56.21(259) Placement. The division not only prepares individuals with disabilities for jobs and trains them in techniques in securing their own jobs, but also accomplishes the actual placement, directly or indirectly, of all eligible individuals with disabilities who receive rehabilitation services. Placement activities are based upon adequate evaluation and preparation of the client and ordinarily include some combination of the following: evaluation of the client's job readiness; development and execution of a plan for job-seeking activities; instruction in making job applications and in conduct and appearance during interviews; employer contacts; registration with the state workforce development center administration division; job analysis and modification; job coaching; employer or supervisor consultation, advisement and training; time-limited job coaching; postplacement follow-up; and relocation costs. Satisfactory employment is the objective of all division services of preparation, and

placement services are an important, integral part of the overall vocational rehabilitation program. As such, in addition to the services listed herein, placement services may include the need for transportation and subsistence allowances and the purchase and acquisition of appropriate clothing, tools, equipment, and occupational licenses.

281—56.22(259) Supported employment and transitional employment. As defined herein, supported employment is provided to clients with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment as defined herein for clients with mental illnesses.

281—56.23(259) Miscellaneous or auxiliary services.

56.23(1) *Family member services.* If necessary to enable an applicant or client to achieve an employment outcome as defined in these rules, the division may provide any service to a family member that it is legally able to provide to a client, as long as the purpose of the service is to assess the ability of the client to benefit from a program of vocational rehabilitation, prepare for, enter, and be successful in employment, or participate in a program of independent living services. Excluded are programs designed to prepare a family member to enter employment that will allow the family member to make money to support the applicant or client. A family member is an individual who either (a) is a relative or guardian of an applicant or client or (b) lives in the same household as an applicant or client and has a substantial interest in the well-being of the applicant or client.

56.23(2) *Interpreter and note taker.* If deemed necessary by the division to enable a client to engage in all parts of the vocational rehabilitation or independent living program process, interpreter services or note taker services shall be provided to such client, unless provision of such services is the statutory responsibility of an institution or organization.

Interpreter services are those special communications services provided by persons qualified by training and experience to facilitate communication between division personnel and persons unable to communicate verbally in English. Persons receiving services include deaf and hard-of-hearing persons who communicate using signs and finger spelling, as well as lip reading, writing, gestures, pictures, and other methods. Persons not fluent in the English language who could benefit from having any part of the vocational rehabilitation process translated into their major language are included. The division shall purchase sign language interpreter services, including transliterating services, from appropriately licensed interpreters only.

Note taker services are services provided to make written notes and summaries of orally presented material. The notes may be made from a live presentation, such as a classroom lecture, or from materials that have been taped. These services are only purchased when the law states that the presenter or institution is not statutorily responsible.

56.23(3) *Other goods and services.* Other goods and services include anything that is legal and necessary to the completion of the client's IPE or independent living (IL) services plan. Under no circumstances may real estate be purchased or built with division funds. Services designed to decrease the need for future IL services can only be provided directly to IL clients.

281—56.24(259) Facilities.

56.24(1) *Types of facilities.* It is the policy of the division to utilize any type of public or private facility that is equipped to render the required services of diagnosis, physical restoration, training, and placement. Facilities include public and private schools; colleges and universities; correspondence schools; agencies for personal adjustment training; business and industrial establishments for employment training; psychometric service agencies; physicians' and dentists' offices; hospitals; sanatoria and clinics; audiometric service centers; rehabilitation centers; the offices of occupational, physical and work therapists or agencies providing these services; convalescent homes; prosthetic appliance dealerships; and other similar facilities that are adequately equipped to contribute to the rehabilitation of individuals with disabilities.

56.24(2) *Standards for facilities providing specialized training or other services.* The division selects its training agencies on the basis of their ability to supply the quality of training desired. The general practice of the division is to utilize the facilities of accredited or approved colleges, universities, and trade and commercial schools for residence and correspondence training.

56.24(3) *Facilities providing customized training.* Facilities selected as locations for employment training must have personnel qualified with respect to personality, knowledge and skills in the technique of instruction, have adequate equipment and instructional materials and be willing to make definite provisions for a plan of graduated progress in the job to be learned according to an efficiently organized and supervised instructional schedule.

56.24(4) *Facilities providing personal adjustment training.* In addition to other standards set for tutorial and customized training, an important basis for selection of facilities for personal adjustment training is a sympathetic understanding of the personal adjustment needs of the individual and their importance to the client's total rehabilitation.

281—56.25(259) Exceptions to payment for services. As required by the Act and 34 CFR 361.50(c), the division shall have a method of allowing for exceptions to its rules regarding payment for services.

56.25(1) *Reasons for exceptions.* Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

a. The need is disability-related.

b. The applicant has used all sources available, such as applying for and using all available loans in postsecondary training situations.

c. Family issues, such as dissolution of marriage, loss of income, or estrangement, render resources unavailable.

d. Academic performance is poor, but could reasonably be expected to return to the required threshold in one semester.

e. Documented evidence supports that the client is in the process of repaying a previously defaulted student loan.

56.25(2) *Prohibitions.* Pursuant to federal law, the division is subject to the following prohibitions:

a. The fee schedule shall not be designed in a way that effectively denies an individual a necessary service.

b. An absolute dollar limit on specific service categories or on the total services provided to an individual may not be established.

56.25(3) *Exception process.* A request for an exception shall originate with a counselor, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

281—56.26(259) Exceptions to duration of services. As required by the Act and 34 CFR 361.50(d), the division shall have a method of allowing for exceptions to its rules regarding the duration of services.

56.26(1) *Reasons for exceptions.* Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

a. The need is disability-related.

b. Academic performance is poor, but could reasonably be expected to return to or above the required threshold in one semester.

56.26(2) *Prohibitions.* Pursuant to federal law, the division is subject to the following prohibitions:

a. The time period established for the provision of services shall not be so short as to effectively deny an individual a necessary service.

b. An absolute time limit on the provision of a specific service or on the total services provided to an individual may not be established. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's IPE.

56.26(3) *Exception process.* A request for an exception shall originate with a counselor, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

281—56.27(259) Maximum rates of payment to training facilities. In no case shall the amount paid a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid the facility shall not exceed the amount paid to the facility by other public agencies for similar services. The division will maintain information necessary to justify the rates of payment made to training facilities.

DIVISION VI
PURCHASING PRINCIPLES

281—56.28(259) Purchasing.

56.28(1) *General purchasing principles.*

a. The division shall purchase only those items/models that allow a client to meet the client's vocational objective. The division shall not pay for additional features that exceed the requirements to meet a client's vocational objective or that serve primarily to enhance the client's personal life.

b. The division shall purchase the most economical item/model that meets the client's vocational needs.

c. The division shall seek out the most economical alternatives to meet the client's vocational needs.

d. The division shall encourage all clients to develop strategies and savings programs to pay for replacement items/models or upgrades.

56.28(2) *Client-specific purchasing principles.* When considering what item/model to purchase for a specific client, the division shall in all cases consider the following factors:

a. Whether the item/model truly is needed for the client to be able to perform the essential functions of the client's job.

b. Whether a more economical item/model is available to permit the client to perform the essential functions of the client's job.

DIVISION VII
SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

281—56.29(259) Review process. At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and clients shall be informed of the right to appeal and the procedures by which to file an appeal. If an applicant or client is dissatisfied with any agency decision that directly affects the applicant or client, the applicant, client, or designated representative may appeal that decision or request mediation. The term "appellant" shall be used to indicate the applicant, client, or designated representative who initiates an appeal. The appellant initiates the appeal process either by filing the appropriate division appeal form, available from any counselor or supervisor of the division, or by calling a counselor or supervisor. If the appeal process is initiated by telephone, the counselor or supervisor who received the call must complete the appeal form to the best of that person's ability with information from the appellant. An appeal must be filed within 90 days of notification of the disputed decision. Once the appeal form has been filed with the division administrator, a hearing shall be held before an impartial hearing officer (IHO) within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation. The appellant may request assistance with an appeal or mediation from the Iowa client assistance program (ICAP).

281—56.30(259) Supervisor review. As a first step, the appellant shall be advised that a supervisor review of the counselor's decision may be requested by notifying the counselor or supervisor in person, by telephone or by letter of the decision to appeal. If the supervisor has been involved in decisions in the case to the extent that the supervisor cannot render a fair and impartial decision or if the supervisor is not available to complete the review in a timely manner, the appeal and case file shall be forwarded to the assistant bureau chief for review. The appellant is not required to request supervisor review as a prerequisite for appeal before an IHO; however, if a supervisor review is requested, the following steps shall be observed:

56.30(1) Upon receipt of a request for supervisor review, the supervisor shall notify all appropriate parties of the date and nature of the appeal; examine case file documentation; discuss the issues and reasons for the decision with the immediate counselor and other counselors who may have been previously involved with the case/issue; and, if necessary, meet with any or all parties to discuss the dispute.

56.30(2) The supervisor shall have ten working days from receipt of the request for supervisor review to decide the issue and notify the appellant in writing. A copy of the supervisor's decision shall be sent to all appropriate parties.

56.30(3) If the supervisor's decision is adverse to the appellant, the copy of the written decision given to the appellant shall include further appeal procedures, including notification that the appellant has ten days from the date of the letter to file further appeal. Also included shall be notice of the Iowa client assistance program (ICAP), a program within the department of human rights, commission of persons with disabilities. If ICAP determines it appropriate, ICAP provides assistance in the preparation and presentation of the appellant's case.

56.30(4) As an alternative to, but not to the exclusion of, filing for further appeal, the appellant may request mediation of the supervisor's decision.

281—56.31(259) Mediation. Regardless of whether a supervisor review is requested, an appellant may request resolution of the dispute through the mediation process. Mediation is also available if the appellant is dissatisfied with the supervisor's decision. If mediation is requested by the appellant and agreed to by the division, the following steps shall be observed:

56.31(1) Mediation shall be conducted by a qualified and impartial mediator, as defined in 34 CFR 361.5(43), trained in effective mediation techniques and selected randomly by the division from a list maintained by the division.

56.31(2) The mediation shall be conducted in a timely manner at a location convenient to the parties.

56.31(3) Mediation shall not be used to delay the appellant's right to a hearing.

56.31(4) Mediation must be voluntary on the part of the appellant and the division.

56.31(5) Mediation is at no cost to the appellant.

56.31(6) All discussions and other communications that occur during the mediation process are confidential. Any offers of settlement made by either party during the mediation process are inadmissible if further appeal is sought by the appellant.

56.31(7) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the mediator, unless so requested by the appellant.

281—56.32(259) Hearing before impartial hearing officer. Regardless of whether the appellant has used supervisor review or mediation or both, if the appellant requests a hearing before an IHO, the following provisions apply:

56.32(1) The division shall appoint the IHO from the pool of hearing officers with whom the division has contracts. The IHO shall be assigned on a random basis or by agreement between the administrator of the division and the appellant.

56.32(2) The hearing shall be held within 20 days of the receipt of the appointment of the IHO. A written decision shall be rendered and given to the parties by the IHO within 30 days after completion of the hearing. Either or both of these time frames may be extended by mutual agreement of the parties or by a showing of good cause by one party.

56.32(3) The appellant shall be informed that the filing of an appeal confers consent for the release of the case file information to the IHO. The IHO shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.

56.32(4) Within five working days after appointment, the IHO shall notify both parties in writing of the following:

a. The role of the IHO;

b. The IHO's understanding of the reasons for the appeal and the requested resolution;

c. The date, time, and place for the hearing, which shall be accessible and located as advantageously as possible for both parties but more so for the appellant;

d. The availability of the case file for review and copying in a vocational rehabilitation office prior to the hearing and how to arrange for the same (see also rule 281—56.29(259));

e. That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;

f. That the appellant may present evidence and information personally, may call witnesses, may be represented by counsel or other appropriate advocate at the appellant's expense, and may examine all witnesses and other relevant sources of information and evidence;

g. The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;

h. Information about the amount of time it will take to complete the hearing process;

i. The possibility of reimbursement of necessary travel and related expenses; and

j. The availability of interpreter and reader services for appellants not familiar with the English language and those who are deaf, as well as transportation or attendant services for those appellants requiring such assistance.

56.32(5) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the IHO, unless so requested by the appellant.

56.32(6) The IHO shall provide a full written decision, including the findings of fact and grounds for the decision. Unless either party chooses to seek judicial review pursuant to Iowa Code chapter 17A, the decision of the IHO is final. If judicial review is sought, the IHO's decision shall be implemented pending outcome of the judicial review.

DIVISION VIII
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The following rules are implemented in addition to the department's rules in 281—Chapter 5.

281—56.33(259) Collection and maintenance of records. The division has the authority to collect and maintain records on individuals under the Act, the state plan for vocational rehabilitation services, and the Social Security Act. The acceptance of the provisions and benefits of the Rehabilitation Act, under Iowa Code section 259.1, is conditioned on the requirement that the division maintain the confidentiality of personally identifiable information and its release under certain circumstances as provided by applicable federal laws. These laws include, but are not limited to, the following:

1. The Freedom of Information Act (5 U.S.C. 552, added by P.L. 90-23 and amended by P.L. 93-502 and P.L. 94-409).

2. The Privacy Act of 1974 (5 U.S.C. 552a, added by P.L. 93-579).

3. The Drug Abuse Office and Treatment Act (21 U.S.C. 1175, added by P.L. 92-255), as amended by the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendment of 1974 (42 U.S.C. 4582, added by P.L. 93-282).

4. Section 6103 of the Internal Revenue Code (26 U.S.C. 6103) as amended by the Tax Reform Act of 1976 (P.L. 94-455).

5. The Government in the Sunshine Act (P.L. 94-409).

6. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, added by P.L. 93-568).

Pursuant to Iowa Code section 259.9, the state of Iowa accepts the social security system rules for the disability determination program of the division. Failure to follow the provisions of the Act can result in the loss of federal funds. The state plan provides that all personally identifiable information is confidential and may be released only with the informed written consent of the client or the client's representative, except as permitted by federal law. Any contrary provision in Iowa Code chapter 22 must be waived in order for the state to receive federal funds, services, and essential information for the administration of vocational rehabilitation services.

281—56.34(259) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the agency by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

56.34(1) *Personnel records.* These records contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances. Pursuant to Iowa Code section 22.7(11), some of the information in personnel records may be confidential.

56.34(2) *Client case records.* An individual file is maintained for each person who has been referred to or has applied for the services of the division. The file contains a variety of personal information about the client, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential.

56.34(3) *Client service record computer database.* This database contains personal data items about individual clients. Data identifying the client is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

56.34(4) *Vendor purchase records.* These are records of purchases of goods or services made for the benefit of clients. If the record contains the client's name or other personal identifiers, the record is confidential. Lists of nonclient vendors, services purchased, and the costs of those services are not confidential when retrieved from a data processing system without personally identifiable information.

56.34(5) *Records and transcripts of hearings or client appeals.* These contain personally identifiable information about a client's case, appeal from or for some action, and the decision that has been rendered. The personally identifiable information is confidential. Some of the information is maintained in an index provided for in Iowa Code subsection 17A.3(1)*"d."* Information is available after confidential personally identifiable information is deleted.

56.34(6) *All computer databases of client and applicant names and other identifiers.* The data processing system contains client status records organized by a variety of personal identifiers. These records are confidential as long as any personally identifiable information is present.

56.34(7) *All computer-generated reports that contain personally identifiable information.* The division may choose to draw or generate from a data processing system reports that contain information or an identifier which would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

281—56.35(259) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the division other than record systems. These records are routinely available to the public, with the exception of parts of the records that contain confidential information. This rule generally describes the nature of the records, the type of information contained therein, and whether the records are confidential in whole or in part.

56.35(1) Rule making. Rule-making records, including public comments on proposed rules, are not confidential.

56.35(2) Council and commission records. Agendas, minutes, and materials presented to any council or commission required under the Act are available to the public with the exception of those

records that are exempt from disclosure under Iowa Code section 21.5. Council and commission records are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319.

56.35(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319. Brochures describing various division programs are also available at local offices of the division.

56.35(4) Statistical reports. Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source and are available to the public.

56.35(5) Grants. Records of persons receiving grants from division services are available through the main office of the division. Grant records contain information about grantees and may contain information about employees of a grantee that has been collected pursuant to federal requirements.

56.35(6) Published materials. The division uses many legal and technical publications, which may be inspected by the public upon request. Some of these materials may be protected by copyright law.

56.35(7) Policy manuals. Manuals containing the policies and procedures for programs administered by the division are available in every office of the division. Subscriptions to all or some of the manuals are available at the cost of production and handling. Requests for subscription information should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

56.35(8) Operating expense records. The division maintains records of the expense of operation of the division, including records related to office rent, employee travel expenses, and costs of supplies and postage, all of which are available to the public.

56.35(9) Training records. Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are available to the public.

56.35(10) Facility surveys. Records of division reviews of facilities providing services to the division are maintained and used to determine the current acceptable fee schedule. Information about individuals may be included in these records; therefore, parts of the records may be confidential.

56.35(11) All other records that are not exempted from disclosure by law.

DIVISION IX
STATE REHABILITATION COUNCIL

281—56.36(259) State rehabilitation council.

56.36(1) *Composition.* The state rehabilitation council shall be composed of no less than 15 members, appointed by the governor. A majority of the council members must be individuals with disabilities who are not employed by the division. The council members shall include the following:

a. At least one representative of the statewide independent living council, one of whom must be the chairperson or chairperson's designee of that council;

b. At least one representative of a parent training and information center established pursuant to Section 682(a) of the Individuals with Disabilities Education Act;

c. At least one representative of the client assistance program, one of whom must be the director or the director's designee of that program;

d. At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the council if employed by the division;

e. At least one representative of community rehabilitation program service providers;

f. Four representatives of business, industry, and labor;

g. Representatives of disability groups that include a cross section of:

(1) Individuals with physical, cognitive, sensory, and mental disabilities; and

(2) Representatives of individuals with disabilities who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;

h. Current or former applicants for, or recipients of, vocational rehabilitation services;

i. At least one representative of the department's bureau of children, family, and community services;

j. At least one representative of the Iowa workforce development board; and

k. The director of the division, who serves as an ex officio, nonvoting member of the council.

56.36(2) *Chairperson.* The chairperson must be selected by the members of the council from among the voting members of the council.

56.36(3) *Terms.* Each member of the council shall be appointed for a term of no more than three years. Each member of the council, other than the representative of the client assistance program, shall serve for no more than two consecutive full terms. The terms of service of the members initially appointed must be for a varied number of years to ensure that terms expire on a staggered basis.

56.36(4) *Vacancies.* The governor shall fill a vacancy in council membership, unless the governor has delegated authority to fill that vacancy to the remaining members of the council.

56.36(5) *Functions.* The council shall perform the following functions:

a. Review and advise the division regarding the performance of the division's responsibilities under this chapter and the Act;

b. In partnership with the division, develop, agree to, and review state goals and priorities;

c. In partnership with the division, evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the federal Secretary of Education when required;

d. Assist in the preparation of the state plan and amendments thereto, applications, reports, needs assessments, and evaluations required by the Act;

e. To the extent feasible, conduct a review and analysis of the effectiveness of and consumer satisfaction with:

(1) The functions performed by the division;

(2) The vocational rehabilitation services provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(3) The employment outcomes achieved by eligible individuals receiving services from the division, including the availability of health and other employment benefits in connection with those employment outcomes;

f. Prepare and submit to the governor and to the Secretary of Education an annual report on the status of vocational rehabilitation programs operated within the state and make the report available to the public through appropriate modes of communication;

g. Coordinate activities with the activities of other councils within the state, including the statewide independent living council, the advisory panel established under Section 612(a)(21) of the Individuals with Disabilities Education Act, the state developmental disabilities planning council, the state mental health planning and advisory council, and the state workforce development board;

h. Provide for the coordination and establishment of working relationships between the division and the statewide independent living council and centers for independent living within the state;

i. Prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the council to carry out its functions under this rule; and

j. Perform other comparable functions, consistent with the purpose of the Act, as the council determines to be appropriate, that are comparable to the other functions performed by the council.

56.36(6) *Meetings.* The council shall convene at least quarterly in locations open and accessible to the general public, including individuals with disabilities. The council's meetings are subject to Iowa Code chapter 21, the open meetings law.

Rule 281—56.36(259) is intended to implement 34 CFR 361.16 and 361.17.

DIVISION X
IOWA SELF-EMPLOYMENT PROGRAM
(a/k/a ENTREPRENEURS WITH DISABILITIES PROGRAM)

281—56.37(82GA,SF2101) Purpose. The division of vocational rehabilitation services works in collaboration with the Iowa department for the blind to administer the Iowa self-employment (ISE)

program, which is also known as the entrepreneurs with disabilities (EWD) program. The purpose of the program is to provide business development grants in the form of technical assistance, monetary business development grants (up to $10,000), and financial assistance grants (up to $10,000) to qualified Iowans with disabilities who start or expand a business within the state of Iowa.

281—56.38(82GA,SF2101) Eligibility requirements. Clients of the division or the department for the blind may apply for the program. All of the following conditions are also applicable:

1. The division may limit or deny ISE assistance to an applicant who has previously received educational or training equipment from the division through another rehabilitation program when such equipment could be used in the applicant's proposed business.
2. Any equipment purchased for the applicant under this program that is no longer used by the applicant shall be returned to the division.
3. An applicant must demonstrate that the applicant has at least 51 percent ownership in a for-profit business that is actively owned, operated, and managed in Iowa.
4. In order to receive financial support from the ISE program, the applicant's business plan must result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.

281—56.39(82GA,SF2101) Application procedure.

56.39(1) *Application.* Application materials for the program are available from the division and the department for the blind.

56.39(2) *Submittal.* Completed applications shall be submitted to a counselor employed by the division or the department for the blind.

56.39(3) *Review.* Applications will be forwarded to a business development specialist employed by the division for review. Applicants whose applications receive a minimum score of 60 points out of a total of 100 points and are accompanied by a letter of support from the division or the department for the blind are eligible to pursue a technical assistance grant. Approval of a technical assistance grant is based upon the results of a business plan feasibility study. If the application is for financial assistance only, a business plan will be required at the time of submission of the application. Applicants whose business plans receive a minimum score of 75 points out of a total of 100 points are eligible to pursue a financial assistance grant. Approval of a financial assistance grant is based upon acceptance of a business plan and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested. A decision on all applications and forms will generally be issued within 30 days of submission with notification by letter to the applicant.

56.39(4) *Applications for technical assistance—evaluation factors.* Applications for the program will be reviewed and evaluated using a 100-point system, based upon the following criteria:

a. Descriptive and organization information: 0 - 30 points. Does the applicant have education, skills, and work experience relevant to the proposed business venture? Does the applicant document previous management or accounting experience? Does the applicant have a clear understanding of the nature of the business?

b. Market information: 0 - 30 points. Does the application indicate a clear understanding of potential customer groups and how to reach them? Does the application show sufficient knowledge of products/services, competition, and marketing methods? Does the applicant understand the critical issue of location?

c. Financial information: 0 - 30 points. Does the applicant demonstrate an understanding of how to estimate sales potential? Does the applicant indicate knowledge of estimated capital requirements for business start-up, expansion, or acquisition?

d. Creditworthiness: 0 - 10 points. Does the applicant's past credit history demonstrate responsible behavior? Awards will not be made if the applicant has a credit history showing delinquent credit obligations including, but not limited to, unpaid income tax, delinquent child support obligations, or defaulted student loans.

56.39(5) *Applications for financial assistance—evaluation factors for business plans.* Applications for financial assistance from the program will be reviewed and evaluated using a 100-point system, based upon the following criteria:

a. Feasibility: 0 - 25 points. Feasibility will be considered based upon the overall business plan. Rating factors for this criterion include, but are not limited to: market analysis, financial projections, initial capitalization, management, and historic data relative to similar businesses. A minimum of 15 points is required for this rating factor.

b. Market plan: 0 - 25 points. Does the business plan contain sufficient information to demonstrate that the applicant fully understands who the applicant's customers will be and how to reach them? Is there adequate information about competition, market need, location, sales/marketing methods, and a product/service description? Is a promotional plan included in the business plan? A minimum of 15 points is required for this rating factor.

c. Financial plan: 0 - 25 points. Does the business plan contain a two-year cash flow projection and profit and loss projection? Is there an itemized listing of fixed assets, working capital, and other start-up, expansion and acquisition needs, including detailed descriptions of equipment to be purchased? Is there a clear statement regarding the composition of the anticipated financial package? Has the applicant provided a personal financial statement along with a detailed personal monthly budget form? A minimum of 15 points is required for this rating factor.

d. Organizational information: 0 - 25 points. Does the business plan document sufficient education and work experience relevant to the proposed business? Does the business plan demonstrate adequate management experience by the principal party(ies)? A minimum of 15 points is required for this rating factor.

56.39(6) *Appeal of application evaluation.* If an application is denied based upon the assignment of an inadequate evaluation score, an applicant may appeal the decision to the division or the department for the blind. An appeal shall be consistent with the appeal processes of the division or the department for the blind.

281—56.40(82GA,SF2101) Award of technical assistance grants.

56.40(1) *Awards.* Technical assistance grants may be used for specialized consulting services as determined necessary by the counselor, the business development specialist, and the client. Technical assistance grants may be awarded up to a maximum of $10,000 per applicant. Specialized technical assistance may include, but is not limited to, market analysis; marketing plans; engineering, legal, and computer services; preliminary business plan development; financial packaging; and other consulting services that require specialized education and training.

56.40(2) *Award process.* Upon approval of the application by the counselor and the business development specialist, generally within 30 days, an applicant will receive notification of eligibility to pursue technical or financial assistance. The applicant must demonstrate the ability to contribute at least 50 percent of the start-up costs and the ability to cover any costs beyond $10,000 if necessary. The business development specialist will identify if specialized services are needed and will provide recommendation for approval by the division or departmental staff.

56.40(3) *Approval of business plan feasibility study.* A business plan feasibility study indicating that the proposed business has a likelihood of success based upon the scoring will accompany notification letters. The business plan feasibility study will require an applicant to identify specific steps in the business planning process as well as who will be involved in each step of the process, address budgetary guidelines, and provide a timeline. The business plan feasibility study must be signed by the applicant and the business development specialist. Applicants receiving a score of 100 out of 125 points on the feasibility study will be recommended for technical or financial assistance or both.

56.40(4) *Technical assistance grant contracts.* The division shall negotiate contracts with qualified consultants for delivery of services to an applicant if specialized services are deemed necessary. The contracts shall state hourly fees for services, the type of service to be provided, and a timeline for delivery of services. Authorization of payment will be made by a counselor employed by the division or the

department for the blind based upon the negotiated rate as noted in the business plan. A copy of each contract shall be filed with the division.

56.40(5) *Consultants.* Applicants will be provided a list of qualified business consultants by the business development specialist if specialized consultation services are necessary. The selection of consultant(s) shall be the responsibility of the applicant.

56.40(6) *Case management.* The business development specialist will commit a specific number of hours of direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

281—56.41(82GA,SF2101) Financial assistance grants.

56.41(1) *Grant awards.* Financial assistance grants may be awarded based upon the demonstrated need and evidence of business progression. The applicant must provide 50 percent of the equipment or working capital needed to start, expand, or acquire a business as defined in the business plan outline. The applicant may provide the 50 percent through conventional financing or other sources. Working capital may include, but is not limited to, design and printing of marketing materials, advertising, rent (up to six months), direct mail postage, raw materials, inventory, insurance (up to six months), and other start-up, expansion, or acquisition costs. The amount that may be awarded by the program shall be provided in three phases of business operations when each phase meets specified business results, and the need for additional award money is indicated. The timing of each phase and the amount of funds for each phase shall be established in the approved business plan, as reviewed by the business development specialist and approved by the counselor. It is a goal of the program that program funds assist an applicant in securing financing from a commercial or private source.

56.41(2) *Approval of business plan financial forms.* Business plan financial forms will define specific financial needs for business start-up, expansion, or acquisition. These forms shall be provided to an applicant by the counselor following evaluation of the application for the program and the submission and review of the business plan. Completed forms shall be submitted to the counselor and the business development specialist. The counselor, the business development specialist, and the applicant will meet to review the forms. Generally, this process shall be completed within 30 days of submission.

56.41(3) *Award process.* Upon the business development specialist's initial approval of the business plan, the counselor shall approve or deny the business plan. If the business plan is approved, the counselor shall send the applicant a notification letter which shall state the amount and conditions of the award.

56.41(4) *Financial assistance grant contracts.* Contracts for financial assistance grants shall be the responsibility of the division or the department for the blind and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy. Recipients of financial assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess the business before additional funds are expended.

These rules are intended to implement Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301 et seq.), and 2008 Iowa Acts, Senate File 2101.

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COLLEGE STUDENT AID COMMISSION[283]

[Prior to 8/10/88, see College Aid Commission[245]]

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283—16.1(82GA,HF2679) Washington, D.C., internship grant.

16.1(1) The Washington, D.C., internship grant is a state-supported and state-administered grant to a national nonprofit organization to be used to assist Iowa students in financing the costs of internship programs in Washington, D.C.

16.1(2) Definitions. As used in this chapter:

"Internship" means a placement in Washington, D.C., for which the recipient receives college credit that is directly applied to the recipient's transcript at the Iowa college or university in which the recipient is enrolled.

"National nonprofit organization" or *"organization"* means the Washington Center for Internships and Academic Seminars located at 1333 16th Street N.W., Washington, D.C. 20036-2205.

283—16.2(82GA,HF2679) Awarding of grant.

16.2(1) At the beginning of each fiscal year, the college student aid commission shall enter into a statewide affiliation agreement with, and award funding to, the national nonprofit organization as provided by 2008 Iowa Acts, House File 2679. All Iowa students shall be given an equal opportunity to apply for funding under the internship program.

16.2(2) Restrictions. The following restrictions on the funding apply:

a. One hundred percent of the funding must go directly to students in the form of academic scholarships.

b. All awards must be reported to the college student aid commission by June 30 for each fiscal year in which funding is distributed. Information must be reported in a format prescribed by the commission, and information about each recipient shall, at a minimum, include:

(1) Student-specific information including name and address;

(2) Iowa college or university at which the student is enrolled;

(3) Amount of award provided to the student; and

(4) Name of the organization to which the student is assigned.

c. Up to 50 percent of the funding shall be dedicated to students participating in the two-to-one federal and state matching agricultural biofuels from biomass internship pilot program if the program is funded by the U.S. Congress.

283—16.3(82GA,HF2679) Student eligibility.

16.3(1) Applicants must:

a. Be residents of the state of Iowa;

b. Be enrolled in Iowa-accredited higher education institutions, as defined in Iowa Code section 261.92, subsection 1; and

c. Complete and file the Free Application for Federal Student Aid (FAFSA).

16.3(2) Applicants must complete and file annual applications for the internship program by the deadline established by the national nonprofit organization. If funds remain available after the application deadline, the organization will continue to accept applications. To ensure equal access to the application process, the application and information about the grant will be provided on the commission's Web site.

16.3(3) Applicants must begin their first internship positions in Washington, D.C., on or after July 1, 2008.

283—16.4(82GA,HF2679) Awarding of funds.

16.4(1) *Selection criteria.* All applications received on or before the published deadline will be considered for funding. In the event that all applications for the program cannot be funded with the available appropriations, criteria for selection of recipients will be prioritized under standards established by the national nonprofit organization.

16.4(2) *Award amount.* The maximum annual award to an eligible intern shall be $2,000.

16.4(3) *Extent of assistance.* Recipients may receive grant assistance for no more than one semester.

16.4(4) *Disbursement of funds.* The national nonprofit organization will disburse funds to recipients in accordance with the established payment schedule developed by the organization.

283—16.5(82GA,HF2679) Restrictions. An applicant who is in default on a Federal Stafford Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for internship benefits. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5.

These rules are intended to implement 2008 Iowa Acts, House File 2679.

[Filed emergency 8/1/08—published 8/27/08, effective 8/1/08]

CHAPTER 17
BARBER AND COSMETOLOGY ARTS AND SCIENCES TUITION GRANT PROGRAM

283—17.1(261) Tuition grant based on financial need to Iowa residents enrolled in barber and cosmetology arts and sciences programs at colleges in the state.

17.1(1) *Financial need.*

a. Financial need is defined as the lesser of the difference between the average expenses for tuition, fees, and books and supplies, as determined by the commission, and the amount of the federal Pell Grant for which the student qualifies or the difference between the average total budget at a college, as determined by the commission, and the expected family contribution.

b. Financial need shall be evaluated annually on the basis of a confidential financial statement filed on a form designated by the commission. For the purposes of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need. The FAFSA must be received by the processing agent by the priority date specified in the application instructions.

17.1(2) *Student eligibility.*

a. A recipient must be an Iowa resident as defined by the Iowa department of education's "Iowa community college uniform policy on student residency status."

b. A recipient must be enrolled for at least three semester hours, or the trimester or quarter equivalent, in a barber or cosmetology arts and sciences program at an eligible Iowa college.

c. A full-time recipient may receive an award under this program for not more than four semesters or the trimester or quarter equivalent of two full years of study. A part-time recipient may receive an award under this program for not more than eight semesters or the trimester or quarter equivalent of two full years of full-time study.

d. A full-time recipient may receive no more than the amount specified by Iowa law or the amount of the student's established financial need, whichever is less. A part-time recipient's award shall be a prorated portion of the full-time award. The proration will be established by the commission in a manner consistent with federal Pell Grant Program proration. Part-time recipients taking from 3 to 5 credit hours will receive awards equal to one-fourth of the full-time award; recipients taking from 6 to 8 credit hours will receive awards equal to one-half of the full-time award; and recipients taking from 9 to 11 credit hours will receive awards equal to three-fourths of the full-time award.

17.1(3) *Priority for grants.* Applicants who apply by the priority date specified in the application are ranked in order of the estimated amount of the family's contribution toward college expenses and awards are granted to those who demonstrate need, as defined by the commission. In the event that all on-time applicants for the program cannot be funded with the available appropriation, priority will be given to full-time students enrolled in their first term of instruction at an eligible institution.

17.1(4) *Award notification.* A grant recipient is notified of the award by the college to which application is made. The college is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The college reports changes in student eligibility to the commission.

17.1(5) *Full year of study.* For purposes of this program, the commission has defined "full year of study" as either four quarters or two semesters. Grant payments are prorated according to this definition.

17.1(6) *Award transfers and adjustments.* Recipients are responsible for promptly notifying the appropriate college of any change in enrollment or financial situation. The college will make necessary changes and notify the commission.

17.1(7) *Restrictions.* A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa vocational-technical tuition grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapters 4 and 5.

283—17.2(261) Tuition grant institutional eligibility requirements.

17.2(1) *Institutional eligibility.* An Iowa college or university requesting participation in the barber and cosmetology arts and sciences tuition grant program must apply to the college student aid commission using the commission's designated application. A college participating in the barber and cosmetology arts and sciences tuition grant program must:

a. Be a barber school licensed under Iowa Code section 158.7; or

b. Be a school of cosmetology arts and sciences licensed under Iowa Code chapter 157; and

c. Be accredited by a national accrediting agency recognized by the United States Department of Education; and

d. Be located in Iowa. "Located in Iowa" means a college or university accredited by a national accrediting agency 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; and

e. Meet the criteria in Iowa Code section 261.9, subsection 1, paragraphs *"d"* through *"g"*;

f. Submit an annual report which includes student and faculty information, enrollment and employment information, and other information required by the commission as described in Iowa Code sections 261.9 through 261.16; and

g. Report to the commission any information requested in the time frame required by the commission.

17.2(2) *Processing college applications.* Application forms will be provided by the commission.

a. Applicant colleges are required to provide a completed application and to provide the commission with any additional documentation establishing eligibility.

b. Colleges seeking to participate in the barber and cosmetology arts and sciences tuition grant program must submit applications by January 1 of the year prior to the beginning of the academic year for which they are applying for participation.

17.2(3) *Notice of change of status.* Any college that loses accreditation must immediately notify the commission. Failure to comply with this notice of change requirement may result in the college being required to return tuition grant funds to the commission.

17.2(4) *Review of eligibility.*

a. The commission shall periodically, at least every three years, investigate and review compliance of institutions participating in the tuition grant program according to criteria described in the Iowa Code and this rule.

b. If the commission finds that a college fails to comply with the provisions of the Iowa Code and this rule, participation in the tuition grant program shall be suspended.

These rules are intended to implement 2008 Iowa Acts, House File 2679, section 32.

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CHAPTER 33
CHIROPRACTIC LOAN FORGIVENESS PROGRAM

283—33.1(261) Chiropractic loan forgiveness program.

33.1(1) The chiropractic loan forgiveness program is a state-supported and state-administered loan forgiveness program for Iowans who are chiropractors practicing in Iowa.

33.1(2) Definition. As used in this chapter, "chiropractic practice" means working as a licensed chiropractor in the state of Iowa as certified by the state board of chiropractic under Iowa Code chapter 151.

283—33.2(261) Eligibility.

33.2(1) Applicants must be:

a. Residents of the state of Iowa; and

b. Employed in chiropractic practice in Iowa.

33.2(2) Applicants must complete and file annual applications for the chiropractic loan forgiveness program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications.

33.2(3) Applicants must annually complete and return to the commission affidavits of practice verifying that they are employed as licensed chiropractors in Iowa.

33.2(4) Applicants must begin their first licensed chiropractic positions in Iowa on or after July 1, 2008.

283—33.3(261) Awarding of funds.

33.3(1) *Selection criteria.* All applications received on or before the published deadline will be considered for funding. In the event that all applications for the program cannot be funded with the available appropriations, criteria for selection of recipients will be prioritized as follows.

a. Applicant renewal status:

(1) Date of application;

(2) Applicant debt level;

b. Full-time employment status:

(1) Date of application;

(2) Applicant debt level;

c. Part-time employment status:

(1) Date of application;

(2) Applicant debt level.

33.3(2) *Annual award.* The maximum annual award to an eligible chiropractor shall be the lesser of:

a. The average resident tuition rate established for students attending universities governed by the Iowa board of regents for the first year following the chiropractor's graduation from a college of chiropractic approved by the board of chiropractic in accordance with Iowa Code section 151.4; or

b. Twenty percent of the chiropractor's total federally guaranteed Stafford loan balance, including principal and interest, under the Federal Family Education Loan Program (FFELP) or the Federal Direct Loan Program (FDLP). Eligible loans include subsidized and unsubsidized Stafford loans and consolidated loans. Only the outstanding portion of a Federal Consolidation Loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness.

33.3(3) *Extent of forgiveness.* Recipients may receive loan forgiveness for no more than five consecutive years. Recipients who fail to complete five consecutive years as chiropractors in Iowa will not be considered for subsequent years of forgiveness.

33.3(4) *Disbursement of loan forgiveness funds.*

a. Loan payments will be disbursed upon completion of the year for which forgiveness was approved and upon certification from the employer or by submission of an affidavit of practice that the chiropractor was employed during the entire year and completed the year in good standing.

b. Loan proceeds will be distributed to the recipient's student loan holder and applied directly to eligible loans. Unless otherwise instructed by the recipient, the holder will be instructed to apply the proceeds of the loan forgiveness program first to any outstanding unsubsidized Stafford loan balances, next to any outstanding subsidized Stafford loan balances, then to any eligible outstanding consolidation loan balances.

283—33.4(261) Loan forgiveness cancellation.

33.4(1) Within 30 days following termination of employment as a chiropractor in Iowa, the recipient shall notify the commission of the nature of the chiropractor's employment status.

33.4(2) The chiropractor is responsible for notifying the commission immediately of a change in name, place of employment, home address, or lender.

283—33.5(261) Restrictions. A chiropractor who is in default on a Federal Stafford Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan forgiveness benefits. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5.

These rules are intended to implement 2008 Iowa Acts, House File 2679, section 34.

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IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

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[Prior to 6/9/04, see 581—Ch 21]

495—6.1(97B) IRS requirements. Wages as discussed in this chapter shall not exceed the amount permitted for a given year under Section 401(a)(17) of the Internal Revenue Code.

495—6.2(97B) Definition of wages. "Wages" means all compensation earned by employees including, except as otherwise provided under this chapter, vacation pay; sick pay; back pay; amounts deducted from the employee's pay at the employee's discretion for tax-sheltered annuities, dependent care and cafeteria plans; and the cash value of wage equivalents. This definition applies to these rules, regulations, interpretations, forms and other IPERS publications unless the context otherwise requires.

495—6.3(97B) IPERS coverage for various forms of compensation. The following is a list of various types of compensation and the corresponding IPERS coverage treatment:

6.3(1) *Vacation pay or annual leave pay.* Vacation pay or annual leave pay means the amount paid to an employee during a period of vacation.

6.3(2) *Sick pay.* Sick pay means payments made for sick leave which are a continuation of salary payments.

6.3(3) *Workers' compensation payments and other third-party payments.* Workers' compensation payments, unemployment payments, or short-term and long-term disability payments made by an insurance company or third-party payer, such as a trust, are not included as wages. Payments for sick leave which are a continuation of salary payments if paid from the employer's general assets, regardless of whether the employer labels the payments as sick leave, short-term disability, or long-term disability, are covered wages.

6.3(4) *Compensatory time.* Wages include amounts paid for compensatory time taken in lieu of regular work hours or when paid as a lump sum. However, compensatory time paid in a lump sum shall not exceed 240 hours per employee per year or any lesser number of hours set by the employer. Each employer shall determine whether to use the calendar year or a fiscal year other than the calendar year when setting its compensatory time policy.

6.3(5) *Banked holiday pay.* If an employer codes banked holiday time as holiday or additional accrued vacation time, the banked holiday pay will be vacation pay under subrule 6.3(1). If an employer codes banked holiday time as compensatory time, the banked holiday pay will be combined with compensatory pay and subject to the limits set forth in subrule 6.3(4).

6.3(6) *Special lump sum payments.* Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. Wages do not include: catastrophic leave paid in a lump sum, bonuses, tips or honoraria. Exclusion of payments as described in this subrule applies whether the payment is in a lump sum or in installments.

6.3(7) *Other special payment arrangements.* Wages do not include amounts paid pursuant to special arrangements between an employer and employee whereby the employer pays increased wages and the employee reimburses the employer or a third-party obligor for all or part of the wage increase. This limitation includes, but is not limited to, the practice of increasing an employee's wages by the employer's share of health care costs and having the employee reimburse the employer or a third-party provider for such health care costs. Wages do not include amounts paid pursuant to a special arrangement between an employer and employee whereby wages in excess of the covered wage ceiling for a particular year are deferred to one or more subsequent years. Wages do not include employer contributions to a plan, program or arrangement that are not included in the employee's federal taxable income. However, certain employer contributions under IRC Section 125 plans are permitted to be treated as covered wages under rule 495—6.5(97B) subject to the terms of that rule.

Employers and employees that knowingly and willfully enter into the types of arrangements described in this subrule, causing an impermissible increase in the payments authorized under Iowa Code chapter 97B, may be prosecuted under Iowa Code section 97B.40 for engaging in a fraudulent practice. If IPERS determines that its calculation of a member's monthly benefit includes amounts paid under an arrangement described in this subrule, IPERS shall recalculate the member's monthly benefit, after making the appropriate wage adjustments. IPERS may recover the amount of overpayments caused by the inclusion of the payments described in this subrule from the monthly amounts plus interest payable to the member or amounts payable to the member's successor(s) in interest, regardless of whether or not IPERS chooses to prosecute the employers and employees under Iowa Code section 97B.40.

6.3(8) *Wage equivalents.* Items such as food, lodging and transportation are includable as employee income, if they are paid as compensation for employment. The basic test is whether or not such wage equivalent was given for the convenience of the employee or employing unit. Wage equivalents are not reportable under IPERS if given for the convenience of the employing unit or are not reasonably quantifiable. Wage equivalents that are not included in the member's federal taxable income shall be deemed to be for the convenience of the employer. A wage equivalent is not reportable if the employer certifies that there was a substantial business reason for providing the wage equivalent, even if the wage equivalent is included in the employee's federal taxable income. Wages paid in any other form than money are measured by the fair market value of the meals, lodging, travel or other wage equivalents.

6.3(9) *Members of the general assembly.* Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary. Wages include per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages do not include expense payments except that, effective July 1, 1990, wages include daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly. Such nontravel expenses of office during a session of the general assembly shall not exceed the maximum established by law for members from Polk County. A member of the general assembly who has elected to participate in IPERS shall receive four quarters of service credit for each calendar year during the member's term of office, even if no wages are reported in one or more quarters during a calendar year.

6.3(10) *Wages paid as a back pay settlement.* IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 6.3(6) and shall not be covered.

6.3(11) *Wages restored following mandatory or voluntary reduction in hours.* Rescinded IAB 7/16/08, effective 6/25/08.

6.3(12) *Limitations on benefits and contributions.*

a. Section 415(b) limitations on benefits. A member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Internal Revenue Code Sections 415(b) and 415(d). For purposes of applying the limits under Internal Revenue Code Section 415(b) (Limit), the following will apply:

(1) With respect to a member who does not receive a portion of the member's annual benefit in a lump sum:

1. The member's Limit will be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

2. To the extent the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost-of-living increases under the IPERS trust fund until such time as the benefit plus the accumulated increases are less than the applicable Limit; and

3. Thereafter, in any subsequent limitation year, the member's annual benefit including any automatic cost-of-living increase shall be tested under the then applicable benefit Limit, including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) (cost-of-living adjustments) and the regulations thereunder; and

(2) With respect to a member who receives a portion of the member's annual benefit in a lump sum:

1. The member's applicable Limit shall be applied taking into consideration automatic cost of living increases as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and

2. In no event shall a member's annual benefit payable under the system in any limitation year be greater than the Limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the assumptions required by Treasury Regulations, including the mortality table specified in Revenue Ruling 2001-62 or Revenue Ruling 2007-67, as applicable.

b. Section 415(c) limitations on contributions and other member additions. Member contributions and other additions paid to the system may not exceed the annual limits on contributions and other additions allowed by Internal Revenue Code Section 415(c). For purposes of applying these limits, the definition of "compensation," where applicable, will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation. The foregoing definition of compensation will exclude member contributions picked up under Internal Revenue Code Section 414(h)(2) and, for plan years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Internal Revenue Code Section 125 or 457 and, for plan years beginning on and after January 1, 2001, pursuant to Internal Revenue Code Section 132(f)(4).

c. Limitation year. The limitation year is the calendar year.

6.3(13) *Limitations on compensation used for benefit computations and for other Internal Revenue Code purposes.* Effective January 1, 1997, the annual compensation of a member taken into account for computing benefits and for testing purposes under any of the applicable sections of the Internal Revenue Code shall not exceed the applicable amount set forth in Internal Revenue Code Section 401(a)(17), as adjusted under Internal Revenue Code Section 401(a)(17)(b), and any federal regulations promulgated pursuant to that section. Furthermore, the annual compensation of a member, taken into account in computing benefits and testing under any of the applicable sections of the Internal Revenue Code, shall not exceed the amount set forth in Treasury Regulation Section 1.415(c)-2(e)(3). The foregoing sentences shall not be deemed to permit the maximum amount of wages of a member taken into account for any other purpose under Iowa Code chapter 97B to exceed the maximum covered wage ceiling under Iowa Code section 97B.1A(26).

6.3(14) *Employer contributions as remuneration counted against the reemployment earnings limit.* Employer contributions made on behalf of retired reemployed members to tax qualified and nonqualified retirement and deferred compensation plans and to other fringe benefit arrangements, excluding health insurance plans and programs, shall constitute remuneration from employment which shall be applied to the reemployment earnings limits and reductions set forth under rule 495—12.8(97B). Such contributions, even if counted as remuneration hereunder, shall not be counted as covered wages, unless the facts in the particular case indicate that, under the circumstances, the arrangement should be treated as covered wages under rules 495—6.1(97B) through 495—6.5(97B). Nonelective employer contributions to the following shall constitute remuneration when determining reemployment earnings limits: tax qualified retirement and deferred compensation plans; all nonqualified retirement plans and deferred compensation arrangements; IRAs; rabbi, secular, and other trust arrangements; split dollar and other life insurance arrangements; and long-term care insurance.

495—6.4(97B) Month for which wages are to be reported. Wages are reportable for the month in which they are actually paid to the employee, except when employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, receive lump sum payments of extra duty pay, and similar situations involving regular and periodic lump sum payments which IPERS in its sole discretion determines should be treated as covered wages. The employer shall file wage adjustment reporting forms with IPERS allocating the wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

6.4(1) Actual and constructive receipt. An employer cannot report wages as having been paid to employees as of a monthly reporting date if the employee has not actually or constructively received the payments in question. For example, wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on June 30 would be reported as June wages, but wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on July 3 would be reported as July wages.

6.4(2) One quarter of service will be credited for each quarter in which a member is paid IPERS covered wages.

a. "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum as permitted for a given year under Section 401(a)(17) of the Internal Revenue Code.

b. Effective January 1, 1988, covered wages shall include wages paid a member regardless of age. (From July 1, 1978, until January 1, 1988, covered wages did not include wages paid a member on or after the first day of the month in which the member reached the age of 70.)

c. If a member is employed by more than one employer during the calendar year, the total amount of wages paid by all covered employers shall be included in determining the annual covered wage limit established under Section 401(a)(17) of the Internal Revenue Code. If the amount of wages paid to a member by several employers during any given month exceeds the covered wage limit as determined for that calendar year, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. IPERS shall not accept excess wages and applicable contributions from employers and shall return excess contributions as provided in 495—subrule 4.3(8).

495—6.5(97B) Covered wage treatment for employer contributions to IRC Section 125 plans. If certain conditions are met, employer contributions to fringe benefit programs that qualify under IRC Section 125 may be treated as covered wages. The following subrules set forth IPERS' regulations for determining covered wage treatment and for making wage adjustments when employer-paid contributions have been covered or excluded in violation of the standards set forth below.

6.5(1) *Section 125 plans.* For purposes of this rule, a Section 125 plan means an employer-sponsored fringe benefit plan that is subject to Section 125 of the federal Internal Revenue Code. Some of the common names for this type of plan are cafeteria plan, flexible benefits plan, flex plan, and flexible spending arrangement.

6.5(2) *Elective employer contributions.* For purposes of this rule, "elective employer contributions" means employer contributions made to a Section 125 plan that can be received in cash or used to purchase benefits under the Section 125 plan. Generally, elective employer contributions that are not subject to special eligibility requirements qualify as covered wages.

6.5(3) *Mandatory minimum coverage requirements.* The term "elective employer contributions" does not include employer contributions that must be used to purchase benefits under a Section 125 plan. For example, if an employer provides $2,500 to its employees to purchase benefits in a Section 125 plan, but requires that all employees must use $1,000 of that amount to purchase single health coverage, the cost of the single coverage is deducted. In this example, $1,000 would be subtracted from the $2,500 provided, resulting in $1,500 of covered wages.

6.5(4) *Uniformity determined coverage group by coverage group.* Iowa Code section 97B.1A(26)*"a"*(1)*"b"* states that elective employer contributions shall be treated as covered wages only if made uniformly available and not limited to highly compensated employees. The application

of the uniformity concept may be illustrated as follows: Employer Z has two major groupings of employees covered under its cafeteria plan: teaching staff and support staff. Every member of the teaching staff is provided $3,000 to purchase benefits under the Section 125 plan. Every member of the teaching staff must take single coverage costing $1,500. Every member of the support staff is provided $2,500 and must also take the single coverage costing $1,500. Each member of the teaching staff would have $1,500 treated as covered wages, and each member of the support staff would have $1,000 treated as covered wages. This would be considered uniform treatment.

Uniformity is not destroyed by the fact that the amount available to members of a coverage group varies because the actual cost of mandatory minimum coverage varies depending on actuarial factors that apply to each individual. For example, assume Employer Z above also requires each employee to have long-term disability coverage. In Employer Z's case, the actual cost of disability coverage will vary from individual to individual. In that case, Employer Z would also deduct the actual cost of the required disability coverage, individual by individual, when determining IPERS covered wages.

Uniformity is not destroyed if an employer has two groups of employees who, as a result of collective bargaining, have differing entitlements to employer contributions. For example, Employer Y has a contract that provides $3,500 to each employee to purchase benefits under the Section 125 plan. Every employee may take all the cash by waiving participation in the plan, or may use all or part of the employer contributions to the Section 125 plan. In the collective bargaining process, a new contract is adopted which states that the employer will still provide $3,500 to each employee to purchase benefits under the Section 125 plan. However, under the new contract, persons who waived participation before April 15 may still waive participation in the plan and take all the cash, but persons who did not waive participation and those hired after April 15 must have single coverage costing $1,700. Employer Y would be treated as having two groups of employees with different elective employer contribution amounts. The grandfathered group (employees who waived participation before April 15) would have covered wages of $3,500, and the group consisting of those who did not waive participation before April 15 and new employees would have covered wages of $1,800.

6.5(5) *Highly compensated employee test.* Iowa Code chapter 97B provides that, in addition to being uniformly available, employer contributions must not discriminate in favor of highly compensated employees (HCEs). For purposes of this subrule, an HCE is an employee who has reported wages and tips subject to Medicare tax in excess of the IRC Section 414(q) limit then in effect. IPERS shall apply the HCE limitation as follows. If elective employer contributions are made available to HCEs, the total elective employer contributions made available to the HCE group must not exceed 25 percent of the total elective employer contributions made available under the Section 125 plan to all employees, including the HCEs. If the elective employer contributions available to the HCE group exceed the 25 percent limit (or if it is determined that the Section 125 plan discriminates in favor of HCEs under other IRS rules), elective employer contributions for HCEs shall not exceed the highest amount available to a nonexecutive coverage group of employees covered under such plan. The general application of these principles is illustrated below, using the 2002 IRC Section 414(q) dollar limit of $90,000.

Employer W has a Section 125 plan that provides elective employer contributions totaling $7,000 to executive staff, $4,500 to teaching staff, and $3,500 to support staff. There are no other limits or exclusions that apply. These amounts are treated as covered wages for each member of each group, provided that the total amount of contributions made available to HCEs does not exceed 25 percent of the total elective employer contributions for all employees covered under the plan. If elective employer contributions for the executive staff totaled $70,000, and total elective employer contributions for the remainder of the staff totaled $500,000, the HCE percentage of total elective employer contributions would be 12 percent ($70,000 divided by $570,000), and all elective employer contributions would be treated as covered wages for all groups. However, if elective employer contributions for the executive staff totaled $70,000, and elective employer contributions for the remainder of the staff totaled $200,000, the HCE percentage would be 26 percent ($70,000 divided by $270,000), and HCEs' elective employer contributions would be limited to $4,500 per HCE for covered wage purposes.

6.5(6) *Elective employer contributions limited to dual coverage employees.* In some cases, a Section 125 plan provides for what appear to be mandatory employer contributions for health plan coverage,

but the terms of the Section 125 plan permit dual coverage employees to waive coverage and receive the employer contributions in cash, if the employee can prove coverage under another health care plan. IPERS shall continue to treat the full amount of employer contributions in such cases as not being IPERS covered wages, even though individual employees with the described dual coverage may actually receive the employer contribution in cash.

6.5(7) *Corrections for overpayments and underpayments of contributions and benefits caused by Section 125 plan covered wage errors.* IPERS shall use the following guidelines in requiring corrections for overpayments and underpayments of contributions and benefits caused by the erroneous inclusion or exclusion of employer contributions to a Section 125 plan. Corrections must be made for all active, terminated and retired members, subject to the following limitations:

a. If elective employer contributions that should have been covered were not covered, wage adjustments shall be filed, and employers shall be billed for all shortages plus interest. Employers shall be entitled to collect reimbursement for the employee share of contributions as provided in Iowa Code section 97B.9. If retirement benefits, death benefits or refunds have been underpaid as a result of the error, IPERS shall, upon receipt of the contribution shortage, make the appropriate adjustments and pay all back benefits.

b. If employer contributions that should not have been covered were covered, wage adjustments shall be filed, and the appropriate contribution amounts shall be repaid to employers for distribution to the respective employee and employer contributors. If the reporting error caused an overpayment of retirement benefits, death benefits, or refunds, IPERS shall offset excess contributions received against overpayments and shall request a repayment of the remainder of the overpayment, if any, from the recipient.

Wage adjustments, overpayments, and underpayments and unintentional reporting errors shall be determined as of the onset of the error, but shall be limited to three years before the beginning of the current contract year for school employers, or current fiscal year for all other covered employers. IPERS may go back to the onset of the error, even if the period exceeds three years, if the error is caused by intentional misconduct or gross neglect. Notwithstanding the foregoing adjustment and collection standards, IPERS reserves the right to negotiate adjustments with individual employers in special situations, and no negotiated settlement with an employer shall be deemed to constitute a waiver of this rule or a binding precedent for other employers.

6.5(8) *Bounties.* In some cases, an employer has a Section 125 plan with employer contributions, and what IPERS refers to as a bounty option. A bounty is an amount that may be elected by all employees, or by a subset of that group, such as employees with coverage under another health care plan, either in lieu of any coverage under the employer's health care plan, or in lieu of family coverage. A bounty is generally set at an amount that is less than the amount that would otherwise be available to purchase benefits under the Section 125 plan. IPERS does not treat bounties as covered wages. The uniformity and nondiscrimination principles described in subrule 6.5(4) do not apply to such benefits.

These rules are intended to implement Iowa Code sections 97B.1A(26), 97B.9, 97B.11, 97B.14 and 97B.14A.

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CHAPTER 14
DEATH BENEFITS AND BENEFICIARIES
[Prior to 11/24/04, see 581—Ch 21]

495—14.1(97B) Internal Revenue Code limitations. The maximum claims period shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for death benefits payable under benefit options described in Iowa Code section 97B.51 and for members who die after their required beginning date. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this rule shall end April 1 of the year following the year of the member's death. A death benefit payable under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed the maximum amount possible under the Internal Revenue Code.

To ensure that the limit is not exceeded, a member's combined lump sum death benefit under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed 100 times the Option 2 amount that would have been payable to the member at the member's earliest normal retirement age. If a beneficiary of a special service member is eligible for an in-the-line-of-duty death benefit, any reduction required under this rule shall be taken first from a death benefit payable under Iowa Code section 97B.52(1). The "100 times" limit shall apply to active and inactive members. The death benefits payable under this chapter for a period of reemployment for a retired reemployed member who dies during the period of reemployment shall also be subject to the limits described in this rule.

A member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest, if any, for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. Interest for periods following the quarter of forfeiture will accrue beginning with the quarter that the claim for reinstatement is received by IPERS. For death benefits required to be forfeited in order to satisfy Section 401(a)(9) of the federal Internal Revenue Code, in no event will the forfeiture date precede January 1, 1988. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

Effective January 14, 2004, all claims for a previously forfeited death benefit shall be processed under the procedure set forth at rule 495—14.13(97B).

495—14.2(97B) Survival into first month of entitlement. When a member who has filed an application for retirement benefits and has survived into the first month of entitlement dies prior to the issuance of the first benefit check, IPERS will pay the death benefit allowed under the retirement option elected by the member in the application for retirement benefits.

495—14.3(97B) Designation of beneficiaries.

14.3(1) *Designation of beneficiaries.* To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits revokes all prior designation of beneficiary forms. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 or 6 retired member may name someone other than the member's contingent annuitant as beneficiary, but only for lump sum death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member before the period of reemployment unless a qualified domestic relations order (QDRO) directs otherwise. If a reemployed IPERS Option 4 or 6 retired member dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the lump sum death benefits awarded in a QDRO shall be paid to the contingent annuitant as alternate payee, and the remainder of the lump sum

death benefits shall be paid to the member's estate or, if applicable, to the member's heirs if no estate is probated.

14.3(2) *Change of beneficiary.* The beneficiary may be changed by the member by filing a new designation of beneficiary form with IPERS. The latest dated designation of beneficiary form on file shall determine the identity of the beneficiary. Payment of a refund to a terminated member cancels the designation of beneficiary on file with IPERS.

495—14.4(97B) Applications for death benefits. Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, together with information establishing the claimant's right to payment. A named beneficiary must complete an IPERS application for death benefits based on the deceased member's account. If the claimant's claim is based on dissolution of marriage that revoked the IPERS beneficiary designation, the claim must be processed pursuant to rule 14.16(97B).

495—14.5(97B) Commuted lump sums.

14.5(1) *Designated beneficiary is an estate, trust, church, charity, or similar organization.* Where the designated beneficiary is an estate, trust, church, charity or similar organization, or is a person, such as a trustee, executor, or administrator who has been appointed to receive funds on behalf of such entities, payment of benefits shall be made in a lump sum only.

14.5(2) *Multiple beneficiaries.* Where multiple beneficiaries have been designated by the member, payment, including the payment of the remainder of a series of guaranteed annuity payments, shall be made in a lump sum only. The lump sum payment shall be paid to the multiple beneficiaries in equal shares unless a different proportion is stipulated.

14.5(3) *Guaranteed payments.* Where a member has selected Option 5 and dies before receiving all guaranteed payments, and the member's designated beneficiary also dies before all guaranteed payments are made, any remaining guaranteed payments shall be paid in a commuted lump sum.

495—14.6(97B) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary form is on file. When no designation of beneficiary or an invalid designation of beneficiary form is on file with IPERS, payment shall be made in one of the following ways.

14.6(1) Where the estate is open, payment shall be made to the administrator or executor where said executor or administrator shall be duly appointed and serving under Iowa Code chapter 633 or 635.

14.6(2) Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits, payment will be made to the surviving spouse. The following documents shall be presented as supporting evidence:

a. Copy of the will, if any;

b. Copy of any letters of appointment; and

c. Copy of the court order closing the estate and discharging the executor or administrator.

14.6(3) Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits and there is no surviving spouse, payment will be made to the heirs-at-law as determined by the intestacy laws of the state of Iowa.

14.6(4) Where a trustee has been named as designated beneficiary and is not willing to accept the death benefit or otherwise serve as trustee, IPERS may apply but is not required to apply to the applicable district court for an order to distribute the funds to the clerk of court on behalf of the beneficiaries of the member's trust. Upon the issuance of an order and the giving of such notice as the court prescribes, IPERS may deposit the death benefit with the clerk of court for distribution. IPERS shall be discharged from all liability upon deposit with the clerk of court.

495—14.7(97B) Waiver of beneficiary rights. A named beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would have been entitled. The waiver of the rights shall occur prior to the receipt of a payment from IPERS to the beneficiary. The waiver of rights shall be binding and will be executed on a form provided by IPERS. The waiver of rights may be

general, in which case payment shall be divided equally among all remaining designated beneficiaries or, if there are none, to the member's estate. The waiver of rights may also expressly be made in favor of one or more of the member's designated beneficiaries or the member's estate. If the waiver of rights operates in favor of the member's estate and no estate is probated or claim made, or if the executor or administrator expressly waives payment to the estate, payment shall be paid to the member's surviving spouse unless there is no surviving spouse or the surviving spouse has waived the surviving spouse's rights. In that case, payment shall be made to the member's heirs excluding any person who waived the right to payment. Any waiver filed by an executor, administrator, or other fiduciary must be accompanied by a release acceptable to IPERS indemnifying IPERS from all liability to beneficiaries, heirs, or other claimants for any waiver executed by an executor, administrator, or other fiduciary.

495—14.8(97B) Beneficiaries under the age of 18. Payment may be made to a conservator if the beneficiary is under the age of 18 and the total dollar amount to be paid by IPERS to a single beneficiary is $25,000 or more. Payment may be made to a custodian if the total dollar amount to be paid by IPERS to a single beneficiary is less than $25,000.

495—14.9(97B) Simultaneous deaths. IPERS will apply the provisions of the Uniform Simultaneous Death Act, Iowa Code sections 633.523 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

495—14.10(97B) Felonious deaths. IPERS will apply the provisions of the Felonious Death Act, Iowa Code sections 633.535 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

495—14.11(97B) No interest on postretirement death benefits. Interest is only accrued on a member's death benefit if the member dies before the member's first month of entitlement (FME) or, for a retired reemployed member, before the member's reemployment FME, and is only accrued with respect to the retired or retired reemployed member's accumulated contributions account.

495—14.12(97B) Preretirement death benefits.

14.12(1) *Pre-January 1, 1999, deaths.* Where the member dies prior to the first month of entitlement, the death benefit shall include the accumulated contributions of the member plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the "applicable denominator," as provided in Iowa Code section 97B.52(1). The amount payable shall not be less than the amount that would have been payable on the death of the member on June 30, 1984. The calculation of the highest year of covered wages shall use the highest calendar year of covered wages reported to IPERS.

14.12(2) *Post-January 1, 1999, deaths—death benefits under Iowa Code section 97B.52(1).*

a. Definitions.

"Accrued benefit" means the monthly amount that would have been payable to the deceased member under IPERS Option 2 at the member's earliest normal retirement age, based on the member's covered wages and service credits at the date of death. If a deceased member's wage record consists of a combination of regular and special service credits, the deceased member's earliest normal retirement age shall be determined under the regular or special service benefit formula for which the majority of the deceased member's service credits were reported.

"Beneficiary(ies)" shall, unless the context indicates otherwise, refer to both window period beneficiaries and post-window period beneficiaries.

"Implementation date" means January 1, 2001.

"Nearest age" means a member's or beneficiary's age expressed in whole years, after rounding for partial years of age. Ages shall be rounded down to the nearest whole year if less than six complete months have passed following the month of the member's or beneficiary's last birthday, and shall be rounded up if six complete months or more have passed following the month of the member's or beneficiary's last birthday.

"Post-window period beneficiary" means a beneficiary of a member who dies before the member's first month of entitlement and on or after January 1, 2001.

"Window period beneficiary" means a beneficiary of a member who dies before the member's first month of entitlement during the period January 1, 1999, through December 31, 2000.

b. Any window period beneficiary or post-window period beneficiary may elect to receive the lump sum amount available under Iowa Code section 97B.52(1). Sole beneficiaries may elect, in lieu of the foregoing lump sum amount, to receive a single life annuity that is the actuarial equivalent of such lump sum amount.

A window period beneficiary must repay any prior preretirement death benefit received as follows:

(1) If a window period beneficiary wishes to receive the larger lump sum amount, if any, the system shall pay the difference between the prior death benefit lump sum amount and the new death benefit lump sum amount.

(2) If a sole window period beneficiary wishes to receive a single life annuity under Iowa Code section 97B.52(1), the sole window period beneficiary may either:

1. Annuitize the difference between the previously paid lump sum amount and the new larger lump sum amount, if any; or

2. Annuitize the full amount of the largest of the lump sum amounts available under the revised statute, but must repay the full amount of the previously paid lump sum amount.

(3) To the extent possible, repayment costs shall be recovered from retroactive monthly payments, if any, and the balance shall be offset against current and future monthly payments until the system is repaid in full.

c. A claim for a single life annuity under this subrule must be filed as follows:

(1) A sole window period beneficiary must file a claim for a single life annuity within 12 months of the implementation date.

(2) A sole post-window period beneficiary must file a claim for a single life annuity within 12 months of the member's death.

(3) A beneficiary who is a surviving spouse must file a claim for a single life annuity within the period specified in subparagraph (1) or (2), as applicable, or by the date that the member would have attained the age of 70½, whichever period is longer.

d. Elections to receive the lump sum amount or single life annuity available under Iowa Code section 97B.52(1) and this subrule shall be irrevocable once the first payment is made. Election shall be irrevocable as of the date the first paycheck is issued, or would have been issued but for the fact that the payment is being offset against a prior preretirement death benefit payment.

e. No further benefits will be payable following the death of any beneficiary who qualifies and elects to receive the single life annuity provided under this subrule.

f. The provisions of this subrule shall not apply to members who die before January 1, 1999.

g. Procedures and assumptions to be used in calculating the lump sum present value of a member's accrued benefit are as follows:

(1) IPERS shall calculate a member's retirement benefit at earliest normal retirement age under IPERS Option 2, based on the member's covered wages and service credits at the date of death, and the retirement benefit formula in effect in the month following the date of death.

(2) For purposes of determining the "member date of death annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the member's nearest age at the member's date of death.

(3) For purposes of determining the "member unreduced retirement annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the member's nearest age at the member's earliest normal retirement date. If a member had already attained the member's earliest normal retirement date, IPERS shall assume that "age" means the member's nearest age at the date of death.

h. Procedures and assumptions for converting the lump sum present value of a deceased member's preretirement death benefit to a single life annuity are as follows:

(1) For purposes of determining the "age of beneficiary annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the beneficiary's nearest age as of the beneficiary's first month of entitlement.

(2) A beneficiary's first month of entitlement is the month after the date of the member's death.

(3) Effective for claims filed after June 30, 2004, no retroactive payments of the single life annuity shall be made under this subrule.

(4) Effective for claims filed after June 30, 2004, the beneficiary whose single life annuity is less than $600 per year shall be able to receive only the lump sum payment under this rule.

i. Eligibility for favorable experience dividend (FED) payments. Any sole beneficiary who is eligible for and elects to receive a single life annuity under this subrule shall also qualify for the dividend payments authorized under rule 495—15.2(97B), subject to the requirements of that rule.

j. Retired reemployed members and aged 70 members who retire without terminating employment. Preretirement death benefits for retired reemployed members and aged 70 members who retire without terminating employment shall be calculated as follows:

(1) For beneficiaries of such members who elect IPERS Option 4 or 6 at retirement, IPERS shall recompute (for retired reemployed members) or recalculate/recompute (for aged 70 members who retired without terminating employment) the member's monthly benefits as though the member had elected to terminate employment as of the date of death, to have the member's benefits adjusted for postretirement wages, and then lived into the recomputation or recalculation/recomputation (as applicable) first month of entitlement.

(2) The recomputation provided under subparagraph (1) shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member's monthly benefit would have been increased by the period of reemployment, and is subject to the limitations of Iowa Code sections 97B.48A, 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. The recalculation/recomputations provided under subparagraph (1) shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member's monthly benefit would have been increased by the period of employment after the initial retirement, and is subject to the limitations of Iowa Code sections 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. In all other cases, preretirement death benefits under this subparagraph shall be equal to the lump sum amount equal to the accumulated employee and accumulated employer contributions.

(3) Beneficiaries of members who had elected IPERS Option 4 or 6 may also elect to receive the accumulated employer and accumulated employee contributions described in subparagraph 14.12(2)*"j"*(2), in lieu of the increased monthly annuity amount. Notwithstanding subparagraph (2) above, if the member elected IPERS Option 5 at retirement, the lump sum amount payable under this paragraph shall be the greater of the applicable commuted lump sum or the accumulated employee and accumulated employer contributions.

k. Inactive members with less than 16 quarters of service credit. For deaths occurring after June 30, 2004, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)*"a,"* and shall only be payable in lump sum amounts for inactive members who have less than 16 quarters of service credit. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

495—14.13(97B) Payment procedures for heirs that cannot be located.

14.13(1) *Order of priority.* If a death benefit cannot be paid because heirs cannot be located, IPERS will pay a death benefit to the member's heirs according to the following procedure.

a. *Children.* If there is no surviving spouse, but at least one child survives, the death benefit shall be divided equally among the member's children. If there are living and deceased children, the shares that would have been payable to deceased children shall be payable in equal shares to the surviving children of each such deceased child.

b. *Grandchildren.* If neither the spouse nor children survive, but at least one grandchild survives, the death benefit shall be divided equally among the member's grandchildren. If there are living and

deceased grandchildren, the shares that would have been payable to any deceased grandchild shall be payable in equal shares to the surviving children of such deceased grandchild.

c. *Parent(s).* If there is no surviving spouse, child, or grandchild, but at least one parent survives, the death benefit shall be divided equally between the member's parents.

d. *Siblings.* If there is no surviving spouse, child, grandchild, or parent, but at least one sibling survives, the death benefit shall be divided equally among the member's siblings. If there are living and deceased siblings, the shares that would have been payable to any deceased sibling shall be payable in equal shares to the surviving children of such deceased siblings.

e. *Nephew(s) and niece(s).* If no one from the above-mentioned groups survives, but there is at least one surviving niece or nephew, the death benefit shall be divided equally among the member's surviving nieces and nephews.

f. *Estate.* If someone other than a member of one of the groups listed above claims the member's death benefit, an estate must be opened and the death benefit shall only be payable to the administrator of that estate.

14.13(2) *Procedures for initial distribution for identified heirs.* IPERS shall distribute the death benefit to the heirs making a claim for such benefit in descending order listed in 14.13(1)*"a"* to *"f."* A claimant shall be required to submit an affidavit suitable to IPERS that verifies the claimant's share or, to the best of the claimant's knowledge, that there are no other surviving persons from the claimant's group and that there are no living persons in any lower-numbered group that would have a higher priority claim to the death benefit. IPERS shall have no responsibility to determine or search out the member's heirs at law, nor shall IPERS incur any liability for relying on a claimant's affidavits in paying the death benefit hereunder.

14.13(3) *Procedures for final distribution to heirs who have filed claims.* If a claimant has identified other persons in the claimant's group who would be entitled to a share of the member's death benefit, but such persons have not filed a claim within five years after the member's death, or by the date required under IRC Section 401(a)(9) if earlier, the remainder of the member's death benefit shall be paid in pro-rata shares to the claimants who were previously paid a share of the death benefit. In order to comply with the applicable IRS limitations, the final payments under this subrule shall be made by December 31 of the fifth year that begins after the member's date of death, or by December 31 of the year that distribution is required under IRC Section 401(a)(9), if earlier. The sole recourse of any claimant who is a member of a group receiving payments hereunder or of any lower-numbered group that should have received all of such payments shall be against the claimants of the group that received death benefit payments.

495—14.14(97B) Procedures for deaths of certain voluntary emergency services personnel occurring in the line of duty. Effective July 1, 2006, for a member who dies while performing the functions of a voluntary emergency services provider as described under Iowa Code section 85.61 or 147A.1, benefits for deaths occurring in the line of duty shall be paid pursuant to Iowa Code section 100B.31.

495—14.15(97B) Rollovers by nonspouse beneficiaries. Effective January 1, 2007, nonspouse beneficiaries shall be permitted to request a direct rollover of such beneficiaries' death benefit payments to traditional IRA accounts established in accordance with Section 829 of the Pension Protection Act of 2006 and IRS Notice 2007-7. IPERS shall determine the amount eligible for direct rollover under IRC Section 401(a)(9), if any, and the procedural requirements for requesting such rollovers. It shall be the beneficiaries' responsibility to determine that the recipient IRAs meet the structural and operational requirements of Section 829 and Notice 2007-7. IPERS shall bear no responsibility for rollovers to IRA accounts that fail to meet such requirements.

Effective January 1, 2008, IPERS will also allow rollovers under this rule to Roth IRA accounts established in accordance with the structural and operational requirements of Section 829 and Notice 2007-7.

495—14.16(97B) Beneficiary revocation pursuant to Iowa Code section 598.20B, dissolution of marriage. IPERS is not liable for the payment of death benefits to a beneficiary pursuant to a beneficiary designation that has been revoked or reinstated by a divorce, annulment, or remarriage before IPERS receives the written notice set forth in subrule 14.16(1). Furthermore, IPERS shall only be liable for payments made after receipt of such written notice if the written notice is received at least ten calendar days prior to the payment.

14.16(1) *Form of notice.* The written notice shall include the following information:

a. The name of the deceased member,

b. The name of the person(s) whose entitlement to IPERS death benefits is being challenged,

c. The name, address, and telephone number of the person(s) asserting an interest,

d. A statement that the decedent's divorce, annulment, or remarriage revoked the entitlement of the person(s) whose status is being challenged to the IPERS death benefits in question, and

e. A copy of the divorce decree upon which the claim is based.

In addition to the above information, if the person whose entitlement is being challenged is not the former spouse, the written notice must indicate that the person was related to the former spouse, but not the member, by blood, adoption or affinity, and state the nature of the relationship.

14.16(2) *Delivery of notice.* Written notice under this rule must be addressed to IPERS General Counsel and mailed to IPERS by registered mail or served upon IPERS in the same manner as a summons in a civil action.

14.16(3) *Administration.* Upon receipt of written notice that meets the requirements of subrules 14.16(1) and 14.16(2):

a. IPERS shall review the deceased member's account and determine if there are moneys left to be distributed from the account.

b. IPERS shall pay the amounts owed, if any, to the probate court having jurisdiction over the decedent's estate, if the deceased member has an open estate.

c. IPERS shall pay the amounts owed, if any, to the probate court that had or would have had jurisdiction over the decedent's estate, if the deceased member's estate is closed or an estate was not opened.

d. As IPERS makes applicable payments, a copy of the written notice received by IPERS shall be filed with the probate court.

If the probate court charges a filing fee for the deposit of amounts payable hereunder, IPERS shall deduct such filing fees and other court costs from the amounts payable prior to transfer. The probate court shall hold the funds and, upon its determination, shall order disbursement or transfer in accordance with the determination. Additional filing fees and court costs, if any, shall be charged upon disbursement either to the recipient or against the funds on deposit with the probate court, in the discretion of the court.

14.16(4) *Release of claims.* Payments made to a probate court under this rule shall discharge IPERS from all claims by all persons for the value of amounts paid the court.

These rules are intended to implement Iowa Code sections 97B.1A(8), 97B.1A(18), 97B.1A(19), 97B.34, 97B.34A, 97B.44, 97B.52 and 97B.53B and 2000 Iowa Acts, chapter 1077, section 75.

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CHAPTER 16
QUALIFIED DOMESTIC RELATIONS ORDERS AND OTHER ASSIGNMENTS
[Prior to 11/24/04, see 581—Ch 21]

495—16.1(97B) Garnishments and income withholding orders.

16.1(1) For the limited purposes of this rule, the term "member" includes IPERS members, beneficiaries, contingent annuitants and any other third-party payees to whom IPERS is paying a monthly benefit or a lump sum distribution.

16.1(2) A member's right to any payment from IPERS is not transferable or assignable and is not subject to execution, levy, attachment, garnishment, or other legal process, including bankruptcy or insolvency law, except for the purpose of enforcing child, spousal, or medical support.

16.1(3) Only members receiving payment from IPERS, including monthly benefits and lump sum distributions, may be subject to garnishment, attachment, or execution against funds that are payable. Such garnishment, attachment, or execution is not valid and enforceable for members who have not applied for and have not been approved to receive funds from IPERS.

16.1(4) Upon receipt of an income withholding order issued by the Iowa department of human services or a court, IPERS shall send a copy of the withholding order to the member. If a garnishment has been issued by a court, the party pursuing the garnishment shall send a notice pursuant to Iowa law to the member against whom the garnishment is issued.

16.1(5) IPERS shall continue to withhold a portion of the member's monthly benefit as specified in the initial withholding order until instructed by the court or the Iowa department of human services issuing the order to amend or cease payment. IPERS shall continue to withhold a portion of the member's monthly benefit as specified in the garnishment until the garnishment expires or is released.

16.1(6) Funds withheld or garnished are taxable to the member. IPERS may assess a fee of $2 per payment in accordance with Iowa Code section 252D.18A(2). The fee will be deducted from the gross amount, less federal and state income tax, before a distribution is divided.

16.1(7) A garnishment, attachment or execution may not be levied upon funds which are already the subject of a levy, including a levy placed upon funds by the United States Internal Revenue Service, unless the requirements of IRC Section 6334(a)(8) are met. Multiple garnishments, attachments and executions are allowed as long as the amount levied upon does not exceed the limitations prescribed in 15 U.S.C. Section 1673(b).

16.1(8) IPERS may release information relating to entitlement to funds to a court or to the Iowa department of human services prior to receipt of a valid garnishment, attachment, execution, or income withholding order when presented with a written request stating the information requested and reasons for the request. This request must be signed by a magistrate, judge, or child support recovery unit director or the director's designee, including an attorney representing the Iowa department of human services. In addition, IPERS may release information to the Iowa department of human services through automated matches.

495—16.2(97B) Qualified domestic relations orders. This rule shall apply only to marital property orders. All support orders shall continue to be administered under rule 495—16.1(97B).

16.2(1) *Definitions.*

"Alternate payee" means a spouse or former spouse of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by IPERS with respect to such member. "Alternate payee" also refers to persons who are entitled pursuant to a qualified domestic relations order to receive benefits after the death of the original alternate payee.

"Benefits" means, for purposes of this rule and depending on the context, a refund, monthly allowance (including monthly allowance paid as an actuarial equivalent (AE)), or death benefit payable with respect to a member covered under IPERS. "Benefits" does not include dividends payable under Iowa Code section 97B.49 or other cost-of-living increases unless specifically provided for in a qualified domestic relations order.

"Domestic relations order" means any judgment, decree, or order which relates to the provision of marital property rights to a spouse or former spouse of a member and is made pursuant to the domestic relations laws of a state.

"Member" means, for purposes of this rule, IPERS members, beneficiaries, and contingent annuitants.

"Qualified domestic relations order" or *"QDRO"* means a domestic relations order which assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member under IPERS and meets the requirements of this rule.

"Trigger event" means a distribution or series of distributions of benefits made with respect to a member.

16.2(2) *Requirements.*

a. Mandatory provisions. A domestic relations order is a qualified domestic relations order if such order:

(1) Clearly specifies the member's name and last-known mailing address, member identification number or social security number, and the names and last-known mailing addresses and social security numbers of alternate payees. This information shall be provided to IPERS in a cover letter or a court's Confidential Information Form;

(2) Clearly specifies a fixed dollar amount or a percentage, but not both, of the member's benefits to be paid by IPERS to the alternate payee or the manner in which the fixed dollar amount or percentage is to be determined, provided that no such method shall require IPERS to perform present value calculations of the member's accrued benefit;

(3) Clearly specifies the period to which such order applies, including whether benefits cease upon the death or remarriage of the alternate payee;

(4) Clearly specifies that the order applies to IPERS;

(5) Clearly specifies that the order is for purposes of making a property division; and

(6) Is clearly signed by the judge and filed with the clerk of court. IPERS will consider an order duly signed if it carries an original signature, a stamp bearing the judge's signature, or is conformed in accordance with local court rules.

b. Prohibited provisions. A domestic relations order is not a qualified domestic relations order if such order:

(1) Requires IPERS to provide any type or form of benefit or any option not otherwise provided under Iowa Code chapter 97B;

(2) Requires IPERS to provide increased benefits determined on the basis of actuarial value;

(3) Requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined by IPERS to be a qualified domestic relations order;

(4) Requires any action by IPERS that is contrary to its governing statutes or plan provisions;

(5) Awards any future benefit increases that are provided by the legislature, except as provided in subparagraph 16.2(2)*"c"*(2); or

(6) Requires the payment of benefits to an alternate payee prior to a trigger event.

c. Permitted provisions. A qualified domestic relations order may also:

(1) If a trigger event has not occurred as of the date the order is received by IPERS, name an alternate payee as a designated beneficiary or contingent annuitant, require the payment of benefits under a particular benefit option, or both;

(2) Specify that the alternate payee shall be entitled to a fixed dollar amount or percentage of dividend payments, or cost-of-living increase or any other postretirement benefit increase to the member (all known as dividend payments), as follows:

1. If the court order awards a fixed dollar amount of benefits to the alternate payee, the dollar amount of dividend payments to be added or method for determining said dollar amount shall be stated in the court order or an award of a share of dividend payments shall be given no effect; and

2. If the court order awards a specified percentage of benefits to the alternate payee, IPERS shall add dividends to the alternate payee's share of the retirement allowance as necessary to keep the alternate payee's share of payments at the percentage specified in the court order;

(3) Bar a vested member from requesting a refund of the member's accumulated contributions without the alternate payee's written consent;

(4) Allow benefits to be paid to an alternate payee based on a period of reemployment for a retired member; and

(5) Name a successor alternate payee to receive the amounts that would have been payable to the member's spouse or former spouse under the order, if the alternate payee dies before the member. The designation of a successor alternate payee in an order shall be void and be given no effect if IPERS does not receive confirmation of the successor's name, social security number, and last-known mailing address in a cover letter or in a copy of the court's confidential information form. A QDRO that lists a series of default successor alternate payees by class or permits a successor alternate payee to designate additional successor alternate payees is not permitted and will be rejected. Once a QDRO is qualified and accepted by IPERS for administration, in order to change the designation of successor alternate payees, an amended order is required.

16.2(3) *Administrative provisions.*

a. Payment to an alternate payee shall be made in a like manner and at the same time that payment is made to the member. Payment to the alternate payee shall be in a lump sum if benefits are paid in a lump sum distribution or as monthly payments if a retirement option is in effect. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member's and alternate payee's respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee.

b. The alternate payee shall not be entitled to any share of the member's death benefits except to the extent such entitlement is recognized in a qualified domestic relations order or in a beneficiary designation filed subsequent to the dissolution.

c. If a qualified domestic relations order directs the member to name the alternate payee under the order as a designated beneficiary, and the member fails to do so, the provisions of the qualified domestic relations order awarding the alternate payee a share of the member's death benefit shall be deemed, except as revoked or modified in a subsequent qualified domestic relations order, to operate as a beneficiary designation, and shall be given first priority by IPERS in the determination and payment of such member's death benefits. Death benefits remaining after payments required by the qualified domestic relations order, to the extent possible, shall then be made according to the terms of the member's most recent beneficiary designation.

d. If an alternate payee has been awarded a share of the member's benefits and dies before the member, the entire account value shall be restored to the member unless otherwise specified in the order and in the manner required under this rule.

e. An alternate payee shall not receive a share of dividends or other cost-of-living increases, unless so provided in a qualified domestic relations order.

f. The CEO, or CEO's designee, shall have exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A final determination by the CEO, or CEO's designee, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

g. A person who attempts to make IPERS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to a member shall be liable to IPERS for its costs and attorney's fees.

h. A domestic relations order shall not become effective until it is approved by IPERS. If a member is receiving a retirement allowance at the time a domestic relations order is received by the system, the order shall be effective only with respect to payments made after the order is determined to

be a qualified domestic relations order. If the order is determined to be qualified after the current month's benefit is certified for payment, the alternate payee's portion of the member's benefit shall begin with the next month's benefit paid to the member without credit for the prior month's payment. If the member is not receiving a retirement allowance at the time a domestic relations order is approved by IPERS and the member applies for a refund or monthly allowance, or dies, no distributions shall be made until the respective rights of the parties under the domestic relations order are determined by IPERS. If IPERS has placed a hold on the member's account following written or verbal notification from the member, member's spouse, or legal representative of either party of a pending dissolution of marriage, and no further contacts are received from either party or their representatives within the following one-year period, IPERS shall release the hold.

i. IPERS and its staff shall have no liability for making or withholding payments in accordance with the provisions of this rule.

j. Alternate payees must notify IPERS of any change in their mailing addresses. IPERS shall contact the alternate payee in writing at the last-known mailing address on file with IPERS, notifying the alternate payee that an application for a distribution has been received with respect to the member and providing the alternate payee with an application to be completed and returned by the alternate payee. The written notice shall provide that if the alternate payee does not return said application to IPERS within 60 days after such written materials are mailed by IPERS, the amounts otherwise payable to the alternate payee shall be paid to the member or the member's beneficiary(ies) until a valid application is received, and IPERS shall have no liability to the alternate payee with respect to such amounts. IPERS has no duty or responsibility to search for alternate payees. If distributions have already begun at the time that an order is determined by IPERS to be a qualified domestic relations order, the qualified domestic relations order shall be deemed to be the alternate payee's application to begin receiving payments under the QDRO.

k. If an alternate payee's application is received after the member's first or current month's benefit is certified for payment, the alternate payee's portion of the member's benefit shall begin with the next month's benefit paid to the member without credit for the prior month's payment.

l. For both lump sum and monthly payments, the alternate payee's tax withholding and rollover (if eligible) elections must be received before the first or current month's benefit is certified for payment or IPERS will use the applicable default tax withholding elections.

m. If an order that is determined to be a qualified domestic relations order divides a member's account using a service factor formula and the member's IPERS benefits are based on a number of quarters less than the member's total covered quarters, notwithstanding any terms of the order to the contrary, IPERS shall limit the number of quarters used in the numerator and the denominator of the service fraction to the number of quarters actually used in the calculation of IPERS benefits.

n. The parties or their attorneys in a dissolution action involving an IPERS member shall decide between themselves which attorney will submit a proposed domestic relations order to IPERS for review. IPERS shall not review a proposed order that has not been approved as to form by both parties or their counsel. A rejection under this paragraph shall not preclude IPERS from placing a hold on a member's account until the qualified status of a proposed order is resolved.

These rules are intended to implement Iowa Code sections 97B.4, 97B.15, 97B.25, 97B.38 and 97B.39.

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TITLE I
GENERAL

CHAPTER 1
OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION

[Prior to 12/3/86, see Water, Air and Waste Management[900] Ch 2]

567—1.1(17A,455A) Scope. This chapter governs the conduct of business by the environmental protection commission. Rule-making proceedings held as part of commission meetings and contested case proceedings involving the commission are governed by other rules of the department.

567—1.2(17A,455A) Time of meetings. The commission meets at least quarterly, and usually meets monthly. The director, the chairperson, or a majority of the commission may establish meetings. Normally, the time of the next meeting will be determined in the current commission meeting.

567—1.3(17A,455A) Place of meetings. Meetings are generally held in the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa. The commission may meet at other locations from time to time; if so, the meeting place will be specified in the agenda.

567—1.4(17A,455A) Notification of meetings. The director of the department shall provide public notice of all meeting dates, locations, and tentative agenda.

1.4(1) *Form of notice.* Notice of meetings is given by posting the tentative agenda and by distribution upon request. The agenda lists the time, date, place, and topics to be discussed at the meeting. The agenda shall include a specific time for the public to address the commission on any issue related to the duties and responsibilities of the commission, except as otherwise provided in these rules.

1.4(2) *Posting of agenda.* The tentative agenda for each meeting will be posted at the department's offices on the fourth and fifth floors, Henry A. Wallace Building, normally at least seven days prior to the meeting. Agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

1.4(3) *Distribution of agenda.* Agenda will be mailed to anyone who files a request with the director. The request should state whether the agenda for a particular meeting is desired, or whether the requester desires to be on the department's mailing list to receive the agenda for all meetings of the environmental protection commission.

1.4(4) *Amendment to agenda.* Any amendments to the agenda after posting and distribution under subrules 1.4(2) and 1.4(3) will be posted, but will not be mailed. The amended agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt amendments to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda amendments, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

1.4(5) *Supporting material.* Written materials provided to the commission with the agenda may be examined and copied as provided. Copies of the materials may be distributed at the discretion of the director to persons requesting the materials. The director may require a fee to cover the reasonable cost to the department to provide the copies, in accordance with rules of the department.

567—1.5(17A,455A) Attendance and participation by the public.

1.5(1) *Attendance.* All meetings are open to the public. The commission may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

1.5(2) *Participation.*

a. *Items on agenda.* Presentations to the commission may be made at the discretion of the chairperson.

b. *Items not on agenda.* Because Iowa Code section 21.4 requires the commission to give notice of its agenda, the commission discourages persons from raising matters not on the agenda. Persons who

wish to address the commission on a matter not on the agenda should file a request with the director to place that matter on the agenda of the subsequent meeting.

c. *Meeting decorum.* The chairperson may limit participation as necessary for the orderly conduct of agency business.

1.5(3) *Use of cameras and recording devices.* Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices discontinued if they cause interference, and may exclude those persons who fail to comply with that order.

[1]567—1.6(17A,455A) Quorum and voting requirements.

1.6(1) *Quorum.* Five or more commissioners present at a meeting constitutes a quorum.

1.6(2) *Voting.*

a. *Voting requirements if eight or nine commissioners are currently appointed.* If eight or nine commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of five or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

b. *Voting requirements if seven or fewer commissioners are currently appointed.* If seven or fewer commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of four or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

c. *Voting requirements to close a meeting.* Notwithstanding paragraph 1.6(2)*"a"* or 1.6(2)*"b,"* a vote to close a meeting shall require the concurrence of six or more members of the commission, or the concurrence of all members present if less than six members are present.

[1] Procedural Objection filed by the Administrative Rules Review Committee at its meeting held August 12, 2008; see text of Objection at end of 567—Chapter 1.

567—1.7(17A,455A) Conduct of meeting.

1.7(1) *General.* Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting shall be by voice or by roll call. Voting shall be by voice unless a voice vote is inconclusive, a member of the commission requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairperson shall announce the result of the vote.

1.7(2) *Voice votes.* All commission members present should respond when a voice vote is taken. The response shall be aye, nay, or abstain.

a. All members present shall be recorded as voting aye on any motion when there are no nay votes or abstentions heard.

b. Any member who abstains shall state at the time of the vote the reason for abstaining. The abstention and the reason for it shall be recorded in the minutes.

1.7(3) *Provision of information.* The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

567—1.8(17A,455A) Minutes, transcripts, and recordings of meetings.

1.8(1) *Recordings.* The director shall record by mechanized means each meeting, and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

1.8(2) *Transcripts.* The department does not routinely prepare transcripts of meetings. The department will have transcripts of meetings, except for closed sessions, prepared upon receipt of a request for a transcript and payment of a fee to cover the cost to the department of preparing the transcript.

1.8(3) *Minutes.* The director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the commission, and retained permanently by the director. The approved minutes shall be signed by the director and the chairperson and secretary of the commission.

567—1.9(17A,455A) Officers and duties.

1.9(1) *Officers.* The officers of the commission are the chairperson, the vice chairperson, and the secretary.

1.9(2) *Duties.* The chairperson shall preside at meetings, and shall exercise the powers conferred upon the chairperson. The vice chairperson shall perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary shall supervise the preparation of minutes, make recommendations to the commission on approval or revision of the minutes, and act as parliamentarian.

567—1.10(17A,455A) Election and succession of officers.

1.10(1) *Elections.* Officers shall be elected annually during May.

1.10(2) *Succession.*

a. If the chairperson does not serve out the elected term, the vice chairperson shall succeed the chairperson for the remainder of the term. A special election shall be held to elect a new vice chairperson to serve the remainder of the term.

b. If the vice chairperson does not serve out the elected term, a special election shall be held to elect a new vice chairperson to serve the remainder of the term.

c. If the secretary does not serve out the elected term, a special election shall be held to elect a new secretary to serve the remainder of the term.

567—1.11(68B) Sales of goods and services.

1.11(1) *Prohibition.* An official shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the department unless the department consents as provided in this rule.

1.11(2) *Definitions.*

"Association" means any profit or nonprofit entity that is not a "corporation" or an "individual" as defined in this rule, but does not include any "unit of government" as defined in this rule.

"Commission" means the environmental protection commission.

"Corporation" means "corporation" and "foreign corporation" as defined in Iowa Code sections 490.140 and 504A.2, but does not include any "unit of government" as defined in this rule.

"Department" means the department of natural resources.

"Goods" means personal property, tangible and intangible.

"Individual" means a human being and includes any individual doing business as a sole proprietorship.

"Official" means a member of the environmental protection commission.

"Sale" or *"sell"* means the process in which goods or services are provided in exchange for money or other valuable consideration. The term does not include purchases of goods or services, nor outside employment activities that constitute an employer-employee relationship.

"Services" means action, conduct or performance which furthers some end or purpose or which assists or benefits someone or something.

"Unit of government" means "United States," "state" and "governmental subdivision" as defined in Iowa Code section 490.140.

1.11(3) *Application for consent.* An application for consent must be signed by the official requesting consent and submitted as specified in subrule 1.11(4). The application must provide a clear statement of all relevant facts concerning the sale, specify the amount of compensation and how compensation is to be determined, and indicate the time period or number of transactions for which consent is requested. The application must also explain why the sale would not create a conflict of interest or provide financial gain by virtue of the applicant's position within the department.

1.11(4) *Consent procedure.* Applications for consent must be submitted to the director who will schedule the matter as an informational item at a meeting of the commission. When the informational item is considered, the applicant may explain the application and entertain questions. The director shall schedule the matter to be decided at the second meeting following its consideration as an informational

item, at which time the commission shall consider written comments which have been filed with the director and entertain any oral comments. The commission shall approve or deny the application by voting in the same manner as it determines other matters, except that the applicant shall not vote.

1.11(5) *General conditions of consent.* Consent shall not be given to an official unless all of the following conditions are met:

a. This condition is satisfied if either of the following paragraphs is met:

(1) The duties or functions performed by the official are not related to the regulatory authority of the department over the individual, association or corporation; or

(2) The duties or functions performed by the official are not affected by the selling of goods or services to the individual, association or corporation.

b. The selling of the goods or services by the official does not include acting as an advocate to the department on behalf of the individual, association or corporation receiving the goods or services.

c. The selling of goods or services does not result in the official selling a good or service to the department on behalf of the individual, association or corporation.

1.11(6) *Class prohibitions and consent.*

a. The commission concludes that the sales of goods and services described in this paragraph, as a class, constitute the sale of a good or service which affects an official's functions. The department will not consent to sales which fall within the following categories unless there are unique facts surrounding a particular sale which clearly satisfy the conditions listed in subrule 1.11(5).

Sales which are prohibited by rule:

(1) Sales of department information or the sale of services necessary to gather department information, including but not limited to solicitation lists.

(2) Services utilized in the preparation of applications, reports, or other documents which may be approved or reviewed by the commission.

b. The commission concludes that sales of goods or services described in this paragraph do not, as a class, constitute the sale of a good or service which affects an official's functions. Application and department approval are not required for these sales unless there are unique facts surrounding a particular sale which would cause that sale to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or otherwise present a conflict of interest.

Sales for which consent is granted by rule:

(1) Nonrecurring sales of goods and services if the official is not engaged for profit in the business of selling those goods or services.

(2) Sale of farm products at market prices to a buyer ordinarily engaged in the business of purchasing farm products.

(3) Sales of goods to general public at an established retail or consignment shop.

(4) Sale of legal, mechanical, or other services at market or customary prices. However, if an official's client or customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to subrules 1.11(3) and 1.11(4).

(5) Sale of goods at wholesale prices to a buyer ordinarily engaged in the business of purchasing wholesale goods for retail sale.

(6) Sale of creative works of art, including but not limited to sculpture and literary products, at market, auction, or negotiated prices. However, if an official's customer has a matter for decision before the commission directly or indirectly involving that good, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to subrules 1.11(3) and 1.11(4).

(7) Sale of goods to general public at market or franchiser-established prices. However, if an official's customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained pursuant to subrules 1.11(3) and 1.11(4).

1.11(7) *Effect of consent.* The consent must be in writing. The consent is valid only for the activities and period described in it and only to the extent that material facts have been disclosed and the actual

facts are consistent with those described in the application. Consent can be revoked at any time by written notice to the official.

1.11(8) *Public information.* The application and consent are public records, open for public examination, except to the extent that disclosure of details would constitute a clearly unwarranted invasion of personal privacy or trade secrets and the record is exempt from disclosure under Iowa law.

1.11(9) *Effect of other laws.* Neither this rule nor any consent provided under it constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Despite department consent under these rules, a sale of goods or services to someone subject to the jurisdiction of the agency may violate the gift law, bribery and corruption laws. It is the responsibility of the official to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

These rules are intended to implement Iowa Code sections 17A.3(1)*"a,"* 68B.4 and 455A.6.

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[Filed emergency 11/27/85—published 12/18/85, effective 11/27/85]
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[Filed emergency 6/13/08—published 7/2/08, effective 6/13/08]
[Editorial change: IAC Supplement 8/27/08]

OBJECTION

At its August 12, 2008 meeting the Administrative Rules Review Committee voted to object to the "emergency" adoption of ARC 6921B, amending rule 567 IAC 1.6. This filing was published in IAB Vol. XXX, No. 01 (7-02-2008). The effective of this objection is to terminate the "emergency" filing 180 days following the filing of this objection.

Rule 1.6 relates to the quorum requirements for Commission meetings. Under this emergency filing the required number of affirmative votes for official action will vary depending on the number of commissioners currently appointed by the Governor. Essentially the rule provides that that four votes are sufficient to take action when there are only seven appointed members.

The substance of new quorum requirement is within the authority of the Commission, as set out in Iowa Code §455A.6. Discussion at the Administrative Rules Review Committees' June and July meetings indicated that commission members felt that the emergency adoption was necessary due to unfilled vacancies on the commission which resulted in "delayed Agency action, gridlock, and stalemate, with the minority at times deciding an issue." Rules Committee members felt these problems, while an impediment to efficient Commission operation, did not rise to the level of a true emergency, which would outweigh the value of notice and an opportunity for public participation The notice and public participation requirements of the rulemaking process are to be construed broadly (see:§§17A.23); this requirement is best served by narrowly applying the grounds for "emergency" rule filing.

Objection filed August 12, 2008

CHAPTER 50
ORAL HEALTH

641—50.1(135) Purpose. The purpose of establishing the state public health dental director position and the oral health bureau within the Iowa department of public health is to create a strong oral health unit with sufficient leadership and capacity to determine priorities, develop plans, make funding decisions, and establish policies that improve the oral health of all Iowans. These rules will enhance the efficiency of state government, strengthen relationships with federal and local authorities, and improve interrelationships between the public and private sectors.

641—50.2(135) Definitions. For purposes of this chapter, the following definitions apply:

"Core public health functions" means the functions of health assessment, policy development, and assurance.

1. Assessment: regular collection, analysis, interpretation, and communication of information about health conditions, risks, and assets.
2. Policy development: development, implementation, and evaluation of plans and policies, for public health in general and priority health needs in particular, in a manner that incorporates scientific information and community values and is in accordance with state public health policy.
3. Assurance: ensuring, by encouragement, regulation, or direct action, that programs and interventions which maintain and improve health are carried out.

"Dental care for persons with disabilities program" means the department program to provide dental services to low-income children and young adults with special health care needs.

"Dental home" means a network of dental and nondental public and private health care professionals providing individualized care based on risk assessment. Services include oral health education, dental screenings, preventive services, diagnostic services, treatment services, and emergency services.

"Dental sealant program" means the department program implemented through public or private nonprofit agencies to provide dental examinations or screenings and dental sealants to children in a school-based setting.

"Department" means the Iowa department of public health.

"Direct dental services" means those services generally delivered one-on-one between a health professional and a client.

"Enabling services" means services that allow or provide for access to and the derivation of benefits from the array of basic health care services and includes activities such as outreach, case management, health education, transportation, translation, home visits, support services, and other services.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment program which provides for regular preventive health care services for children aged 0 to 21 as authorized by Title XIX of the Social Security Act.

"Fluoride mouth rinse program" means the department program implemented through elementary schools and middle schools, which includes oral health education and weekly rinsing with fluoride. The program targets schools with children at high risk for tooth decay.

"Gap filling" means direct health services supported by public health staff or resources that are needed but are not otherwise accessible in the community.

"Infrastructure building" means activities directed at improving and maintaining the health status of all clients by providing support for the development and maintenance of comprehensive health service systems, including development and maintenance of health service standards or guidelines, training, data, and planning systems.

"I-Smile program" means the department program implemented through public and private nonprofit agencies and private health care providers to increase access to dental care for children and to ensure a dental home.

"Medicaid" means the Medicaid program authorized by Title XIX of the Social Security Act and funded through the Iowa department of human services from the United States Department of Health and Human Services.

"Oral health education" means information provided by a health professional about dental disease, prevention, and anticipatory guidance, including oral habits, oral development, fluoride exposure, and dietary counseling.

"Population-based services" means preventive interventions and personal health services developed for and available to populations of the state rather than for individuals in a one-on-one situation. Disease prevention, health promotion, and statewide outreach are major components.

"Senior smiles program" means the department program implemented through public and nonprofit private agencies to provide oral screenings and interventions for older Iowans.

"Title V" means Title V of the Social Security Act and the federal requirements contained in the Omnibus Reconciliation Act of 1989 (Public Law 101-239) which address the Maternal and Child Health and Children with Special Health Care Needs programs.

"Title V maternal and child health program" means the department program implemented through local public or private nonprofit agencies for the assurance of access to preventive and primary child and maternal health services and services to children with special health care needs in accordance with 641—Chapter 76, Maternal and Child Health Program. Through this program, agencies are responsible for ensuring access to dental services, with an emphasis on early intervention and preventive oral health care beginning at or near the age of 12 months and continuing into adulthood.

"Title XIX" means the Medicaid program authorized by Title XIX of the Social Security Act and funded through the Iowa department of human services from the United States Department of Health and Human Services.

"Vulnerable populations" means individuals and groups whose needs are not addressed by traditional dental service providers and health care systems.

641—50.3(135) Dental director responsibilities. The state public health dental director shall provide overall leadership of the state oral health program and shall be responsible for the following duties:

1. Plan and direct all work activities of the statewide public health dental program.
2. Develop comprehensive initiatives for oral health prevention and improved access to dental care.
3. Evaluate the effectiveness of the statewide public health dental program and of program personnel.
4. Manage the oral health bureau, including direction, supervision, and fiscal management of bureau staff.
5. Represent the department to external stakeholders, including public and private organizations, providers, and the general public.
6. Other related work as required.

641—50.4(135) Oral health bureau functions. The bureau shall be responsible for the core public health functions of assessment, policy development, and assurance of oral health services in Iowa.

50.4(1) *Assessment.* The bureau shall develop and implement an ongoing oral health surveillance system to evaluate and monitor the oral health status of children and other vulnerable population groups in Iowa. Assessment activities may include the following:

a. Assess oral health status and needs so that problems can be identified and addressed.

b. Assess determinants of identified oral health needs, including resources.

c. Assess the fluoridation status of water systems and other sources of fluoride.

d. Identify, investigate, and monitor oral health problems and health hazards.

50.4(2) *Policy development.* The bureau shall facilitate ongoing strategic planning and application of evidence-based research in oral health policy development to improve access to care and the overall oral health of all Iowans. Policy development activities may include the following:

a. Develop plans and policies through a collaborative process that supports individual and community oral health efforts to address oral health needs.

b. Provide leadership to address oral health problems by maintaining a strong oral health unit within the department.

c. Mobilize partnerships with policymakers, professionals, organizations, groups, the public and others to identify and implement solutions to oral health problems.

50.4(3) *Assurance.* The bureau shall assist Iowans in maintaining optimal oral health throughout all stages of life by providing or ensuring infrastructure-building, population-based, and enabling services at the state and local level. Infrastructure-building and enabling services shall target the improvement of access to dental care and prevention. Population-based services shall include public health training and technical assistance, educational activities that increase oral health awareness, and activities that improve dental support systems for families.

The bureau shall leverage federal, state, and local resources to administer grant programs which include Title V maternal and child health, including the Medicaid and EPSDT programs; I-Smile program; dental sealant program; fluoride mouth rinse program; dental care for persons with disabilities program; senior smiles program; and other new and existing programs. Assurance activities may include the following:

a. Provide assistance and resources to local public health programs for community capacity-building efforts to identify vulnerable populations and to develop innovative approaches that link people to needed oral health services, including gap-filling direct dental services.

b. Inform, educate, and empower the public regarding oral health problems and solutions.

c. Promote and enforce laws and regulations that protect and improve oral health, ensure safety, and assure public accountability for the public's well-being.

d. Assure that the public health and personal health workforce has the capacity and expertise to effectively address oral health needs.

e. Evaluate the effectiveness, accessibility, and quality of population-based and personal oral health services.

f. Conduct research and support projects to gain new insights and promote innovative solutions to oral health problems.

641—50.5(135) Funding. The oral health bureau and the state public health dental director shall be funded through federal Title V funds and state matching funds, state general funds, department of human services funding, and other funds as available.

These rules are intended to implement Iowa Code Supplement sections 135.14 and 135.15.

[Filed 7/10/08, Notice 5/21/08—published 7/30/08, effective 9/3/08]*

[Editorial change: IAC Supplement 8/27/08]

*September 3, 2008, effective date of ARC 7023B [Ch 50] delayed 70 days by the Administrative Rules Review Committee at its meeting held August 12, 2008.

CHAPTER 35
IOWA PRACTITIONER REVIEW COMMITTEE

650—35.1(153,272C) Iowa practitioner review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the board establishes the Iowa practitioner review committee.

35.1(1) *Definitions.*

"Impairment" means an inability, or significant potential for inability, to practice dentistry, dental hygiene, or dental assisting with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any mental or physical disorder or disability. For the purposes of this program, "impairment" does not include sexual dysfunction, sexual addiction, sexual compulsivity, paraphilia, or other sexual disorder.

"Initial agreement" means the written document establishing the initial terms for participation in the program.

"Iowa practitioner program contract" or *"contract"* means the written document executed by a practitioner and the IPRC that establishes the terms for participation in the program.

"IPP" or *"program"* means the Iowa practitioner program.

"IPRC" or *"committee"* means the Iowa practitioner review committee.

"Practitioner" means a licensed dentist or dental hygienist or a registered dental assistant or a person applying for a license or registration.

"Self-report" means the practitioner providing written or oral notification to the IPRC that the practitioner has been, is or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging an impairment prior to the date of self-report. Information related to an impairment or a potential impairment that is provided on a license or registration application or renewal form may be considered a self-report upon the request of the practitioner, authorization from the license committee, and agreement by the IPRC.

35.1(2) *Purpose.* The IPRC evaluates, assists, and monitors the recovery, rehabilitation, or maintenance of dentists, hygienists, or assistants who self-report impairments. As necessary, the committee notifies the board in the event of noncompliance with contract provisions. The IPRC is both an advocate for the health of a practitioner and a means to protect the health and safety of the public. Reports on the activities of the IPRC shall be made to the board on a quarterly basis.

35.1(3) *Composition of the committee.* The chairperson of the board shall appoint the members of the IPRC. Committee members, except the executive director, shall be appointed for three-year terms, for a maximum of three terms. The committee shall elect a chairperson and vice chairperson at the last meeting of each calendar year to begin serving a one-year term on January 1. The membership of the IPRC may include, but is not limited to:

a. Executive director of the board or the director's designee from the board's staff;

b. One practitioner who has remained free of addiction for a period of no less than two years following successful completion of a board-approved recovery program, a board-ordered probation for drug or alcohol dependency, addiction, or abuse, or an IPRC contract;

c. One physician/counselor with expertise in substance abuse/addiction treatment programs;

d. One psychiatrist or one psychologist; and

e. One public member.

35.1(4) *Eligibility.* To be eligible for participation in the IPP, a practitioner must self-report an impairment or suspected impairment directly to the office of the board. A practitioner is deemed ineligible to participate in the program if the license committee or IPRC finds sufficient evidence of any of the following:

a. The practitioner is engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third person or for personal profit or gain;

b. At the time of the self-report, the practitioner is already under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;

c. The practitioner has caused harm or injury to a patient;

d. There is currently a board investigation of the practitioner that concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

e. The practitioner has been subject to a civil administrative or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of dentistry, dental hygiene, or dental assisting;

f. The practitioner provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the board or committee; or

g. There is currently a complaint before the board related to an impairment.

35.1(5) *Type of program.* The IPP is an individualized recovery, rehabilitation, or maintenance program designed to meet the specific needs of the impaired practitioner. The committee, in consultation with an IPRC-approved evaluator, shall determine the type of recovery, rehabilitation, or maintenance program required to treat the practitioner's impairment. The committee shall prepare a contract, to be signed by the practitioner, that shall provide a detailed description of the goals of the program, the requirements for successful participation, and the practitioner's obligations therein.

35.1(6) *Terms of participation.* A practitioner shall agree to comply with the terms for participation in the IPP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

a. *Duration.* The length of time a practitioner shall participate in the program shall be determined by the committee. Length of participation in the program will vary depending upon the recommendations provided by an approved evaluator and the determination of the IPRC following review of all relevant information.

b. *Noncompliance.* A practitioner participating in the program is responsible for notifying the committee of any instance of noncompliance including, but not limited to, a relapse. Notification of noncompliance made to the IPRC by the practitioner, any person responsible for providing or monitoring treatment, or another party shall result in full review by the board for the filing of formal charges or other action the board deems appropriate.

c. *Practice restrictions.* The IPRC may impose restrictions on the license to practice dentistry or dental hygiene or registration to practice dental assisting as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator and the IPRC determines, based on all relevant information, that the practitioner is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a practitioner is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that the practitioner refuses to agree to or comply with the restrictions established in the initial agreement or contract, the committee shall refer the practitioner to the board for appropriate action.

d. *Monitoring costs.* A provision for payment of the actual costs or a $100 quarterly fee to cover the board's expenses associated with monitoring a practitioner's compliance with the terms of the IPRC initial agreement or contract may be included in the initial agreement and contract. Actual costs include mileage, meals, travel expenses, hourly investigative time, and all incidental expenses associated with monitoring compliance. Monitoring costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

35.1(7) *Limitations.* The IPRC establishes the terms and monitors a participant's compliance with the program specified in the initial agreement and contract. The IPRC is not responsible for participants who fail to comply with the terms of or successfully complete the IPP. Participation in the program under the auspices of the IPRC shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of dentistry, dental hygiene, or dental assisting by a participant shall be referred to the board for appropriate action.

35.1(8) *Confidentiality.* Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Accordingly, information in

the possession of the board or the committee about practitioners in the program shall not be disclosed to the public. Participation in the IPP under the auspices of the IPRC is not a matter of public record. Information about participants may only be shared in the following circumstances:

a. Upon authorization or prior to successful completion of a contract, the IPRC may communicate information about an IPP participant to dental regulatory authorities or the impaired practitioner program of any jurisdiction of the United States in which the participant is currently licensed to practice dentistry, dental hygiene, or dental assisting, or in which the practitioner is seeking licensure.

b. The IPRC may communicate information about an IPP participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance.

c. The IPRC may communicate information about an IPP participant to the board in the event that a participant does not comply with the terms of the initial agreement or contract. The IPRC may provide the board with a participant's IPRC file in the event that the participant does not comply with the terms of the initial agreement or contract and the IPRC refers the case to the board for appropriate action.

d. The IPRC shall report to the board any knowledge of violations of administrative rules or statutes unrelated to the impairment.

e. If the board initiates disciplinary action against a practitioner for noncompliance with the terms of the contract, the board may include information about the practitioner's participation in the IPP in the statement of charges, settlement agreement and final order, or order following hearing.

650—35.2(272C) Board referrals to the Iowa practitioner review committee.

35.2(1) *Eligibility for board referral to IPRC.* The board may refer a practitioner who is the subject of a board order to the IPRC for monitoring in the following circumstances:

a. The practitioner has an impairment as defined in rule 650—35.1(272C).

b. The board determines that the practitioner is an appropriate candidate for participation in the IPRC.

c. The IPRC determines that the practitioner is an appropriate candidate for participation in the IPRC.

35.2(2) *Referral process.*

a. Determination of whether a practitioner is appropriate for referral to the IPRC is in the sole discretion of the board. Upon the board's approval, a referral shall be made to the IPRC and the committee shall be provided with relevant information about the practitioner.

b. The IPRC shall make a determination whether the practitioner is an appropriate candidate for participation in the program. Upon this determination, the IPRC shall offer the referred practitioner a contract that specifies terms of participation in the program. See 650—35.1(272C).

c. If the IPRC finds that the practitioner is not an appropriate candidate for participation in the IPP or if the practitioner fails to sign the contract in the time period specified by the IPRC, the IPRC shall notify the board promptly.

d. When the practitioner signs the contract, the IPRC shall notify the board that the referral has been finalized. The practitioner's failure to sign a contract within the time period specified by the IPRC may be grounds for disciplinary action.

e. Referral of a practitioner by the board to the IPP shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. Upon referral, the practitioner shall be subject to the provisions of 650—Chapter 35. Specifically, the practitioner shall be subject to board review and potential formal disciplinary action for noncompliance with the provisions of the IPP contract.

These rules are intended to implement Iowa Code section 272C.3(1)*"k."*

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PUBLIC SAFETY DEPARTMENT[661]

Rules transferred from agency number 680 to 661 to conform with the reorganization numbering scheme in general

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[Ch 5 as appeared in July 1974 IDR Supplement, rescinded June 30, 1975]
[Prior to 4/20/88, Public Safety Department [680] Ch 5]

GENERAL PROVISIONS

661—5.1(100) Description. This division's charter is to prevent fires. Fire causes are determined and communicated to the public by various means including the division's annual report. The division requires building standards necessary for fire safety and apprehends those who violate such standards or fire-related criminal statutes.

5.1(1) The division's administrator is entitled the state fire marshal. The fire marshal has one assistant. The nonclerical employees of this division are peace officers designated as special agents, fire prevention inspectors, fire prevention specialists, and designated subordinates.

5.1(2) Special agents examine a fire or a fire scene to determine its cause, and arrest any who unlawfully cause fires or violate fire-related laws.

5.1(3) Inspectors examine buildings to determine the compliance of its system with applicable laws or rules.

5.1(4) A fire prevention specialist examines blueprints and specifications of proposed buildings.

5.1(5) Variance from rules. Rescinded IAB 10/31/01, effective 1/1/02.

661—5.2(17A,80,100,101,101A) Definitions. The following definitions apply generally to the provisions of this chapter unless a specific exception is made with reference to a particular rule or sequence of rules within the chapter.

"Basement" means a usable or unused floor space not meeting the definition of a "story."

"Building" is any structure used for or intended for supporting or sheltering any use or occupancy. Each portion of a building separated by one or more area separation walls with a fire-resistive rating of at least two hours may be considered a separate building.

"Corridor" means an enclosed exit access component that defines and provides a path of egress travel to an exit.

"Fire" includes explosions in which fire, combustion or rapid oxidation is an element but does not include explosions caused by nonflammable gases, liquids or other materials.

"Fire marshal" means the fire marshal, the assistant fire marshal, fire prevention inspectors, special agents, fire prevention specialist and designated subordinates.

"Fire marshal's office" means the headquarters of the fire marshal.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

"Owner" (For service of notice, criminal sanctions and penalties.) If a building is owned by a corporation, the chairperson or president of the board of directors is considered the owner. If a building is owned by an organization governed by a board of trustees, the president or chairperson of the board is considered the owner. If a partnership is shown to be the owner of a building, any partner is considered the owner. If an individual is shown to be the owner, the individual, or the guardian or conservator of such individual is considered to be the owner. If the building is shown to be owned by a trade name, the person who registered the trade name is considered the owner.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than 6 feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused underfloor space shall be considered as a story.

661—5.3(17A,100) Building plan approval. Plans for the proposed construction of certain new buildings or additions, alterations or changes to existing buildings require the approval of the fire marshal. Plans for initial construction or alterations, changes, additions, renovations or remodeling of the following shall be submitted to the fire marshal for approval, unless the plans have been submitted to a local fire or building department for approval based upon compliance with the rules of the fire marshal or a local fire ordinance recognized in rule 661—201.4(100):

- Any educational building or facility serving kindergarten through twelfth grade,
- Any college or university building or facility,
- Any child care facility intended to serve seven or more children at one time,
- Any correctional facility, or
- Any gaming facility.

Plans for initial construction or alterations, changes, additions, renovations or remodeling of the following shall be submitted to the department of inspections and appeals and are not required to be submitted to the fire marshal:

- Adult day services, or
- Assisted living facilities.

Plans for initial construction or alterations, changes, additions, renovations or remodeling of any building or facility subject to the provisions of 661—Chapter 205 shall be submitted to the fire marshal.

5.3(1) An initial evaluation or review by the fire marshal may be obtained on preliminary plans by submitting the plan that shows the building outline with rooms, corridors and exits indicated. The fire marshal informally responds to such preliminary plan.

5.3(2) Building plan submittals.

a. Working plans and specifications. When approval of building construction projects is required by this chapter or when requested by the submitter for other building construction projects covered by this chapter, one complete set of the final working plans and specifications shall be submitted to the fire marshal's office. The submittal shall comply with Iowa Code chapters 542B and 544A. The submittal is examined and submitter is notified of the findings. If the working plans and specifications comply with this chapter, an approval letter shall be sent to the submitter.

b. Shop drawings. Shop drawings, equipment specifications and supporting documentation for fire alarm and sprinkler systems may be submitted for review and approval. If the system is being installed as part of a project which has been designed by an engineer or architect, the submittal shall be approved by the responsible architect or engineer prior to submittal to the fire marshal. The submittal is examined and submitter is notified of the findings. If the submittal complies with the applicable standards, all copies are stamped approved and one copy is retained and the other copies, if any, are returned to the submitter. If only one copy of shop drawings, equipment specifications and supporting documentation is received, a letter shall be sent to the submitter in lieu of returning approved shop drawings.

c. Changes. No changes shall be made to the approved final working plans and specifications or shop drawings unless the changes are submitted to and approved by the fire marshal's office.

EXCEPTION: Submittal of working plans and specifications or shop drawings is not required when the plans and specifications or shop drawings have been reviewed for compliance with this chapter by the chief, or an employee authorized by the chief, of a fire department organized under Iowa Code chapter 400.

NOTE: Building, planning and design services are required to be in conformance with Iowa Code chapters 542B and 544A.

5.3(3) If the blueprints and specifications are not acceptable, the fire marshal's office specialist notifies the submitter of the deficiencies and requests that the submitter either forward changes or request a review of the blueprints and specifications with the specialist.

5.3(4) If, after such review, the submitter disputes the specialist's findings, the submitter may request that the disputed questions be referred to the national fire protection association or other similar generally recognized authority, at the submitter's expense, and the specialist submits the blueprints and

specifications to the national fire protection association or other similar generally recognized authority for their analysis.

5.3(5) If the submitter disputes the findings of the national fire protection association, the submitter may appeal to the fire marshal under the procedures of 661—Chapter 10.

5.3(6) For any construction project requiring approval of the state fire marshal, construction shall not begin until such approval has been received.

NOTE: It is recommended that approval of the fire marshal be obtained prior to the release of bid documents.

661—5.4(17A,100,101,101A) Inspections. Certain buildings as designated in the Iowa Code shall comply with the Iowa Code and fire safety rules. The fire marshal determines and enforces such compliance. To do so, the fire marshal may enter such building or premises at any time without notice to inspect it.

5.4(1) Such inspection may be of a particular system in the building. For example, the electrical, heating, exit, valve, piping and venting systems may be inspected. The inspection may include the entire building. For example, the building may be so dilapidated as to be especially liable to fire.

5.4(2) Such inspection is conducted by the fire marshal or by a consultant as requested by the fire marshal. A consultant would be a person with the necessary degree of training, education or experience to examine a system within a building required to be in compliance with the law or rules and determine if such system or systems is in compliance with such requirements.

5.4(3) Inspections are conducted without announcement and occur on a random basis, upon anyone's request, upon any complaint or when fire appears to be possible. For example, the presence of flammable liquids or gases or the odor thereof outside a building storing such gases or liquids may cause an inspection.

5.4(4) When the member or consultant arrives at the building that is to be inspected, the member or consultant usually advises the owner. If a person in such a position cannot be contacted, the inspection commences anyway. If the owner or representative wishes to accompany the member or consultant, they may do so, but the inspection is not delayed.

5.4(5) The member or consultant examines the system or systems being inspected to determine compliance with the laws or rules. To guide the inspection, the member or consultant uses state rules or a manual recommended by the national fire protection association or a similar acceptable fire protection agency.

5.4(6) Upon completion of an inspection, the member or consultant completes written inspection orders. The original is filed in the fire marshal's office by county; a copy is filed in the member's office in a geographical area file; and a copy is left with the fire department having jurisdiction.

5.4(7) Upon completion of the inspection, if the building does not comply with applicable laws or rules, the member or consultant identifies specifically such noncompliance and notifies the owner. The owner may be ordered to correct or repair the deficiency or may order the building removed or demolished.

a. Copies of the notice of deficiencies or order are distributed to the fire marshal's office and the fire department having jurisdiction and a copy is filed in the member's office.

b. The time to comply with the order is determined by the member considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish and other reasonable, relevant information.

c. If the owner of the building does not agree with the deficiency findings and order, the owner asks the fire marshal to review the order. The provisions of 661—Chapter 10 are then used.

d. Failure to comply with an order may incur penalties.

661—5.5(100) Certificates and inspection fees.

5.5(1) *Certificates for license.* Several Iowa statutes provide that a license to conduct certain functions cannot be issued until the fire marshal has approved the building to be used for such function. Upon receipt of a written request, the fire marshal conducts or has conducted an inspection using the

procedures contained in the building inspection rule 5.4(17A,100,101,101A). Upon completion of an inspection showing the building to be in compliance, the fire marshal issues a certificate. If the building is found to be in noncompliance, the certificate applicant may file a petition requesting a review and the same procedure is used as if an order were being requested to be reviewed. Upon completion of the review process, if the building is found to be in compliance, a certificate is then issued.

5.5(2) *Inspection fees.* The following fees shall apply respectively to inspections of the facilities of the types listed where a certificate of inspection from the fire marshal is required in order to obtain licensure or certification under Iowa law. The inspection fee shall be paid by check made payable to "Fire Marshal Division, Iowa Department of Public Safety" prior to the issuance of the certificate provided for in subrule 5.5(1).

a. The inspection fee for a health care facility licensed or seeking licensure pursuant to Iowa Code chapter 135C or a group home licensed or seeking licensure in this state is $2 per bed.

b. The inspection fee for an elder group home certified or seeking certification pursuant to Iowa Code chapter 231B or an assisted living facility licensed or seeking licensure pursuant to Iowa Code chapter 231C is $7.50 per bed.

c. The inspection fee for an adult day services program certified or seeking certification pursuant to Iowa Code Supplement chapter 231D is $50 per facility.

d. The inspection fee for a child care facility licensed or seeking licensure pursuant to Iowa Code chapter 237A is $20 per facility.

e. When an initial inspection which requires a fee pursuant to paragraphs *"a," "b,"* or *"c"* of this subrule results in a finding of a deficiency or deficiencies which require a reinspection, the initial reinspection shall be performed without the imposition of any additional fee. If the original deficiency or deficiencies have not been corrected at the time of the initial reinspection, then a fee of $100 for each additional reinspection after the initial reinspection is required until the original deficiency or deficiencies have been corrected.

f. The fee for a suitability inspection of a prospective site for a facility which may seek licensure or certification from the state of Iowa is $100.

This rule is intended to implement Iowa Code chapter 100 as amended by 2000 Iowa Acts, House File 2552.

661—5.6(17A,80,100) Fire investigations.

5.6(1) The fire marshal has the authority to investigate any fire in the state of Iowa.

5.6(2) City and township officers have the primary responsibility to and shall investigate fires. The city or township officer shall file a report of each fire with the fire marshal's office within one week of the fire even if the fire marshal's division participated in, assisted with, directed or supervised the fire investigation. Upon written request, the fire marshal may grant an extension of the time for filing this report for a period not to exceed 14 days. The request shall set forth compelling reasons for such extension.

5.6(3) The city or township officer shall immediately report a fire that involves death or suspected arson and does so by contacting the member assigned to that area or, if not available, the fire marshal's office or the fire marshal or assistant or, if no such contact can be made, the officer asks the county sheriff to relay the information to the Iowa police radio or teletype system (patrol communications division). The officer's report will be recorded or logged.

5.6(4) The notice of a fire involving death or arson contains the following information, if known:

a. If death has occurred or is suspected, the name, age and address of person or persons deceased or missing; the date, time and address of the fire; and the suspected cause of fire.

b. If arson is suspected, the date, time, address of the fire; the reasons for suspecting arson; whether there is obvious evidence of arson and if there is an arson suspect.

c. Whether an explosion occurred.

5.6(5) If Iowa police radio has been so notified, it immediately notifies the fire marshal or the nearest available member of the fire marshal's division.

5.6(6) The fire marshal may, while investigating the cause of a fire, compel witnesses and others to testify under oath and to submit books, records and other documents.

a. This is in the discretion of the fire marshal and may be exercised anytime, including fires that involve an extensive loss, a death, arson or explosion, or suspected arson.

b. The fire marshal may allow a person to submit to a polygraph examination.

5.6(7) The fire marshal notifies the person compelled to give testimony or information.

5.6(8) The fire marshal may assist a local officer in the investigation of any fire. The fire marshal may superintend, direct or conduct the investigation of a fire and may request the participation of a consultant when:

a. Requested by state or local authority to do so.

b. A death has occurred, an extensive amount of property has been destroyed, arson is suspected or an explosion has occurred.

c. A person is identified as an arson suspect.

d. There is obvious physical evidence of arson.

e. The fire marshal deems it necessary.

5.6(9) The fire marshal, when participating in the investigation of a fire, may request the person in control of the premises to execute a consent to search.

661—5.7(17A,101A) Explosive materials. Those wishing to receive an explosive materials commercial license may obtain a copy of the required application by contacting the fire marshal's office, sheriff's office or the office of the chief of police in cities of over 10,000 people.

5.7(1) Such application is submitted to the sheriff's office or office of the chief of police. That agency reviews the application, investigates the applicant, inspects the buildings, if necessary, and completes the application, then forwards it to the fire marshal.

a. If the application is approved, the fire marshal enters approval thereon, notifies the local agency, and issues the license.

b. Explosive materials commercial license expires on December 31 of each year and may be renewed.

c. If an application is denied, the applicant may appeal under 661—Chapter 10.

5.7(2) A person wishing to purchase, possess, transport, store or detonate explosive materials shall obtain a permit to do so from the county sheriff or the chief of police.

5.7(3) When a sheriff confiscates explosive materials, the sheriff shall give notice to the state fire marshal's office as soon as reasonably possible.

661—5.8(100,101,101A) Fire drills. All public and private school officials and teachers shall conduct fire drills in all school buildings as specified in Iowa Code section 100.31 when school is in session. All doors and exits of their respective rooms and buildings shall remain unlocked during school hours or when such areas are being used by the public at other times.

661—5.9(17A,100) Fire escapes. Upon receipt of a written communication from an owner appealing the action or requirement of any fire escape inspector that sets forth such action or requirement and the objections the owner has to the action or requirement of such inspector, the provisions of 661—Chapter 10 will apply.

661—5.10(17A,22,100,692) Public inspection of fire marshal files and fire records. The fire marshal's office keeps a record on file of every reported fire in Iowa. All other important written information gathered by the fire marshal also is filed. Most of the contents of these documents are available to the public. Some of the information contained in these files, such as investigative data, intelligence data or criminal history data, as defined in Iowa Code chapter 692, is not public record. Requests for information should be addressed to the Fire Marshal Division, Iowa Department of Public Safety, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

5.10(1) A person may request to examine or copy a public record by either submitting a request in person or in writing. A person who plans to make a request in person to examine public records should first contact the office by telephone at (515)281-5821 to determine if personnel will be available to assist the person.

5.10(2) A copy will be provided on request of any public record in the possession of the fire marshal division at the expense of the person requesting the copy of the record. The fee for a copy of a record shall reflect only the cost of copying the record and the time required of staff of the department of public safety to retrieve the record, copy the record, supervise the copying of the record, and mail the record.

5.10(3) If a person wishes a copy of the record of a particular fire, it may be copied in the fire marshal's office or that person may so request by writing to the fire marshal's office setting forth the date, time and address, including county, of the fire. The fire marshal will forward a copy of the public record and may require reimbursement for the actual cost of copying and mailing the information.

661—5.11(17A,80,100) Information requested before inspection. Persons requesting the inspection of a building that is alleged to require repair, removal or demolition under Iowa Code section 100.13 shall provide the following information, if known: the address of the building; the name and address of the building's owner; the requester's name, address and telephone number; and a general description of the alleged deficiencies which the requester seeks remedied.

5.11(1) *Initial determination.* The fire marshal, upon receipt of the information, shall make an initial determination whether there are sufficient allegations to warrant an inspection.

a. If, in the fire marshal's opinion, the complaint fails to warrant conducting an inspection, the fire marshal shall then so advise the complainant.

b. If the fire marshal determines that an inspection is warranted, the fire marshal will so advise the county attorney, the requester and person(s) identified as the owner(s).

5.11(2) *Cause to be inspected.* The fire marshal shall then cause the inspection of the building to determine if:

a. By want of proper repair, or by reason of age and dilapidated condition, it is especially liable to fire and is so situated as to endanger other buildings, property or persons, or

b. It contains combustibles, explosives or flammable materials dangerous to the safety of any buildings, premises or persons.

5.11(3) *Final decision.* Upon completion of the inspection the fire marshal shall then decide if the building needs to be removed or repaired.

a. If the building complies with applicable laws or rules and no deficiencies are found, the fire marshal shall accordingly notify the county attorney, the owner and the requester.

b. If any deficiencies are found, and the building is within the corporate limits of a city, the fire marshal shall then notify the mayor and clerk of said city of the deficiencies and the need for repairs or removal.

c. If any deficiencies are found, and the building is within the corporate limits of a city, the fire marshal shall then identify specifically such deficiencies and prepare an order to correct or repair the deficiencies or remove or demolish the building. Such notice and order should be sent to the county attorney with a request that the notice and order be examined by the county attorney.

NOTE: An owner who receives an order from the fire marshal may appeal the order using procedures established in 661—Chapter 10.

5.11(4) *Verification of legal description.* The county attorney shall, upon receipt of the fire marshal's notice and order, verify the legal description and identification of the property owner and shall advise the fire marshal how to properly serve the order.

5.11(5) *Contents of order.* This order shall notify the owner of the building that the order becomes effective upon its receipt or issuance. The order shall also notify the owner that, within five days after the order's effective date, the owner may file a petition for review of the order in accordance with Iowa Code section 100.14.

5.11(6) *Who shall be served.* If the county attorney deems it appropriate, any occupants, lienholders or lessees shall be served with a copy of the order.

5.11(7) *Reasonable time to comply.* The order shall give the owner a reasonable time to comply with its mandate(s). The fire marshal shall determine what constitutes a reasonable time by considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish the building and other reasonable, relevant information.

5.11(8) *Reinspection.* If the owner of the building elects not to challenge the fire marshal's order, the fire marshal shall then, at the end of the period during which compliance was required, conduct another inspection of the building.

a. If the fire marshal finds that the order has been complied with, the fire marshal shall notify the county attorney, owner and requester of this fact.

b. If the fire marshal finds that the order has not been complied with, the fire marshal will notify the county attorney of noncompliance.

NOTE: An owner who receives a notice of noncompliance from the fire marshal may appeal the notice using procedures established in 661—Chapter 10.

5.11(9) *Failure to comply.* Upon receipt from the fire marshal of the owner's failure to comply, the county attorney shall:

a. Institute the procedure necessary to subject the owner to a penalty of $10 for each day the owner fails to comply, and

b. Confirm the legal description of the property, the owner's name and address, the alleged deficiencies of the building, that an inspection was conducted, that some deficiency was found, that the owner was properly served, notified and given an adequate opportunity to repair the deficiency, and that the deficiency has not been remedied and may, therefore, advise the fire marshal that the destruction is appropriate at this time.

5.11(10) *Final action taken.* The fire marshal, upon the advice of the county attorney, may repair, remove or destroy the building. Such destruction may occur by:

a. Permitting the local fire service to burn the building as a training exercise;

b. Asking for public bids on the building;

c. If significant costs are anticipated, the fire marshal may request funds from the Iowa executive council.

661—5.12(17A,80,100A) Sharing of insurance company information with the fire marshal. Insurance companies shall provide the specified information to the fire marshal as follows:

5.12(1) Whenever an insurance company has reason to believe that a fire loss insured by the company was caused by something other than an accident, said insurance company shall provide to the fire marshal, or some other agency authorized to receive such information under Iowa Code chapter 100A, all information and material possessed by said company relevant to an investigation of the fire loss or a prosecution for arson.

5.12(2) Whenever the fire marshal, or an agent or employee of the fire marshal, requests in writing that an insurance company provide information in its possession regarding a fire to the fire marshal, the insurance company shall provide all relevant information requested. Relevant information may include, but need not be limited to:

a. Insurance policy information relating to a fire loss under investigation including information on the policy application.

b. Policy premium payment records.

c. History of previous claims made by the insured.

d. Material relating to the investigation of the loss, including the statement of any person, proof of loss, and other information relevant to the investigation.

5.12(3) Unless otherwise expressly limited any request for information under this rule shall be construed to be a request for all information in the possession of an insurance company. Any information in the custody or control of any agent, employee, investigator, attorney or other person engaged by an insurance company, on a permanent or temporary basis, in the person's professional relationship to the insurance company shall be considered to be in the possession of the insurance company subject to this rule.

661—5.13(17A,80,100A) Release of information to an insurance company. An insurance company which has provided fire loss information to an authorized agency pursuant to Iowa Code section 100A.2 may request information relevant to said fire loss investigation from the fire marshal. If the insurance company has provided information to an authorized agency other than the fire marshal, the request shall include proof that information was provided. For purposes of this rule the term insurance company shall include an attorney, adjustor or investigator engaged by the company in reference to the particular fire loss involved in the request even though the attorney, adjustor or investigator is not a full-time employee of the insurance company. The attorney, adjustor or investigator shall provide the fire marshal with proof of authorization from the insurance company to act as its representative relative to the loss.

661—5.14(17A,80,100A) Forms. These rules require the use of the following forms that are available from the commissioner or the state fire marshal.

5.14(1) When an insurance company has reason to believe that a fire loss has occurred, the company shall notify the fire marshal on the form entitled "Insurance Form Number One."

5.14(2) Requests for information by the fire marshal, the fire marshal's agents or employees from an insurance company pursuant to Iowa Code section 100A.2 shall comply with the form entitled "Insurance Form Number Two."

5.14(3) Material requested on Insurance Forms Number One and Two shall carry a cover form which complies with "Insurance Form Number Three."

5.14(4) Request for information by an insurance company from the fire marshal shall comply with "Insurance Form Number Four."

661—5.15(17A,100) Waivers, variances, and exceptions. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules of the state fire marshal in situations where no other more specific procedure provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

"Rules of the state fire marshal" means any rules adopted pursuant to rule-making authority assigned to the fire marshal, including but not limited to rules adopted pursuant to Iowa Code section 100.1, 100.35, 100B.10, 100C.7, 101.1, 101.23, or 101A.5, or to implement any provision of Iowa Code chapter 100, 100A, 100B, 100C, 101, or 101A, or any other reference in an Iowa statute to rule making by the fire marshal or establishment of fire safety standards or requirements by the fire marshal.

NOTE: As of February 1, 2006, the following chapters are "rules of the state fire marshal": 661—Chapters 5, 51, 53, 205, 231, 251, 259, and 291.

"Waiver" or *"variance"* means an action by the fire marshal 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. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

5.15(1) Applicability of rule. The fire marshal may grant a waiver from a rule only if the fire marshal has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The fire marshal may not waive requirements created or duties imposed by statute.

5.15(2) Criteria for waiver or variance. In response to a petition completed pursuant to this rule, the fire marshal may, in the fire marshal's sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the fire marshal finds, based on clear and convincing evidence, all of the following:

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

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

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

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

5.15(3) Filing of petition. A petition for a waiver must be submitted in writing to the fire marshal as follows:

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

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

c. *Other.* If the petition does not relate to a license application or a pending contested case, the petition shall be submitted using a caption indicating the name of the entity or person for whom the waiver is requested and the location of property to which the proposed waiver would apply, if any.

d. *File petition.* A petition is deemed filed when it is received in the office of the state fire marshal. A petition should be sent or delivered to the Iowa State Fire Marshal, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

5.15(4) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

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

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

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 5.15(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the department of public safety or any other agency of the state of Iowa or political subdivision and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license or certificate held by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the last five years.

f. Any information known to the requester regarding actions of the fire marshal in 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 entity or person who 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 department with information relevant to the waiver.

5.15(5) Additional information. Prior to issuing an order granting or denying a waiver, the fire marshal 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 fire marshal may, on the fire marshal's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the fire marshal related to the waiver request.

5.15(6) Notice. The fire marshal shall acknowledge a petition upon receipt. The fire marshal shall ensure that, within 30 days of receipt of the petition, notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, including the petitioner. In addition, the fire marshal may give notice to other persons. To accomplish this notice provision, the fire marshal 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 department attesting that notice has been provided.

5.15(7) 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 department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

5.15(8) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity 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.

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

b. *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the fire marshal should exercise discretion to grant a waiver of a rule.

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

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

e. *Conditions.* The fire marshal may place on a waiver any condition that the fire marshal finds desirable to protect the public health, safety, and welfare.

f. *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 fire marshal, a waiver may be renewed if the fire marshal finds that grounds for a waiver continue to exist.

g. *Time for ruling.* The fire marshal 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 fire marshal shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

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

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

5.15(9) 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 fire marshal is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

5.15(10) Summary reports. The fire marshal shall provide information regarding requests for waivers received pursuant to this rule to the agency rules administrator for inclusion in summary reports of requests for waivers as provided for in 661—subrule 10.222(10).

5.15(11) Cancellation of a waiver. A waiver issued by the fire marshal pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the fire marshal issues an order finding any of the following:

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

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

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

5.15(12) 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.

5.15(13) Defense. After the fire marshal issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

5.15(14) Appeals. Decisions of the fire marshal pursuant to this rule may be appealed to the commissioner of public safety. Provision for appeals of proposed decisions in contested case proceedings shall apply, as provided in rule 661—10.327(17A).

5.15(15) Judicial review. Judicial review of the department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

5.15(16) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must either be submitted on a completed waiver request form provided by the fire marshal or substantially conform to the following form:

BEFORE THE IOWA DEPARTMENT OF PUBLIC SAFETY,
STATE FIRE MARSHAL DIVISION

Petition by (name of petitioner) for the waiver/variance of (insert rule citation) relating to (insert the subject matter). }	PETITION FOR WAIVER/VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also provide the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in the answer all of the following:

- Why applying the rule would result in undue hardship to the petitioner;
- Why waiving the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- 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.

5. Provide a history of any prior contacts between the department, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the fire marshal's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver.

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

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the fire marshal with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature Date

This rule is intended to implement Iowa Code section 17A.22.

661—5.16(100) Alternate requirements. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.17 to **5.34** Reserved.

661—5.35(100) Standards for automatic fire extinguishing systems. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.36 to **5.39** Reserved.

661—5.40(17A,80,100) Portable fire extinguishers—generally. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.41(17A,80,100) Halon fire extinguishing systems—generally. Rescinded IAB 7/19/06, effective 7/1/06.

661—5.42(100) Cellulose insulation. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.43 to **5.49** Reserved.

These rules are intended to implement Iowa Code chapters 100 and 100A.

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MEANS OF EXIT

661—5.50(100) General requirements. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.51(100) Exits. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.52(100) Sprinklers in elevators. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.53 to **5.99** Reserved.

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LIFE SAFETY REQUIREMENTS FOR EXISTING BUILDINGS

661—5.100(100) Exits and escapes. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.101(100) Exits. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.102(100) Enclosure of vertical shafts. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.103(100) Standpipes. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.104(100) Separation of occupancies. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.105(100) Dead-end corridors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.106 to **5.229** Reserved.
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661—5.230(100) High-rise buildings. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.231 to **5.249** Reserved.
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LIQUEFIED PETROLEUM GASES

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.250 to **5.274** Reserved.

LIQUEFIED NATURAL GAS

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.275 to **5.299** Reserved.

FLAMMABLE AND COMBUSTIBLE LIQUIDS CODE

661—5.300 Reserved.

661—5.301(100) Assembly occupancies. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.302 to **5.349** Reserved.

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OIL BURNING EQUIPMENT

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.350 to **5.399** Reserved.

STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND ISOLATED CONSTRUCTION PROJECTS

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.400 to **5.449** Reserved.

TRANSPORTATION AND DELIVERY OF FLAMMABLE AND COMBUSTIBLE LIQUIDS BY TANK VEHICLES

Rescinded IAB 11/27/02, effective 1/1/03. See 661—Chapter 51.

661—5.450 to **5.499** Reserved.

CHILD CARE CENTERS

661—5.500(100) Definitions. The following definitions apply to rules 661—5.500(100) to 661—5.509.

"Approved" is defined as being acceptable to the state fire marshal.

"Approved equipment and material" shall mean any equipment or material tested and listed by a nationally recognized testing laboratory.

"Approved standards" shall mean any standard or code prepared and adopted by a nationally recognized association.

"Attic," when used in these standards, shall mean the space between the ceiling beams of the top habitable story and the roof rafters.

"Automatic," as applied to a door, window or other protection for an opening shall mean that such door, window or other protection is so constructed and arranged that if open it will close when subjected to a predetermined temperature or rate of temperature rise.

"Automatic sprinkler system" shall mean an arrangement of piping and sprinkler designated to operate automatically by the heat of fire and to discharge water upon the fire, according to the standards of the National Fire Protection Association.

"Basement" or cellar for these regulations shall mean that part of a building where the finish floor is more than 30 inches below the finish grade at the building.

"Child occupied areas" used in this regulation for purposes of area separation, means of egress and use, as that area used for sleeping, dining, activity and educational purposes and other areas subject to occupancy by children.

"Combustible" shall mean capable of undergoing combustion.

"Combustible or hazardous storage area of room" shall mean those areas containing heating apparatus and boiler rooms, basements or attics used for the storage of combustible material, flammable liquids, workrooms such as kitchen, laundry, handicraft shops, carpenter shops, paint shops, and upholstery shops, central storerooms such as furniture, mattresses and miscellaneous storage, and similar occupancies intended to contain combustible material which will either be easily ignited, burn with an intense flame or result in the production of dense smoke and fumes.

"Existing center" is that which is already in existence at the date these rules go into effect.

"Exit" is that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment as required in these regulations to provide a protected way of travel to the exit discharge.

"Exit access" is that portion of a means of egress which leads to an entrance to an exit.

"Exit discharge" is that portion of a means of egress between the termination of an exit and a public way.

"Fire door" shall mean a door and its assembly, so constructed and assembled in place as to give protection against the passage of fire, equal to surrounding construction.

"Fire extinguisher rating" shall be determined as stated in NFPA 10, 2006 edition, Appendix G.

"Fire marshal" means the state fire marshal, any of the state fire marshal's staff, or assistant state fire inspectors, carrying authorized cards signed by the state fire marshal.

"Fire partition" shall mean a partition which subdivides a story of a building to provide an area of refuge or to restrict the spread of fire for a minimum of one hour.

"Fire-resistance rating" shall mean the time in hours or fractions thereof that materials or their assemblies will resist fire exposure as determined by fire tests conducted in compliance with approved standards.

"Fire resistive" shall mean that property of materials or assemblies which prevents or retards the passage of excessive heat, hot gases or flames under condition of use. The term "fire resistive" shall mean the same as "fire resistance."

"Fire wall" shall mean a wall of brick or reinforced concrete having adequate fire resistance and structural stability under fire conditions to accomplish the purpose of completely subdividing a building or of completely separating adjoining building to resist the spread of fire. A fire wall shall extend continuously through all stories from foundation to or above the roof.

"Floor area net" shall be the actual occupied area not including accessory unoccupied areas or thickness of walls.

"Interior finish material" shall be classified in accordance with the method of tests of surface burning characteristics of building material National Fire Protection Association Standard No. 255, Test Methods, Surface Burning—Building Materials, 1969. Classification of interior finish material shall be in accordance with tests made under conditions simulating actual installations, provided that the state fire marshal may by rule establish the classification of any material on which a rating by standard test is not available. Interior finish material shall be grouped in the following classes in accordance with their flame spread and related characteristics.

Class A. Interior finish flame spread 0-25.

Class B. Interior finish flame spread 25-75.

Class C. Interior finish flame spread 75-100.

"Mixed occupancy" shall mean when the building is used for more than one occupancy purpose.

"Panic hardware" shall cause the door latch to release when pressure of not to exceed 15 pounds is applied to the releasing devices in the direction of exit travel. Such releasing devices shall be bars or panels extending not less than two-thirds of the width of the door and placed at height not less than 30 nor more than 44 inches above the floor. Only approved panic hardware shall be used on exit doors.

"Self-closing" shall mean to be equipped with an approved device which will ensure closing after having been opened.

"Sprinklered" shall mean to be completely protected by an approved system of automatic sprinklers installed and maintained in accordance with approved standards.

"State fire marshal" shall mean the chief officer of the division of fire protection as described in Iowa Code section 100.1 or one authorized to act in the state fire marshal's absence.

"Story" shall mean that part of a building comprised between a floor and ceiling or roof next above. The first story shall be that story which is of such height above the ground that it does not come within the definition of a basement or cellar.

"Types of construction" shall be defined in National Fire Protection Association, pamphlet No. 220, published in 1985.

"Unduly endanger" shall mean beyond a normal limit bring into danger or peril.

661—5.501(100) Child care centers in mixed occupancies.

5.501(1) *"Application—mixed occupancy."* All child care centers seeking licenses under Iowa Code chapter 237A, located in mixed occupancies shall meet the requirements of the primary use and occupancy of the building as promulgated by the state fire marshal. If no such rules exist the following shall be complied to and the area used for child care shall comply as per number of children occupying the center at any given time.

5.501(2) *"Mixed occupancy."*

a. *"Not meeting codes."* In facilities not meeting nationally recognized codes for child care centers the minimum division between the child occupied area and other areas shall be a one-hour fire partition and the perimeter protected with an approved fire detection or automatic extinguishing system as directed by the fire marshal. Less than a one-hour partition may be accepted when the fire marshal approves adequate perimeter protection.

b. *"Meeting recognized codes."* Where child care centers are located in a building containing mixed occupancies, the separation requirements of a nationally recognized code are satisfied, it shall be considered as complying to the section above.

c. *"Undue danger."* Child care centers shall not be in buildings of mixed occupancies where the acts of other occupants could unduly endanger the lives of the children in the child care center.

661—5.502(100) Child care centers for seven or more children.

5.502(1) *"Application."*

a. *"Life safety requirements."* This section establishes life safety requirements for child care centers in which seven or more children receive care.

b. *"Regulations shall apply to all centers."* Rules 661—5.500(100) through 661—5.502(100) shall apply to all child day care centers. Rules 661—5.500(100) through 661—5.502(100) shall constitute the minimum requirements for day care centers for approval by the state fire marshal's office. Additional requirements may be established by other governmental agencies or governmental subdivisions.

c. *"Time for compliance."* In existing childcare centers a reasonable time shall be allowed for compliance with any part of this rule, commensurate with the magnitude of the expenditure and the disruption of services. When alternate protection is installed and accepted the center shall be considered as conforming for the purposes of these regulations.

d. "Additions or structural alterations." Additions or structural alterations to existing facilities must have written approval from the state fire marshal, and working plans and specifications must be submitted for review and approval.

5.502(2) *"Exit details."*

a. "Number of exits." Each floor occupied by children shall have not less than two approved remote means of egress. Additional exits shall be determined by the number of occupants.

b. "Basement exits." Where children are located below the floor of exit discharge (basement) at least one exit directly to the outside to ground level shall be provided. No center shall be located more than one story below the ground. Any stairway to the floor above shall be cut by a fire barrier containing a rated door of at least 20-minute fire protection or a minimum of 1¾-inch solid bonded wood core. They shall be equipped with a self-closing device and positive latch.

c. "Types of exits." Exits shall be of the following types or combinations thereof as defined by the National Fire Protection Association. At least two exits of the below types, remote from each other, shall be provided for every story or section of the building. At least one exit in every story or section shall be of type 2, 3, 4, 5, or 6 as listed below. Exterior fire escape stairs, minimum of 44 inches in width, may be accepted as a second means of exit.

(1) Horizontal exits.
(2) Doors leading directly outside the buildings (without stairs).
(3) Ramps.
(4) Stairways, or outside stairs.
(5) Rescinded IAB 2/15/06, effective 2/1/06.
(6) Smoke towers.

d. "Direct exits." At least one required exit from each floor shall lead directly or through an enclosed corridor, to the outside. A second or third required exit, where a more direct exit is impractical, may lead to a first floor lobby having ample and direct exit to the outside.

e. "Exit doors shall not be locked." Exit doors shall not be locked against egress by bolt, key locks, hooks or padlocks. A latch type lock is permissible that locks against the outside entrance.

5.502(3) *"Doors."*

a. "Size." Each door in a means of egress shall not be less than 30 inches wide, 6 feet in height and reasonably covering the opening. If a door has a latch and is used by more than 50 people it shall be equipped with panic hardware.

b. "Closet doors." Every closet door latch shall be such that children can open the door from the inside of the closet.

c. "Emergency unlocking." Every door lock, except exit discharge, shall be designed to permit opening of the locked door from the outside in an emergency, and the opening device shall be readily accessible to the staff.

d. "Doors protecting vertical openings." The doorway between the floor of exit discharge and any floor below shall be equipped with a self-closing labeled door of at least a 20-minute fire protection rating or a 1¾-inch solid bonded wood core door.

5.502(4) *"Interior finish."* Interior finish in exits in child occupied spaces in the center shall be Class A in new centers and A or B in existing centers. See Table No. 5-C following 5.105(100).

5.502(5) *"Detection and extinguishing systems when needed."* Detection and extinguishing systems shall comply to the following chart in regard to construction and number of stories.

a. "Chart for detection and extinguishing systems—when needed."

Number of stories

Type of Construction	Number of Children	1	2	3	4	5 or more
Fire Resistive and Protected Noncombustible	7-15	4	2	2	2	2
	16 or more	3	2	2	2	2
Protected Wood Frame and Protected Ordinary	7-15	4	2	1	NP	NP
	16 or more	3	2	1		
Heavy Timber	7-15	4	2	1	NP	NP
	16 or more	3	2	1		
Unprotected Noncombustible	7-15	4	2	1	NP	NP
	16 or more	3	2	1		
Unprotected Wood Frame and Unprotected Ordinary	7-15	4	NP	NP	NP	NP
	16 or more	2				

Note 1—Sprinkler; Note 2—Complete Automatic Detection; Note 3—Manual Alarm; Note 4—Single Station Smoke Detection; Note 5—NP Not Permitted

"EXCEPTION:" Buildings where classrooms have a direct exit door to the outside are not required to have complete automatic detection. A manual alarm or single-station detector will be satisfactory.

b. "Approved sprinkler system." Any required automatic sprinkler system shall be in accordance with approved standards for systems in light hazard occupancies, and shall be electrically interconnected with the manual fire alarm system. The main sprinkler control valve shall be electrically supervised so that at least a local alarm will sound when the valve is closed.

c. "Complete automatic detection system." Requirements for automatic fire detection systems shall meet the following standards.

(1) Automatically detect a fire.

(2) Sound alarm signal throughout the premises for evacuation purposes.

(3) Provide assurance the system is in operating condition by electric supervision.

(4) Underwriters Laboratories listed equipment to be used throughout the system.

(5) Provide a manual test switch and tested monthly and noted for inspection purposes.

(6) Installation of equipment and wiring shall be in a neat and workmanship like manner.

(7) To include smoke, or products of combustion, detection devices when required by the fire marshal.

(8) Properly located manual alarm stations.

(9) Where fire detection systems are installed to meet the requirements of this regulation, they shall be approved electrically supervised systems. Detectors shall be approved combined rate of rise and fixed temperature type detectors 135°F, or smoke, or products of combustion type, and properly installed. In spaces where high temperature is normal, devices having a higher operating point may be used. Operation of a detection or alarm shall cause an alarm which is audible throughout the center. In existing centers where "fixed temperature only detectors" are already installed, they need not be replaced until such time that a new head needs to be installed. Detector units shall be installed in every room and concealed area of the child care center.

d. "Single station detectors." Every single station detector of product of combustion other than heat shall be mounted on the ceiling or wall at a point of central location in the corridor or in child occupied areas. No detector shall be mounted less than 12 inches of ceiling level. Care shall be exercised to ensure the installation will not interfere with the operating characteristics of the detectors. When activated the detector shall provide an alarm. The detectors shall be tested monthly by the operator of the center or the operator's designee and a record kept for inspection purposes.

e. "Manual fire alarms."

(1) "Installation." Manual fire alarm stations shall be provided on each floor and so located that the alarm station is not more than 75 feet from any area within the building. Horns or bells that provide a distinctive sound different from any other bell system shall be provided that will give audible warning to all occupants of the building in case of a fire or other emergency. A test system shall be provided for the purpose of conducting fire drills and tests of the alarm system.

(2) "Approval of systems." Factory Mutual or Underwriters Laboratories, Inc., equipment and component parts shall be used in the installation of the fire alarm system. The electrical energy for the fire alarm system shall be on a separate circuit and shall be taken off the utility service to the center building ahead of the entrance disconnect.

(3) "Extension of system." Whenever the fire marshal determines it advisable, it may be required that the fire alarm system be extended or designed to provide automatic fire detection devices in unsupervised areas, boiler rooms, storerooms and shop areas.

(4) "Mounting." Each station shall be securely mounted. The bottom of each station will be not less than 4½ feet and not more than 6 feet above the floor level.

(5) "Location." Manual fire alarm boxes shall be distributed throughout the protected area so that they are unobstructed, readily accessible, and located in the normal path of exit from the area.

5.502(6) *"Fire drills."* Fire drills shall be held at least once a month and recorded. A fire emergency plan shall be written and posted in a conspicuous place.

5.502(7) *"Extinguishers."* Each child occupied area shall be protected by a Class "A" fire extinguisher 2A rating, and in areas where heating or cooking units are used there shall be a "5" lb. BC extinguisher 2B rating.

5.502(8) *"Heating equipment."*

a. *"Location."* No furnace, space heater or portable heater shall be located in child occupied areas. EXCEPTION: Approved suspended unit heaters may be used, except in means of egress and sleeping areas, provided such heaters are located high enough to be out of the reach of persons using the area and provided they are equipped with the proper safety devices. Fireplaces may be used providing the fireplace is equipped with a heat tempered glass fireplace enclosure guaranteed against breakage up to a temperature of 650°F. If, in the opinion of the fire marshal, special hazards are present, a lock on the enclosure and other safety precautions may be required.

b. *"Combustion air."* If solid partitions are used to provide the separation of the furnace room from other areas, provision for outside air shall be made to assure adequate combustion for the heating unit.

5.502(9) *"Floor coverings."* For carpet see Table No. 5-D following 5.105(100). Wall hangings and window treatments shall be flame-retardant or rendered flame-retardant.

5.502(10) *"Maintenance."*

a. *"Regular and proper maintenance."* Regular and proper maintenance of electric service, heating plants, alarm systems, sprinkler systems, fire doors and exit facilities shall be accomplished.

b. *"Storerooms."* Storerooms shall be maintained in a neat and proper manner at all times.

c. *"Excessive storage."* Excessive storage of combustible materials such as paper cartons, magazines, paints, sprays, old clothing, furniture and similar materials shall be prohibited at all times.

661—5.503 to **5.509** Reserved.

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ADULT DAY SERVICES PROGRAMS

661—5.510(231D) Adult day services.

5.510(1) *Definitions.* The following definitions apply to rule 661—5.510(231D).

"Existing adult day services program" means an adult day services program certified or seeking certification from the department of inspections and appeals pursuant to the provisions of Iowa Code Supplement chapter 231D and which has been in continuous operation in the same facility since May 31, 2004, or before and which has operated continuously since May 31, 2004, in a facility which has not undergone major renovation or remodeling since May 31, 2004.

"New adult day services program" means an adult day services program certified or seeking certification from the department of inspections and appeals pursuant to the provisions of Iowa Code Supplement chapter 231D which has not been in continuous operation since May 31, 2004, or which operates in a facility which has undergone major renovation or remodeling since June 1, 2004.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

5.510(2) *Fire safety requirements for existing adult day services programs.* NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," is adopted by reference as the rules establishing fire safety requirements for existing adult day services programs. Any existing adult day services program shall comply with the provisions of NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," by June 1, 2005.

EXCEPTION: If the fire marshal finds that a violation of any provision of NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," presents an imminent threat to the safety of clients or staff, the fire marshal may require correction of the condition or conditions which are in violation as a condition of approval of the facility for use by an adult day services program.

5.510(3) *Fire safety requirements for new adult day services programs.* NFPA 101, Life Safety Code, 2003 edition, Chapter 16, "New Day Care Occupancies," is adopted by reference as the rules establishing fire safety requirements for new adult day services programs.

This rule is intended to implement Iowa Code Supplement section 231D.15.

661—5.511 to **5.606** Reserved.

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RESIDENTIAL FACILITIES

661—5.607(100) Scope. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.608(100) Means of escape. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.609(100) Protection of vertical openings. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.610(100) Detection, alarm, and communications. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.611(100) Hazardous areas. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.612(100) Building service. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.613(100) Evacuation plan and fire drills. Rescinded IAB 11/22/06, effective 1/1/07.

Rules 5.607(100) to 5.613(100) are intended to implement Iowa Code section 135G.4.

661—5.614 Reserved.

661—5.615(237C) Facilities in which foster care is provided to fewer than six children by agencies. Any facility, including a single-family residence, within which foster care is provided by an agency to fewer than six children shall meet each of the requirements established in this rule.

5.615(1) Battery-operated smoke detectors shall be installed in each sleeping room and on each floor of the home and shall be installed in compliance with the manufacturer's instructions.

5.615(2) Each exit and exit path shall remain clear and unobstructed at all times.

5.615(3) A five-pound 2A:10B:C fire extinguisher shall be installed in the primary caregiver's sleeping room. Additional extinguishers may be provided. Each extinguisher in the facility shall be inspected yearly by a third party in accordance with NFPA 10, Standard for Portable Fire Extinguishers, 2006 edition.

5.615(4) No combustible items shall be stored within a three-foot clearance of furnaces, hot water heaters, and electrical panels.

5.615(5) A carbon monoxide detector shall be installed on each floor of the residence. A detector shall be installed in proximity to any gas-fired appliance. All detectors shall be installed in accordance with the manufacturer's installation instructions.

5.615(6) If propane is used in the facility, a propane leak detector shall be installed in proximity to each propane-fired appliance. All detectors shall be installed in accordance with the manufacturer's installation instructions.

5.615(7) An evacuation plan shall be maintained, and fire drills shall be conducted at least once every other month.

5.615(8) If a child is sleeping in a basement room, then an egress window shall be provided in the room. An "egress window" means an existing operable window with a clear opening area of not less than 5.7 square feet, and with a minimum opening height and width of 24 inches and 20 inches, respectively.

This rule is intended to implement Iowa Code section 237.3, subsection 3.

661—5.616 to **5.619** Reserved.

661—5.620(100,135C) General requirements for small group homes (specialized licensed facilities) licensed pursuant to Iowa Code section 135C.2.

5.620(1) *Scope.* This rule applies to specialized licensed facilities licensed under the provisions of Iowa Code section 135C.2 having three to five beds and serving persons with mental retardation, chronic mental illness, developmental disabilities, or brain injuries.

5.620(2) *Exits.*

a. There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms.

b. Interior and exterior stairways shall have a minimum clear width of not less than 30 inches.

5.620(3) *Windows.* Every resident sleeping room shall have an outside window or outside door arranged and located to permit the venting of products of combustion and access to fresh air in the event of an emergency.

a. In new construction, windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches and the finished sill height shall be not more than 44 inches above the floor.

b. In existing construction the finished sill height shall be not more than 44 inches above the floor or may be accessible from a platform not more than 44 inches below the window sill.

5.620(4) *Interior finish.* Interior finish in exit shall be Class A, B or C. See Table No. 5-C, following 661—5.105(100).

5.620(5) *Doors.* Doors to resident sleeping rooms shall be a minimum of 1 3/8-inch solid core wood or equivalent.

5.620(6) *Vertical separations.* Basement stairs must be enclosed with one-hour rated partitions and 1¾-inch solid core wood doors equipped with self-closers. These doors must be kept closed unless held open by an approved electromagnetic holder, actuated by an approved smoke detection device located at the top of the stairwell and interconnected with the alarm system.

5.620(7) *Fire detection, fire alarms and sprinklers.*

a. The home shall have smoke detection installed on each occupied floor, including basements, in accordance with NFPA 72, 1999 edition, Chapter 11. Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout. The system shall be tested by a competent person at least semiannually with date of test and name noted.

b. Homes in which exiting is restricted by special door locking arrangements that prevent residents from free egress shall be equipped with sprinkler systems meeting the requirements of National Fire Protection Association Standard Number 13D, 1996 edition.

EXCEPTION: Homes in this classification that were licensed prior to November 1, 1999, shall comply with this requirement within a reasonable period of time and, in any event, not later than November 1, 2001.

5.620(8) *Fire extinguishers.*

a. Approved fire extinguishers shall be provided on each floor, so located that a person will not have to travel more than 75 feet from any point to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, each kitchen or basement storage room.

b. Type and number of portable fire extinguishers shall be determined by the fire marshal.

5.620(9) *Mechanical, electrical and building service equipment.*

a. Air conditioning, ventilating, heating, cooking and other service equipment shall be in accordance with state regulations governing same, or nationally recognized standards such as National Fire Protection Association standards governing the type of equipment, and shall be installed in accordance with the manufacturer's specifications. All hazardous areas normally found in one- and two-family dwellings, such as laundry, kitchen, heating units and closets need not be separated with walls if all equipment is installed in accordance with the manufacturer's listed instructions.

b. Portable comfort heating devices are prohibited.

5.620(10) *Attendants, evacuation plan.*

a. Every home shall have at least one staff person on the premises at all times while residents are present. This staff person shall be at least 18 years of age and capable of performing the required duties of evacuation. No person other than the management or a person under management control shall be considered as an attendant.

b. Every facility shall formulate a plan for the protection of all persons in the event of fire and for their evacuation to areas of refuge and from the building when necessary. All employees shall be instructed and kept informed respecting their duties under the plan. This plan is to be posted where all employees may readily study it. Fire drills shall be held at least once a month. Records must be kept available for inspection.

5.620(11) *Smoking.*

a. There shall be no smoking in resident sleeping areas and smoking and no smoking policies shall be strictly adhered to.

b. Ashtrays shall be constructed of noncombustible material with self-closing tops and shall be provided in all areas where smoking is permitted.

5.620(12) *Exit illumination.* Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

5.620(13) *Occupancy restrictions.*

a. Occupancies not under the control of, or not necessary to, the administration of residential care facilities are prohibited therein with the exception of the residence of the owner or manager.

b. Nonambulatory residents shall be housed only on accessible floors which have direct access to grade which does not involve stairs or elevators.

5.620(14) *Maintenance.*

a. All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, doors and their appurtenances, cords and switches, heating and ventilating equipment, sprinkler systems and exit facilities.

b. Storerooms shall be maintained in a neat and proper manner at all times.

c. Excessive storage of combustible materials such as papers, cartons, magazines, paints, sprays, old clothing, furniture and similar materials shall be prohibited at all times.

This rule is intended to implement Iowa Code section 135C.2(5)*"b."*

661—5.621 to **5.624** Reserved.

661—5.625(100,231B) Elder group homes. This rule applies to elder group homes certified by the Iowa department of elder affairs.

5.625(1) *Definitions.* The following definitions apply to rule 661—5.625(100,231B):

"Elder" means a person 60 years of age or older.

"Elder group home" means a single family residence that is the residence of a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity and which is certified as an elder group home by the Iowa department of elder affairs.

5.625(2) *Exits.* There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms. Interior and exterior exit stairways shall have a minimum clear width of not less than 30 inches.

5.625(3) *Windows.* Each resident sleeping room shall have an outside window or outside door arranged and located to provide ventilation, access to fresh air, and an emergency escape route. New or replacement windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and the finished sill height shall not be more than 44 inches above the floor.

5.625(4) *Interior finish.* Interior finish in resident occupied areas shall be Class A or B in accordance with Table 5-C, 661 IAC 5.105(100).

5.625(5) *Doors.* Door to resident sleeping rooms shall be a minimum of one and three-eighths inches solid core wood or equivalent.

5.625(6) *Fire detection.* An elder group home shall have smoke detectors installed on each floor, including the basement, and in each sleeping room, in accordance with National Fire Protection Association # 74, Standard for Household Fire Warning Equipment, 1989 edition, and 661 IAC 5.807(100). Smoke detectors shall be interconnected so that activation of any detector will activate detectors throughout the home.

5.625(7) *Fire extinguishers.* Fire extinguishers shall be provided on each floor and shall be located so that a person will not have to travel any more than 75 feet from any point in the home to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, the kitchen. Type, distribution, inspection, maintenance, and recharging of extinguishers shall conform to NFPA 10, Standard for Portable Fire Extinguishers, 2006 edition.

5.625(8) *Smoking.* There shall be no smoking in resident sleeping rooms. Smoking may be permitted in designated areas only. If an indoor area within an elder group home is designated as a smoking area, that area shall be equipped with ashtrays constructed of noncombustible material and with self-closing tops.

5.625(9) *Exit illumination.* Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

5.625(10) *Maintenance.* All fire and life safety equipment or devices shall be U.L. or independent testing laboratory approved, installed according to manufacturer specifications, and regularly and properly maintained at all times in accordance with nationally recognized standards. This includes, but is not limited to, fire extinguishing equipment, alarm systems, doors and their appurtenances, and exit facilities. Flammable and combustible materials shall be properly stored in original, properly labeled containers or approved safety containers. Storerooms shall be maintained in a neat and proper manner at all times. Excessive storage of combustible materials is not permitted.

5.625(11) *Equipment.* Electrical, heating, and ventilating equipment shall be installed and maintained in accordance with manufacturer's instructions and nationally recognized standards. Portable space heaters are not permitted.

5.625(12) *Emergency procedures.* Every home shall formulate a plan for the protection of occupants in the event of a fire or other emergency. The plan shall take into consideration areas of refuge within the building as well as evacuation from it. The written plan must be provided to each resident and explained to them at the time they move into the facility and at least annually thereafter.

5.625(13) *Compressed gases.* If oxygen or other compressed gases are required by residents for respiratory purposes, the applicable standards for use, containers, equipment, maintenance and storage of compressed gases, as set forth in National Fire Protection Association # 99, 1993 edition, shall be adhered to.

5.625(14) *Basements.* Interior basement stairways, if enclosed, must have walls and ceilings constructed of five-eighths inch gypsum board or material providing equivalent fire protection. Basements must be separated from the first floor by a self-closing one and three-eighths inch solid wood core door or equivalent. If a basement is used by residents, it must have a door leading to the outside or an operational window having a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and the finished sill height shall not be more than 44 inches above the floor.

5.625(15) *Construction.* Unprotected wood frame structures of more than two stories in height, excluding basement, shall not be permitted for use as elder group homes.

EXCEPTION: Unprotected wood frame structures protected throughout by an approved automatic sprinkler system may be used as elder group homes.

This rule is intended to implement Iowa Code chapter 100 and section 231B.2.

661—5.626(231C) Assisted living housing.

5.626(1) *Definitions.* The following definitions apply to rule 661—5.626(231C):

"Assisted living facility" means a facility that houses a program that is certified or seeking certification pursuant to the provisions of Iowa Code Supplement section 231C.3 or that has been identified by the department of inspections and appeals as a facility housing a program which requires certification pursuant to Iowa Code Supplement section 231C.3 and is not currently certified.

"Existing assisted living facility" means an assisted living facility which has been in continual operation since May 31, 2004, or before.

"New assisted living facility" means an assisted living facility which begins operation on or after June 1, 2004.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

5.626(2) *New assisted living facilities.* NFPA 101, Life Safety Code, 2003 edition, Chapter 32, "New Residential Board and Care Occupancies," is hereby adopted by reference as the rules governing new assisted living facilities.

5.626(3) *Existing assisted living facilities.* NFPA 101, Life Safety Code, 2003 edition, Chapter 33, "Existing Residential Board and Care Occupancies," is hereby adopted by reference as the rules governing existing assisted living facilities.

5.626(4) *Alternative requirements.* In lieu of complying with the requirements established in subrule 5.626(2) or 5.626(3), an assisted living facility may alternatively comply with the requirements established in this subrule, if it meets the respective qualifications stated for the alternative requirement.

a. An assisted living facility that was initially approved by the fire marshal on the basis of compliance with the requirements of the 2000 edition of the Life Safety Code or that is located within or adjacent to a licensed health care facility required to comply with applicable provisions of the 2000 edition of the Life Safety Code may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition. If the facility was initially approved on the basis of compliance with Chapter 32, "New Residential Board and Care Occupancies," the facility shall continue to comply with the provisions of that chapter. A facility that was initially approved by the fire marshal on the basis of compliance with Chapter 33, "Existing Residential Board and Care Occupancies," may continue to comply with that chapter as long as it is in continuous operation and does not undergo major renovation

or remodeling. A facility that was initially approved on the basis of compliance with Chapter 33 and whose operation is not continuous or that undergoes major renovation or remodeling shall comply with Chapter 32.

b. An assisted living facility that was certified prior to July 1, 1997, and that has continuously operated under that certification since July 1, 1997, may comply with the requirements of NFPA 101, Life Safety Code, 1994 edition, Chapter 23, "Existing Residential Board and Care Occupancies."

c. An assisted living facility that was certified on or after July 1, 1997, and before June 1, 2004, and that has continuously operated under that certification since before June 1, 2004, may comply with the requirements of NFPA 101, Life Safety Code, 1994 edition, Chapter 22, "New Residential Board and Care Occupancies."

5.626(5) *Evacuation capability.* For any provision of subrules 5.626(1) through 5.626(4) which is contingent upon evacuation capability, facilities may:

a. Comply with requirements for an evacuation capability rating of "impractical."

b. Comply with requirements which are contingent upon evacuation ratings of "slow" or "prompt," provided that the residents and staff of the facility have undergone evacuation rating evaluations performed by a health care professional and that all residents and staff are rated capable of "slow" or "prompt" evacuation, respectively. The evacuation capability ratings shall be updated each time a new resident arrives at the facility, a new staff person is assigned to the facility, or the physical condition or capacity for mobility of a resident or staff member changes significantly. Evacuation capability ratings shall be performed at the expense of the facility and any records supporting the ratings shall be made available to a fire inspector or personnel of the department of inspections and appeals upon request.

This rule is intended to implement Iowa Code Supplement section 231C.4.

661—5.627 to **5.649** Reserved.

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FIRE SAFETY RULES FOR SCHOOL AND COLLEGE BUILDINGS

661—5.650(100) General requirements and definitions. Rescinded IAB 11/22/06, effective 1/1/07.

EXISTING SCHOOL BUILDINGS

661—5.651(100) Application. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.652(100) Exits and occupancy load. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.653(100) Corridors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.654(100) Doors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.655(100) Windows. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.656(100) Stairway enclosures and floor cutoffs. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.657(100) Interior finishes. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.658(100) Construction. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.659(100) Fire alarm systems. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.660(100) Electrical wiring. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.661(100) Heating equipment and flammable and combustible liquids. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.662(100) Gas piping. Rescinded IAB 12/1/99, effective 2/1/00.

661—5.663(100) Fire extinguishers. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.664(100) Basement, underground and windowless classrooms. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.665(100) Fire hazard safeguards. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.666(100) Automatic sprinklers. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.667(100) Open plan buildings. Rescinded IAB 11/22/06, effective 1/1/07.
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661—5.668 to **5.674** Reserved.

NEW SCHOOL BUILDINGS

661—5.675(100) New school buildings. Rescinded IAB 11/22/06, effective 1/1/07.
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661—5.676 to **5.699** Reserved.

NEW COLLEGE BUILDINGS

661—5.700 to **5.714** Rescinded IAB 12/1/99, effective 2/1/00. See 661—5.775(100).
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661—5.715 to **5.748** Reserved.

EXISTING COLLEGE BUILDINGS

661—5.749(100) Application. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.750(100) Exits. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.751(100) Corridors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.752(100) Doors. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.753(100) Windows. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.754(100) Stairway enclosures and floor cutoffs. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.755(100) Interior finishes. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.756(100) Construction. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.757(100) Fire alarm systems. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.758(100) Electrical wiring. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.759(100) Heating equipment and flammable and combustible liquids. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.760(100) Gas piping. Rescinded IAB 2/15/06, effective 2/1/06.

661—5.761(100) Fire extinguishers. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.762(100) Basements. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.763(100) Fire hazard safeguards. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.764(100) Automatic sprinklers. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.765(100) Open plan buildings. Rescinded IAB 11/22/06, effective 1/1/07.

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661—5.766 to **5.774** Reserved.

NEW COLLEGE BUILDINGS

661—5.775(100) New college buildings. Rescinded IAB 11/22/06, effective 1/1/07.

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661—5.776 to **5.799** Reserved.

FIRE SAFETY RULES FOR RESIDENTIAL OCCUPANCIES

661—5.800(100) General provisions. Rescinded IAB 11/22/06, effective 1/1/07.

NEW RESIDENTIAL OCCUPANCIES

661—5.801(100) General requirements. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.802(100) Exit facilities in new residential occupancies. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.803(100) General safety requirements. Rescinded IAB 11/22/06, effective 1/1/07.

EXISTING RESIDENTIAL OCCUPANCIES

661—5.804(100) Existing residential occupancies. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.805(100) Exit facilities. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.806(100) General provisions. Rescinded IAB 11/22/06, effective 1/1/07.

661—5.807(100) Smoke detectors definition. Rescinded IAB 8/27/08, effective 10/1/08.

661—5.808(100) General requirements. Rescinded IAB 8/27/08, effective 10/1/08.

661—5.809(100) Smoke detectors—notice and certification of installation. Rescinded IAB 8/27/08, effective 10/1/08.

661—5.810(100) Smoke detectors—new and existing construction. Rescinded IAB 8/27/08, effective 10/1/08.

OCCUPANCY CLASSIFICATIONS PER TABLE 8-A

General Occupation Description	Current Occupancy Designation	Complete Occupancy Description
Assembly	A-1	Any assembly building with a stage and occupant load of 1,000 or more in building.
	A-2	Any building or portion of a building having an assembly room with an occupant load of less than 1,000 and a stage.
	A-2.1	Any building or portion of a building having an assembly room with an occupant load of 300 or more without a stage, including such buildings used for educational purposes and not classed as a Group E or Group B, Division 2 Occupancy.
	A-3	Any building or portion of building having an assembly room with an occupant load of 300 or more without a stage, including such buildings used for educational purposes and not classed as a Group E or Group B, Division 2 Occupancy.
	A-4	Stadiums, reviewing stands and amusement park structures not included within other Group A Occupancies.

Business, including offices, factories, mercantile and storage	B-1	Gasoline service stations, storage garages where no repair work is done except exchange of parts and maintenance requiring no open flame, welding or the use of highly flammable liquids.
	B-2	Drinking and dining establishments having an occupant load of less than 50, wholesale and retail stores, office buildings, printing plants, municipal police and fire stations, factories and workshops using material not highly flammable or combustible, storage and sales rooms for combustible goods, paint stores without bulk handling. Buildings or portions of buildings having rooms used for educational purposes, beyond the 12th grade, with less than 50 occupants in any room.
	B-3	Aircraft hangers where no repair work is done except change of parts and maintenance requiring no open flame, welding or use of highly flammable liquids. Open parking garages, heliports.
	B-4	Ice plants, power plants, pumping plants, cold storage, creameries. Factories and workshops using noncombustible and nonexplosive materials. Storage and sales rooms for noncombustible and nonexplosive materials.
Educational	E-1	Any building used for educational purposes through 12th grade by 50 or more persons for more than twelve hours per week or four hours in any one day.
	E-2	Any building used for educational purposes through 12th grade by less than 50 persons for more than twelve hours per week or four hours in one day.
	E-3	Any building used for day-care purposes for more than six children.
Hazardous	H-1	Storage, handling, use or sale of hazardous and highly flammable or explosive materials other than Class I, II, or III-A liquids.
	H-2	Storage and handling of Class I, II and III-A liquids, dry cleaning plants using flammable liquids; paint stores with bulk handling; paint shops and spray painting rooms and shops. The storage or sale of hazardous materials or chemicals or Class I, II and III-A liquids in amounts that do not exceed those set forth in Table No. 9-A is permitted in buildings or portions thereof without classifying such buildings as a Group H Occupancy, provided such chemicals, hazardous materials or liquids are stored and handled in compliance with the provisions of the Fire Code.
	H-3	Woodworking establishments, planing mills, box factories, buffing rooms for tire rebuilding plants and picking rooms; shops, factories or warehouses where loose combustible fibers or dust are manufactured, processed, generated or stored; and pin-refinishing rooms.
	H-4	Repair garages.
	H-5	Aircraft repair hangers.
Institutional	I-1	Nurseries for full-time care of children under the age of six (each accommodating more than five persons). Hospitals, sanitariums, nursing homes with nonambulatory patients and similar buildings (each accommodating more than five persons).

	I-2	Nursing homes for ambulatory patients, homes for children six years of age or over (each accommodating more than five persons).
	I-3	Mental hospitals, mental sanitariums, jails, prisons, reformatories and buildings where personal liberties of inmates are similarly restrained.
		EXCEPTION: Group I Occupancies shall not include buildings used only for private residential purposes for a family group.
Miscellaneous 11 structures	M-1	Private garages, carports.
	M-2	Fences over six feet high, tanks and towers.
Residential 12	R-1	Hotels and apartment houses. Convents and monasteries (more than 10 people).
	R-3	Lodging houses (five guests or rooms).

TABLE 8-B: ALLOWABLE FLOOR AREA
(Per single story)
AND MAXIMUM HEIGHT OF BUILDINGS

TYPES OF CONSTRUCTION								
I	II			III		IV	V	
F.R.	F.R.	ONE-HOUR	N	ONE-HOUR	N	H.T.	ONE-HOUR	N
BASIC ALLOWABLE FLOOR AREA FOR BUILDINGS ONE STORY IN HEIGHT (In Square Feet)								
Unlimited	29,900	13,500	9,100	13,500	9,100	13,500	10,500	6,000
MAXIMUM HEIGHT IN FEET								
Unlimited	160	65	55	65	55	65	50	40
MAXIMUM HEIGHT IN STORIES								
Unlimited	12	4	2	4	2	4	3	2

See Notes 1. - 6.
N — No Requirements for Fire Resistance
F.R. — Fire Resistive
H.T. — Heavy Timber

NOTE 1: Separation on two sides. Where public space, streets, or yards more than twenty feet in width extend along and adjoin the sides of the building, floor areas may be increased at a rate of 1¼ percent for each foot by which the minimum width exceeds twenty feet but the increase shall not exceed 50 percent.

NOTE 2: Separation on three sides. Where public space, streets or yards more than twenty feet in width extend along and enjoin three sides of the building, floor areas may be increased at a rate of 2½ percent for each foot by which the minimum width exceeds twenty feet, but the increase shall not exceed 100 percent.

NOTE 3: Separation on all sides. Where public space, streets or yards more than twenty feet in width extend on all sides of a building and enjoin the entire perimeter, floor areas may be increased at a rate

of 5 percent for each foot by which the minimum width exceeds twenty feet. Such increases shall not exceed 100 percent.

NOTE 4: Areas of buildings over one story. The total combined floor area for multistory buildings may be twice that permitted by Table 8-B for one-story buildings, and the floor area of any single story shall not exceed that permitted for a one-story building.

NOTE 5: Automatic sprinkler system. The areas specified in Table 8-B may be tripled in one-story buildings and doubled in buildings of more than one story if the building is provided with an approved automatic sprinkler system throughout. The area increases permitted for installing an approved automatic sprinkler system may be compounded with that specified in Notes 1, 2, and 3.

NOTE 6: The area increases permitted in Note 5 shall not apply when automatic sprinkler systems are installed under the following provisions:

a. An increase in allowable number of stories.
b. Substitution for one-hour fire-resistive construction.
c. Atriums.

TABLE 8-C—REQUIRED SEPARATION
IN BUILDINGS OF MIXED OCCUPANCY
(In Hours)

	A-1	A-2	A-2.1	A-3	A-4	B-1	B-2	B-3	B-4	E	H-1	H-2	H-3	H-4,5	I	M[2]	R-1	R-3
I	3	3	3	3	3	4	2	4	4	1	NP[3]	4	4	4	—	1	1	1
R-1	1	1	1	1	1	3[1]	1	1	1	1	4	3	3	3	1	1	—	N
R-3	1	1	1	1	1	1	N	N	N	1	4	3	3	3	1	1	N	—

[1]The three-hour separation may be reduced to one hour where the Group B, Division 1 Occupancy, is limited to the storage of passenger motor vehicles having a capacity of not more than nine persons per vehicle and provided no repair or fueling is done and the area does not exceed 3,000 square feet in a building.

[2]In the one-hour occupancy separation between a Group R, Division 3 and M Occupancy, the separation may be limited to the installation of materials approved for one-hour fire-resistive construction on the garage side and a self-closing, tight fitting solid wood door in lieu of a one-hour fire assembly. Fire dampers shall not be required in ducts piercing this separation for ducts constructed of not less than No. 26 gauge galvanized steel.

[3]Not permitted.

661—5.811 to **5.819** Reserved.

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BED AND BREAKFAST INNS

661—5.820(100,137C) Bed and breakfast inns.

5.820(1) *Appliances.* Heating, cooking and gas and electrical equipment and appliances must conform with nationally recognized codes and standards and be installed and maintained in accordance with manufacturer's recommendations. If the building has an operable solid fuel fireplace, all components must be cleaned and maintained in accordance with NFPA 211, 2000 edition.

5.820(2) *Smoke detectors.* Each bed and breakfast inn shall have an operable smoke detector in each guest room, at the top of each stairwell, and at intervals not to exceed 30 feet in each exit corridor. Detectors shall be installed and maintained in accordance with NFPA 72, 1999 edition.

a. Existing facilities. In bed and breakfast inns which begin operation or are constructed or remodeled prior to February 1, 2002, required smoke detectors may be battery operated.

b. New facilities. Each bed and breakfast inn which begins operation or is constructed or remodeled on or after February 1, 2002, shall be equipped with a system of interconnected smoke detectors with detectors at the top of each stairwell and at intervals not to exceed 30 feet in each exit corridor. These smoke detectors shall receive primary power from the building's electrical wiring and shall include battery backup. Each guest room shall be equipped with a smoke detector which may be a single station detector that complies with subrule 5.807(6).

5.820(3) *Emergency lighting.* Each bed and breakfast inn must be equipped with approved emergency lighting so located and directed in a manner that will illuminate the routes of travel from each guest-occupied room to the outside of the building.

5.820(4) *Windows.* Each bed and breakfast inn guest sleeping room must have at least one outside window that is openable without the use of tools or special knowledge. The window must be large enough that, when open and without breaking glass, it will permit the emergency egress of guests.

5.820(5) *Exits.* Each story that has one or more guest sleeping rooms must have two means of exit that are remote from each other and so arranged and constructed as to minimize any possibility that both may be blocked by any one fire or other emergency.

5.820(6) *Exit door markings.* Exit doors must be marked in accordance with NFPA 101, Life Safety Code, 2000 edition, Section 7.10.

5.820(7) *Fire extinguishers.* Fire extinguishers must be installed and maintained in accordance with National Fire Protection Association Standard Number 10, 1998 edition.

5.820(8) *Smoking prohibited.* Smoking is not permitted in any sleeping room, and rooms shall be posted with plainly visible signs so stating.

5.820(9) *Additional prohibitions.* Candles, lamps with power sources other than electricity or solid fuel fireplaces shall not be used in guest sleeping rooms.

5.820(10) *Directions.* Each bed and breakfast inn shall have clearly displayed in each guest bedroom printed directions and a diagram for emergency evacuation procedures. These directions must include the primary route to the outside and how to use the emergency egress window in the event the primary route cannot be traversed.

This rule is intended to implement Iowa Code section 137C.35.

661—5.821 to **5.849** Reserved.

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EXPLOSIVE MATERIALS

661—5.850(101A) Rules generally. Rescinded IAB 10/12/05, effective 1/1/06.

661—5.851(101A) Inventory. Inventory shall be of such that it shows amount of explosive material on hand, quantities dispensed and to whom, and quantity on hand at the end of each calendar working day. Anytime a shortage appears it shall be reported immediately to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal form 4712 (Department of Treasury, Internal Revenue Service) to be implemented, a copy of which shall be sent to the Iowa Department of Public Safety, attention of state fire marshal.

This rule is intended to implement Iowa Code section 101A.5.

661—5.852 to **5.864** Reserved.

661—5.865(101A,252J) Grounds for suspension, revocation, or denial of commercial explosives licenses. The department may refuse to issue a commercial license for the manufacture, importation, distribution, sale, and commercial use of explosives sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

1. Finding that the applicant or licensee is not of good moral character and sound judgment.
2. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.
3. Finding that the applicant or licensee falsified information in the current or any previous license application.
4. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A or these rules.
5. Receipt by the department of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, pursuant to the procedures set forth in Iowa Code Supplement chapter 252J.

An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked other than because of receipt of a certificate of noncompliance from the child support recovery unit may appeal that action pursuant to 661—Chapter 10. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit shall be subject to the provisions of rule 661—5.866(252J) and procedures specified in 661—Chapter 10 for contesting department actions shall not apply in these cases.

This rule is intended to implement Iowa Code section 101A.2 and Iowa Code Supplement chapter 252J.

661—5.866(252J) Child support collection procedures. The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code Supplement chapter 252J:

5.866(1) The notice required by Iowa Code Supplement section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee, identification card holder, or applicant may accept service personally or through authorized counsel.

5.866(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service upon the licensee or applicant.

5.866(3) Licensees and applicants for licenses shall keep the department informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code Supplement chapter 252J and shall provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section

252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

5.866(4) All departmental fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the department has denied the issuance or renewal of a license, or has suspended or revoked a license pursuant to Iowa Code Supplement chapter 252J.

5.866(5) In the event a licensee or applicant files a timely district court action following service of a department notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension or denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code chapter 252J.

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661—5.867 to **5.899** Reserved.

HOSPITALS AND LICENSED HEALTH CARE FACILITIES
[Prior to 4/2/03, see rules 661—5.550(100) to 661—5.603(100)]

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◊ Two or more ARCs

1 Tables published in 6/8/83 IAB

2 Effective date of 661—5.620(100,135C), introductory paragraph, and subrule 5.620(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1999.

3 Effective date of amendments to 5.800 to 5.810 and 5.820 delayed 70 days by the Administrative Rules Review Committee at its meeting held April 6, 2001. These amendments were published in the March 21, 2001, Iowa Administrative Bulletin as ARC 0566B. [See Notice ARC 9970A, IAB 7/12/00.] At its meeting held February 8, 2002, the Committee voted to lift the delay, effective February 9, 2002.At its meeting held June 5, 2001, the Committee voted to delay the effective date until adjournment of the 2002 Session of the General Assembly.

4 Editor's Note:
Effective date of 5.300, 5.301(6), 5.301(7), 5.302, 5.304(2)*"c"*(2), 5.304(3), 5.304(4), 5.305, 5.350 and 5.351 delayed by the Administrative Rules Review Committee 70 days.
Subrule 5.305(3) which was delayed 70 days from November 8, 1979, is renumbered and amended as 5.305(2) to be effective January 17, 1980.
Effective date of 5.400 and 5.450 to 5.452 delayed by the Administrative Rules Review Committee 70 days. These amendments published in IAC 10/3/79, ARC 0596.

5 Effective date of 661—5.620(100,135C), introductory paragraph, and subrule 5.620(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1999.

CHAPTER 210
SMOKE DETECTORS

661—210.1(100) Definitions. The following definitions apply to rules 661—210.1(100) through 661—210.4(100):

"Approved" means that the equipment has been approved for a specific use by an independent testing laboratory or organization of national reputation.

"Dual sensor smoke detector" means a smoke detector which contains both an ionization sensor and a photoelectric sensor and which is designed to detect and trigger an alarm in response to smoke detected through either sensing device.

661—210.2(100) General requirements.

210.2(1) Approved single station smoke detectors shall be acceptable in all areas covered by this chapter, unless other fire warning equipment or materials are required by any provision of 661—Chapter 201, 202, or 205. Any single station smoke detector installed on or after October 1, 2008, in compliance with this subrule, including a replacement of an existing detector, shall be a dual sensor smoke detector. If sufficient dual sensor smoke detectors have been installed to comply with the requirements of this chapter, additional smoke detectors which may be other than dual sensor detectors may be installed.

210.2(2) Any installation of wiring and equipment shall comply with NFPA 70, National Electrical Code, 2005 edition, and requirements established by the manufacturer of the equipment serviced by the wiring.

210.2(3) All devices, combinations of devices, and equipment to be installed in conformity with this chapter shall be approved and used for the purposes for which they are intended. Any smoke detector installed on or after October 1, 2008, in compliance with this chapter, including a replacement of an existing detector, shall be a dual sensor smoke detector. If sufficient dual sensor smoke detectors have been installed to comply with the requirements of this chapter, additional smoke detectors which may be other than dual sensor detectors may be installed.

210.2(4) A combination system, such as a household fire warning system whose components may be used in whole or in part, in common with a nonfire emergency signaling system, such as a burglar alarm system or an intercom system, shall not be permitted or approved, except for one- or two-family dwellings.

210.2(5) All power supplies shall be sufficient to operate the smoke detector alarm for at least four continuous minutes.

210.2(6) Power source.

a. In new buildings and additions constructed after July 1, 1991, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than that required for overcurrent protection. Smoke detectors may be solely battery operated when installed in existing buildings, or in buildings without commercial power, or in buildings which undergo alterations, repairs or additions subject to subrule 210.2(2).

b. New and replacement smoke detectors installed after May 1, 1993, which receive their primary power from the building wiring shall be equipped with a battery backup.

210.2(7) The failure of any nonreliable or short-life component which renders the detector inoperative shall be readily apparent to the occupant of the sleeping unit without the need for a test. Each smoke detector shall detect abnormal quantities of smoke that may occur and shall properly operate in the normal environmental condition.

210.2(8) Equipment shall be installed, located and spaced in accordance with the manufacturer's recommendations.

210.2(9) Installed fire warning equipment shall be mounted so as to be supported independently of its attachment to wires.

210.2(10) All apparatus shall be restored to normal immediately after each alarm or test.

210.2(11) Location within dwelling units.

a. In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story and in dwellings with basements, a detector shall be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, the smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a detector shall be installed on each level. When sleeping rooms are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches or more, smoke detectors shall be installed in the hallway and in the adjacent room. Detectors shall sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.

b. Location in efficiency dwelling units and hotels. In efficiency dwelling units, in hotel suites and in hotel sleeping rooms, detectors shall be located on the ceiling or wall of the main room or hotel sleeping room. When sleeping rooms within an efficiency dwelling unit or hotel suite are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. When actuated, the detector shall sound an alarm audible within the sleeping area of the dwelling unit, hotel suite or sleeping room in which it is located.

661—210.3(100) Smoke detectors—notice and certification of installation.

210.3(1) *Notice of installation.* An owner of a rental residential building containing two or more units, who is required by law to install smoke detectors, shall notify the local fire department upon installation of required smoke detectors.

210.3(2) *Certification—single-family dwelling units.* A person who files for a homestead tax credit pursuant to Iowa Code chapter 425 shall certify that the single-family dwelling unit for which the credit is filed has a smoke detector(s) installed in accordance with subrule 210.2(6) and paragraph 210.2(11)*"a,"* or that such smoke detector(s) will be installed within 30 days of the date of filing for credit.

210.3(3) *Reports to fire marshal.* Each county or city assessor charged with the responsibility of accepting homestead tax credit applications shall obtain certification of smoke detection on a form acceptable to the state fire marshal, signed by the person making application for credit, and shall file a quarterly report with the fire marshal listing the name and address and stating whether applicant attested to a detector(s) being present at the time of application or that a detector(s) would be installed as required within 30 days.

661—210.4(100) Smoke detectors—new and existing construction.

210.4(1) *New construction.* All multiple-unit residential buildings and single-family dwellings which are constructed after July 1, 1991, shall include the installation of smoke detectors meeting the requirements of rule 661—210.1(100) and rule 661—210.2(100).

210.4(2) *Existing construction.* All existing single-family units and multiple-unit residential buildings shall be equipped with smoke detectors as required in paragraph 210.2(11)*"a."*

These rules are intended to implement Iowa Code section 100.18.

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CHAPTER 276
Reserved

CHAPTER 277
CERTIFICATION OF ALARM SYSTEM CONTRACTORS AND INSTALLERS

661—277.1(100C) Establishment of program. There is established within the fire marshal division an alarm system contractor and installer certification program. The program is established pursuant to Iowa Code Supplement chapter 100C.

277.1(1) *Certification required.*

a. Except as provided in paragraph 277.1(1)*"b,"* no person shall act as an alarm system contractor without being currently certified as an alarm system contractor by the fire marshal. Except as provided in paragraph 277.1(1)*"b,"* no person shall act as an alarm system installer without being currently certified by the fire marshal as an alarm system contractor or alarm system installer unless the person is engaged in the installation of alarm system components, is currently licensed pursuant to Iowa Code Supplement chapter 103, and is exempt from requirements for certification by the fire marshal as an alarm system installer pursuant to Iowa Code Supplement chapter 103.

EXCEPTION: A person may pull cable for an alarm system under the direct supervision of a certified contractor, certified installer, or person licensed pursuant to Iowa Code Supplement chapter 103 who is working as an installer without certification pursuant to Iowa Code Supplement chapter 103.

b. On or after October 1, 2008, and before January 1, 2009, a person may operate as a contractor or installer subject to this chapter without being currently certified under this chapter only if the contractor or installer has applied for certification under this chapter. A contractor or installer operating under this paragraph may perform work only within the scope of certification for which the contractor or installer has applied.

277.1(2) *Endorsement.*

a. The certification of each contractor or installer shall carry an endorsement for one or more of the following:

(1) Alarm system contractor.

1. Fire alarm system contractor (1a).
2. Nurse call system contractor (1b).
3. Security alarm system contractor (1c).
4. Alarm system maintenance inspection contractor (1d).
5. Dwelling unit alarm system contractor (1e).

(2) Alarm system installer.

1. Fire alarm system installer (2a).
2. Nurse call system installer (2b).
3. Security alarm system installer (2c).
4. Alarm system component installer (2d).
5. Alarm system maintenance inspection installer (2e).
6. Dwelling unit alarm system installer (2f).
7. Alarm system installer assistant (2g).

b. Any person acting as an alarm system contractor or installer, other than a person who is not required to be certified for such work by the fire marshal, shall do so only in relation to systems covered by the endorsements on the contractor's or installer's certification.

277.1(3) *Length of certification.* Certification shall normally be for three years and shall expire on September 30 of the third year after the certification has been issued. A certification which is effective on a date other than October 1 shall be effective on the date on which the certification is issued and shall expire on the next September 30, after two years have passed from the date on which the certification was issued.

277.1(4) *Inquiries.* Inquiries regarding the alarm system contractor and installer certification program may be addressed to:

Alarm System Contractor and Installer Certification Program
Fire Marshal Division
Iowa Department of Public Safety

215 East 7th Street
Des Moines, Iowa 50319

Inquiries may be addressed by electronic mail to alarminfo@dps.state.ia.us, or by telephone to (515)725-6145.

661—277.2(100C) Definitions. The following definitions apply to rules 661—277.1(100C) through 661—277.7(100C):

"Alarm system" means a system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of a fire alarm, security alarm, or medical alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals.

"Alarm system component installer" means an employee of an alarm system contractor who is engaged in a portion of alarm system installation limited to mounting alarm system raceways, boxes or system devices, and pulling of system cable.

"Alarm system contractor" or *"contractor"* means a person engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of alarm systems in this state.

"Alarm system installer" means a person who is engaged in the layout, installation, repair, alteration, addition, or maintenance of alarm systems and who is certified under the provisions of this chapter to perform work authorized by that certification and any endorsement pertaining thereto. An alarm system installer shall be an employee of an alarm system contractor or, if employed by anyone other than an alarm system contractor, shall perform work requiring certification as an alarm system installer only on property owned or occupied by such employer.

"Alarm system installer assistant" means a person who is engaged in the layout, installation, repair, alteration, addition, or maintenance of alarm systems under the direct supervision of an alarm system installer.

"Alarm system maintenance inspection installer" means an employee of an alarm system contractor who is engaged in maintenance inspection of alarm systems.

"Dwelling alarm system" means a system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of a fire alarm, nurse call or security alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a single-family dwelling or a single dwelling unit of a multifamily residential building and not interconnected with another dwelling alarm system. A dwelling alarm system does not mean single-station or multiple-station alarms installed in dwelling units.

"Fire alarm system" means a system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of a fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals that serves the general fire alarm needs of a building or buildings and that provides fire department or occupant notification or both. A fire alarm system does not mean single-station or multiple-station alarms installed in dwelling units.

"Installation" means hanging electrical conduits, raceways or boxes; mounting system devices; pulling system cable; activating system-initiating devices and system control units or verifying system operations to meet specifications; and performing system acceptance testing.

"Layout" means drawings, calculations and component specifications to achieve the specified system design installation. "Layout" does not include design.

"Listed" means equipment, materials, or services included in a list published by a nationally recognized independent testing organization that is concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

"Maintenance inspection" means periodic inspection and certification completed by an alarm system contractor or installer. For purposes of this chapter, "maintenance inspection" does not include an inspection completed by a building official or fire inspector when acting in an official capacity, or an insurance inspector employed by an insurance company licensed to do business in Iowa.

"NBFAA" means the National Burglar and Fire Alarm Association, 2300 Valley View Lane, Suite 230, Irving, Texas 75062.

NOTE: As of July 1, 2008, the Web site of the NBFAA is http://www.alarm.org/.

"NICET" means the National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, Virginia 22314-2794.

NOTE: As of July 1, 2008, the Web site of NICET is http://www.nicet.org/.

"Nurse call system" means a nurse call system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of a nurse call system or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a facility required to be licensed or certified by the state pursuant to Iowa Code chapter 125, 135B, 135C, 135G, 135H, 135J, 231C, or 231D, or installed in a facility operating pursuant to Iowa Code chapter 218, 219, 223, 225, 233A, or 233B, to initiate response of on-site medical care providers.

"Responsible managing employee" means an owner, partner, officer, or manager employed full-time by an alarm system contractor who is designated as a responsible managing employee for an alarm system contractor and who meets the requirements for a responsible managing employee established in rule 661—277.3(100C).

"Security alarm system" means a system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of a security alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a building or facility to detect unauthorized entry into a building or portion of a building and to notify security personnel or building occupants or both.

661—277.3(100C) Responsible managing employee. Each alarm system contractor shall designate a responsible managing employee and may designate one or more alternate responsible managing employees. A contractor may designate more than one responsible managing employee in order to satisfy the requirements for more than one endorsement as provided in subrule 277.1(2). If more than one responsible managing employee is designated, the contractor shall indicate for which responsible managing employee each designated alternate managing employee serves as an alternate.

277.3(1) The responsible managing employee or employees shall be designated in the application for certification; and, if a responsible managing employee is no longer acting in that role, the contractor shall so notify the fire marshal, in writing, within 30 calendar days, on a form designated by the fire marshal.

277.3(2) If a responsible managing employee is no longer acting in the role of responsible managing employee and the contractor has designated an alternate responsible managing employee, the alternate responsible managing employee shall become the responsible managing employee and the contractor shall so notify the fire marshal, in writing, within 30 calendar days of the date on which the preceding responsible managing employee ceased to act in that role. If the contractor has designated more than one alternate responsible managing employee, the notice to the fire marshal shall indicate which alternate responsible managing employee has assumed the position of responsible managing employee.

277.3(3) If a responsible managing employee designated by an alarm system contractor is no longer acting in the role of responsible managing employee and the contractor has not designated an alternate responsible managing employee, the contractor shall designate a new responsible managing employee and shall notify the fire marshal, in writing, of the designation within six months of the date on which the former responsible managing employee ceased to act in that capacity, on a form designated by the fire marshal. If the fire marshal has not been notified of the appointment of a new responsible managing employee within six months of the date on which a responsible managing employee ceased serving in that capacity, the fire marshal shall suspend the certification of the alarm system contractor.

277.3(4) A responsible managing employee or an alternate responsible managing employee shall meet one of the following requirements:

a. Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design.

b. For fire alarm system endorsement, current certification by NICET at level III or higher as a fire alarm systems technician.

c. For nurse call system endorsement, current certification by a nurse call system manufacturer or current NICET level II certification or higher in fire alarm systems or audio systems.

d. For security alarm system endorsement, current certification by NBFAA as an advanced alarm system technician (level II) or higher, or NICET level II certification or higher in fire alarm systems.

e. For alarm system maintenance inspection endorsement, current certification by NBFAA as an advanced alarm technician (level II), or NICET level II certification or higher in fire alarm systems.

f. For dwelling unit alarm system endorsement, current certification by NBFAA as an alarm technician (level I) or higher, or NICET level I certification or higher in fire alarm systems.

g. For any endorsement, completion of any third-party training or certification approved by the fire marshal, as provided in subrule 277.3(5), for that endorsement.

h. Prior to October 1, 2010, an alarm system contractor may receive provisional certification if the person designated as the contractor's responsible managing employee provides documentation that procedures have been initiated for obtaining required qualifications for the endorsement requested. Provisional certification shall not be recognized on or after October 1, 2011. Documentation may include an affidavit completed by the applicant if documentation is not available from the testing organization.

EXCEPTION: Provisional certification for fire alarm endorsement shall be recognized until October 1, 2013, provided that by no later than October 1, 2011, the responsible managing employee for a contractor with this provisional endorsement shall have achieved NICET level II certification in fire alarm systems.

277.3(5) In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the fire marshal, such approval is required prior to acceptance of the training or testing to meet certification requirements. Approval by the fire marshal of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the fire marshal. Any individual, firm or organization seeking to obtain such approval may apply to the fire marshal. An application form for approval of a testing or training program may be obtained by contacting the alarm system contractor and installer certification program as specified in subrule 277.1(4).

277.3(6) Work performed by a contractor subject to these rules shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the responsible managing employee.

277.3(7) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing an alarm system set forth in any rule of the fire marshal or local fire ordinance or standard adopted by reference therein.

661—277.4(100C) Contractor certification requirements. An alarm system contractor shall meet all of the following requirements in order to receive certification from the fire marshal and shall continue to meet all requirements throughout the period of certification. The contractor shall notify the fire marshal, in writing, on a form designated by the fire marshal, within 30 calendar days if the contractor fails to meet any requirement for certification.

277.4(1) The contractor shall designate one or more responsible managing employees as provided in rule 661—277.3(100C).

277.4(2) The contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic alarm systems in the following amounts: $500,000 per person, $1,000,000 per occurrence, and $1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The contractor shall cease operation immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A contractor shall not initiate any installation of an alarm system which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage

required by this subrule and of which the contractor has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

277.4(3) The contractor shall maintain current registration as a contractor with the labor services division of the Iowa workforce development department in compliance with Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code.

EXCEPTION: A contractor shall not be required to maintain registration with the labor services division of the Iowa workforce development department if the contractor does not meet the definition of "contractor" for purposes of Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code.

277.4(4) The contractor shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the contractor is performing work.

661—277.5(100C) Contractor application and fees.

277.5(1) *Application.* Any contractor seeking certification as an alarm system contractor shall submit a completed application form to the fire marshal. The application shall be filed no later than 30 days prior to the date on which certification is required or on which an existing certification expires. An application form may be obtained from the fire marshal or from the Web site of the alarm system contractor and installer certification program. The application form shall be submitted with all required attachments and the required application fee established in subrule 277.5(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The Web site for the alarm system contractor and installer certification program is: http://www.dps.state.ia.us/fm/alarm/index.shtml.

277.5(2) *Certification fee.* The certification fee for alarm system contractors shall be $300 for three years. If an application for certification provides for more than one responsible managing employee pursuant to rule 661—277.3(100C), there shall be an additional fee of $50 for each responsible managing employee beyond the first. If an application for certification provides for more than one endorsement as provided in subrule 277.1(2), there shall be an additional fee of $50 for each endorsement beyond the first. If an application is denied, all except $100 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the certification fee shall be made if the certification is revoked or if the denial of the certification is based on the applicant's knowingly including false or misleading information on the application.

277.5(3) *Payment.* The certification fee shall be submitted by draft, check, or money order in the applicable amount payable to the Department of Public Safety. The memo portion of the check, if the payment is by check, shall be completed as follows: Alarm System Contractor and Installer Certification Program.

277.5(4) *Amended certification fee.* The fee for issuance of an amended certification is $100. The fee shall be submitted with the request for an amended certification.

a. A contractor shall request and the fire marshal shall issue an amended certificate for any of the following:

(1) A change in the designation of a responsible managing employee;

(2) A change in insurance coverage; or

(3) A change in any other material information included in or with the initial or renewal application. A change in the location of a business is a material change; however, no fee shall be charged for the issuance of an amended certificate if the sole reason for amending the certificate is to reflect a change in location which was necessitated by disaster emergency conditions and the business was located in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

b. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the fire marshal but shall not require issuance of an amended certification or payment of the amended certification fee.

277.5(5) *Attachments.* Required attachments to the application for certification include, but are not limited to, the following:

a. Documentation verifying that the contractor has in force the insurance coverage required by subrule 277.4(2). The documentation shall include an acknowledgment that the contractor's insurance coverage extends to any work performed by the contractor within the scope of certification pursuant to this chapter. The documentation may consist of a letter from the insurance carrier or a copy of the insurance certificate with an endorsement showing the required information.

b. Documentation verifying that the person designated as the responsible managing employee and any persons designated as alternate responsible managing employees have met the applicable certification requirements.

277.5(6) *National criminal history check.* Each applicant for certification as a contractor shall submit fingerprints and the applicable fee as directed by the division of criminal investigation for a national criminal history check conducted by the Federal Bureau of Investigation.

661—277.6(100C) Installer certification requirements. An applicant for alarm system installer certification shall meet all of the following requirements which are applicable to the endorsements for which the applicant is applying in order to receive certification from the fire marshal and shall continue to meet all such requirements throughout the period of certification. The installer shall notify the fire marshal, in writing, on a form designated by the fire marshal, within 30 calendar days if the installer fails to meet any applicable requirement for certification.

277.6(1) The alarm system installer shall meet one of the following requirements:

a. Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design.

b. For fire alarm system endorsement, current certification by NICET at level II or higher in fire alarm systems or current certification by NBFAA as an advanced alarm system technician (level II) and two years of related work experience.

c. For nurse call system endorsement, current certification by a nurse call system manufacturer, documented training by the certified nurse call contractor employer, current NICET level I certification or higher in fire alarm systems or audio systems, completed certification by NBFAA as an alarm system technician (level I) or higher, or current licensure as a master electrician or journeyman electrician by the electrical examining board, pursuant to Iowa Code Supplement chapter 103.

d. For security alarm system endorsement, completed certification by NBFAA as an alarm technician (level I) or higher, or current NICET level I certification or higher in fire alarm systems or audio systems.

e. For alarm system component installer endorsement, completed certification by NBFAA as an alarm technician (level I) or higher, current NICET level I certification or higher in fire alarm systems or audio systems, or current licensure as a master electrician or journeyman electrician by the electrical examining board, pursuant to Iowa Code Supplement chapter 103.

f. For alarm system maintenance inspection endorsement, completed certification by NBFAA as an alarm system technician (level I) or higher, or current NICET level I certification or higher in fire alarm systems or audio systems.

g. For dwelling unit alarm system endorsement, completed certification by NBFAA as an alarm technician (level I) or higher, or current NICET level I certification or higher in fire alarm systems or audio systems, or current licensure as a master electrician or journeyman electrician by the electrical examining board, pursuant to Iowa Code Supplement chapter 103.

h. For alarm system installer assistant endorsement, submission of a completed application no later than the first day of employment. An alarm system installer assistant may perform work which requires certification under this chapter only under the direct supervision of an alarm system installer whose certification contains one or more endorsements as provided in subrule 277.6(1), paragraphs *"a"* through *"f,"* and that work must be within the scope of work authorized by the endorsements held by the supervising installer.

i. For any endorsement, completion of any third-party training or certification approved by the state fire marshal as provided in subrule 277.3(5).

j. Prior to October 1, 2010, an alarm system installer may receive provisional certification if the installer provides documentation that procedures have been initiated for obtaining required qualifications for the endorsement requested. Provisional certification shall not be recognized on or after October 1, 2011. No provisional certification shall be issued for alarm system installer endorsement. Documentation may include an affidavit completed by the applicant if documentation is not available from the testing organization.

277.6(2) The installer shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the installer is performing work.

277.6(3) In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the state fire marshal, such approval is required prior to acceptance of the training or testing to meet certification requirements. Approval by the state fire marshal of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the state fire marshal. Any individual, firm or organization seeking to obtain such approval may apply to the state fire marshal. An application form for approval of a testing or training program may be obtained by contacting the alarm system contractor and installer certification program as specified in subrule 277.1(4).

277.6(4) Work performed by an installer subject to these rules shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the installer and shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the responsible managing employee of the installer's employer, unless the employer is not a certified contractor as allowed by 2008 Iowa Acts, House File 2547, section 2.

277.6(5) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing an alarm system set forth in any rule of the fire marshal or local fire ordinance or standard adopted by reference therein.

661—277.7(100C) Installer application and fees.

277.7(1) *Application.* Any installer seeking certification as an alarm system installer shall submit a completed application form to the state fire marshal. The application shall be filed no later than 30 days prior to the date on which certification is required or on which an existing certification expires, except that an application for endorsement as an alarm system installer assistant shall be submitted no later than the first day of employment as an alarm system installer assistant. An application form may be obtained from the state fire marshal or from the Web site of the alarm system contractor and installer certification program. The application form shall be submitted with all required attachments and the required application fee established in subrule 277.7(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The Web site for the alarm system contractor and installer certification program is: http://www.dps.state.ia.us/fm/alarm/index.shtml.

277.7(2) *Certification fee.* The certification fee for an alarm system installer shall be $150 for three years, except that the certification fee for endorsement as an alarm system installer assistant shall be $50 for one year. There shall be an additional fee of $25 for each endorsement beyond the first. If an application is denied, all except $50 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the certification fee shall be made if the certification is revoked or if the denial of the certification is based on the applicant's knowingly including false or misleading information on the application.

277.7(3) *Payment.* The certification fee shall be submitted by draft, check, or money order in the applicable amount payable to the Department of Public Safety, with the memo portion of the check completed as follows: Alarm System Contractor and Installer Certification Program.

277.7(4) *Amended certification fee.*

a. The fee for issuance of an amended certification is $50. The fee shall be submitted with the request for an amended certification. An installer shall request and the fire marshal shall issue an amended certificate for a change in any material information included in or with the initial or renewal application.

b. Other changes in the information required in the application form shall be reported to the fire marshal but shall not require issuance of an amended certification or payment of the amended certification fee.

277.7(5) *Attachments.* Required attachments to the application for certification include, but are not limited to, documentation of required certifications, licenses or training.

277.7(6) *National criminal history check.* Each applicant for certification as an installer shall submit fingerprints and the applicable fee as directed by the division of criminal investigation for a national criminal history check conducted by the Federal Bureau of Investigation.

661—277.8(100C) Complaints. Complaints regarding the performance of any certified contractor or installer, failure of a certified contractor or installer to meet any of the requirements established in Iowa Code Supplement chapter 100C or this chapter or any other provision of law, or operation as an alarm system contractor or installer without certification may be filed with the state fire marshal.

277.8(1) Complaints should be addressed as follows:

Alarm System Contractor and Installer Certification Program
Fire Marshal Division
Iowa Department of Public Safety
215 East 7th Street
Des Moines, Iowa 50319

277.8(2) Complaints may be submitted by electronic mail to alarminfo@dps.state.ia.us or by facsimile to (515)725-6172.

277.8(3) Complaints should be as specific as possible and must clearly identify the contractor or installer against whom the complaint is filed. A form which may be used to file complaints is available on the Web site of the alarm system contractor and installer certification program. Complaints may be filed without using the complaint form provided, but shall be submitted in writing. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

NOTE: The Web site for the alarm system contractor and installer certification program is: http://www.dps.state.ia.us/fm/alarm/index.shtml.

661—277.9(100C) Denial, suspension, or revocation of certification; civil penalties; and appeals. The fire marshal may deny, suspend or revoke the certification of a contractor or installer or may assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as an alarm system contractor or installer is violated.

277.9(1) *Denial.* The fire marshal may deny an application for certification:

a. If the applicant makes a false statement on the application form or in any other submission of information required for certification. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for certification established in this chapter.

c. If the applicant is currently barred for cause from acting as an alarm system contractor or installer in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as an alarm system contractor or installer and if the basis of that action reflects upon the integrity of the applicant in operating as an alarm system contractor or installer. If an applicant is found to have been previously barred for cause from operating as an alarm system contractor or installer in another jurisdiction and is no longer barred from doing so, the fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a certified contractor or

installer. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

e. If either the applicant or the designated responsible managing employee, if the application is for certification as a contractor, has been convicted of a crime which reflects upon the integrity of the applicant in operating as an alarm system contractor or installer, the fire marshal shall evaluate the conviction or convictions with regard to the likelihood that the applicant would operate with integrity as a certified contractor or installer. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

277.9(2) *Suspension.* A suspension of a certification may be imposed by the fire marshal for any violation of these rules or Iowa Code Supplement chapter 100C or for a failure to meet any legal requirement to operate as an alarm system contractor or installer in this state. Failure to provide any notice to the fire marshal as provided in these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the certification even after the period of the suspension.

277.9(3) *Revocation.* A revocation is a termination of a certification. A certification may be revoked by the fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by an alarm system incorrectly installed by a certified contractor or installer or when information comes to the attention of the fire marshal which, if known to the fire marshal when the application was being considered, would have resulted in denial of the certification. A new application for certification from a contractor or installer whose certification had previously been revoked shall not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The fire marshal may specify in the revocation order a longer period than one year before a new application for certification may be considered. When a new application for certification from a contractor or installer whose certification was previously revoked is being considered, the applicant may be denied certification based upon the same information which was the basis for revocation even after any such period established by the fire marshal has expired.

277.9(4) *Civil penalties.* The fire marshal may impose a civil penalty of up to $500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

277.9(5) *Suspension or revocation for nonpayment of child support.* The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the certified contractor or installer by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the contractor or installer may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of certification of a contractor or installer, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the contractor or installer.

c. Contractors or installers shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. All applicable fees for an application or reinstatement must be paid by the contractor or installer before a certificate will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a certification or has suspended or revoked a certification pursuant to Iowa Code chapter 252J.

e. In the event a contractor or installer files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension of the certification, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively within the department of public safety.

NOTE: The procedures established in subrule 277.9(5) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a certification program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

277.9(6) *Appeals.* Any denial, suspension, or revocation of a certification, or any civil penalty imposed upon a certified contractor or installer under this rule, other than one imposed pursuant to subrule 277.9(5), may be appealed by the contractor or installer within 14 days of receipt of the notice. Appeals of actions taken by the fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

These rules are intended to implement Iowa Code Supplement chapter 100C as amended by 2008 Iowa Acts, House File 2547.

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CHAPTERS 278 to 290
Reserved

CHAPTER 1
ADMISSION RULES COMMON TO THE THREE STATE UNIVERSITIES

[Prior to 4/20/88, Regents, Board of[720]]

Preamble: The state board of regents has adopted the following requirements governing admission of students to the three state universities.

Each university is expected to describe in its catalog the requirements and other information necessary to make the admission process operate within the framework of these requirements.

Amendments and changes in these requirements normally are proposed by the universities to the regent committee on educational relations which examines the proposals and makes specific recommendations through the interinstitutional committee on educational coordination to the state board of regents which is empowered by law to establish the admission requirements.

681—1.1(262) Admission of undergraduate students directly from high school. Students desiring admission to the University of Iowa, Iowa State University, or the University of Northern Iowa must meet the requirements in this rule and also any special requirements for the curriculum, school, or college of their choice.

1.1(1) Application. Applicants must submit a formal application for admission, together with the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) and detailed in rule 681—1.7(262), and have their secondary school provide a transcript of their academic record, including credits and grades, rank in class, and certification of graduation. Applicants must also submit SAT Reasoning Test or ACT scores. Applicants whose primary language is not English must also meet the English language proficiency requirement specified by each university. Applicants may be required to submit additional information or data to support their applications.

1.1(2) Admission criteria.

a. Effective for students who seek admission prior to fall 2009. Graduates of approved Iowa high schools who have the subject matter background required by each university and who rank in the upper one-half of their graduating class will be admitted to any regent university. Applicants who are not in the upper one-half of their graduating class may, after an individual review of their academic and test records, and at the discretion of the admissions officers:

(1) Be admitted unconditionally,

(2) Be admitted conditionally,

(3) Be required to enroll for a tryout period during a preceding summer session, or

(4) Be denied admission.

b. Effective for students who seek admission in fall 2009 and thereafter.

(1) Decisions on admission to a regent university are based on the following four factors: performance on standardized tests (SAT Reasoning Test or ACT); high school grade point average (GPA); high school percentile rank in class; and number of high school courses completed in the core subject areas. These factors are used in the following equation to calculate a regent admission index (RAI):

RAI = (2 × ACT composite score) + (1 × high school rank expressed as a percentile) + (20 × high school grade point average) + (5 × number of high school courses completed in the core subject areas)

NOTE: For purposes of calculating the regent admission index, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents); high school rank is expressed as a percentile with 99 percent as the top value; high school GPA is expressed in a four-point scale; and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.

(2) Graduates of approved Iowa high schools who have the subject matter background required by each university and who meet the regent admission index of 245 required for automatic admission will be admitted to any regent university. Applicants who do not meet the regent admission index of 245 for automatic admission or for whom a regent admission index cannot be calculated may, after an individual review of their academic and test records, and at the discretion of the admissions officers:

1. Be admitted unconditionally,
2. Be admitted conditionally,
3. Be required to enroll for a tryout period during a preceding summer session, or
4. Be denied admission.

1.1(3) Graduates of approved high schools in other states may be held to higher academic standards, but must meet at least the same requirements as graduates of Iowa high schools. The options for conditional admission or summer tryout enrollment may not necessarily be offered to these students.

1.1(4) Applicants who are graduates of nonapproved high schools will be considered for admission in a manner similar to applicants from approved high schools, but additional emphasis will be given to scores obtained on standardized examinations.

1.1(5) Applicants who are not high school graduates, but whose classes have graduated, may be considered for admission. These applicants will be required to submit all academic data to the extent that it exists and achieve scores on standardized examinations which will demonstrate that they are adequately prepared for academic study.

1.1(6) Early admission.

a. Students with superior academic records may be admitted, on an individual basis, for part-time university study while enrolled in high school or during the summers prior to high school graduation.

b. In rare situations, exceptional students may be admitted as full-time students to a regent university before completing high school. Early admission to a regent university is provided to serve persons whose academic achievement and personal and intellectual maturity clearly suggest readiness for collegiate level study. Each university will specify requirements and conditions for early admission.

This rule is intended to implement Iowa Code section 262.9(3).

681—1.2(262) Admission of undergraduate students by transfer from other colleges. Students desiring admission to the University of Iowa, Iowa State University, or the University of Northern Iowa must meet the requirements in this rule and also any special requirements for the curriculum, school, or college of their choice.

Applicants must submit a formal application for admission, together with the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) and detailed in rule 681—1.7(262), and request that each college they have attended send an official transcript of record to the admissions office. High school academic records and standardized test results may also be required. The Test of English as a Foreign Language (TOEFL) is required of foreign students whose first language is not English.

1.2(1) Transfer applicants with a minimum of 24 semester hours of graded credit from regionally accredited colleges or universities, who have achieved for all college work previously attempted the grade point required by each university for specific programs, will be admitted. Higher academic standards may be required of students who are not residents of Iowa.

Applicants who have not maintained the grade point required by each university for specific programs or who are under academic suspension from the last college attended may, after a review of their academic and test records, and at the discretion of the admissions officers:

a. Be admitted unconditionally,

b. Be admitted conditionally,

c. Be required to enroll for a tryout period during a preceding summer session, or

d. Be denied admission.

1.2(2) Admission of students with fewer than 24 semester hours of college credit will be based on high school academic and standardized test records in addition to review of the college record.

1.2(3) Transfer applicants under disciplinary suspension will not be considered for admission until information concerning the reason for the suspension has been received from the college assigning the suspension. Applicants granted admission under these circumstances will be admitted on probation.

1.2(4) Transfer applicants from colleges and universities not regionally accredited will be considered for admission on an individual basis taking into account all available academic information.

This rule is intended to implement Iowa Code section 262.9(3).

681—1.3(262) Transfer credit practices. The regent universities endorse the Joint Statement on Transfer and Award of Academic Credit approved in 1978 by the American Council on Education (ACE), the American Association of Collegiate Registrars and Admissions Officers (AACRAO), and the Council on Postsecondary Accreditation (COPA). The current issue of Transfer Credit Practices of Selected Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), and publications of the Council on Postsecondary Accreditation (COPA) are examples of references used by the universities in determining transfer credit. The acceptance and use of transfer credit is subject to limitations in accordance with the educational policies operative at each university.

1.3(1) *Students from regionally accredited colleges and universities.* Credit earned at regionally accredited colleges and universities is acceptable for transfer except that credit in courses determined by the receiving university to be of a remedial, vocational, or technical nature, or credit in courses or programs in which the institution granting the credit is not directly involved, may not be accepted, or may be accepted to a limited extent.

Of the coursework earned at a two-year college, students may apply up to one-half but no more than 65 hours of the credits required for a bachelor's degree toward that degree at a regent university. This policy becomes effective September 29, 1993.

1.3(2) *Students from colleges and universities which have candidate status.* Credit earned at colleges and universities which have become candidates for accreditation by a regional association is acceptable for transfer in a manner similar to that from regionally accredited colleges and universities if the credit is applicable to the bachelor's degree at the receiving university.

Credit earned at the junior and senior classification from an accredited two-year college which has received approval by a regional accrediting association for change to a four-year college may be accepted by a regent university.

1.3(3) *Students from colleges and universities not regionally accredited.* When students are admitted from colleges and universities not regionally accredited, they may validate portions or all of their transfer credit by satisfactory academic study in residence, or by examination. Each university will specify the amount of the transfer credit and the terms of the validation process at the time of admission.

In determining the acceptability of transfer credit from private colleges in Iowa which do not have regional accreditation, the regent committee on educational relations, upon request from the institutions, evaluates the nature and standards of the academic program, faculty, student records, library, and laboratories.

In determining the acceptability of transfer credit from colleges in states other than Iowa which are not regionally accredited, acceptance practices indicated in the current issue of Transfer Credit Practices of Selected Educational Institutions will be used as a guide. For institutions not listed in the publication, guidance is requested from the designated reporting institution of the appropriate state.

1.3(4) *Students from foreign colleges and universities.* Transfer credit from foreign educational institutions may be granted after a determination of the type of institution involved and after an evaluation of the content, level, and comparability of the study to courses and programs at the receiving university. Credit may be granted in specific courses, but is frequently assigned to general areas of study. Extensive use is made of professional journals and references which describe the education systems and programs of individual countries.

This rule is intended to implement Iowa Code section 262.9(3).

681—1.4(262) Classification of residents and nonresidents for admission, tuition, and fee purposes.

1.4(1) *General.*

a. A person enrolling at one of the three state universities shall be classified as a resident or nonresident for admission, tuition, and fee purposes by the registrar or someone designated by the registrar. The decision shall be based upon information furnished by the student and other relevant information.

b. In determining resident or nonresident classification, the issue is essentially one of why the person is in the state of Iowa. If the person is in the state primarily for educational purposes, that person will be considered a nonresident. For example, it may be possible that an individual could qualify as a resident of Iowa for such purposes as voting, or holding an Iowa driver's license, and not meet the residency requirements as established by the board of regents for admission, tuition, and fee purposes.

c. The registrar, or designated person, is authorized to require written documents, affidavits, verifications, or other evidence deemed necessary to determine why a student is in Iowa. The burden of establishing that a student is in Iowa for other than educational purposes is upon the student.

A student may be required to file any or all of the following:

(1) A statement from the student describing employment and expected sources of support;

(2) A statement from the student's employer;

(3) A statement from the student's parents verifying nonsupport and the fact that the student was not listed as a dependent on tax returns for the past year and will not be so listed in future years;

(4) Supporting statements from persons who might be familiar with the family situation;

(5) Iowa state income tax return.

d. Change of classification from nonresident to resident will not be made retroactive beyond the term in which application for resident classification is made.

e. A student who gives incorrect or misleading information to evade payment of nonresident fees shall be subject to serious disciplinary action and must also pay the nonresident fees for each term previously attended.

f. Review committee. These regulations shall be administered by the registrar or someone designated by the registrar. The decision of the registrar or designated person may be appealed to a university review committee. The finding of the review committee may be appealed to the state board of regents.

1.4(2) *Guidelines.* The following guidelines are used in determining the resident classification of a student for admission, tuition, and fee purposes:

a. A financially dependent student whose parents move from Iowa after the student is enrolled remains a resident provided the student maintains continuous enrollment. A financially dependent student whose parents move from Iowa during the senior year of high school will be considered a resident provided the student has not established domicile in another state.

b. In deciding why a person is in the state of Iowa, the person's domicile will be considered. A person who comes to Iowa from another state and enrolls in any institution of postsecondary education for a full program or substantially a full program shall be presumed to have come to Iowa primarily for educational reasons rather than to establish a domicile in Iowa.

c. A student who was a former resident of Iowa may continue to be considered a resident provided absence from the state was for a period of less than 12 months and provided domicile is reestablished. If the absence from the state is for a period exceeding 12 months, a student may be considered a resident if evidence can be presented showing that the student has long-term ties to Iowa and reestablishes an Iowa domicile.

A person or the dependent of a person whose domicile is permanently established in Iowa, who has been classified as a resident for admission, tuition, and fee purposes, may continue to be classified as a resident so long as domicile is maintained, even though circumstances may require extended absence of the person from the state. It is required that a person who claims Iowa domicile while living in another state or country will provide proof of the continual Iowa domicile as evidence that the person:

(1) Has not acquired a domicile in another state,

(2) Has maintained a continuous voting record in Iowa, and

(3) Has filed regular Iowa resident income tax returns during absence from the state.

d. A student who moves to Iowa may be eligible for resident classification at the next registration following 12 consecutive months in the state provided the student is not enrolled as more than a half-time student (6 credits for an undergraduate or professional student, 5 credits for a graduate student) in any academic year term, is not enrolled for more than 4 credits in a summer term for any classification, and provides sufficient evidence of the establishment of an Iowa domicile.

e. A student who has been a continuous student and whose parents move to Iowa may become a resident at the beginning of the next term provided the student is dependent upon the parents for a majority of financial assistance.

f. A person who is moved into the state as the result of military or civil orders from the government for other than educational purposes, or the dependent of such a person, is entitled to resident status. However, if the arrival of the person under orders is subsequent to the beginning of the term in which the student is first enrolled, nonresident fees will be charged in all cases until the beginning of the next term in which the student is enrolled. Legislation, effective July 1, 1977, requires that military personnel who claim residency in Iowa (home of record) will be required to file Iowa resident income tax returns.

g. A person who has been certified as a refugee or granted asylum by the appropriate agency of the United States who enrolls as a student at a university governed by the Iowa state board of regents may be accorded immediate resident status for admission, tuition, and fee purposes when the person:

(1) Comes directly to the state of Iowa from a refugee facility or port of debarkation or

(2) Comes to the state of Iowa within a reasonable time and has not established domicile in another state.

Any refugee or individual granted asylum not meeting these standards will be presumed to be a nonresident for admission, tuition, and fee purposes and thus subject to the usual method of proof of establishment of Iowa residency.

h. An alien who has immigrant status establishes Iowa residency in the same manner as a United States citizen.

i. At the regent institutions, American Indians who have origins in any of the original people of North America and who maintain a cultural identification through tribal affiliation or community recognition with one or more of the tribes or nations connected historically with the present state of Iowa, including the Iowa, Kickapoo, Menominee, Miami, Missouri, Ojibwa (Chippewa), Omaha, Otoe, Ottawa (Odawa), Potawatomi, Sac and Fox (Sauk, Meskwaki), Sioux, and Winnebago (Ho Chunk), will be assessed Iowa resident tuition and fees.

1.4(3) *Facts.*

a. The following circumstances, although not necessarily conclusive, have probative value in support of a claim for resident classification:

(1) Reside in Iowa for 12 consecutive months, and be primarily engaged in activities other than those of a full-time student, immediately prior to the beginning of the term for which resident classification is sought.

(2) Reliance upon Iowa resources for financial support.

(3) Domicile in Iowa of persons legally responsible for the student.

(4) Former domicile in the state and maintenance of significant connections therein while absent.

(5) Acceptance of an offer of permanent employment in Iowa.

(6) Other facts indicating the student's domicile will be considered by the universities in classifying the student.

b. The following circumstances, standing alone, do not constitute sufficient evidence of domicile to effect classification of a student as a resident under these regulations:

(1) Voting or registration for voting.

(2) Employment in any position normally filled by a student.

(3) The lease of living quarters.

(4) Admission to a licensed practicing profession in Iowa.

(5) Automobile registration.

(6) Public records, for example, birth and marriage records, Iowa driver's license.

(7) Continuous presence in Iowa during periods when not enrolled in school.

(8) Ownership of property in Iowa, or the payment of Iowa taxes.

This rule is intended to implement Iowa Code section 262.9(3).

681—1.5(262) Registration and transcripts—general. A person may not be permitted to register for a course or courses at a state board of regents institution until any delinquent accounts owed by the person to an institution or any affiliated organization for which an institution acts as fiscal agent have been paid.

A state board of regents institution may withhold official transcripts of the academic record of a person until any delinquent accounts owed by the person to an institution or any affiliated organization for which an institution acts as fiscal agent have been paid.

This rule is intended to implement Iowa Code section 262.9.

681—1.6(262) College-bound program.

1.6(1) *Definitions.*

"Accredited private institution" means an institution of higher education as defined in Iowa Code section 261.9, subsection 5.

"Commission" means the college aid commission.

"Financial need" means the difference between the student's financial resources, including resources available from the student's parents and the student, as determined by a completed parents' financial statement and including any non-campus-administered federal or state grants and scholarships, and the student's estimated expenses while attending the institution. A student shall accept all available federal and state grants and scholarships before being considered eligible for grants under the Iowa minority academic grants for economic success program. Financial need shall be reconsidered on at least an annual basis.

"Full-time student" means an individual who is enrolled at an accredited private institution or board of regents university for at least 12 semester hours or the trimester or quarter equivalent.

"Minority person" means an individual who is black, Hispanic, Asian, or a Pacific Islander, American Indian, or an Alaskan Native American.

"Part-time student" means an individual who is enrolled at an accredited private institution or board of regents university in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours.

"Program" means the Iowa minority academic grants for economic success program established in this division.

1.6(2) *Policy on college-bound program.*

a. The regent institutions will cooperate with other state and local agencies, including the department of education, the college aid commission, and educational institutions in implementing the college-bound program.

b. The universities will develop programs for elementary, middle and secondary school students and their families in the following areas:

(1) Encouragement to consider attending a postsecondary institution;

(2) Enrichment and academic preparation;

(3) Information about how to apply for admission.

c. College-bound program vouchers will be awarded to students on the basis of the participation of the student and the student's family in the college-bound program. One voucher will be awarded for participation in each college-bound program sponsored by a university.

(1) Each university will maintain records concerning those students who participate in the college-bound program, according to its established policies and procedures. The records will include information on those students who have received college-bound program vouchers which are described in Iowa Code section 262.92(2). The University of Iowa will maintain a central record on all students who have received college-bound program vouchers on behalf of all regent institutions and will make appropriate information available to the college aid commission.

(2) College-bound program vouchers may be used by students enrolled at a regent institution or at a private college or university in Iowa.

(3) A student holding vouchers and enrolling at a regent institution will receive priority in the award of funds under the Iowa minority academic grants for economic success (IMAGES) program.

Awards under the IMAGES program are made on the basis of financial need. A student may be eligible for an additional award from the institution in which the student is enrolled.

(4) A student holding vouchers and enrolling at a private college or university in Iowa will receive priority in the award of funds under the Iowa minority academic grants for economic success program as provided by the rules of the college aid commission.

(5) The presidents, or their designees, will administer and coordinate the college-bound program at the universities. As part of the coordination, they will establish liaison with the appropriate state and local agencies, serve as the university contact and promote collaborative efforts among the regent universities and other appropriate agencies and institutions. Annual reports to the board of regents shall be prepared by each regent university. The reports shall contain relevant information as to the accomplishments of the program in the past year and a plan of action with goals and objectives for the forthcoming year. Reports shall be submitted to the board of regents on October 1 of each year.

This rule is intended to implement Iowa Code section 262.92.

681—1.7(262) Application fees. Application fees required for admission to the University of Iowa, Iowa State University and the University of Northern Iowa are as follows:

University of Iowa

Undergraduate domestic student	$40
Undergraduate international student	$60
Graduate/professional domestic student	$60
Graduate/professional international student	$85
PharmD student	$100
Re-entry fee	$20

Iowa State University

Undergraduate domestic student	$30
Undergraduate international student	$50
Graduate domestic student	$30
Graduate international student	$70
Veterinary Medicine	$60

University of Northern Iowa

Undergraduate domestic student	$40
Undergraduate international student	$50
Graduate domestic student	$30
Graduate international student	$50

This rule is intended to implement Iowa Code section 262.9(3).

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