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

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

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

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

Editor's telephone (515) 281-3355 or (515) 281-8157

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CHAPTER 4  
IADA LOAN PARTICIPATION PROGRAM

**25—4.1(175) Program summary.** The Iowa agricultural development authority (IADA) loan participation program for qualified farmers (hereafter referred to as “program”) is intended to assist lenders and qualified farmers (hereafter referred to as “borrower(s)”) by participating in a loan for the purchase of agricultural property. This chapter will be known as the IADA loan participation program.

**4.1(1) Supplement borrower’s down payment.** The participation can be used to supplement the borrower’s down payment so that the borrower can more readily secure a loan (the “participated loan”) from a participating lender (the “lender”).

**4.1(2) IADA’s last-in/last-out collateral position.** The program enables lenders to request a “last-in/last-out” loan participation (the “participation”) from the Iowa agricultural development authority (the “authority”). The lender, on behalf of the borrower, shall apply for the participation on application forms provided by the authority. The authority board and staff will review the application and make a determination regarding approval of a participation.

**4.1(3) Lender’s certification.** The lender and the borrower shall certify that:

a. The information included in the application and any other documents submitted to the authority for consideration is true and correct to the best of their knowledge.

b. Borrower is a low-income farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.

c. No other state or private credit is available or can be obtained in a timely manner.

**4.1(4) Participation loan in conjunction with beginning farmer loan.** The loan participation program may be used in conjunction with the authority’s beginning farmer loan program, providing the borrower meets the criteria for both programs respectively. In these instances, the lender will have the borrower sign one promissory note to cover the loan funds to purchase the “aggie bond” as well as the down payment loan funds to be participated with the authority.

**25—4.2(175) Definitions.** As used in this chapter, unless the context otherwise requires:

“*Agricultural improvements*” means any improvements, buildings, structures, or fixtures suitable for use in farming which are located on agricultural land. Agricultural improvements are defined in Iowa Code chapter 175 to include a single-family dwelling located on agricultural land, which is or will be occupied by the borrower, and structures attached to or incidental to the use of the dwelling.

“*Agricultural land*” means land suitable for use in farming and which is or will be operated as a farm.

“*Agricultural property*” means agricultural land, agricultural improvements, or depreciable agricultural property.

“*Application*” means a completed instrument on a form approved by the authority. Each application must include the following: borrower’s name, address, financial data, description of anticipated use of loan proceeds, amount of loan, down payment amount (if any), statement of borrower’s net worth determined in accordance with authority rules, a summary of proposed loan terms, and certifications of the borrower.

“*Authority*” means the agricultural development authority established in Iowa Code section 175.3.

“*Corporation*” or “*domestic corporation*” means a corporation for profit, which is incorporated under Iowa Code chapter 490 and not a foreign corporation. To comply under this program, such corporation shall have no more than two corporate shareholders. Shareholder means the person in whose name the shares are registered in the records of the corporation.

“*Depreciable agricultural property*” means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the Internal Revenue Code of 1986.

“*Farm*” means a farming enterprise which is recognized in the community as a farm rather than a rural residence.

*“Farming”* means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority’s rules.

*“Lender”* means any regulated bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality, or other financial institution or entity authorized to make mortgage loans or secured loans in this state.

*“Limited liability company”* means a limited liability company as defined in Iowa Code section 490A.102.

*“Low-income farmer”* means a farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.

*“Net worth”* means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the net worth of the individual, partnership, limited liability company or corporation. Assets shall be valued at fair market value.

*“Participated loan”* means the aggregate amount of a loan that is participated in total by the lender and the Iowa agricultural development authority.

*“Participation”* means the “last-in/last-out” loan participation requested by the lender from the Iowa agricultural development authority.

*“Partnership”* means a partnership formed by two or more persons under the laws of the state of Iowa.

*“Projected gross income”* is the total of all nonfarm income plus gross farm revenues which include revenue from cash sales, inventory and receivable charges; crops, livestock products, government program payments, and other farm income received by the borrower during the next calendar year.

*“Term debt coverage ratio”* is the total of net farm income from operations plus total nonfarm income plus depreciation/amortization expense plus interest on term debt plus interest on capital leases minus total income tax expense minus withdrawals for family living multiplied by 100 and divided by the sum of annual scheduled principal and interest payments on term debt and the annual scheduled principal and interest payments on capital leases. The ratio provides a measure of the ability of the borrower to cover all term debt and capital lease payments. The greater the ratio over 100 percent, the greater the margin to cover the payments.

*“Total assets”* shall include but not be limited to the following: cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

Total assets shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

*“Total liabilities”* shall include but not be limited to the following: accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

## **25—4.3(175) Basic qualification criteria.**

**4.3(1) Borrower.** A borrower may be an individual, partnership, corporation or limited liability company that is a low-income farmer.

**4.3(2) Age limits.** A borrower must be at least 18 years of age unless the borrower is married. There is no upper age limit.

**4.3(3) Residence.** Borrower must be an Iowa resident at the time of loan closing and throughout the duration of the participation. Project must be located in Iowa.

**4.3(4) Training and experience.** The borrower, whether an individual, partnership, corporation or limited liability company, must have documented, to the satisfaction of the authority, sufficient education, training, and experience in the type of farming operation for which the participated loan is requested.

**4.3(5) Loan purpose.** Loans must be for new purchases of agricultural property; funds may not be used for refinancing, except for those instances when down payment funds are made for a new purchase no more than 60 days prior to the authority approving the participation.

**4.3(6) Amount of participated loan.** The aggregate amount of the participated loan can be no more than two times the net worth of the borrower.

**4.3(7) Net worth.**

*a.* For an individual, an aggregate net worth of the individual and the individual's spouse and minor children (if any) shall be less than \$300,000.

*b.* For a partnership, an aggregate net worth of all partners, including each partner's net capital in the partnership, together with each partner's spouse and minor children, shall be less than \$600,000. However, the aggregate net worth of each partner, including the partner's net capital in the partnership together with that of the partner's spouse and minor children, shall not exceed \$300,000.

*c.* For a corporation, an aggregate net worth of all corporate shareholders, including each shareholder's net capital in the corporation plus the net capital of the corporation, shall not exceed \$600,000. The aggregate net worth of each shareholder, including the shareholder's net capital in the corporation together with that of the shareholder's spouse and minor children (if any), shall not exceed \$300,000.

*d.* For a limited liability company, an aggregate net worth of all members, including each member's ownership interest in the limited liability company, together with that of each member's spouse and minor children, shall be less than \$600,000. However, the aggregate net worth of each member, including the member's ownership interest in the limited liability company together with that of the member's spouse and minor children, shall not exceed \$300,000.

**4.3(8) Maximum debt level.** Borrower's debts at the time of application:

*a.* For an individual, and the individual's spouse and minor children (if any) shall be less than \$400,000.

*b.* For a partnership, including each partner, together with each partner's spouse and minor children, shall be less than \$800,000. However, the aggregate debt of each partner, together with that of the partner's spouse and minor children, shall not exceed \$400,000.

*c.* For a corporation, its aggregate debt shall not exceed \$800,000. The aggregate debt of each shareholder, together with that of the shareholder's spouse and minor children (if any), shall not exceed \$400,000.

*d.* For a limited liability company, the aggregate debt of all members, including each member, together with each member's spouse and minor children, shall be less than \$800,000. However, the aggregate debt of each member, together with that of each member's spouse and minor children, shall not exceed \$400,000.

**4.3(9) Farm debt-to-asset ratio.** Borrower must have a farm debt-to-asset ratio of no more than 80 percent upon completion of loan closing. If the farm debt-to-asset ratio is greater than 60 percent, borrower's projected term debt coverage ratio must be 120 percent or greater. This requirement may be waived if:

*a.* The project has a guaranteed source of repayment; and

*b.* An assignment of payment is obtained.

**4.3(10) Ratio of current assets to current liabilities.** Borrower must have a ratio of current assets to current liabilities better than 1.1 to 1 at the time of application.

**4.3(11) Off-farm income.** Borrower may have off-farm income, but 50 percent or more of the projected gross income must come from farm income.

**4.3(12) Collateral appraisals.** All real estate and depreciable property intended for use as collateral on a participated loan must be evaluated/appraised by a qualified third-party appraiser. All real estate appraisals must meet the federal regulatory requirements of the lender's examiners and the uniform standards of professional appraisal practice of the appraisal foundation.

**4.3(13) Loan-to-value ratio.**

*a.* The authority may approve any participation where the borrower does not borrow more than 100 percent of the appraised value or purchase price of the property offered as security for the participated loan.

*b.* Participation loans for real estate cannot exceed 90 percent of the appraised value of the real estate collateral unless the participation loan is evenly amortized and paid in full in seven years.

[ARC 8157B, IAB 9/23/09, effective 9/2/09]

**25—4.4(175) Eligible projects and activities.**

**4.4(1) Use of project.** Loans must be for new purchases; funds may not be used for refinancing. Assets purchased with loan funds must be used for agricultural purposes.

*a.* If the borrower is an individual, the agricultural property purchased with funds from a participated loan shall be used for farming only by the individual, the individual's spouse, or the individual's minor children.

*b.* If the borrower is a partnership, the agricultural property purchased with funds from a participated loan shall be used for farming only by the partners, each partner's spouse or each partner's minor children.

*c.* If the borrower is a corporation, the agricultural property purchased with funds from a participated loan shall be used for farming only by the corporate shareholders, each shareholder's spouse or each shareholder's minor children.

*d.* If the borrower is a limited liability company, the agricultural property purchased with funds from a participated loan shall be used for farming by the members, each member's spouse or each member's minor children.

**4.4(2) Agricultural land.** The participated loan can be used for the purchase of agricultural land, which may include small acreages on which sufficient agricultural improvements are located to conduct a livestock operation. If a house is located on land for which a participation is requested, an appraisal of the house will be made. If the appraised value of the house exceeds 50 percent of the appraised value of the property or total collateral, then the property will not be eligible for a loan.

**4.4(3) Agricultural improvements.** The participated loan can be used for the construction or purchase of improvements located on agricultural land (which is suitable for use in farming). Examples of such improvements include, but are not limited to, the following: confinement systems for swine, cattle, or poultry; barns or other outbuildings; grain storage facilities and silos. There are restrictions regarding participated loans for a personal residence on a farm.

**4.4(4) Livestock used for breeding purposes.** The participated loan can be used for the purchase of livestock for which an income tax deduction for depreciation is allowed in computing state and federal income taxes.

*a.* Eligible livestock include, but are not limited to, the following: swine, sheep, beef, and dairy cattle used for breeding purposes.

*b.* Ineligible animals include, but are not limited to, the following: feeder cattle, feeder pigs, feeder lambs, chickens, or turkeys as they do not qualify as depreciable property and, as a result, are not eligible under the program. Other animals that would be ineligible under the program would include horses and those classed as "exotic" such as llamas, fallow deer, ostriches and emus.

*c.* There are certain provisions included in the loan agreement regarding payments due to the death or sale of livestock included in the loan.

**4.4(5) Machinery and equipment.** The participated loan can be used for the purchase of agricultural machinery and equipment for which an income tax deduction for depreciation is allowed in computing state and federal income taxes. This machinery and equipment must be used in the borrower's farming operation.

**4.4(6) Recent purchases.** Purchases which can be approved by the authority within 60 days of the purchase date are permitted.

**4.4(7) Interim financing by lender.** Interim financing by the lender may be done provided the authority has received a written request by the lender explaining the details and justification for interim financing and the expected time frame for participation closing date. Examples: construction projects, buying breeding livestock or machinery.

**25—4.5(175) Ineligible projects and activities.** The following program activities are ineligible:

**4.5(1) Refinancing of existing debt.** Refinancing of existing debt or new purchases which have been incurred by the borrower more than 60 days prior to approval of the participation by the authority.

**4.5(2) Financing personal expenses.** Financing personal or living expenses and working capital to purchase such items as feed, seed, fertilizer, fuel, and feeder livestock.

**4.5(3) Down payment funds for contract sale.** Down payment to a contract sale, or in connection with a loan from a nonregulated lender.

**25—4.6(175) Program maximums.**

**4.6(1) Purchase price impact.** Maximum participation amount is the lesser of:

- a. Thirty percent of the purchase price; or
- b. One hundred fifty thousand dollars.

**4.6(2) Net worth factor.** The aggregate amount of the participated loan can be no more than three times the net worth of the borrower. This requirement may be waived if:

- a. The project has a guaranteed source of repayment; and
- b. An assignment of payment is obtained.

**4.6(3) Real estate collateral issues.** A participated loan for real estate:

- a. Cannot exceed 100 percent of the appraised value of the real estate collateral.
- b. Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan including the participation (by the authority).

**4.6(4) Loan terms.** The authority has established the following with respect to participation terms:

a. The maximum amortization period for the participation is seven years for depreciable agricultural property. When a participated loan is made for livestock, the length of the participation is restricted to the expected useful life of the animal being purchased. The following expected useful life schedules have been approved for livestock: cattle (including beef and dairy) equal 7 years; swine equal 3 years; and sheep equal 7 years.

b. IADA participation loan payments on participated real estate loans will be equally amortized for the term of the participation, but shall not exceed a 20-year amortization, including a 10-year term with balloon payment and the balance of the participation paid in full by the end of the tenth year. If utilized in conjunction with federal programs, the amortization will be consistent with federal rules.

c. The interest rate on the participated loan shall be a fixed rate. The fixed interest rate shall be reviewed by the board on a quarterly basis and adjusted as needed.

**4.6(5) Loans outstanding.** Loans under the program may be issued more than once, provided that the outstanding participation totals do not exceed \$150,000 to any single borrower.

[ARC 8157B, IAB 9/23/09, effective 9/2/09]

**25—4.7(175) Loan application procedures.**

**4.7(1) Financial statement.** Lenders may use their own form of financial statement and other forms deemed necessary and appropriate to document the eligibility of the borrower and the borrower's ability to make principal and interest payments. A copy of the borrower's most current financial statement (taken within one month preceding application submission) and the prior two years' financial statements, and a projected after-closing financial statement must be submitted with the application. If a participation is sought with respect to a partnership, a limited liability company or corporation, separate applications and financial statements must be submitted by each partner, member or shareholder.

NOTE: If the borrower or the borrower's spouse is involved in a business, partnership, limited liability company, or corporation, for example, either related or unrelated to the borrower's farming operation, a financial statement from this entity must also be submitted with the application.

**4.7(2) *Income statement.*** A copy of the borrower's most recent income statement, prior three years' income statements, and a projected income statement must be submitted with the application. If historical income statements are not available, then copies of income tax returns may be submitted. If a participation is sought with respect to a partnership, limited liability company or corporation, separate applications and financial statements must be submitted by each partner, member or shareholder.

**4.7(3) *Background letter.*** A "background letter" regarding the borrower must be submitted with the application. This letter should explain the borrower's background with respect to education and experience in the type of farming operation for which a participation is sought. The letter should also outline the borrower's access to machinery, if the participated loan is for land; or the borrower's access to land, if the participated loan is for agricultural improvements or depreciable agricultural property. The letter should also state where the borrower will obtain operating capital.

**4.7(4) *Credit evaluation.*** The lender will submit a credit evaluation of the project for which a participation is sought. The lender will evaluate the borrower's net worth and ability to pay principal and interest and certify the sufficiency of security for the participated loan. The authority will review the application and make its own credit evaluation prior to issuance of a participation. Such evaluation will center on whether:

*a.* The borrower adequately demonstrates the ability to service the debt requirements of the participated loan based on cash flow, net worth, down payment, and collateral pledged for the participated loan.

*b.* The borrower provides sufficient collateral to adequately secure the participated loan and keep the participated loan collateralized throughout its term.

*c.* The lender certifies that all of the borrower's debts will be current at the time the participated loan is closed.

*d.* The applicant is a "low-income" farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.

*e.* The lender certifies that no other private or state credit is available or can be obtained in a timely manner.

**4.7(5) *Processing loan applications.*** Applications for the program will be taken and processed by the authority on a first-come, first-served basis. The authority reserves the right to change the program or terminate the approval of participations under the program at any time. Grounds for termination/suspension of the program would include, but not be limited to, reaching the maximum allowable limit for total outstanding participations as established by the authority or changing the program by order of the Iowa general assembly or by rules promulgated by the authority.

**4.7(6) *Security for participated loans and use of security documents.*** The lender shall take any security, cosignatures, guarantees, sureties, for example, that are deemed necessary for any participated loan.

*a.* The authority would advise that any security documents or guarantees required to be used in connection with a participated loan clearly state they are given as security for the indebtedness evidenced by the promissory note and to further secure the agreements, covenants, and obligations of the borrower for the loan involved.

*b.* The security documents and any guarantees should run directly between the borrower and the lender.

*c.* Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan including the participation (by the authority).

**4.7(7) *Loan terms.*** The lender and borrower must agree on terms of the participated loan including interest rate, length of loan, prepayment options, service fees, and repayment schedule. See loan terms in rule 25—4.6(175), Program maximums.

**4.7(8) *Fees.*** The lender or borrower must submit to the authority a nonrefundable application fee in the amount of \$100 when the application is submitted. A participation closing fee equal to 1.25 percent

of the IADA participation will be deducted from the participation proceeds by the IADA. A minimum participation closing fee of \$300 will be charged.

#### **25—4.8(175) Loan closing procedures.**

**4.8(1) *IADA conditional commitment.*** If the application is approved, a conditional commitment to participate will be sent to the lender.

**4.8(2) *Before loan closing.***

*a.* Lender will submit to IADA:

- (1) Signed conditional commitment to participate.
- (2) Preliminary title opinion on real estate collateral, if applicable.
- (3) Appraiser's certification (completed by third-party appraiser).
- (4) At least three days prior to closing, in the IADA office:
  - Copy of the UCC search on the borrower.
  - Credit Bureau report on the borrower.
  - Copy of blank promissory note form to be used if loan is not a part of Aggie Bond program.

*b.* IADA will submit to lender:

- (1) If participation is for a project that is NOT also funded through the IADA beginning farmer loan program (BFLP), IADA will forward loan participation certificate and agreement.
- (2) If participation is for a project that IS also funded through the IADA beginning farmer loan program (BFLP), the IADA will forward the loan participation certificate and agreement along with the closing documents for the BFLP bond.

NOTE: A Loan Participation coupled with a loan with the Beginning Farmer Loan Program will need to close the same day.

**4.8(3) *On loan closing day:***

*a.* Lender closes loan for the approved agricultural purchase and forwards the following to the IADA:

- (1) Original signed loan participation certificate and agreement.
- (2) Copy of signed promissory note.
- (3) Copy of signed mortgage, if applicable.
- (4) Copy of signed security agreement.
- (5) Copy of bill of sale, purchase agreement, or sales receipt of purchase(s).
- (6) Copy of recorded UCC filing.

*b.* Upon receipt of the above items, the IADA will disburse their participation funds, less 1 percent loan participation fee.

**4.8(4) *Final title opinion.*** For real estate loans, the participating bank will be expected to forward a copy of the final title opinion within 90 days after closing.

**4.8(5) *Recording documents and fees.*** Any recording or filing fees or transfer taxes associated with the participated loan will be paid by the borrower or lender and not the authority. Also, the authority will have no responsibility with respect to the preparation, execution, or filing of any declaration of value or groundwater hazard statements.

#### **25—4.9(175) Loan administration procedures.**

**4.9(1) *Lender's responsibilities.*** The lender is responsible for servicing the participated loan following accepted standards of loan servicing and transferring participation payments to the authority.

*a.* The lender shall:

- (1) On an annual basis, provide the authority with copies of a current financial statement or a current tax return, or both.
- (2) Provide copies of insurance to the authority with the lender named as loss payee. Lender will apply payments to the participated loan on a pro-rata basis.

*b.* The lender shall not, without prior consent of the authority:

- (1) Make or consent to any substantial alterations in the terms of any participated loan instrument;

- (2) Make or consent to releases of security or collateral unless replaced with collateral of equal value on the participated loan;
- (3) Lender will not use the collateral purchased with funds from the participated loan as security for any other loan without prior written consent of the authority;
- (4) Accelerate the maturity of the participated loan;
- (5) Sue upon any participated loan instrument;
- (6) Waive any claim against any borrower, cosignor, guarantor, obligor, or standby creditor arising out of any instruments.

**4.9(2) *Payment due dates.*** Payment due dates for the participation will be the same as for the lender's share of the loan.

**4.9(3) *Prepayment penalty.*** There is no penalty for early repayment of principal or interest.

**4.9(4) *Repayment proceeds and collateral.*** Without limitation, the repayment of proceeds and collateral shall include rights of setoff and counterclaim, which the lender or the authority jointly or severally may at any time recover on any participated loan.

**4.9(5) *Subsequent loans.*** Any loan or advance made by a lender to a borrower subsequent to obtaining a participation under the program and secured by collateral or security pledged for the participated loan will be subordinate to the participated loan.

**4.9(6) *Events of loan default.***

*a.* Default will occur when loan payment is 30 days past due. Notice to cure will be sent to borrower with a copy sent to the authority; and the lender will take appropriate steps to cure the default through mediation, liquidation, or foreclosure if needed.

*b.* After a participated loan is in default for a period of 30 days, the lender shall file monthly reports regarding the status of the participated loan to the authority.

*c.* The authority may, anytime a participated loan is in default, purchase the unpaid portion of the participated loan from the lender including the note, security agreements, additional guarantees, and other documents. The authority would become the servicer of the participated loan in such case.

**4.9(7) *Applying principal and interest payments.*** Lenders shall receive all payments of principal and interest. All payments made prior to liquidation or foreclosure shall be made on a pro-rata basis. All accrued interest must be paid to zero at least annually on the anniversary date of the note.

**4.9(8) *Application of proceeds of loan liquidation.*** Application of proceeds of loan liquidation will be determined after a written liquidation plan is approved by the authority or the authority's loan committee. All amounts recovered upon liquidation or foreclosure will be applied first to the unpaid balance of the lender's portion and then to the unpaid portion of the participation's portion. All funds received from liquidation or foreclosure procedures shall be applied in the following order of priority:

First Priority: To the payment of the outstanding principal of and accrued interest on the lender's portion of the participated loan;

Second Priority: To the payment of the outstanding principal of and accrued interest on the authority's participation;

Third Priority: To the payment on a pro-rata basis of all reasonable and necessary expenses incurred by the lender or the authority in connection with such liquidation or foreclosure procedures.

**25—4.10(175) Source of participation funds.** Funding for the program is derived from the Iowa Rural Rehabilitation Corporation Assets (IRRC). The IRRC assets were obtained from the Rural Rehabilitation Corporation Trust Liquidation Act, 40 U.S.C. 440 et seq., and prior thereto from the Federal Emergency Relief Act of 1933, 48 Stat. 55, the Act of February 15, 1934, 48 Stat. 351, and the Act of June 19, 1934, 48 Stat. 1055. The administration of the fund was transferred to the authority in 1980 when the authority was created.

**25—4.11(175) Right to audit.**

**4.11(1)** The authority shall have, at any time, the right to audit records of the lender and the borrower relating to any participated loan made under the program.

**4.11(2)** Loans made pursuant to the provisions of this program may be subject to review by the Iowa division of banking for the purpose of determining that the underwriting requirements of the program have been complied with by the lender.

These rules are intended to implement Iowa Code section 175.13A.

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PART I  
DEPARTMENT STRUCTURE  
CHAPTER 1  
ORGANIZATION

**261—1.1(15) Mission.** The Iowa department of economic development was established in 1986 pursuant to Iowa Code chapter 15. The authority delegated to the department had previously been delegated to the Iowa development commission and the office for planning and programming. The mission of the Iowa department of economic development is to continually improve the economic well-being of all Iowans by working in focused partnerships with businesses, entrepreneurs, communities and educational entities. The department's primary responsibilities are in the areas of finance, marketing, local government and service coordination, exporting, tourism, job training and entrepreneurial assistance, and small business.

**261—1.2(15) Definitions.** As used in these rules, unless the context otherwise requires:

“*Board*” or “*IDED board*” means the Iowa economic development board created by Iowa Code chapter 15.

“*Department*” or “*IDED*” means the Iowa department of economic development authorized by Iowa Code chapter 15.

“*Director*” means the director of the Iowa department of economic development or the director's designee.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—1.3(15) Iowa department of economic development board.**

**1.3(1) Composition.**

*a. Board size.* The board consists of 15 voting members appointed by the governor and 7 ex officio nonvoting members. The ex officio nonvoting members are 4 legislative members, 2 state senators and 2 state representatives; 1 president, or the president's designee, of the University of Northern Iowa, University of Iowa, or Iowa State University of Science and Technology designated by the state board of regents on a rotating basis; 1 president, or the president's designee, of a private college or university appointed by the Iowa association of independent colleges and universities; and 1 superintendent, or the superintendent's designee, of a merged area school, appointed by the Iowa association of community college presidents.

*b. Terms.* Board members are appointed for four-year terms that begin and end as provided by Iowa Code section 69.19.

*c. Voting members—representation on the board following the transitional year (July 1, 2005, to June 30, 2006).* Following the transitional year, at least one of the voting members shall be less than 30 years of age at the time of appointment. At least 9 voting members of the board shall be actively employed in the private, for-profit sector of the economy. Each of the following areas of expertise shall be represented by at least 1 voting member of the board who has professional experience in that area of expertise:

- (1) Finance, insurance, or investment banking.
- (2) Advanced manufacturing.
- (3) Statewide agriculture.
- (4) Life sciences.
- (5) Small business development.
- (6) Information technology.
- (7) Economics or alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph “a.”
- (8) Labor.
- (9) Marketing.
- (10) Entrepreneurship.

**1.3(2) Meetings.**

a. The board generally meets monthly at the department's offices located at 200 East Grand Avenue in Des Moines, Iowa. By notice of the regularly published meeting agendas, the board and its committees may hold regular or special meetings at other locations within the state. Meeting agendas are available on the department's Web site at [www.iowalifechanging.com](http://www.iowalifechanging.com).

b. The board shall meet in May of each year for the purpose of receiving recommendations from the nominations committee, if established by the chairperson, and electing one of its voting members as chairperson and one of its voting members as vice chairperson. Nominations may also be made from the floor at the time of the election provided the consent of the nominee has been obtained. The chairperson and the vice chairperson shall not be from the same political party. The board shall meet at the call of the chairperson or when any eight members of the board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

c. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

d. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

e. Open session and closed session proceedings are electronically recorded. Minutes of open meetings are available for viewing at the department's offices.

**1.3(3) Duties.** The board shall perform the duties as outlined in Iowa Code section 15.104, and other functions as necessary and proper to carry out its responsibilities.

**1.3(4) Board committees.** The board shall establish the following statutorily authorized committees: a due diligence committee pursuant to Iowa Code section 15.103(6), a loan and credit guarantee committee pursuant to Iowa Code section 15.103(6) as amended by 2009 Iowa Acts, Senate File 344, section 18, and a technology commercialization committee pursuant to Iowa Code section 15.116 as amended by 2009 Iowa Acts, Senate File 344, section 22. The board may, from time to time, establish other standing committees that the board members deem necessary to assist the board in carrying out its duties. Meetings of standing committees are open to the public pursuant to Iowa Code chapter 21. The board chairperson may appoint such other ad hoc advisory committees as deemed necessary for specific purposes. An ad hoc committee appointed by the chairperson shall be comprised of less than a quorum of the board. Meetings of ad hoc committees or subcommittees appointed by the board chairperson are not open to the public.

**1.3(5) Standing committees.**

a. *Due diligence committee.* The due diligence committee shall be an advisory committee composed of voting members of the board elected annually by the voting members of the board. The size of the committee and the terms of committee members will be established annually by the board. Duties of the due diligence committee include, but are not limited to, carrying out any duties assigned by the board in relation to programs administered by the department, reviewing applications for financial assistance, conducting a thorough review of proposed projects and making recommendations to the board regarding funding. A majority of committee members constitutes a quorum. Nonvoting, ex officio members of the board may be appointed by the chairperson of the due diligence committee to serve on the due diligence committee as nonvoting, ex officio members.

b. *Loan and credit guarantee committee.* The loan and credit guarantee committee shall be an advisory committee composed of voting members of the board elected annually by the voting members of the board. The size of the committee and the terms of committee members will be established annually by the board. Duties of the loan and credit guarantee committee include, but are not limited to, carrying out any duties assigned by the board in relation to the loan and credit guarantee program administered by the department, reviewing loan and credit guarantee applications and making recommendations to the board regarding funding. A majority of committee members constitutes a quorum. Nonvoting, ex officio members of the board may be appointed by the chairperson to serve on the loan and credit guarantee

committee as nonvoting, ex officio committee members. The loan and credit guarantee program was repealed by 2009 Iowa Acts, Senate File 344. This board committee shall continue to exist until the program has been closed out.

*c. Technology commercialization committee.* To evaluate and approve funding for projects and programs under Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the board shall create a technology commercialization committee composed of members with expertise in the areas of biosciences, engineering, manufacturing, pharmaceuticals, materials, information solutions, software, and energy. At least one member of the technology commercialization committee shall be a member of the economic development board. The size of the committee and the terms of committee members will be established annually by the board. An organization designated by the department, composed of members from both the public and private sectors and composed of subunits or subcommittees in the areas of already identified bioscience platforms, education and workforce development, commercialization, communication, policy and governance, and finance, shall provide funding recommendations to the technology commercialization committee. A majority of committee members constitutes a quorum.

*d. Community and workforce development committee.* The community and workforce development committee shall be an advisory committee to the board on workforce development matters. The committee shall review and make recommendations regarding programs such as CDBG and HOME programs which include housing, public infrastructure and public facilities funding programs; main street Iowa and downtown resource center; tourism office; training programs established by Iowa Code chapters 260E, 260F and 260G; workforce and economic development training fund; and programs administered by the innovation and commercialization division such as internship, career awareness, up-skilling and related programs.

**1.3(6) Ad hoc committees.** The board chairperson or committee chairpersons, as applicable, may appoint ad hoc advisory committees and subcommittees that meet for specific, limited purposes including but not limited to:

*a. Nominations committee.* Prior to May 1 of each year, the board chairperson may appoint a nominations committee comprised of voting members of the board for the purpose of developing recommendations to the full board for the election of a board chairperson, vice-chairperson, and membership on the board's standing committees. Upon recommendation of the nominations committee, the board shall elect the members of the committees, and the board chairperson shall designate the chairpersons and vice-chairpersons of all committees.

*b. Finance review committee.* The board chairperson may appoint a finance review committee comprised of voting members of the board for the purpose of periodically meeting with department officials to review the department's regularly maintained financial records and other financial information requested by the board. The finance review committee may also attend audit entrance and exit interviews conducted by the auditor of state with department officials. The finance review committee is advisory only and may provide recommendations to the board.

*c. Due diligence subcommittee.* The due diligence committee chairperson may appoint a due diligence subcommittee comprised of voting members of the board for the purpose of reviewing requests for project extensions, amended awards, workouts and project restructures. The due diligence subcommittee is advisory only and may provide recommendations to the due diligence committee.

**1.3(7) Appeals of department of revenue decisions—wage-benefit tax credit program appeals.** A business whose application for a wage-benefit tax credit has been denied by the department of revenue may appeal the decision to the board. The appeal must be made in writing and received by the department within 30 days of the date on the notice of denial sent to the business by the department of revenue. The board may uphold or overturn the decision of the department of revenue. If the IDED board overturns the decision of the department of revenue, the department of revenue will be instructed, subject to availability, to issue a tax credit certificate.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—1.4(15) Department structure.**

**1.4(1) General.** The department's organizational structure consists of the director, deputy director, and four divisions.

**1.4(2) Director.** The Iowa department of economic development is administered by a director appointed by the governor, who serves at the pleasure of the governor and is subject to confirmation by the senate. The director is the chief administrative officer of the department and in that capacity administers the programs and services of the department in compliance with applicable federal and state laws and regulations. The duties of the director are as authorized in Iowa Code section 15.106 and include preparing a budget subject to board approval, establishing an internal administrative structure and employing personnel, reviewing and submitting to the board legislative proposals, recommending rules to the board, reporting to the board on grants and contracts awarded by the department, and other actions to administer and direct the programs of the department.

The administrators of the four divisions and the deputy director report to the director.

**1.4(3) Deputy director.** The deputy director, appointed by the director, directs and administers the department in the director's absence.

**1.4(4) Divisions.** The director has established the following administrative divisions within the department in order to most efficiently and effectively carry out the department's responsibilities:

1. Administration division;
2. Business development division;
3. Community development division; and
4. Innovation and commercialization division.

**1.4(5) Attachment for administrative purposes; board support.** The Iowa department of economic development provides office space and staff support to the city development board pursuant to Iowa Code sections 368.9 and 15.108(3) "a"(2). The department provides administrative support to the vision Iowa board pursuant to Iowa Code section 15F.104 and the renewable fuel infrastructure board pursuant to Iowa Code section 15G.202.

**1.4(6) Advisory committees.** The director may appoint committees to serve in an advisory capacity to the department that are deemed necessary to accomplish the work of the department. The size of the committee and the terms of committee members will be established by the director. These committees may be dissolved as deemed appropriate by the director, and other committees may from time to time be established for specific purposes.

**261—1.5(15) Information.** The general public may obtain information about the Iowa department of economic development by contacting the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4700; or through the department's Web site at [www.iowalifechanging.com](http://www.iowalifechanging.com).

These rules are intended to implement Iowa Code chapter 15 as amended by 2009 Iowa Acts, Senate File 344, chapter 15G as amended by 2009 Iowa Acts, Senate File 344, and section 17A.3.

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CHAPTER 23  
IOWA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

**261—23.1(15) Purpose.** The primary purpose of the community development block grant program is the development of viable communities by providing decent housing and suitable living environments and expanding economic opportunities, primarily for persons of low and moderate income.

**261—23.2(15) Definitions.** When used in this chapter, unless the context otherwise requires:

“*Activity*” means one or more specific activities, projects or programs assisted with CDBG funds.

“*Career link*” means a program providing training and enhanced employment opportunities to the working poor and underemployed Iowans.

“*CDBG*” means community development block grant.

“*EDSA*” means economic development set-aside.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*IDED*” means the Iowa department of economic development.

“*LMI*” means low and moderate income. Households earning 80 percent or less of the area median income are LMI households.

“*PFSA*” means public facilities set-aside.

“*Program income*” means gross income a recipient receives that is directly generated by the use of CDBG funds, including funds generated by the use of program income.

“*Program year*” means the annual period beginning January 1 and ending December 31.

“*Quality jobs program*” means a job training program formerly funded with CDBG funds that is no longer operational.

“*Recipient*” means a local government entity awarded CDBG funds under any CDBG program.

“*Sustainable community activities*” means activities to develop viable communities while preserving precious environment and resources.

“*Working poor*” means an employed person with an annual household income between 25 and 50 percent of the area median family income.

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**261—23.3(15) Eligible applicants.** All incorporated cities and all counties in the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development, are eligible to apply for and receive funds under this program.

**23.3(1)** Any eligible applicant may apply directly or on behalf of a subrecipient.

**23.3(2)** Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

**23.3(3)** Applicants shall not apply on behalf of eligible applicants other than themselves.

**261—23.4(15) Allocation of funds.** IDED shall distribute CDBG funds as follows:

**23.4(1) Administration.** Two percent of total program funds including program income plus \$100,000 shall be used for state administration.

**23.4(2) Technical assistance.** One percent of the funds shall be used for the provision of substantive technical assistance to recipients.

**23.4(3) Housing fund.** Twenty-five percent of the funds shall be reserved for a housing fund to be used to improve the supply of affordable housing for LMI persons.

**23.4(4) Job creation, retention and enhancement fund.** Twenty percent of the funds shall be reserved for a job creation, retention and enhancement fund to be for workforce development and to expand economic opportunities and job training for LMI persons. Job creation, retention and enhancement funds are awarded through three programs: the economic development set-aside (EDSA), the public facilities set-aside (PFSA), and career link. For CDBG federal program year 2008 only (October 1, 2007, through September 30, 2008), up to \$5 million of funding normally allocated to this job creation, retention and enhancement fund may be allocated by the department to the contingency fund established in subrule 23.4(5). If reallocated, the funds will be used for disaster recovery activities.

**23.4(5) Contingency funds.** IDEED reserves the right to allocate up to 5 percent of the funds for projects that address threats to public health and safety, or for disaster recovery activities, or for sustainable community demonstration projects. No more than \$1 million may be utilized for sustainable community demonstration projects. For CDBG federal program year 2008 only (October 1, 2007, through September 30, 2008), an additional amount of up to \$5 million of funding normally allocated to the job creation, retention and enhancement fund in subrule 23.4(4) may instead be allocated by the department to this contingency fund, and used for disaster recovery activities.

**23.4(6) Competitive program.** The remaining funds shall be available on a competitive basis through the water and sewer fund and community facilities and services fund. Of the remaining amount, 70 percent shall be reserved for the water and sewer fund, 15 percent shall be reserved for the community facilities and services fund and 15 percent shall be allocated to either the water and sewer fund or community facilities and services fund at the discretion of the director, based on requests for funds.

**23.4(7) Reallocation.** Any reserved funds not used for their specified purpose within the program year shall be reallocated in amounts and to funds as approved by the director to ensure the availability of resources to those funds in which the greatest need is demonstrated to exist or to respond to community or business needs.

**23.4(8) Recaptured funds.** Recaptured funds shall be available for use through the water and sewer fund, the community facilities and services fund, the contingency fund, the housing fund, and the downtown revitalization fund. As approved by the director, recaptured funds may be used to fund projects from the job creation, retention and enhancement fund in order to respond to an immediate business need if no funds are available through the economic development set-aside fund or public facilities set-aside fund. Recaptured funds remaining at the end of a program year shall be reallocated in amounts and to funds as approved by the director to ensure the availability of resources to those funds in which the greatest need is demonstrated to exist or to respond to a community or business need.

**261—23.5(15) Common requirements for funding.** Applications for funds under any of the CDBG programs shall meet the following minimum criteria:

**23.5(1)** Proposed activities shall be eligible, as authorized by Title I, Section 105 of the Housing and Community Development Act of 1974 and as further defined in 24 CFR 570, as revised April 1, 1997.

**23.5(2)** Proposed activities shall address at least one of the following three objectives:

1. Primarily benefit low- and moderate-income persons. To address this objective, 51 percent or more persons benefiting from a proposed activity must have incomes at or below 80 percent of the area median income.

2. Aid in the prevention or elimination of slums and blight. To address this objective, the application must document the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community and illustrating that the proposed activity will alleviate or eliminate the conditions causing the deterioration.

3. Meet an urgent community development need. To address this objective, the applicant must certify that the proposed activity is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community and that are recent in origin or that recently became urgent; that the applicant is unable to finance the activity without CDBG assistance and that other sources of funding are not available. A condition shall be considered recent if it developed or became urgent within 18 months prior to submission of the application for CDBG funds.

**23.5(3)** Applicants shall demonstrate capacity for grant administration. Administrative capacity shall be evidenced by previous satisfactory grant administration, availability of qualified personnel or plans to contract for administrative services. Funds used for administration shall not exceed 10 percent of the CDBG award amount or 10 percent of the total contract amount, except for awards made under the career link program, for which funds used for administration shall not exceed 5 percent of the CDBG award amount.

**23.5(4)** Applicants who have received previous CDBG awards shall have demonstrated acceptable past performance, including the timely expenditure of funds.

**23.5(5)** Applications shall demonstrate the feasibility of completing the proposed activities with the funds requested.

**23.5(6)** To the greatest extent feasible, applications shall propose the use of CDBG funds as gap financing. Applications shall identify and describe any other sources of funding for proposed activities.

**23.5(7)** Applications shall include a community development and housing needs assessment.

**23.5(8)** Negotiation of awards. IDED reserves the right to negotiate award amounts, terms and conditions prior to making any award under any program.

**23.5(9)** Applicants shall certify their compliance with the following:

1. The Civil Rights Act of 1964 (PL 88-352) and Title VIII of the Civil Rights Act of 1968 (PL 90-284) and related civil rights, fair housing and equal opportunity statutes and orders;
2. Title I of the Housing and Community Development Act of 1974;
3. Age Discrimination Act of 1975;
4. Section 504 of the Housing and Urban Development Act of 1973;
5. Section 3 of the Housing and Urban Development Act of 1968;
6. Davis-Bacon Act (40 U.S.C. 276a-5) where applicable under Section 100 of the Housing and Community Development Act of 1974;
7. Lead-Based Paint Poisoning Prevention Act;
8. 24 CFR Part 58 and the National Environmental Policy Act of 1969;
9. Uniform Relocation Assistance and Real Property Acquisition Act of 1979, Titles II and III;
10. Americans with Disabilities Act;
11. Section 102 of the Department of Housing and Urban Development Reform Act of 1989;
12. Contract Work Hours and Safety Act;
13. Copeland Anti-Kickback Act;
14. Fair Labor Standards Act;
15. Hatch Act;
16. Prohibition on the Use of Excessive Force and Barring Entrance;
17. Drug-Free Workplace Act;
18. Governmentwide Restriction on Lobbying;
19. Single Audit Act;
20. State of Iowa Citizen Participation Plan; and
21. Other relevant regulations as noted in the CDBG management guide.

**261—23.6(15) Requirements for the competitive program.**

**23.6(1)** *Restrictions on applicants.*

*a.* An applicant shall be allowed to submit one application per year under the water and sewer fund and one application per year under the community facilities and services fund.

*b.* An eligible applicant involved in a joint application (not as the lead applicant) shall be allowed to submit a separate, individual application only if the applicant is bound by a multijurisdictional agreement by state statute to provide a public service that is facilitated by the joint application and the activity proposed in the joint application is not located in the applicant's jurisdiction.

**23.6(2)** *Grant ceilings.* Maximum grant awards are as follows:

1. Applicants with populations of fewer than 1,000 shall apply for no more than \$300,000.
2. Applicants with populations of 1,000 to 2,499 shall apply for no more than \$500,000.
3. Applicants with populations of 2,500 to 14,999 shall apply for no more than \$600,000.
4. Applicants with populations of 15,000 to 49,999 shall apply for no more than \$800,000.

However, no recipient shall receive more than \$1,000 per capita based on the total population within the recipient's jurisdiction. If a county applies on behalf of one or more unincorporated communities within its jurisdiction, the \$1,000 per capita ceiling shall pertain to any project benefiting all residents of the unincorporated community or communities, not the entire unincorporated population of the county applying. Applicants shall use one of the following for population figures to determine the applicable grant ceilings: 2000 census figures, special census figures or adjusted figures based on annexation

completed in accordance with statutory requirements in Iowa Code chapter 368. County populations shall be calculated for unincorporated areas only to determine applicable grant ceilings.

*a.* Joint applications for sewer and water projects shall be awarded no more than the cumulative joint total allowed according to the population of each jurisdiction participating in the project. For all other joint applications, an application shall be awarded no more than one and one-half times the maximum amount allowed for either of the joint applicants.

*b.* Applicants may apply for the maximum amount for which they are eligible under both the sewer and water fund and community facilities and services fund.

*c.* Applicants may apply for multiple activities under each fund for an amount up to the applicable ceilings.

**23.6(3)** *Water and sewer fund application procedure.* IDED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDED.

*a.* Application forms shall be available upon request from IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, or on the division's Web site at [www.community.state.ia.us](http://www.community.state.ia.us).

*b.* Applications shall be submitted by the deadline established by IDED.

*c.* IDED shall review applications and make funding decisions based on the following criteria:

(1) Magnitude of need for the project.

(2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.

(3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion. Procurement of an engineer shall be considered evidence of readiness to proceed.

(4) Degree to which water and sewer fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.

(5) Capacity to operate and maintain the proposed activity.

(6) Capacity for continued viability of the activity after CDBG assistance.

(7) Scope of project benefit relative to the amount of CDBG funds invested.

(8) Degree to which the project promotes orderly, compact development supported by affordable public infrastructure.

*d.* Applicants shall submit preliminary engineering reports with their full applications for drinking water projects.

*e.* Applicants shall submit facility plans with their full applications for wastewater projects.

*f.* IDED staff may consult on proposed activities with other state agencies responsible for water- and sewer-related activities and may conduct site evaluations of proposed activities.

*g.* Applicants selected to receive awards shall be notified by letter from the IDED director by date(s) determined by IDED.

**23.6(4)** *Community facilities and services fund application procedure.* Each year, IDED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDED.

*a.* Application forms shall be available upon request from IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, or on the division's Web site at [www.community.state.ia.us](http://www.community.state.ia.us).

*b.* Applications shall be submitted by the deadline established by IDED.

*c.* IDED shall review applications and make funding decisions based on the following criteria:

(1) Magnitude of need for the project.

(2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.

(3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion.

(4) Degree to which community facilities and services fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.

(5) Capacity to operate and maintain the proposed activity.

(6) Capacity for continued viability of the activity after CDBG assistance.

(7) Scope of project benefit relative to the amount of CDBG funds invested.

(8) Degree to which the project promotes orderly, compact development supported by affordable public infrastructure.

(9) Whether the project meets or exceeds the minimum building and site design criteria established by IDED to be eligible for funding.

*d.* IDED staff may consult on proposed activities with other state agencies responsible for community facilities and services-related activities and may conduct site evaluations of proposed activities.

*e.* Applicants selected to receive awards shall be notified by letter from the IDED director by date(s) determined by IDED.

**23.6(5) *Contingent funding.*** IDED may make awards contingent upon receipt of funding from other sources.

**23.6(6) *Negotiation of awards.*** IDED reserves the right to negotiate award amounts and terms.

## **261—23.7(15) Requirements for the economic development set-aside fund.**

### **23.7(1) *Restrictions on applicants.***

*a.* Applicants shall apply only for direct loans or forgivable loans to make to private businesses for the creation of new jobs or the retention of existing jobs that would otherwise be lost.

*b.* The maximum grant award for individual business assistance applications from any city or county is \$1,000,000.

*c.* To be eligible for assistance, applicants shall meet the qualifying wage threshold requirements described in 261—Chapter 174.

*d.* At least 51 percent of the permanent jobs created or retained by the proposed project shall be taken by or made available through first consideration activities to persons from low- and moderate-income families.

*e.* Projects must maintain a minimum ratio of one permanent job created or retained for every \$10,000 in CDBG funds awarded.

*f.* Terms of conventional loans proposed for the project must be consistent with terms generally accepted by conventional financial institutions.

*g.* Applications must provide evidence of adequate private equity.

*h.* Applications must provide evidence that the EDSA funds requested are necessary to make the proposed project feasible and that the business requesting assistance can continue as a going concern in the foreseeable future if assistance is provided.

*i.* IDED shall not consider applications proposing business relocation from within the state unless evidence exists of unusual circumstances that make the relocation necessary for the business' viability.

*j.* No significant negative land use or environmental impacts shall occur as a result of the project.

*k.* Rescinded IAB 10/22/08, effective 11/26/08.

*l.* Unless in conflict with a federal HUD definition for CDBG, the standard definitions located in 261—Chapter 173 apply to the EDSA program.

**23.7(2) *Application procedure.*** Application forms and instructions shall be available upon request from IDED, Business Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4819. An original and two copies of completed applications with required attachments shall be submitted to the same address. IDED shall accept EDSA applications at any time and shall review applications on a continuous basis. IDED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

**23.7(3) Review criteria.** IDED shall review applications and make funding decisions based on the following criteria:

1. Impact of the project on the community.
2. Appropriateness of the jobs to be created or retained by the proposed project.
3. Appropriateness of the proposed wage and benefit package available to employees in jobs created or retained by the proposed project.
4. Degree to which EDSA funding would be leveraged by private investment.
5. Degree of demonstrated business need.

In evaluating applications, IDED shall give supplementary credit to applicants who have executed a good neighbor agreement with the business to be assisted.

IDEED may conduct site evaluations of proposed projects.

**261—23.8(15) Requirements for the public facilities set-aside fund.** PFSA funds are reserved for infrastructure projects in direct support of economic development activities that shall create or retain jobs.

**23.8(1) Restrictions on applicants.**

- a. The maximum grant award for individual applications is \$500,000.
- b. At least 51 percent of the permanent jobs created or retained by the proposed project shall be taken by or made available through first consideration activities to persons from low- and moderate-income families.
- c. Projects must maintain a minimum ratio of one permanent job created or retained for every \$10,000 in CDBG funds awarded.
- d. The applicant local government must contribute at least 50 percent of the total amount of funds requested.
- e. Applications must provide evidence that the PFSA funds requested are necessary to make the proposed project feasible and that the business requesting assistance can continue as a going concern in the foreseeable future if assistance is provided.
- f. Jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered to be new jobs created.
- g. No significant negative land use or environmental impacts shall occur as a result of the project.
- h. Applications shall include a business assessment plan, projecting for each identified business the number of jobs to be created or retained as a result of the public improvement proposed for assistance.

**23.8(2) Application procedure.** Application forms and instructions shall be available upon request from IDED, Business Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4819. An original and one copy of completed applications with required attachments shall be submitted to the same address. IDED shall accept PFSA applications at any time and shall review applications on a continuous basis. IDED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

**23.8(3) Review criteria.** IDED shall review applications and make funding decisions based on the following criteria:

1. Impact of the project on the community.
2. Number of jobs created or retained per funds requested.
3. Degree to which PFSA funding would be leveraged by private investment.
4. Degree of demonstrated need for the assistance.

IDEED may conduct site evaluations of proposed projects.

**261—23.9(15) Requirements for the career link program.** Projects funded through the career link program assist the unemployed and underemployed to obtain the training and skills necessary to move into available higher-skill, higher-paying jobs.

**23.9(1) Restrictions on applicants.**

a. Identified positions shall pay an average starting wage that meets or exceeds the lower of 100 percent of the average county wage or 100 percent of the average regional wage.

b. Applications shall include evidence of business participation in the curriculum design and evidence that a number of positions are available equal to or greater than the number of persons to be trained.

c. The project length shall not exceed 24 months.

d. Applicants may use awarded funds for training, transportation and child care costs. Up to 5 percent of funds may be used for administration.

e. Rescinded IAB 1/19/05, effective 2/23/05.

**23.9(2) Application procedure.** Application forms and instructions shall be available upon request from IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4783. An original and five copies of completed applications shall be submitted to the same address. IDED shall accept career link applications at any time and shall review applications on a continuous basis until all program funds are obligated or the program is discontinued.

**23.9(3) Review criteria.** IDED shall review applications and make funding decisions based on the following criteria:

1. Quality of the jobs available and business participation.
2. Merit of the proposed training plan.
3. Degree to which career link funds are leveraged by other funding sources.
4. Merit of the recruitment/job matching plan.
5. Scope of project benefit relative to the amount of funds invested.

**261—23.10(15) Requirements for the contingency fund.** The contingency fund is reserved for communities experiencing a threat to public health, safety or welfare that necessitates immediate corrective action sooner than can be accomplished through normal community development block grant procedures, or for disaster recovery activities, or for communities developing a sustainable community demonstration project.

**23.10(1) Application procedure.** Those local governments applying for contingency funds shall submit a written request to IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the situation, the project budget including the amount of the request from IDED, projected use of funds and an explanation of the reason that the situation cannot be remedied through normal CDBG funding procedures.

**23.10(2) Application review.** Upon receipt of a request for contingency funding, IDED shall determine whether the project is eligible for funding and notify the applicant of its determination. A project shall be considered eligible if it meets the following criteria:

- a. Projects to address a threat to health and safety.
  - (1) An immediate threat to health, safety or community welfare must exist that requires immediate action.
  - (2) The threat must be the result of unforeseeable and unavoidable circumstances or events.
  - (3) No known alternative project or action would be more feasible than the proposed project.
  - (4) Sufficient other local, state or federal funds either are not available or cannot be obtained in the time frame required.
- b. Projects to demonstrate sustainable community activities.
  - (1) The project is consistent with sustainability and smart growth principles.
  - (2) The project provides a beneficial impact on the standard of living and quality of life of proposed beneficiaries.
  - (3) The project can be ready to proceed and be completed in a timely manner.
  - (4) The project leverages the maximum amount of local funds possible.
  - (5) The project will continue to remain viable after CDBG assistance.
  - (6) The project meets the funding standards established by the funding criteria set forth in this rule.

(7) The applicant provides adequate information to IDED on total project design and costs as requested.

(8) The project is innovative and could be replicated in other communities.

(9) The project meets or exceeds the minimum building and site design criteria established by IDED.

**23.10(3) Additional information.** IDED reserves the right to request additional information on forms prescribed by IDED prior to making a final funding decision. IDED reserves the right to negotiate final project award and design components.

**23.10(4) Future allocations.** IDED reserves the right to reserve future funds anticipated from federal CDBG allocations to the contingency fund to offset current need for commitment of funds which may be met by amounts deferred from current awards.

**261—23.11(15) Requirements for the housing fund program.** Specific requirements for the housing fund are listed separately at 261—Chapter 25.

**261—23.12(15) Interim financing program.** The objective of the CDBG interim financing program is to benefit persons living in eligible Iowa communities by providing short-term financing for the implementation of projects that create or retain employment opportunities, prevent or eliminate blight or accomplish other federal and state community development objectives. Up to \$25 million shall be made available for grants under the CDBG interim financing program during any program year.

**23.12(1) Eligible activities.** Funds provided through the interim financing program shall be used for the following activities:

1. Short-term assistance, interim financing or construction financing for the construction or improvement of a public work.

2. Short-term assistance, interim financing or construction financing for the purchase, construction, rehabilitation or other improvement of land, buildings, facilities, machinery and equipment, fixtures and appurtenances or other projects undertaken by a for-profit organization or business or a nonprofit organization.

3. Short-term or interim financing assistance for otherwise eligible projects or programs.

**23.12(2) Restrictions on applicants.**

a. No significant negative land use or environmental impacts shall occur as a result of the project.

b. Applications must provide evidence that the proposed project shall be completed within 30 months of the date of grant award.

c. The amount of funds requested shall not exceed \$20 million.

d. Applications must provide evidence of an irrevocable letter of credit or equivalent security instrument from an AA- or better-rated lending institution, assignable to IDED, in an amount equal to the CDBG short-term grant funds requested, plus interest, if applicable.

e. Applications must provide evidence of the commitment of permanent financing for the project.

f. Applications must include assurance that program income earned or received as a result of the project shall be returned to IDED on or before the end date of the grant contract.

**23.12(3) Application procedure.** Applications may be submitted at any time in a format prescribed by IDED. Applications shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. IDED shall make funding decisions within 30 days of a receipt of a completed application. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority.

**23.12(4) Application review.** Applications shall be reviewed and funding decisions made based on the following review criteria:

1. Degree to which CDBG funds would be leveraged by other funding sources.

2. Reasonableness of the project cost per beneficiary ratio.

3. Documented need for the CDBG assistance.

4. Degree of public benefit, as measured by the present value of proposed assistance to direct wages and aggregate payroll lost, indirect wages and aggregate payroll lost, dislocation and potential absorption of workers and the loss of economic activity.

**261—23.13(15) Flood recovery fund.** Rescinded IAB 9/18/02, effective 10/23/02.

**261—23.14(15) Disaster recovery fund.** The disaster recovery fund is reserved for communities impacted by natural disasters when a supplemental disaster appropriation is made under the community development block grant program. Funds are available to repair damage and to prevent future threat to public health, safety or welfare that is directly related to the disaster for which HUD supplemental funds have been allocated to the state.

**23.14(1) Application procedure.** Communities in need of disaster recovery funds shall submit a written request to IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds, the amount of local funds to be provided and the percent of low- and moderate-income persons benefiting from the project.

**23.14(2) Application review.** Upon receipt of a request, IDED, in consultation with appropriate federal, state and local agencies, shall make a determination of whether the community and project are eligible for funding and notify the applicant community of its determination. A project shall be considered eligible only if it meets all of the following criteria:

1. A threat must exist to health, safety or community welfare that requires immediate action.
2. The threat must be a result of a natural disaster receiving a presidential declaration for which IDED received a supplemental HUD appropriation.
3. No known alternative project or action would be more feasible than the proposed project.
4. Sufficient other local, state or federal funds (including the CDBG competitive program) either are not available or cannot be obtained in the time frame required.

**23.14(3) Compliance with federal and state regulation.** A community receiving funds under the disaster recovery fund shall comply with all laws, rules and regulations applicable to the CDBG competitive program, except those waived by HUD as a result of federal action in conjunction with the disaster recovery initiative and those not required by federal law that IDED may choose to waive. IDED shall make available a list of all applicable federal regulations and disaster-related waivers granted by Congress and relevant federal agencies to all applicants for assistance.

**261—23.15(15) Administration of a CDBG award.** This rule applies to all grant recipients awarded funds from any of the CDBG programs. Recipients shall comply with requirements and instructions set forth in the applicable CDBG management guide.

**23.15(1) Contracts.** After making an award notification to a recipient, IDED will issue a CDBG contract. The contract shall be between the recipient local government and IDED. These rules and applicable federal and state laws and regulations shall be part of the contract.

*a.* Recipients shall execute and return the contract to IDED within 45 days of the transmittal date from IDED. Failure to do so may be cause for termination of the award.

*b.* Certain activities require permits or clearances that shall be obtained from other state or federal agencies prior to proceeding with the project. IDED may include securing necessary permits or clearances as conditions to the CDBG contract.

**23.15(2) General financial management standards.** Recipients shall comply with 24 CFR 85, as revised January 1, 2007, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. Allowable costs shall be determined in accordance with OMB Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

**23.15(3) Requests for funds.** Recipients shall submit requests for funds in the manner described and on the forms provided in the CDBG management guide. Individual requests for funds shall be made in whole dollar amounts not less than \$500, except for the final request for funds.

**23.15(4) Program income.** If a recipient receives program income before the contract end date, it must be expended before requesting additional funds. If a recipient receives program income on or after the contract end date, the recipient may reuse the program income according to an IDED-approved reuse plan, or the recipient may return the program income to IDED. If a recipient receives less than \$25,000 of program income cumulative of all CDBG grants in a program year, it shall be considered miscellaneous revenue and may be used for any purpose.

**23.15(5) Record keeping and retention.** All records related to the project, including the original grant application, reports, financial records and documentation of compliance with state and federal requirements, shall be retained for five years after contract closeout. Representatives of HUD, the Inspector General, the General Accounting Office, the state auditor's office and IDED shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of CDBG funds.

**23.15(6) Performance reports and reviews.** Recipients shall submit recipient performance reports to IDED as prescribed in the CDBG management guide. IDED shall perform project reviews and site inspections deemed necessary to ensure program compliance. When noncompliance is indicated, IDED may require remedial actions to be taken.

**23.15(7) Contract amendments.** Any substantive change to a funded CDBG project, including time extensions, budget revisions and significant alteration to proposed activities, shall be considered a contract amendment. The recipient shall request the amendment in writing. No amendment shall be valid until approved in writing by IDED. IDED shall not approve the addition of a new activity unrelated to the original contract activities, unless all original activities shall also be completed per the contract. In such cases, IDED may allow up to \$10,000 of the original CDBG award to be used for a new activity. For projects funded under the economic development set-aside, IDED shall not approve amendments involving the replacement of one activity with another.

**23.15(8) Contract closeout and audit.** Upon completion of project activities and contract expiration, IDED shall initiate closeout procedures. Contracts may be subject to audit before closeout of the contract can be completed. Recipients that expend \$500,000 or more of federal funds within one year must have these funds audited. The audit shall be performed in a manner consistent with the provisions set forth in the Single Audit Act, as revised in 1996, and described in the CDBG management guide.

**23.15(9) Contractors and subrecipients limitation.** CDBG funds shall not be used directly or indirectly to employ, award contracts to, otherwise engage the services of or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by HUD under the provisions of 24 CFR 24, as revised April 1, 1997.

**23.15(10) Compliance with federal and state laws and regulations.** Recipients shall comply with all applicable provisions of the Housing and Community Development Act of 1974 and these administrative rules. Recipients shall also comply with any provisions of the Iowa Code governing activities performed under this program.

**23.15(11) Noncompliance.** At any time before project closeout, IDED may, for cause, find that a recipient is not in compliance with requirements under this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Findings of noncompliance may include the use of CDBG funds for activities not described in the application, failure to complete approved activities in a timely manner, failure to comply with any applicable state or federal rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

**23.15(12) Appeals process for findings of noncompliance.** Appeals shall be entertained in instances where it is alleged that IDED staff participated in a decision that was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals shall be addressed to the division administrator of the community development division. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director shall make the final decision on all appeals.

**261—23.16(15) Requirements for the downtown revitalization fund.** Downtown revitalization funds are reserved for eligible CDBG activities that assist in the revitalization of downtown areas.

**23.16(1) Maximum grant award.** The maximum grant award for individual applications is \$500,000.

**23.16(2) Application procedure.** Application forms and instructions shall be available upon request from IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, or on the division Web site at [www.iowalifechanging.com/community](http://www.iowalifechanging.com/community).

**23.16(3) Review criteria.** IDED shall review applications and make funding decisions based on the following criteria:

- a. Impact of the project on the community.
- b. Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion.
- c. Level of community support for a downtown revitalization effort.
- d. Degree to which downtown revitalization fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount of local financial support for the activity.
- e. Degree to which the activity meets or exceeds the minimum building and site design criteria established by IDED to be eligible for funding.
- f. Level of planning completed for comprehensive downtown revitalization efforts.

These rules are intended to implement Iowa Code section 15.108(1)“a.”

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<sup>1</sup> See IAB Economic Development Department.

CHAPTER 53  
COMMUNITY ECONOMIC BETTERMENT ACCOUNT (CEBA) PROGRAM

[Prior to 1/14/87, Iowa Development Commission[520] Ch 8]

[Prior to 7/19/95, see 261—Ch 22]

[Former Ch 53, "Economic and Research and Development Grants," rescinded IAB 7/19/95, effective 8/23/95]

**261—53.1(15) Purpose and administrative procedures.**

**53.1(1) Purpose.** The purpose of the community economic betterment account (CEBA) program is to assist communities and rural areas of the state with their economic development efforts and to increase employment opportunities for Iowans by increasing the level of economic activity and development within the state. The program structure provides financial assistance to businesses and industries which require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Also, the program may provide comprehensive management assistance to businesses involved with the CEBA program. Assistance may be provided to encourage:

1. New business start-ups in Iowa;
2. Expansion of existing businesses in Iowa; or
3. The recruitment of out-of-state businesses into Iowa.

**53.1(2) Administrative procedures.** The CEBA program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.

**261—53.2(15) Definitions.** In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the CEBA program:

*"Applicant"* means a city, county, or merged area school which requests state financial assistance on behalf of a business or a local development organization.

*"Base economic activities"* means those business activities which result in a net increase in the production of goods or services within the state. This would occur if a majority of the company's products or services were new, were sold outside the state, or were sold within the state in place of items previously purchased outside the state.

*"Business start-up"* means a business which has not been in operation for more than two years prior to the date of the CEBA application.

*"Buydown"* means participation by the state in a conventional loan to an assisted business by lowering either the effective principal or interest of the loan.

*"CEBA"* refers to the community economic betterment account funded by Iowa Code section 15.32(2).

*"Comprehensive management assistance"* means provision of technical business assistance through the use of department staff or professional business services provided by a public or private organization.

*"Entrepreneurial development"* means the promotion of small business ownership through the provision of technical management expertise.

*"Modernization project"* means an economic activity that is performed by a business to retool or upgrade production equipment to meet contemporary technology standards and that results in improving existing employees' job skills to enhance competitiveness for future growth and development.

*"New business opportunity"* means an economic activity performed by a start-up or recruited business that meets the definition of subrule 53.9(1).

*"New product development"* means an economic activity performed by an existing Iowa business through expansion or diversification and meets the definition of subrule 53.9(1).

*"Project"* means the activity, or set of activities proposed by the recipient, resulting in accomplishing the goals of the CEBA program, and which will require state assistance to accomplish.

*"Retail business"* means a business whose operation consists predominantly of the purchase of a product for sale to the final user or consumer who would not be purchasing for resale.

*"Service business"* means a business which produces and sells a thing of value which is not a tangible product.

“*Small business*” refers to a business which meets the size criteria for a small business as defined by the U.S. Small Business Administration and as published from time to time in the Federal Register.

“*Twenty-eight E agreement*” or “*28E agreement*” means an intergovernmental agreement formed according to Iowa Code chapter 28E.

“*Venture project*” means an economic activity performed by a start-up company, early-stage company, or existing company developing a new product or new technology.

**261—53.3(15) Board and committee.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.4(15) Eligible applicants.** Only cities, counties, and merged area schools are eligible to apply to the department for funding under this program. Applicants which are awarded funds will pass those funds on to the recipient or approved recipient’s vendor.

**261—53.5(15) Provision of assistance.**

**53.5(1) Eligible projects.** Projects eligible for CEBA funding include, but are not limited to, the following:

1. Building construction or reconstruction;
2. Acquisition of land;
3. Equipment purchases;
4. Operating and maintenance expenses;
5. Clearance, demolition and removal of buildings to develop sites;
6. Infrastructure improvements directly related to new employment;
7. Road construction projects directly supporting and assisting economic development;
8. Funds for guaranteeing business loans made by commercial lenders; and
9. Technical management assistance for businesses that are applying for or have received CEBA

funding.

**53.5(2) Forms of assistance.** Assistance for projects may be provided in any of the following forms:

1. Principal buydowns to reduce the principal of a business loan;
2. Interest buydowns to reduce the interest on a business loan;
3. Forgivable loans;
4. Loans and loan guarantees, including short-term (float) loans. Float loans may only be made for projects where the department obtains an irrevocable letter of credit from an acceptable financial institution on behalf of the company in an amount equal to or greater than the principal amount of the loan;
5. Equity-like investments;
6. Cost reimbursement for technical/professional management services.

**261—53.6(15) Application for assistance.** The requirements outlined in this rule are applicable to all CEBA program components, except applications under the venture project component. Refer to rule 261—53.10(15) for application requirements for venture projects.

**53.6(1) General policies.**

*a.* An applicant may submit as many different applications as it wishes at any time. However, if the department is reviewing two or more applications from the same applicant at the same time, it may ask the applicant to rank them in the order preferred by the applicant.

*b.* Only one applicant may apply for any given project.

*c.* No single project may be awarded more than \$1 million unless at least two-thirds of the members of the board approve the award. However, this restriction will not apply after the first \$10 million has been credited to the CEBA program in any given year. This restriction does not apply to the float loan described in 53.5(2)“4.”

*d.* No single project may be awarded a forgivable loan of more than \$500,000.

*e.* No single project may be awarded more than \$500,000 unless all other applicable CEBA requirements and each of the following criteria is met:

(1) The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

(2) The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan or its equivalent for all full-time employees working at the facility in which the new investment occurred.

(3) The business shall agree to pay a wage for new full-time jobs of at least 130 percent of the average county wage in the county in which the community is located. This requirement may be waived by the department in the case of a float loan described in 53.5(2)“4” if the net value of the award is determined by the department to be less than \$500,000.

*f.* To be eligible for assistance, the business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

*g.* To be eligible for assistance, applicants shall meet the qualifying wage threshold requirements described in 261—Chapter 174 and the following:

(1) Fifty percent or more of the jobs to be created or retained shall have a starting wage that pays at least the qualifying wage threshold.

(2) The department may approve a project where the starting project wage is less than the average county wage or average regional wage under the following conditions:

1. The starting wage is associated with a training period which is of relatively short duration as documented by the business; and

2. The wages will exceed 100 percent of the average county wage or 100 percent of the average regional wage at the conclusion of the training period as documented by the business; and

3. CEBA funds will be released only at the conclusion of the training period when the average county or average regional wage is achieved.

**53.6(2) Ineligible applications.** The department will not rate and rank ineligible applications. An application may be ruled ineligible if:

*a.* It is submitted by an ineligible applicant, or

*b.* The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business’s viability, or

*c.* CEBA funds comprise more than 50 percent of the project’s financing, or

*d.* The CEBA application is not properly signed by the applicant and the business, or

*e.* The project fails to meet the qualifying wage threshold requirements under 261—Chapter 174, or

*f.* The business has a record of violations of the law over a period of time that tends to show a consistent pattern as described in 261—Chapter 172.

**53.6(3) Procedures.**

*a.* Applications may be submitted at any time.

*b.* Applications should be submitted to: Division of Business Development, Department of Economic Development, CEBA Program, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address, on the department’s Web site, or by calling (515)242-4819.

*c.* Application contents. Required contents of application will be described within the application package itself.

*d.* Each eligible application will be reviewed by the department. The department may request additional information from the applicant or the proposed recipient, or perform other activities to obtain needed information.

*e.* The department will rate and rank applications according to the criteria in rule 53.7(15). Additionally, for small business gap financing applications, the department will use rule 53.8(15). For new business opportunities and new product development applications, the department will

use rule 53.9(15). Applications shall be reviewed and approved following the process described in 261—Chapter 175.

**53.6(4) *Emergency applications.*** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.7(15) Selection criteria.** In ranking applications for funding submitted under the small business gap financing component, the new business opportunities component, and the new product development component, at least the following criteria shall be considered:

**53.7(1) *Relating to local/business involvement:***

- a. The proportion of local match to be provided as compared to the local resources.
- b. The proportion of private contribution to be provided, including the involvement of financial institutions.
- c. The need of the business for financial assistance from governmental sources. More points shall be awarded to a business for which the department determines that governmental assistance is most necessary to the success of the project.
- d. The level of need of the political subdivision.
- e. The impact of the proposed project on the economy of the political subdivision and the state.
- f. The certification of a community builder program for the community.
- g. The expected recapture of these funds.

**53.7(2) *Relating to job creation/retention:***

a. The total number of jobs to be created or retained. When rating a project, the department shall only consider those positions which meet the qualifying wage threshold requirements defined in 261—Chapter 174.

b. The quality of jobs to be created. In rating the quality of the jobs, the department shall award more points to those jobs that have a higher wage scale, a lower turnover rate, are full-time, career-type positions, or have other related factors. Those applications that have average starting wage scales which are 10 percent or more below that of the average county wage or average regional wage shall be given an overall score of zero. Business start-ups shall be given a score of zero only if their wage scales are 20 percent or more below that of the average county wage or average regional wage.

**53.7(3) *Relating to business activity :***

- a. The size of the business receiving assistance. The department shall award more points to small businesses as defined by the U.S. Small Business Administration.
- b. The potential for future growth in the industry represented by the business being considered for assistance.
- c. The impact of the proposed project on competitors of the business.
- d. The capacity of the proposed project to create products by adding value to agricultural commodities.
- e. The degree to which the proposed project relies upon agricultural or value-added research conducted at a college or university, including a regents institution, community college, or a private university or college.

**261—53.8(15) Small business gap financing.**

**53.8(1) *Additional criteria.*** Applications under this component shall be for businesses that meet the SBA definition of a small business. All geographic locations of the business will be used to determine the total number of employees. The criteria in rule 53.7(15) will be used for evaluating applications under this component.

**53.8(2) *Application form.*** Applicants applying for assistance under this component shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

- a. The new business opportunities or new product development components of CEBA;
- b. EDSA (economic development set-aside program); or
- c. PFSA (public facilities set-aside program).

**53.8(3) Scoring.** The criteria noted in rule 53.7(15) are incorporated into the scoring system as follows:

*a.* Local effort compared with local resources. Maximum — 20 points. This includes assistance from the city, county, community college, chambers of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. The form of local assistance compared to the form of CEBA assistance requested will be considered (e.g., in-kind, grant, loan, forgivable loan, job training, tax abatement, tax increment financing). The dollar amount of local effort and the timing of the local effort participation as compared to the dollar amount and timing of the requested CEBA participation will also be considered. Conventional financing, inadequately documented in-kind financing, and local infrastructure projects not specifically directed at the business are not considered local effort.

*b.* Community need. Maximum — 10 points. This includes considerations such as unemployment rates, per capita income, major closings and layoffs, declining tax base, etc.

*c.* Private contribution compared with CEBA request. Maximum — 30 points. The greater the contribution by the assisted business, the higher the score. Conventional financing will be considered a private contribution. Contribution in the form of “new cash equity” by the business owner will result in a higher score.

*d.* A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171. Maximum — 10 points. Projects meeting these conditions will receive 10 points.

*e.* Extra points if small business, as defined by SBA. Maximum — 10 points.

*f.* Project impact on the state and local economy.

(1) Cost/benefit analysis. Maximum — 40 points. This factor compares the amount requested to the number of jobs to be created or retained as defined in paragraph 53.7(2) “a” and the projected increase in state and local tax revenues. Also considered here is the form of assistance (e.g., a forgivable loan will receive a lower score than a loan).

(2) Quality of jobs to be created. Maximum — 40 points. Higher points to be awarded for:

Higher wage rates;

Lower turnover rates;

Full-time, career-type positions;

Relative safety of the new jobs;

Health insurance benefits;

Fringe benefits;

Other related factors.

(3) Economic impact. Maximum — 40 points. Higher points to be awarded for base economic activities, e.g.:

Greater percentage of sales out of state, or import substitution;

Higher proportion of in-state suppliers;

Greater diversification of state economy;

Fewer in-state competitors;

Potential for future growth of industry;

Consistency with the state strategic plan for economic development prepared in compliance with Iowa Code section 15.104(2);

Increased value to agricultural commodities;

Degree of utilization of agricultural or value-added technology research from an Iowa educational institution;

A project which is not a retail operation;

A project which includes remediation or redevelopment of a brownfield site.

Maximum preliminary points for project impact — 120 points.

(4) Final impact score. Maximum — 120 points. Equal to preliminary impact score multiplied by a reliability factor (as a percent).

(NOTE OF EXPLANATION — Rating factors in 53.8(3)“f”(1) to (3) attempt to measure the expected impact of the project, if all predictions and projections in the application turn out to be accurate. Up to that point in the rating system, no attempt has been made to judge the feasibility of the business venture, the reliability of the job creation and financial estimates, the likelihood of success, the creditworthiness of the business, and whether the project would occur without state assistance. An attempt to analyze projects against these factors is also important. In order to incorporate this judgment into the rating system, the Preliminary Impact Score (Maximum of 120 points) is multiplied by a “reliability and feasibility factor” to obtain a final impact score, 53.8(3)“f”(4). This factor will range from 0 to 100 percent, depending upon the department’s judgment as to the likelihood of the projections turning out as planned. If, in the department’s judgment, the project would proceed whether it was funded or not, it will be assigned a zero percent on the reliability and feasibility factor and the final impact score will be zero. This is consistent with the intent of the program to use funds only where state assistance will make a difference.)

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.8(15) will not be recommended for funding by the staff to the committee.

**53.8(4) *Project period.*** Projects funded under rule 53.8(15) are considered to have a project period as described in 261—Chapter 187. This is the time period allowed for meeting and maintaining the job and performance obligations.

**261—53.9(15) New business opportunities and new product development components.**

**53.9(1) *Additional criteria and targeting for new business opportunities and new product development components.*** The criteria in rule 53.7(15) will be used for evaluating applications under these components. Applications for these components must be for businesses with projects that offer a quality economic opportunity to Iowans and meet one of the following characteristics:

- a. The industry is one targeted within the state’s strategic plan; or
- b. The resulting economic activity is underrepresented in the state’s overall economic activity mix.

**53.9(2) *Applications.*** Applicants applying for assistance under these components shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

- a. Small business gap financing component of CEBA;
- b. EDSA (economic development set-aside program); or
- c. PFSA (public facilities set-aside program).

**53.9(3) *Rating system.*** The rating system for proposed projects will be as follows:

- a. Local effort (as defined in 53.8(3)“a”). Maximum — 20 points;
- b. Private contributions as compared to CEBA request (as defined in 53.8(3)“c”). Maximum — 20 points;
- c. A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171. Maximum — 10 points. Projects meeting these conditions will receive 10 points;
- d. Extra points if small business, as defined by the SBA. Maximum — 10 points;
- e. Project impact, as defined in 53.8(3)“f” and 53.8(4). Maximum — 120 points;
- f. Potential for future expansion of the industry in general. Maximum — 20 points. This factor awards additional points for those projects that tend to show a greater potential for expansion of that industry within Iowa.

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.9(15) will not be recommended for funding by the staff to the committee.

**53.9(4) *Project period.*** Projects funded under rule 53.9(15) are considered to have a project period as described in 261—Chapter 187. This is the time period allowed for meeting and maintaining the job and performance obligations.

**261—53.10(15) Venture project components.****53.10(1) Eligible applicants; projects; coordination with PROMISE JOBS.**

*a. Eligible businesses.* Eligible businesses include start-up companies, early-stage companies, and existing companies that are developing a new product or new technology.

*b. Form and amount of assistance.* The CEBA award will be in the form of an equitylike investment (e.g., royalty agreement or deferred loan). The maximum award amount shall not exceed \$250,000.

*c. Eligible applicants.* Applications will be accepted from cities, counties, and community colleges on behalf of eligible businesses. Applications shall be submitted on the CEBA venture project application form provided by the department. If an application is approved, the department will contract directly with the business on whose behalf the application was submitted.

**53.10(2) Ineligible applications.** The department will not rate and rank ineligible applications. An application may be determined to be ineligible if:

- a.* It is submitted by an ineligible applicant; or
- b.* The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business's viability; or
- c.* The CEBA application is not properly signed by the applicant and the business; or
- d.* The business has a record of violations of the law over a period of time that tends to show a consistent pattern as described in 261—Chapter 172.

**53.10(3) Rating system.** Eligible applications will be reviewed and rated using the following criteria:

*a.* Jobs associated with the project. Factors considered include, but are not limited to, the following:

- (1) The number of jobs created, if any, by the project;
- (2) The potential for job creation as a result of the project;
- (3) The quality of the wages and benefits for jobs actually or potentially created as a result of the project.

NOTE: For the venture project component, CEBA funds will not be leveraged on a per job basis. Maximum — 10 points.

*b.* Additional funding sources. The amount of the total project costs coming from sources other than CEBA venture funds including, but not limited to, private equity investment, conventional loans, owner equity investment, or other acceptable forms of investment as determined by the department. Maximum — 10 points.

*c.* Strength of the business plan. Factors to be considered include, but are not limited to, the following:

- (1) A description of the business and the overall industry;
- (2) The experience level of the business management team;
- (3) A description of the product and production plan;
- (4) Project financial projections;
- (5) Feasibility of the product and project;
- (6) Market identification and marketing strategy.

Maximum — 60 points.

*d.* Potential return on investment of the CEBA venture award. Maximum — 10 points.

*e.* Potential for future growth of the business. Maximum — 5 points.

*f.* Local financial support. The amount of the total project costs attributable to local funding sources including, but not limited to, city, county, community college, chamber of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. Maximum — 10 points.

*g.* A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171 will receive 5 extra points.

Applications must receive a minimum of 60 points to be recommended for funding.

**53.10(4) Application review and approval.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.11(15) Modernization project component.** The general program policies described in rule 261—53.6(15) are applicable to modernization projects. Exceptions to these general rules are identified in this rule. If there is a conflict between the general program policies and the modernization project component requirements as described in this rule, this rule will take priority. Applications must receive a minimum of 60 points to be recommended for funding.

**53.11(1) Additional criteria and targeting for modernization projects.** Modernization projects shall meet the following additional requirements:

- a. Applications for this component must be for businesses with projects that offer a quality economic opportunity to Iowans.
- b. The business shall demonstrate that it is modernizing and retooling to remain competitive.
- c. The business shall demonstrate how employee job skills are being enhanced through advanced training and educational opportunities.

**53.11(2) Applications.** Businesses applying for assistance under this component shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program administered by the department.

**53.11(3) Project period.** Rescinded IAB 7/4/07, effective 6/15/07.

**53.11(4) Rating system.** Eligible applications will be reviewed and rated using the following criteria:

a. *Strength of the business proposal.* Factors to be considered include, but are not limited to, the following:

- (1) Description of the business and the overall industry;
- (2) Description and feasibility of the modernization project;
- (3) Market identification and the business's current position in that market;
- (4) Project financial history and projections;
- (5) Total cost of the modernization project.

Maximum — 25 points.

b. *Job positions associated with the project.* Factors to be considered include, but are not limited to, the following:

- (1) Increase in job skills as a result of the project as measured by job training and educational opportunities;
- (2) Increased quality of the wages and benefits as a result of the project;
- (3) Number of jobs impacted by the project.

NOTE: For the modernization project component, CEBA funds will not be leveraged on a per-job basis.

Maximum — 25 points.

c. *Leverage of other additional funding sources.* The amount of the total project costs coming from sources other than CEBA modernization funds including, but not limited to, private equity investment, conventional loans, owner equity investment, or other acceptable forms of investment as determined by the department. Maximum — 15 points.

d. *Regional financial support.* The amount of the total project costs attributable to regional funding sources including, but not limited to, city, county, community college, chamber of commerce, economic development groups, utilities, or other regional sources, compared to the resources reasonably available from those sources. Maximum — 15 points.

e. *Potential for improved efficiency, capacity and competitiveness of the business.* Maximum — 10 points.

f. *Potential for future growth of the business and the industry.* Maximum — 10 points.

**53.11(5) Application review and approval.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.12(15) Comprehensive management assistance and entrepreneurial development.**

**53.12(1) Eligible applicants.** Application for comprehensive management assistance is limited to:

a. Businesses that have either previously received a CEBA award or have a CEBA application under current review by the department; or

*b.* Businesses requesting assistance in meeting the regulatory requirements of other government agencies.

**53.12(2) *Use of funds.*** Assistance is available only in the form of technical or professional assistance. This may be accomplished by use of department staff or department-contracted professional services in assisting the business to develop:

- a.* Entrepreneurial management skills;
- b.* Employment hiring, recruiting, or personnel assistance;
- c.* Inventory controls;
- d.* Financial controls;
- e.* Marketing plans; or
- f.* Other related business assistance.

**53.12(3) *Determination of assistance.*** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.13(15) Award process.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.14(15) Administration of projects—financial management.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.15(15) Default.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.16(15) Standards for negotiated settlements or discontinuance of collection efforts.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.17(15) Miscellaneous.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—53.18(15,83GA,SF344) Applicability of CEBA program after July 1, 2009.**

**53.18(1)** Effective July 1, 2009, the CEBA program is rescinded by 2009 Iowa Acts, Senate File 344, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

**53.18(2)** For awards made prior to July 1, 2009, the rules of 261—Chapter 53 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.  
[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code sections 15.315 to 15.320.

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◇ Two or more ARCs

CHAPTER 57  
VALUE-ADDED AGRICULTURAL PRODUCTS AND PROCESSES  
FINANCIAL ASSISTANCE PROGRAM (VAAPFAP)

[Prior to 7/19/95, see 261—Ch 29]

**261—57.1(15E) Purpose and administrative procedures.**

**57.1(1) Purpose.** The purpose of this program is to encourage the increased utilization of agricultural commodities produced in this state. The program shall assist in efforts to revitalize rural regions of this state by committing resources to provide financial assistance to new or existing value-added production facilities.

**57.1(2) Administrative procedures.** The VAAPFAP program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.

**261—57.2(15E) Definitions.** In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the VAAPFAP program:

*“Agricultural biomass industry”* means businesses that utilize agricultural commodity crops, agricultural by-products, or animal feedstock in the production of chemicals, protein products, or other high-value products.

*“Agricultural biotechnology industry”* means businesses that utilize scientifically enhanced plants or animals that can be raised by producers and used in the production of high-value products.

*“Agriculture”* means the science, art, and business of cultivating the soil, producing crops and raising livestock.

*“Alternative energy industry”* includes businesses involved in the production of ethanol, including gasoline with a mixture of 70 percent or more ethanol, biodiesel, biomass, hydrogen, or in the production of wind energy.

*“Committee”* means the renewable fuels and coproducts advisory committee established pursuant to Iowa Code section 159A.4.

*“Coordinator”* means the administrative head of the office of renewable fuels and coproducts appointed by the department of agriculture and land stewardship as provided in Iowa Code section 159A.3.

*“Coproduct”* means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities and which may include corn gluten feed, distillers grain, solubles, a feed supplement, or can be used as livestock feed.

*“Farming”* means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod; and farming shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

*“Fund”* means the renewable fuels and coproducts fund established pursuant to Iowa Code section 159A.7.

*“Innovative”* means a new or different agricultural product or a method of processing agricultural products which is an improvement over traditional methods in a new, different, or unusual way.

*“Livestock production operations”* means the production, feeding and marketing of livestock, poultry and aquaculture. This includes, but is not limited to, beef and dairy cattle, swine, sheep, goat, poultry, turkey and equine operations. It also includes nontraditional agricultural operations such as ostrich, fallow deer, rabbit, fish and other aquaculture.

*“Office”* means the office of renewable fuels and coproducts created pursuant to Iowa Code section 159A.3.

*“Organic products”* means Iowa-grown or Iowa-raised agricultural products as defined by 21—Chapter 47, Iowa Organic Program.

“*Person*” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“*Producer-owned, value-added business*” means a person who holds an equity interest in the agricultural business and is personally involved in the production of crops or livestock on a regular, continuous, and substantial basis.

“*Renewable fuel*” means an energy source at least in part derived from an organic compound, capable of powering machinery, including an engine or power plant. A renewable fuel includes but is not limited to ethanol-blended or soydiesel fuel.

“*Renewable fuels and coproducts activities*” means either of the following:

1. The research, development, production, promotion, marketing, or consumption of renewable fuels and coproducts.
2. The research, development, transfer, or use of technologies which directly or indirectly increases the supply or demand of renewable fuels and coproducts.

“*Rural region*” means any geographic area which is predominantly rural in nature, that is, having a relatively low population density and where agriculture is the predominant economic activity.

“*Soydiesel fuel*” means a fuel made of processed soybean oil which is mixed with diesel fuel, the mixture being a minimum of 20 percent processed soybean oil.

“*VAAPFAP*” means the value-added agricultural products and processes financial assistance program.

“*Value-added product*” means a product, which through a series of activities or processes, can be sold at a higher price than its original purchase price.

**261—57.3(15E) General eligibility.** A person is eligible to apply for assistance under this program if the following requirements are met:

1. The existing or proposed facility is located in this state.
2. The person applies to the department of economic development in a manner and according to procedures required by the department.
3. The person submits a business plan which demonstrates managerial and technical expertise.

**261—57.4(15E) Program components and eligibility requirements.** There will be six components to the VAAPFAP program. For program components described in subrules 57.4(1) through 57.4(4), the department shall prefer producer-owned, value-added businesses, education of producers and management boards in value-added businesses, and other activities that would support the infrastructure in the development of value-added agriculture, and public and private joint ventures involving an institution of higher learning under the control of the state board of regents or a private college or university to acquire assets, research facilities, and leverage moneys in a manner that meets the goals of the grow Iowa values fund. The component(s) include the following:

**57.4(1) Innovative agricultural products and processes component.** An application based on this component shall be considered if either of the following applies:

- a. The business will produce a product derived from an agricultural commodity, if the product is not commonly produced in Iowa from an agricultural commodity; or
- b. The business will utilize a process to produce a product derived from an agricultural commodity, if the process is not commonly used in Iowa to produce the product.

For purposes of this subrule, a product is “not commonly produced” and a process is “not commonly used” if the product or process is not usually, generally, or ordinarily produced or processed in Iowa.

**57.4(2) Renewable fuel component.** Applications for renewable fuel and ethanol production shall be considered by the department for funding. Applications based on ethanol fuel production must meet the following criteria to be considered for funding:

- a. All fermentation, distillation, and dehydration of the ethanol occurs at the proposed facility.
- b. The ethanol produced at the proposed facility is at least 190 proof and is denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner produces at least 190 proof ethanol from the ethanol purchased from the facility.

**57.4(3)** *Agricultural biotechnology, biomass and alternative energy component.* Agricultural business facilities in the agricultural biotechnology industry, agricultural biomass industry, and alternative energy industry are eligible to submit applications.

**57.4(4)** *Organic and emerging markets component.* Facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets are eligible for program assistance.

**57.4(5)** *Project development assistance.* The department, at its discretion, may also provide funding for project development related to proposed projects under this program. Project development assistance could be for the purpose of assisting in departmental evaluation of proposals, or could be one of the proposed activities in a funding request whose further project development could reasonably be expected to lead to a VAAPFAP-eligible commercial enterprise. Feasibility studies and basic research are not eligible for assistance under this program.

**57.4(6)** *Project creation assistance.* This component is for projects that eventually could be eligible for funding within the other VAAPFAP components. Periodically, a request for proposal (RFP) will be issued based on strategic initiatives developed by the department in consultation with relevant agricultural groups and advisors. The RFP will describe the desired outcome of the proposed effort. The desired outcome could be a new and innovative product, new processing or marketing techniques, or new forms of business operation or collaboration. These efforts could include:

*a.* Projects that can show need for special financial assistance to engage participation of expertise needed from sources external to the business sponsor of the project.

*b.* Endeavors where there is a need for financial assistance to plan and organize business consortia or joint ventures among firms or to support costs of special services to be acquired from university or other sources.

*c.* Situations where there is a need to provide matching funds to businesses to enter competition for federal research and development grants.

#### **261—57.5(15E) Ineligible projects.**

**57.5(1)** The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has demonstrated a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment as more fully described in 261—Chapter 172.

**57.5(2)** The department shall not approve an application for assistance under this program to refinance an existing loan.

**57.5(3)** The department shall not directly award financial assistance to support an activity directly related to farming as defined in Iowa Code section 9H.1, including the establishment or operation of a livestock production operation, regardless of whether the activity is related to a renewable fuel production facility.

**57.5(4)** An applicant may not receive more than one award under this program for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates that the funding is to be used for a significant expansion of the project, a new project, or a project which results from previous project development assistance.

**57.5(5)** The department shall not approve an application for assistance in which VAAPFAP funding would constitute more than 50 percent of the total project costs.

#### **261—57.6(15E) Awards.**

**57.6(1)** *Form.* Financial assistance awarded under this program may be in the form of a loan, forgivable loan, deferred loan, grant, or a combination thereof. The department shall not award more than 25 percent of the amount allocated to the value-added agricultural products and processes financial assistance fund during any state fiscal year to support a single person. The department may finance any size of facility. However, the department may reserve up to 50 percent of the total amount allocated to the fund for purposes of assisting persons requiring \$500,000 or less in financial assistance. The

amount shall be reserved until the end of the third quarter of the state fiscal year and may then become available for other projects.

**57.6(2) Amount.**

*a.* Grants, forgivable loans, and loans shall be awarded on the basis of the impact of the project and the degree to which the project meets the goals of the program.

*b.* The department reserves the right to negotiate the amount, term payback amount, and other conditions of an award.

**261—57.7(15E) Application procedure.** Application materials are available on line at [www.iowalifechanging.com](http://www.iowalifechanging.com) or from IDEED, Business Finance, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)242-4819. A comprehensive business plan must accompany the application and shall include at least the following:

1. Marketing plan for the project;
2. Project budget and status of alternative financing (if applicable);
3. Production operations;
4. Management structure;
5. Personnel needs;
6. Description of product, process or practice;
7. Status of product/service development; and
8. Patent status (if applicable).

**261—57.8(15E) Review process.** Subject to availability of funds, applications are reviewed and rated by IDEED staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. If the applicant had previously consulted with the coordinator in completion of the application, the department may refer the application to the coordinator for further feasibility studies if deemed necessary. Applications will be reviewed as described in 261—Chapter 175.

The department may consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry.

The department reserves the right to informally consult with external resources to assist in the evaluation of projects or to contract with outside consultants, in an amount not to exceed \$20,000 per project, for the same purpose.

**261—57.9(15E) Deferral process.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—57.10(15E) Evaluation and rating criteria.** The IDEED staff shall evaluate and rank applications based on the following criteria:

**57.10(1)** For the innovative products and processes component:

*a.* Feasibility (0-25 points). The feasibility of the existing or proposed facility, process, or operation to remain a viable enterprise. Rating factors for this criterion include, but are not limited to, the following: initial capitalization, project budget, financial projections, marketing analysis, marketing plan, management team, and production plan. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

*b.* Priority components (0-25 points). The degree to which the proposed project meets one of the four primary program components which include:

1. Innovative agricultural products and processes.
2. Renewable fuels.
3. Agricultural biotechnology, agricultural biomass, and alternative energy.
4. Organic products and emerging markets.

In order to be eligible for funding, proposals must score at least 15 points in the program component under which the applicant is eligible.

*c.* Utilization (0-25 points). The degree to which the facility will add value to and increase the utilization of agricultural commodities produced in this state. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

*d.* Producer ownership (0-15 points). The level of producer ownership will be given additional consideration.

*e.* The extent to which the existing or proposed facility is located in a rural region of the state (0-10 points).

*f.* The proportion of local match to be contributed to the project (0-5 points).

*g.* The level of need of the region where the existing facility is or the proposed facility is to be located (0-5 points). More points are awarded to those projects which exhibit greater need as measured by factors including, but not limited to, the following: regional unemployment rate, poverty level, or other measures of regional fiscal distress.

*h.* The degree to which the facility produces a coproduct which is marketed in the same locality as the facility (0-5 points).

A minimum score of 65 points is needed for a project to be recommended for funding.

**57.10(2)** For the project creation assistance component:

*a.* Any person is eligible to apply except educational or research institutions. However, an educational or research institution may be a partner to an eligible applicant.

*b.* The evaluation process will focus on the application of new technology and knowledge to agricultural processing and will be based upon the degree to which:

(1) The resulting business has potential to increase the utilization of agricultural commodities in Iowa; and

(2) The resulting business increases value-added economic activities (for example, facilities or employment) within the state of Iowa.

**261—57.11(15E) Negotiation and award.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—57.12(15E) Award process.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—57.13(15E) Contract.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—57.14(15E) Administration.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—57.15(15E) Default.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—57.16(15E,83GA,SF344) Applicability of VAAPFAP program after July 1, 2009.**

**57.16(1)** Effective July 1, 2009, the VAAPFAP program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

**57.16(2)** For awards made prior to July 1, 2009, the rules of 261—Chapter 57 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code sections 15E.111 and 15E.112.

[Filed emergency 8/17/90 after Notice 7/11/90—published 9/5/90, effective 8/17/90]

[Filed emergency 8/19/94 after Notice 7/6/94—published 9/14/94, effective 8/19/94]

[Filed 6/26/95, Notice 5/10/95—published 7/19/95, effective 8/23/95]

[Filed 8/21/95, Notice 6/7/95—published 9/13/95, effective 10/18/95]

[Filed 8/23/96, Notice 3/13/96—published 9/11/96, effective 10/16/96]

[Filed 9/25/00, Notice 8/9/00—published 10/18/00, effective 11/22/00]

[Filed 9/11/03, Notice 8/6/03—published 10/1/03, effective 11/5/03]

[Filed emergency 6/15/07—published 7/4/07, effective 6/15/07]

[Filed 8/22/07, Notice 7/4/07—published 9/26/07, effective 10/31/07]

[Filed Emergency ARC 7970B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 59  
ENTERPRISE ZONE (EZ) PROGRAM

**261—59.1(15E) Purpose and administrative procedures.**

**59.1(1) Purpose.** The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. Businesses that are eligible and locating or located in an enterprise zone and approved by the department are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encourage communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city. Projects that have already been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.

**59.1(2) Administrative procedures.** The EZ program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—59.2(15E) Definitions.** In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the EZ program:

“*Act*” means Iowa Code sections 15E.191 to 15E.197 as amended by 2009 Iowa Acts, Senate File 344.

“*Agricultural land*” as defined in Iowa Code section 403.17 means real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. “Agricultural land” includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. “Agricultural land” includes land taken out of agricultural production for purposes of environmental protection or preservation.

“*Annual base rent*” means the business's annual lease payment minus taxes, insurance and operating or maintenance expenses.

“*Biotechnology-related processes*” means the use of cellular and biomolecular processes to solve problems or make products. Farming activities shall not be included for purposes of this definition.

“*Blighted area*” as defined in Iowa Code section 403.17 means an area of a municipality within which the local governing body of the municipality determines that the presence of a substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; insanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or any combination of these factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use. A disaster area referred to in Iowa Code section 403.5, subsection 7, constitutes a “blighted area.” “Blighted area” does not include real property assessed as agricultural land or property for purposes of property taxation.

“*Business closure*” means a business that has completed the formal legal process of dissolution, withdrawal or cancellation with the secretary of state.

“*Commission*” or “*enterprise zone commission*” means the enterprise zone commission established by a city or county to review applications for incentives and assistance for businesses located within or requesting to locate within certified enterprise zones over which the enterprise zone commission has jurisdiction under the Act.

“*Contractor*” or “*subcontractor*” means a person who contracts with an eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development zone, of the eligible business.

“*Eligible business*” means a business which meets the requirements of rule 261—59.5(15E).

“*Enterprise zone*” means a site or sites certified by the department of economic development board for the purpose of attracting private investment within economically distressed counties or areas of cities within the state.

“*Permanent layoff*” means the loss of jobs to an out-of-state location, the cessation of one or more production lines, the removal of manufacturing machinery and equipment, or similar actions determined to be equivalent in nature by the department. A permanent layoff does not include a layoff of seasonal employees or a layoff that is seasonal in nature. For purposes of these rules, a permanent layoff must occur on or after February 1, 2007.

“*Project*” means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the enterprise zone program, and for which the business requests the benefits of the enterprise zone program.

“*Project jobs*” means all of the new jobs to be created by the location or expansion of the business in the enterprise zone that meet the qualifying wage threshold requirements described in 261—Chapter 174.

“*Tax credit certificate*” means a document issued by the department to an eligible business which indicates the amount of unused investment tax credit that the business is requesting to receive in the form of a refund. A tax credit certificate shall contain the taxpayer’s name, address, and tax identification number, the date of project completion, the amount of the tax credit certificate, the tax year for which the credit will be claimed, and any other information required by the department of revenue or the department.

“*Transportation enterprise zone*” means a site or sites certified by the Iowa department of economic development board for the purpose of attracting private investment within economically distressed areas of cities within the state which are in close proximity to transportation facilities.

“*Value-added agricultural products*” means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—59.3(15E) Enterprise zone certification.** An eligible county or an eligible city may request the board to certify an area meeting the requirements of the Act and these rules as an enterprise zone. Certified enterprise zones will remain in effect for a period of ten years from the date of certification by the board. A county may request zone certification under subrule 59.3(1) at any time prior to December 1, 2003. A county or city may request zone certification under subrules 59.3(2), 59.3(3), 59.3(4) and 59.3(6) at any time prior to July 1, 2010.

**59.3(1) County—eligibility based on distress criteria in section 15E.194, Iowa Code (2001).**

*a. Requirements.* To be eligible for enterprise zone certification, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 1995 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 1990 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1990 and 1995.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 1990 census.

*b. Zone parameters.* Up to 1 percent of a county area may be certified as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land certified as enterprise zones, other than those zones certified pursuant to subrules 59.3(3), 59.3(4) and 59.3(6), shall not exceed in the aggregate 1 percent of the total county area. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to Iowa Code chapter 28E regarding the establishment of the enterprise zone.

**59.3(2) County—eligibility based on distress criteria in section 15E.194, Iowa Code (2003).**

*a. Requirements.* To be eligible for enterprise zone certification, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 2000 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 2000 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1995 and 2000.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 2000 census.

*b. Zone parameters.* Up to 1 percent of a county area may be certified as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land certified as enterprise zones, other than those zones certified pursuant to subrules 59.3(3), 59.3(4) and 59.3(6), shall not exceed in the aggregate 1 percent of the total county area. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to Iowa Code chapter 28E regarding the establishment of the enterprise zone.

**59.3(3) City—eligibility.**

*a. Requirements.* To be eligible for enterprise zone certification, a designated area within a city which includes at least three census tracts with at least 50 percent of the population in each tract located in the city, as shown by the 2000 certified federal census, must meet at least two of the following criteria:

(1) The area has a per capita income of \$12,648 or less based on the 2000 census.

(2) The area has a family poverty rate of 12 percent or higher based on the 2000 census.

(3) Ten percent or more of the housing units are vacant in the area.

(4) The valuations of each class of property in the designated area is 75 percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

(5) The area is a blighted area, as defined in Iowa Code section 403.17.

*b. Population limits.* A city which includes at least three census tracts with at least 50 percent of the population in each tract located in the city, as shown by the 2000 certified federal census, may request enterprise zone certification by the board. The zone shall consist of one or more contiguous census tracts, as determined in the most recent federal census, or alternative geographic units approved by the department, for that purpose. In creating an enterprise zone, an eligible city may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units otherwise meet the criteria on their own and the contiguous city agrees to be included in the enterprise zone.

*c. Zone parameters.* A city may establish more than one enterprise zone. The area meeting the requirements for eligibility for an enterprise zone shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be certified by the state as an enterprise zone.

**59.3(4) Transportation enterprise zone—eligibility.**

*a. Transportation enterprise zone requirements.* To be eligible for transportation enterprise zone certification, a designated area within a city which includes at least three census tracts with at least 50 percent of the population in each tract located in the city, as shown by the 2000 certified federal census, must be a blighted area as defined in Iowa Code section 403.17, but must not be agricultural land or property, and must include or be within four miles of at least three of the following:

- (1) A commercial service airport, as defined by the Iowa department of transportation.
- (2) A barge terminal or a navigable waterway, as defined by the Iowa department of transportation.
- (3) Entry to a rail line.
- (4) Entry to an interstate highway.
- (5) Entry to a commercial and industrial highway network as identified pursuant to Iowa Code section 313.2A.

*b. Transportation enterprise zone population limits.* A city which includes at least three census tracts with at least 50 percent of the population in each tract located in the city, as shown by the 2000 certified federal census, may request transportation enterprise zone certification by the board.

*c. Transportation enterprise zone parameters.* A city may establish more than one transportation enterprise zone. The area being designated as a transportation enterprise zone shall not exceed four square miles. The area meeting the requirements for eligibility for a transportation enterprise zone shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones.

*d. Transportation enterprise zone award restrictions.* In the period from July 1, 2007, through June 30, 2010, the cumulative total of benefits awarded to eligible businesses shall not exceed \$25 million per fiscal year. Value-added property tax exemption benefits provided by the city shall not count against the \$25 million. Transportation enterprise zones established pursuant to this subrule shall not be used to provide incentives for eligible housing businesses to construct new housing units or rehabilitate existing housing units.

**59.3(5) Certification procedures.**

*a. Request with supporting documentation.* All requests for certification shall be made using the application provided by the department and shall include the following attachments:

(1) A legal description of the proposed enterprise zone area and a detailed map showing the boundaries of the proposed enterprise zone.

(2) If the proposed county enterprise zone contains a city whose boundaries extend into an adjacent county, the resolution of the board of supervisors of the adjacent county approving the establishment of the zone and a copy of an executed 28E agreement.

(3) Resolution of the city council or board of supervisors, as appropriate, requesting certification of the enterprise zone(s). Included within this resolution may be a statement of the schedule of value-added property tax exemptions that will be offered to all eligible businesses that are approved for incentives and assistance. If a property tax exemption is made applicable only to a portion of the property within the enterprise zone, a description of the uniform criteria which further some planning objective that has been established by the city or county enterprise zone commission and approved by the eligible city or county must be submitted to the department. Examples of acceptable “uniform criteria” that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. “Planning objectives” may include, but are not limited to, land use, rehabilitation of distressed property, or brownfields remediation.

The city or county shall forward a copy of the official resolution listing the property tax exemption schedule(s) to the department and to the local assessor.

*b. Board review.* The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

*c. Notice of board action.* The department will provide notice to a city or county of the board’s certification, denial, or deferral of the city’s or county’s request for certification of an area as an enterprise zone. If an area is certified by the board as an enterprise zone, the notice will include the date of the zone certification and the date this certification expires.

*d. Amendments.* A certified enterprise zone may be amended at the request of the city or county that originally applied for the zone certification. Requests must be in writing and be received by the department prior to December 1, 2003, if the county is eligible pursuant to subrule 59.3(1) or prior to July 1, 2010, if the county or city is eligible pursuant to subrule 59.3(2), 59.3(3), or 59.3(4). Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, the reason an amendment is being requested, the number of acres the zone will contain if the amendment is approved, and a resolution of the city council or board of supervisors, as appropriate, requesting the amendment. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

A city requesting an amendment that consists of an area being added to the enterprise zone must include documentation that demonstrates that the area being added meets the eligibility requirements of subrule 59.3(3) or 59.3(4). A city requesting an amendment that consists of an area being removed from the enterprise zone must include documentation that demonstrates that the remaining area still meets the eligibility requirements of subrule 59.3(3) or 59.3(4).

An amendment shall not extend the zone's ten-year expiration date, as established when the zone was initially certified by the board or when the board approved an extension. The board will review the request and may approve, deny, or defer the proposed amendment. A county or city shall not be allowed to remove a portion of an enterprise zone that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

*e. Decertification.* A county or city may request decertification of an enterprise zone. Requests must be in writing and be received by the department prior to December 1, 2003, if the county is eligible pursuant to subrule 59.3(1) or prior to July 1, 2010, if the county or city is eligible pursuant to subrule 59.3(2), 59.3(3), or 59.3(4). Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, and a resolution of the city council or board of supervisors, as appropriate, requesting the decertification. Requests for enterprise zone decertification will be reviewed by the board and may be approved, denied or deferred. If the county or city requesting decertification designates a subsequent enterprise zone, the expiration date of the subsequent enterprise zone shall be the same as the expiration date of the decertified enterprise zone. A county or city shall not be allowed to decertify an enterprise zone that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

*f. Extensions.* Prior to the expiration of an enterprise zone, a city or county may apply for a one-time extension.

(1) Counties eligible under subrule 59.3(1) but not eligible under subrule 59.3(2). A county may request that the board extend the expiration date of a previously certified enterprise zone. The extended expiration date will be one year following the complete publication of the 2010 federal census, as determined by the department.

In applying for this one-time extension, the county may redefine the boundaries of the enterprise zone provided the size of the enterprise zone remains unchanged. A county shall not be allowed to redefine the boundaries of an enterprise zone if the redefinition would result in removing an area that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

(2) Counties eligible under subrule 59.3(2). A county may request that the board extend the expiration date of a previously certified enterprise zone by ten years. In applying for this one-time, ten-year extension, the county may redefine the boundaries of the enterprise zone provided the redefinition of the enterprise zone does not cause the county to exceed the 1 percent aggregate area limitation for enterprise zones. A county shall not be allowed to redefine the boundaries of an enterprise zone if the redefinition would result in removing an area that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

(3) Cities eligible under subrule 59.3(3). A city may request that the board extend the expiration date of a previously certified enterprise zone by ten years provided that at the time of the request, the enterprise zone meets the eligibility requirements established by paragraph 59.3(3)“a.” In applying for this one-time, ten-year extension, the city may redefine the boundaries of the enterprise zone provided that the redefined enterprise zone meets the eligibility requirements established in paragraph 59.3(3)“a.” A city shall not be allowed to redefine the boundaries of an enterprise zone if the redefinition would result in removing an area that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

(4) Extension requests. Extension requests shall be made using the form provided by the department and shall be accompanied by a resolution of the city council or board of supervisors, as appropriate, requesting the extension of the enterprise zone. The board will review requests for enterprise zone extensions. The board may approve, deny, or defer an extension request.

**59.3(6) City or county with business closure.**

*a. Requirements.* A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure or permanent layoff occurs involving the loss of full-time employees, not including retail employees, at one place of business totaling at least 1,000 employees or 4 percent of the county’s resident labor force based upon the most recent annual resident labor force statistics from the department of workforce development, whichever is lower.

*b. Zone parameters.* The enterprise zone may be established on the property of the place of business that has closed or imposed a permanent layoff, and the enterprise zone may include an area up to an additional three miles adjacent to the property. The closing business or business imposing a permanent layoff shall not be eligible to receive incentives or assistance under this program. The area meeting the requirements for enterprise zone eligibility under this subrule shall not be included for the purpose of determining the area limitation pursuant to Iowa Code section 15E.192, subsection 4.

*c. Certification procedures.* All requests for certification shall be made using the application provided by the department. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

*d. Amendments.* A city or county which designated an enterprise zone under this subrule on or after June 1, 2000, may request an amendment to include additional area within the enterprise zone. Requests must be in writing and be approved by the department within three years of the date the enterprise zone was originally certified. Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, and the number of acres the zone will contain if the amendment is approved. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

*e. Restrictions.* Enterprise zones established pursuant to this subrule shall not be used to provide incentives for eligible housing businesses to construct new housing units or rehabilitate existing housing units.

**261—59.4(15E) Enterprise zone commission.** Following notice of enterprise zone certification by the board, the applicant city or county shall establish an enterprise zone commission. The commission shall review applications from eligible businesses and eligible housing businesses located in the zone and forward approved applications to the department for final review and approval. A county eligible to designate enterprise zones which contains a city which is eligible to designate enterprise zones, upon mutual agreement between the board of supervisors and the city council and in consultation with the department, may elect to establish one enterprise zone commission to serve both the county and the city.

**59.4(1) Commission composition.**

*a. County enterprise zone commission.* A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses (including eligible housing businesses) located or requesting to locate within a certified enterprise zone. The enterprise zone commission shall consist of nine members. Five of these members shall be comprised of:

- (1) One representative of the county board of supervisors,
- (2) One member with economic development expertise selected by the department,
- (3) One representative of the county zoning board,
- (4) One member of the local community college board of directors, and
- (5) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The five members identified above shall select the remaining four members. If the enterprise zone is located in a county that does not have a county zoning board, the representatives identified in 59.4(1) "a"(1), (2), (4), and (5) shall select an individual with zoning expertise to serve as a member of the commission.

*b. City enterprise zone commission.* A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. A city which includes at least three census tracts with at least 50 percent of the population in each census tract located in the city, as shown by the 2000 federal census, in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance. The commission shall consist of nine members. Six of these members shall consist of:

- (1) One representative of an international labor organization,
- (2) One member with economic development expertise chosen by the department of economic development,
- (3) One representative of the city council,
- (4) One member of the local community college board of directors,
- (5) One member of the city planning and zoning commission, and
- (6) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The six members identified above shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission.

**59.4(2) Department review of composition.**

*a.* Once a county or city has established an enterprise zone commission, the county or city shall provide the department with the following information to verify that the commission is constituted in accordance with the Act and these rules:

- (1) The name and address of each member.
- (2) An identification of what group the member is representing on the commission.
- (3) Copies of the resolution or other necessary action of a governing body, as appropriate, by which a member was appointed to the commission.
- (4) Any other information that the department may reasonably request in order to permit it to determine the validity of the commission's composition.

*b.* If a city has established an enterprise zone commission prior to July 1, 1998, the city may petition to the department of economic development to change the structure of the existing commission. A petition to amend the structure of an existing city enterprise zone commission shall include the following:

- (1) The names and addresses of the members of the existing commission.
- (2) The date the commission was approved by the department.
- (3) The proposed changes the city is requesting in the composition of the commission.
- (4) Copies of the resolution or other necessary action of a governing body, as appropriate, by which a member was appointed to the commission.

**59.4(3) Commission policies and procedures.** Each commission shall develop policies and procedures which shall, at a minimum, include:

- a. Processes for receiving and evaluating applications from qualified businesses seeking to participate within the enterprise zone; and
- b. Operational policies of the commission such as meetings; and
- c. A process for the selection of commission officers and the filling of vacancies on the commission; and
- d. The designation of staff to handle the day-to-day administration of commission activities.
- e. Additional local eligibility requirements for businesses, if any, as discussed in subrule 59.9(1).

**261—59.5(15E) Eligibility and negotiations.**

**59.5(1) Program categories.** To participate in the enterprise zone program, a business must qualify under one of two categories: an eligible business or an eligible housing business. Refer to rule 261—59.6(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible business.” Refer to rule 261—59.8(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible housing business.”

**59.5(2) Negotiations.** The department reserves the right to negotiate the terms and conditions of an award and the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria, as applicable to the category under which the business is applying, to be used in the negotiations to determine the amount of tax incentives and assistance include but are not limited to:

- a. The number and quality of jobs to be created. Factors to be considered include but are not limited to full-time, career path jobs; number of jobs meeting or exceeding the qualifying wage threshold requirements described in 261—Chapter 174; turnover rate; fringe benefits provided; safety; skill level.
- b. The wage levels of the jobs to be created.
- c. The amount of capital investment to be made.
- d. The level of need of the business. Factors to be considered include but are not limited to the degree to which the business needs the tax incentives and assistance in order for the project to proceed. Methods of documenting need may include criteria such as financial concerns; risk of the business’s locating in or relocating to another state; or return on investment concerns.
- e. The economic impact and cost to the state and local area of providing tax incentives and assistance in relation to the public gains and benefits to be provided by the business. Factors to be considered include but are not limited to the amount of tax credits likely to be used by the business and the impact on the local and state tax base and economic base.
- f. Other state or federal financial assistance received or applied for by the business for the project.

**59.5(3) Limitation on negotiations.** Rescinded IAB 11/9/05, effective 12/14/05.

**261—59.6(15E) Eligible business.**

**59.6(1) Requirements.** A business which is or will be located, in whole or in part, in an enterprise zone is eligible to be considered to receive incentives and assistance under the Act if the business meets all of the following:

- a. *No closure or reduction.* The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone. This requirement does not prohibit a business from expanding its operation in an enterprise zone if existing operations of a similar nature in the state are not closed or substantially reduced.
- b. *No retail.* The business is not a retail business or a business whose entrance is limited by a cover charge or membership requirement.
- c. *Employee benefits.* The business offers or will offer a sufficient benefits package to its employees as defined in 261—Chapter 173.
- d. *Wage levels.* The business pays or will pay the qualifying wage threshold for the enterprise zone program as established in 261—Chapter 174 and defined in 261—Chapter 173. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than \$7.50 per hour.

The local enterprise zone commission may establish higher company eligibility wage thresholds if it so desires.

*e. Job creation or retention.* The business expansion or location must result in at least ten full-time project jobs. The time period allowed to create the jobs and the required period to retain the jobs are described in 261—Chapter 187.

*f. Capital investment.* The business makes a capital investment of at least \$500,000.

*g. Location within zone.* If the business is only partially located in an enterprise zone, the business must be located on contiguous land.

**59.6(2) Additional information.** In addition to meeting the requirements under subrule 59.6(1), an eligible business shall provide the enterprise zone commission with all of the following:

*a.* The long-term strategic plan for the business, which shall include labor and infrastructure needs.  
*b.* Information dealing with the benefits the business will bring to the area.  
*c.* Examples of why the business should be considered or would be considered a good business enterprise.

*d.* The impact the business will have on other Iowa businesses in competition with it. The enterprise zone commission shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The enterprise zone commission shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

*e.* A report describing all violations of environmental law or worker safety law within the last five years. If, upon review of the application, the enterprise zone commission finds that a business has a record of violations of the law, statutes, rules, or regulations that tends to show a consistent pattern, the enterprise zone commission shall not make an award of financial assistance to the business unless the commission finds either that the violations did not seriously affect public health, public safety, or the environment, or, if such violations did seriously affect public health, public safety, or the environment, that mitigating circumstances were present.

**59.6(3) Benefits.** The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The following incentives and assistance may be available to an eligible business within a certified enterprise zone, subject to the amount of incentives and assistance negotiated by the department with the eligible business and agreed upon as described in an executed agreement, only when the average wage of all the new project jobs meets the minimum wage requirements of 59.6(1)“d”:

*a. New jobs supplemental credit.* An approved business shall receive a new jobs supplemental credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business, as provided in Iowa Code section 15E.197. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Additional new jobs created by the project, beyond those that were agreed to in the original agreement as described in 261—59.12(15E), are eligible for the additional 1½ percent withholding credit as long as those additional jobs meet the local enterprise zone wage eligibility criteria and are an integral part or a continuation of the new location or expansion. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E. Businesses eligible for the new jobs training program are those businesses engaged in interstate commerce or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but exclude retail, health or professional services.

*b. Value-added property tax exemption.*

(1) The county or city for which an eligible enterprise zone is certified may exempt from property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption

shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business under this program. The amount of value added for purposes of Iowa Code section 15E.196 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone.

(2) If an exemption is made applicable only to a portion of the property within an enterprise zone, there must be approved uniform criteria which further some planning objective established by the city or county zone commission. These uniform criteria must also be approved by the eligible city or county. Examples of acceptable “uniform criteria” that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. “Planning objectives” may include, but are not limited to, land use, rehabilitation of distressed property, or brownfields remediation.

(3) The exemption may be allowed for a period not to exceed ten years beginning the year value added by improvements to real estate is first assessed for taxation in an enterprise zone.

(4) This value-added property tax exemption may be used in conjunction with other property tax exemptions or other property tax-related incentives such as property tax exemptions that may exist in Urban Revitalization Areas or Tax Increment Financing (TIF). Property tax exemptions authorized under Iowa Code chapter 427B may not be used, as stated in Iowa Code section 427B.6, in conjunction with property tax exemptions authorized by city council or county board of supervisors within the local enterprise zone.

*c. Investment tax credit and insurance premium tax credit.*

(1) Investment tax credit. An eligible business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. The credit may be used against a tax liability imposed for individual income tax, corporate income tax, franchise tax, or against the moneys and credits tax imposed in Iowa Code section 533.24.

1. Five-year amortization period. For projects approved on or after July 1, 2005, the tax credit shall be amortized equally over a five-year period which the department, in consultation with the eligible business, will define. The five-year amortization period will be specified in the agreement referenced in rule 261—59.13(15E).

2. Flow-through of tax credits. If the business is a partnership, subchapter S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed.

3. Seven-year carryforward. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

4. Refund of unused tax credit. Subject to prior approval by the department in consultation with the department of revenue, an eligible business whose project primarily involves the production of value-added agricultural products or biotechnology-related processes may elect to apply for a refund for all or a portion of an unused tax credit.

5. IRS Section 521. For purposes of this paragraph, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code which is not required to file an Iowa corporate income tax return.

6. Maximum capital expenditures stated in agreement. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

(2) Insurance premium tax credit. The insurance premium tax credit benefit is available for a business that submits an application for enterprise zone participation on or after July 1, 1999. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15E.196.

1. Five-year amortization period. For projects approved on or after July 1, 2005, the tax credit shall be amortized equally over a five-year period which the department, in consultation with the eligible business, will define. The five-year amortization period will be specified in the agreement referenced in rule 261—59.13(15E).

2. Credit of up to 10 percent of new investment. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone.

3. Seven-year carryforward. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

4. Maximum capital expenditures as stated in agreement. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.

(3) Eligible capital expenditures. For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the enterprise zone program are:

1. The costs of machinery and equipment as defined in Iowa Code section 427A.1(1)“e” and “j” purchased for use in the operation of the eligible business, the purchase prices of which have been depreciated in accordance with generally accepted accounting principles;

2. The cost of improvements made to real property which is used in the operation of the eligible business; and

3. The annual base rent paid to a third-party developer for a period equal to the term of lease agreement but not to exceed ten years, provided that the cumulative costs of the base rent payments for that period do not exceed the cost of the land and the third-party developer’s costs to build or renovate the building. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years.

(4) Real property. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 and for business applications received on or after May 26, 2000, for purposes of the insurance premium tax credit claimed under Iowa Code section 15.333A, subsection 1, the purchase price of real property and any existing buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 or under Iowa Code section 15.333A, subsection 1, the income tax liability, or where applicable the insurance premium tax liability, of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

1. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one year after being placed in service.

2. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two years after being placed in service.

3. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three years after being placed in service.

4. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four years after being placed in service.

5. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five years after being placed in service.

(5) Refunds. An eligible business whose project primarily involves the production of value-added agricultural products and whose application was approved by the department on or after May 26, 2000, or whose project primarily involves biotechnology-related processes and whose application was approved

by the department on or after July 1, 2005, may elect to receive as a refund all or a portion of an unused investment tax credit.

1. The department will determine whether a business's project primarily involves the production of value-added agricultural products or biotechnology-related processes. Effective July 1, 2001, an eligible business that elects to receive a refund shall apply to the department for a tax credit certificate.

2. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the United States Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.

3. The department will make public by June 1 of each year the total number of requests for tax credit certificates and the total amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time.

4. The department shall not issue tax credit certificates which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an eligible business will be prorated based upon the total amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each eligible business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an eligible business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000:

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500,000.$$

5. Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code. For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates. Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. An eligible business may apply for tax credit certificates once each year for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. For example, an eligible business which completes a project in October 2001 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2002. If, because of the proration of the \$4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 for up to seven years or until the credit is depleted, whichever occurs first.

*d. Research activities credit.* A business is eligible to claim a research activities credit as provided in Iowa Code section 15.335. This benefit is a corporate tax credit for increasing research activities in

this state during the period the business is participating in the program. For purposes of claiming this credit, a business is considered to be “participating in the program” for a period of ten years from the date the business’s application was approved by the department. This credit equals 6½ percent of the state’s apportioned share of the qualifying expenditures for increasing research activities. The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

For projects approved on or after July 1, 2005, “research activities” includes the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. A renewable energy generation component will no longer be considered innovative when more than 200 megawatts of installed effective name plate capacity has been achieved. Research activities credits awarded under this program and the high quality job creation program for innovative renewable energy generation components shall not exceed a total of \$1 million.

*e. Refund of sales, service and use taxes paid to contractors or subcontractors.*

(1) A business is eligible for a refund of sales, service and use taxes paid to contractors and subcontractors as authorized in Iowa Code section 15.331A.

1. An eligible business may apply for a refund of the sales, service and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the enterprise zone.

2. Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business must, within one year after project completion, make an application to the department of revenue. For new manufacturing facilities, “project completion” means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the enterprise zone is at least 50 percent of the initial design capacity of the facility. For existing facilities, “project completion” means the date of completion of all improvements included in the enterprise zone project.

(2) If the project is the location or expansion of a warehouse or distribution center in the enterprise zone, the approved business may be entitled to a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall, within one year of project completion, make written application to the department for a refund. The application must include the refund amount being requested and documentation such as invoices, contracts or other documents which substantiate the requested amount. The department, in consultation with the department of revenue, will validate the refund amount and instruct the department of revenue to issue the refund.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality job creation program, new capital investment program, new jobs and income program, and enterprise zone program benefits shall not exceed \$500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business’s application does not receive a refund or tax credits due to the limitation of \$500,000 per fiscal year, the approved business’s application shall be considered in the succeeding fiscal year.

*f. New jobs insurance premium tax credit.* Rescinded IAB 11/9/05, effective 12/14/05.

*g. Limitation on receiving incentives.* Rescinded IAB 11/9/05, effective 12/14/05.

**59.6(4) Duration of benefits.** An enterprise zone designation shall remain in effect for ten years following the date of certification. Any state or local incentives or assistance that may be conferred must

be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration of the zone designation.

**59.6(5) Application review and submittal.** Eligible businesses shall first submit applications for enterprise zone program benefits to the local enterprise zone commission. Commission-approved applications shall be forwarded to the department for final review and approval.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—59.7(15E) Alternative eligible business.** Rescinded IAB 9/17/03, effective 10/22/03.

**261—59.8(15E) Eligible housing business.** An eligible housing business includes a housing developer, housing contractor, or nonprofit organization.

**59.8(1) Requirements.** A housing business shall satisfy all of the following as conditions to receiving the benefits described in this rule.

*a.* The housing business must build or rehabilitate either:

(1) A minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone, or

(2) One multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.

For purposes of this subrule, rehabilitation means any project in which the costs of improvements to the property are equal to or greater than 25 percent of the acquisition cost of the property.

*b.* The single-family homes or dwelling units which are rehabilitated or constructed by the housing business shall include the necessary amenities. When completed and made available for occupancy, the single-family homes or dwelling units shall meet the United States Department of Housing and Urban Development's housing quality standards and local safety standards.

*c.* The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business's becoming ineligible and subject to the repayment requirements and penalties in the agreement described in rule 261—59.13(15E).

*d.* An eligible housing business shall provide the enterprise zone commission with all of the following information:

(1) The long-term plan for the proposed housing development project, including labor and infrastructure needs.

(2) Information dealing with the benefits the proposed housing development project will bring to the area.

(3) Examples of why the proposed development project should be considered a good housing development project.

(4) An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violations have occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

(5) Information showing the total costs and sources of project financing that will be utilized for the new investment directly related to housing for which the business is seeking approval for a tax credit provided in subrule 59.8(2), paragraph "a."

(6) The names of the partners if the business is a partnership, the names of the shareholders if the business is an S corporation, or the names of the members if the business is a limited liability company. The amount of each partner's, shareholder's or member's expected share of the percentage of benefits should be included.

**59.8(2) Benefits.** A business that qualifies under the "eligible housing business" category may be eligible to receive the following benefits:

*a. Investment tax credit.* An eligible housing business may claim a tax credit up to a maximum of 10 percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise

zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.

(1) New investment which is directly related to the building or rehabilitating of homes includes, but is not limited to, the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and material provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

(2) New investment does not include the machinery, equipment, or hand or power tools necessary to build or rehabilitate homes.

(3) In determining the amount of tax credits to be awarded to a project, the department shall not include the portion of the project cost financed through federal, state, and local government tax credits, grants, and forgivable loans.

(4) The tax credit shall not exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

(5) This tax credit may be used to reduce the tax liability imposed under Iowa Code chapter 422, division II, III, or V, or chapter 432. The tax credit may be taken on the tax return for the tax year in which the project is certified for occupancy. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust, except in projects using low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. The approved housing business using federal Section 42 tax credits may designate each owner's or participant's share or percentage of the benefits.

(6) The department shall issue tax credit certificates once per year or when the department determines it to be necessary and appropriate to approve housing businesses eligible to receive the housing enterprise zone tax credit. The eligible housing business may claim the tax credit by attaching the certificate to the business's tax return for the year in which the housing units are completed.

(7) If the approved housing business is using federal low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the project, the department shall issue a transferable tax credit certificate to the eligible housing business. The amount of any replacement tax credit certificates requested by the housing business will be based on documentation provided to the department by the applicant or by the Iowa finance authority and should be consistent with the amount contained in the project's 8609 CPA Certification on file with the Iowa finance authority.

(8) Housing enterprise zone tax credit certificates issued to eligible housing businesses also using low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the project may be transferred to any person. Within 90 days of the sale of the housing enterprise zone tax credit, the eligible housing business must return the tax credit certificate issued by the department so that replacement tax credit certificate(s) can be issued. The original tax credit certificate shall be accompanied by a written statement from the eligible housing business which contains the names, tax identification numbers, and addresses of the taxpayers to which the tax credits are being transferred, along with the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within 30 days of receiving the eligible housing business's tax credit certificate and written statement, the department shall issue replacement tax credit certificate(s).

(9) The tax credit certificate shall also be transferable if the housing development is located in a brownfield site as defined in Iowa Code section 15.291 or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. Not more than \$3 million worth of tax credits for housing developments that are located in a brownfield site as defined in Iowa Code section 15.291 or housing developments located in a blighted area as defined in Iowa Code section 403.17 shall be

transferred in a calendar year. The \$3 million annual limit does not apply to tax credits awarded to an eligible business having low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. The department may approve an application for tax credit certificates for transfer from an eligible housing business located in a brownfield site as defined in Iowa Code section 15.291 or in a blighted area as defined in Iowa Code section 403.17 that would result in the issuance of more than \$3 million of tax credit certificates for transfer, provided that the department, through negotiation with the eligible housing business, allocates those tax credit certificates for transfer over more than one calendar year. The department shall not issue more than \$1,500,000 in tax credit certificates for transfer to any one eligible housing business located in a brownfield site as defined in Iowa Code section 15.291 or in a blighted area as defined in Iowa Code section 403.17. If \$3 million in tax credit certificates for transfer have not been issued at the end of a calendar year, the remaining tax credit certificates for transfer may be issued at the end of a calendar year, the remaining tax credit certificates for transfer may be issued in advance to an eligible housing business scheduled to receive a tax credit certificate for transfer in a later calendar year. Anytime the department issues a tax credit certificate for transfer which has not been allocated at the end of a calendar year, the department may prorate the remaining certificates to more than one eligible applicant. If the entire \$3 million of tax credit certificates for transfer is not issued in a given calendar year, the remaining amount may be carried over to a succeeding calendar year.

(10) The department will process requests for transfer of the tax credit and issuance of the replacement tax credit certificates for housing developments that are located in brownfield sites as defined in Iowa Code section 15.291 or blighted areas as defined in Iowa Code section 403.17 at the time of application or in writing each calendar year. Eligible requests for transfer of these credits will be considered in the order they are received. The transfer of the credit by replacement tax credit certificate will be limited to \$3 million per calendar year and \$1,500,000 per development per calendar year. Requests received after the \$3 million limit is reached will be considered for the following year's allocation after any previously approved requests or negotiated allocations of the credit remaining from the current or previous years have been processed. When housing enterprise zone benefits are awarded to one housing business in an amount exceeding the annual transferable limit of \$1,500,000 per year, the housing business may negotiate with the department to receive the tax credit benefits from future years' limits when possible. These limits do not apply to housing tax credits authorized by Section 42 of the Internal Revenue Code or to other housing enterprise zone developments not located in brownfield sites as defined in Iowa Code section 15.291 or blighted areas as defined in Iowa Code section 403.17.

*b. Sales, service, and use tax refund.* An approved housing business shall receive a sales, service, and use tax refund for taxes paid by an eligible housing business including an eligible housing business acting as a contractor or subcontractor, as provided in Iowa Code section 15.331A.

**59.8(3) Application submittal and review.** An eligible housing business shall first submit an application to the commission for approval. The commission shall forward applications that it has approved to receive benefits and assistance to the department for final review and approval.

**261—59.9(79GA,ch141) Eligible development business.** Rescinded IAB 11/9/05, effective 12/14/05.

**261—59.10(15E) Commission review of businesses' applications.**

**59.10(1) Additional commission eligibility requirements.** Under the Act, a commission is authorized to adopt additional eligibility requirements related to compensation and benefits that businesses within a zone must meet in order to qualify for benefits. Additional local requirements that may be considered could include, but are not limited to, the types of industries or businesses the commission wishes to receive enterprise zone benefits; requirements that preference in hiring be given to individuals who live within the enterprise zone; higher wage eligibility threshold requirements than would otherwise be required; higher job creation eligibility threshold requirements than would otherwise be required; the level of benefits required; local competition issues; or any other criteria the commission deems appropriate. If a commission elects to adopt more stringent requirements than those contained in the

Act and these rules for a business to be eligible for incentives and assistance, these requirements shall be submitted to the department.

**59.10(2) Application.** The department will develop a standardized application that it will make available for use by a business applying for benefits and assistance as an eligible business, an eligible housing business or an eligible development business. The commission may add any additional information to the application that it deems appropriate for a business to qualify as an eligible business, an eligible housing business or an eligible development business. If the commission determines that a business qualifies for inclusion in an enterprise zone and that it is eligible for benefits under the Act, the commission shall submit an application for incentives or assistance to the department.

**261—59.11(15E) Other commission responsibilities.**

**59.11(1)** Commissions have the authority to adopt a requirement that preference in hiring be given to individuals who live within the enterprise zone. If it does so, the commission shall work with the local workforce development center to determine the labor availability in the area.

**59.11(2)** Commissions shall examine and evaluate building codes and zoning in enterprise zones and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

**261—59.12(15E) Department action on eligible applications.** The department may approve, deny, or defer applications from qualified businesses. In reviewing applications for incentives and assistance under the Act, the department will consider the following:

**59.12(1) Compliance with the requirements of the Act and administrative rules.** Each application will be reviewed to determine if it meets the requirements of the Act and these rules. Specific criteria to be reviewed include, but are not limited to: medical and dental insurance coverage; wage levels; number of jobs to be created; and capital investment level.

**59.12(2) Competition.** The department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives and assistance under this program, to ensure an overall economic gain to the state.

**59.12(3) Displacement of workers.** The department will make a good-faith effort to determine the probability that the proposed incentives will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

**59.12(4) Violations of law.** The department will review each application to determine if the business has a record of violations of law as described in 261—Chapter 172.

**59.12(5) Commission's recommendations and additional criteria.** For each application from a business, the department will review the local analysis (including any additional local criteria) and recommendation of the enterprise zone commission in the zone where the business is located, or plans to locate.

**59.12(6) Other relevant information.** The department may also review an application using factors it reviews in other department-administered financial assistance programs which are intended to assess the quality of the jobs pledged.

**59.12(7) Negotiations.** The department may enter into negotiations regarding the amount of tax incentives and assistance the business may be eligible to receive. The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria to be used in the negotiations to determine the amount of tax incentives and assistance are as described in subrule 59.5(2) and are subject to the limitations stated in subrule 59.5(3).

**261—59.13(15E) Agreement.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—59.14(15E) Compliance; repayment requirements; recovery of value of incentives.** Rescinded IAB 7/4/07, effective 6/15/07.

These rules are intended to implement Iowa Code sections 15.333, 15.333A, and 15E.191 to 15E.196 and 2009 Iowa Acts, Senate File 344.

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CHAPTER 60  
ENTREPRENEURIAL VENTURES  
ASSISTANCE (EVA) PROGRAM

**261—60.1(15) Purpose and administrative procedures.**

**60.1(1) Purpose.** The department of economic development administers the entrepreneurial ventures assistance (EVA) program. The purpose of the entrepreneurial ventures assistance program is to encourage the development of entrepreneurial venture planning and managerial skills in conjunction with the delivery of a financial assistance program for business start-ups and expansions.

**60.1(2) Administrative procedures.** The EVA program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.

**261—60.2(15) Definitions.** In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the EVA program:

*“Early-stage industry company”* or *“early-stage company”* means a company with three years or less of experience in a particular industry.

*“Eligible applicant”* means an individual or business that has consulted with and obtained a letter of endorsement from an IDEED-approved business accelerator or from another IDEED-recognized entrepreneurial development organization.

*“Eligible business”* means a start-up company, an early-stage company, or an existing company that is developing a new product or technology.

*“EVA”* means the entrepreneurial ventures assistance program, authorized by Iowa Code sections 15.338 and 15.339.

**261—60.3(15) Eligibility requirements.**

**60.3(1)** In order to be eligible for assistance, the business, or proposed business, must be located in the state of Iowa.

**60.3(2)** If the business is a sole proprietorship or a partnership, all applicable business owners must apply. If the business is a limited liability company, a limited liability partnership, or a corporation, the application must be submitted and signed by an individual who has been authorized by the business to do so.

**60.3(3)** In order to be eligible for assistance, the business owner or owners (or appropriate individual(s) in a limited liability company, limited liability partnership or corporation) must consult with and obtain a letter of endorsement from an IDEED-approved business accelerator or from another recognized entrepreneurial development organization such as a John Pappajohn Entrepreneurial Center (JPEC), a Small Business Development Center (SBDC), or an equivalent organization recognized by IDEED.

**60.3(4)** In order to be eligible for assistance, the individual or business must have a business plan which details the business's growth strategy, management team (if applicable), production/management plan, marketing plan, financial plan, and other standard elements of a business plan.

**261—60.4(15) Financial assistance.** Applicants may apply to IDEED for financial assistance to assist with their business start-up or early-stage growth. The applicant may request up to \$250,000 for start-up or early-stage growth activities to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. Assistance will generally be made in staged investments with amounts to be determined by company development, growth, and defined milestones. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, or software, or for working capital needs, or other business expenses deemed reasonable and appropriate by IDEED. Awards will be in the form of an equitylike investment (e.g., royalty agreement, deferred loan). A single recipient is limited to \$250,000 in total financial assistance.

**261—60.5(15) Technical assistance.** Applicants may also apply for assistance in paying for consulting, or technical assistance, either in conjunction with the request for financial assistance, or after a period of time that the business has been in operation. Technical assistance of this nature is limited to no more than \$25,000 per applicant.

**261—60.6(15) Application process.** Applications must be submitted in the format required by the department. Applications, the business plan, and related material shall be submitted on line or by mail to Entrepreneurial Ventures Assistance Program, Division of Business Development, Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

**261—60.7(15) Review criteria.**

**60.7(1)** Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further action on the request.

**60.7(2)** The applications will then be reviewed for content of the business plan, and an evaluation of the business's potential viability and potential for growth. The department may consult with the JPEC centers, or other knowledgeable agencies or individuals, as a part of the review process.

**60.7(3)** The following items will be reviewed and evaluated:

*a. Type of business.*

(1) Highest priority will be given to businesses in sectors of the Iowa economy with the greatest start-up and growth potential for Iowa, including but not limited to:

1. Biotechnology (including drugs and pharmaceuticals and value-added agricultural products);
2. Recyclable materials;
3. Software development and computer-related products;
4. Advanced materials;
5. Advanced manufacturing; and
6. Medical and surgical instruments.

(2) Assistance may be provided to industries other than those listed in "1" through "6" above; however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry's benefit to Iowa's economic base will include:

1. The majority of the products or services produced by the industry are exported out of Iowa;
  2. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;
  3. The goods or services produced by this industry diversify Iowa's economy;
  4. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;
  5. The industry shows potential for future growth;
  6. The functions of the industry do not produce harmful effects for Iowa's natural environment;
- and
7. Whether the average wages of the majority of the occupations in the industry are above the statewide average wage.

Businesses engaged in retail sales, personal services, consulting, franchises, the provision of health care or other professional services, and distributors of products or services will not be considered targeted industries and are not eligible for this program.

*b. Management team and management expertise.* Factors considered here would be whether the applicant(s) has a background (including education, training, work experience, and other factors) which

will be helpful and useful in the business in question. Also considered would be the degree to which the applicant's background is fully documented.

*c. Business capitalization.* Factors considered here would be the original sources of financing for the business. Although all projects must have at least 50 percent of their financing from sources other than the EVA program, preference would be given to those applications where the other sources of financing were even higher than 50 percent.

*d. Strength of business plan.* Factors considered here would be the quality of the business plan and how well it addresses all elements of the business, such as:

1. A description of the company and the overall industry;
2. The product and production plan;
3. The market, competition, and the marketing strategy;
4. The management team and business operations;
5. Patent issues (if applicable), critical risks and problems; and
6. Financial information and plan.

The strength of the business plan will be the most important factor in the evaluation and rating of applications. Rating factors in paragraphs "a," "b," and "c" above will be evaluated as either satisfactory or not satisfactory. However, the business plan will be rated on an actual numerical or comparative scale. Those applications which are satisfactory on factors in paragraphs "a," "b," and "c" above and which rate highest on strength of business plan will be funded first.

**261—60.8(15) Negotiation, decision, and award process.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—60.9(15) Monitoring, reporting, and follow-up.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—60.10(15,83GA,SF344) Applicability of EVA program after July 1, 2009.**

**60.10(1)** Effective July 1, 2009, the EVA program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

**60.10(2)** For awards made prior to July 1, 2009, the rules of 261—Chapter 60 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code sections 15.338 and 15.339.

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CHAPTER 61  
PHYSICAL INFRASTRUCTURE ASSISTANCE PROGRAM (PIAP)

**261—61.1(15E) Purpose and administrative procedures.**

**61.1(1) Purpose.** The purpose of the physical infrastructure assistance program (PIAP) is to provide financial assistance for the physical infrastructure necessary to aid in community or business development or redevelopment projects which involve substantial investment; provide for the opportunity for creating quality, high-wage jobs; and have statewide impact.

**61.1(2) Administrative procedures.** The PIAP program is subject to the requirements of the department's rules located in 261—Chapters 171 through 175 and 261—Chapters 187 through 189.

**261—61.2(15E) Eligible activities.**

**61.2(1)** Eligible activities for assistance include, but are not limited to, physical infrastructure improvements of:

- a. Any mode of transportation infrastructure; or
- b. Public works and utilities such as water, sewer, power, or telecommunications; or
- c. Physical improvements which mitigate, prevent, or eliminate environmental contaminants.

**61.2(2)** The department may also fund other activities deemed appropriate and consistent with program purposes.

**261—61.3(15E) Eligibility requirements.** To be eligible for program funds a business shall, as a result of the proposed project, demonstrate that it meets each of the following requirements:

**61.3(1) Quality, high-wage jobs.** A business shall create or retain quality, high-wage, full-time jobs or provide the foundation for creation of such jobs. The quality of the jobs will be measured by factors such as the wage level and benefits provided.

**61.3(2) Substantial capital investment.** A business shall make a substantial private capital investment in the project. Capital investment is defined as the costs associated with land acquisition, site development, building construction or improvements, fixtures, machinery and equipment.

**61.3(3) Statewide impacts.** An applicant shall show, as a result of the proposed project, significant beneficial impacts to the state.

**61.3(4) No closure or reduction in operations.** A business shall not close or substantially reduce operations at one location in Iowa and relocate substantially the same operation elsewhere in the state if the closure or reduction results in loss of employment.

**61.3(5) Other funding sources unable to assist.** The business's project must be of a size, nature or scope that the project could not be assisted through, or eligible for, financial assistance for the entirety of the project from other existing private, local, or state funds or programs.

**261—61.4(15E) Application procedures.**

**61.4(1) Application required.** To access program funds, an application must be submitted in the format specified by the department. Applications will be accepted from a city or county on behalf of the city or county, a nonprofit local development corporation, publicly owned utility, private utility, private developer or redeveloper. A business may also submit an application on its own behalf. Applicants other than a city or county shall obtain formal support from the city or county where the project is to be located.

**61.4(2) Application contents.** Applications shall include the following:

a. A project description including the private activity involved and the physical infrastructure affected.

b. A description of the consistency of the proposed project with state and local policies and plans for development. Project coordination with other physical infrastructure projects in the area shall also be included in this project description.

c. An identification of the number of jobs to be created or retained as a result of the project and an explanation of why they are considered quality, high-wage jobs. The explanation shall include the job classifications, the number of jobs that meet or exceed the qualifying wage threshold described in

261—Chapter 174, and benefits to be provided to the employees. If no jobs are to be created or retained as a direct result of the project, the applicant shall provide a description of how the project creates the foundation for the creation of high-quality jobs in the future.

*d.* An identification of the amount, terms, and sources of all proposed public and private investments that the project will leverage and a statement concerning whether the other financing has been secured or is still to be arranged.

*e.* Cost estimates for all project activities.

*f.* A time frame within which the project will be completed.

*g.* A description of the immediate (within 24 months) impacts as a result of the project.

*h.* A description of the long-term (beyond 24 months), speculative impacts as a result of the project.

*i.* A description of statewide impacts as a result of the project.

*j.* An explanation as to why the project could not be entirely assisted through, or is not eligible for, financial assistance from other existing private, local, or state funds or programs.

*k.* The type of financing (e.g., loan, forgivable loan) sought and the amount of assistance requested.

*l.* Signed acknowledgements from the city or county, or both, and the business stating that the project is supported and will occur if PIAP funding is provided.

*m.* Current company financials.

**261—61.5(15E) Application review criteria, performance measures.**

**61.5(1)** Quality of the jobs. In determining the quality of the jobs, the department will consider the wage levels, benefit package, turnover rate, full-time and career positions, and other relevant factors.

**61.5(2)** Substantiality of the capital investment pledged by the business.

**61.5(3)** Closure or relocation of the business's operations and any resulting loss of employment.

**61.5(4)** Access to other funding. The department will review the application to assess whether the project could reasonably be funded under other existing private, local, or state funds or programs.

**61.5(5)** The number of jobs to be created or retained or how the project contributes to the future creation of high-quality jobs.

**61.5(6)** The amount, terms, and sources of all proposed public and private investments that the project will leverage.

**61.5(7)** The immediate and long-term impacts the proposed project will have on the economy of the community and the state.

**61.5(8)** The financial need of the business.

**61.5(9)** The degree of coordination the project has with state and local development plans.

**61.5(10)** The feasibility of the project.

**61.5(11)** Any other information about the business that has a bearing on the likely success of the project.

**61.5(12)** Each fiscal year the department may allocate up to \$5 million from the Iowa values fund to the PIAP program for eligible projects that shall not be subject to job and wage requirements established in Iowa Code section 15G.112. The department will establish performance measures for projects funded through this allocation. Performance measures may include but are not limited to the requirement of tenant businesses involved in business infrastructure projects to meet minimum job and wage requirements pursuant to Iowa Code section 15G.112, the requirement that a certain percentage of building space resulting from the project be leased to business tenants, documentation that the project is part of a larger redevelopment effort, or other measures deemed appropriate by the department. Performance measures for such projects will be determined at the time of award and incorporated into any contract between the department and the applicant. Performance measures shall be met within three years of the completion of the project.

**261—61.6(15E) Award process.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—61.7(15E) Forms of assistance available; award amount.**

**61.7(1)** *Forms of assistance.* Funding is available for providing assistance in the form of a loan, forgivable loan, loan guarantee, cost-share, or any combination deemed to be the most efficient in facilitating the infrastructure project.

**61.7(2)** *Amount of award.* The maximum award per project shall not exceed \$1 million. The director may waive this award limit upon a showing that the business exceeds the eligibility requirements for the program; or the wages to be paid are in excess of those paid in the community or the industry; or the project will bring a substantial economic benefit to the community or the state. If an award would exceed the \$1 million level, the director shall advise and consult with the IDED board prior to approving a waiver of the award limit. Any award in excess of \$1 million shall be secured by an irrevocable letter of credit, unless funded through special allocation of PIAP funds, up to \$5 million, established in subrule 61.5(12).

**261—61.8(15E) Program administration.** Rescinded IAB 7/4/07, effective 6/15/07.

**261—61.9(15E) Applicability of PIAP program after July 1, 2009.**

**61.9(1)** Effective July 1, 2009, the PIAP program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

**61.9(2)** For awards made or contracts entered into prior to July 1, 2009, the rules of 261—Chapter 61 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

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CHAPTER 68  
HIGH QUALITY JOBS PROGRAM (HQJP)

**261—68.1(15) Administrative procedures and definitions.**

**68.1(1) *Administrative procedures.*** The HQJP is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

**68.1(2) *Definitions.*** In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the HQJP:

“*Act*” means Iowa Code sections 15.326 to 15.337 as amended by 2009 Iowa Acts, Senate File 344.

“*Annual base rent*” means the business's annual lease payment minus taxes, insurance and operating or maintenance expenses.

“*Biotechnology-related processes*” means the use of cellular and biomolecular processes to solve problems or make products. For purposes of this definition, farming activities shall not be included.

“*Community*” means a city, county, or other entity established pursuant to Iowa Code chapter 28E.

“*Contractor or subcontractor*” means a person who contracts with the eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility of the eligible business.

“*Eligible business*” means a business meeting the conditions of Iowa Code section 15.329 as amended by 2009 Iowa Acts, Senate File 344, section 12.

“*High quality jobs*” means created or retained jobs that meet the wage requirements established in subrule 68.2(4) and subrules 68.2(7) and 68.2(8) when applicable.

“*Program*” means the high quality jobs program.

“*Project*” means the activity, or set of activities, proposed in the application by the business which will result in accomplishing the goals of the program and for which the business is requesting tax incentives and assistance. A project shall include the start-up, location, expansion, or modernization of a business.

“*Value-added agricultural products*” means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—68.2(15) Eligibility requirements.**

**68.2(1) *Community approval.*** If the qualifying investment is \$10 million or more, the community in which the business's project is or will be located shall approve by ordinance or resolution the start-up, location, expansion, or modernization of the business for purposes of receiving tax incentives and assistance under this program.

**68.2(2) *Closures or relocations.*** The business shall not close or substantially reduce operations in one area of this state and relocate substantially the same operations in a community in another area of this state. This subrule shall not be construed to prohibit the business from expanding its operations in a community if existing operations of a similar nature in this state are not closed or substantially reduced.

**68.2(3) *No retail or service businesses.*** The business shall not be a retail or service business. For purposes of this subrule, a service business is a business providing services to a local consumer market which does not have a significant proportion of its sales coming from outside the state.

**68.2(4) *Created and retained jobs.*** The business shall create or retain jobs as part of a project.

a. The business shall pay the qualifying wage threshold for HQJP as established in 261—Chapter 174.

b. If the business is creating jobs, the business shall demonstrate that the jobs will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, at least 130 percent of the qualifying wage threshold by the project completion date, and at least 130 percent of the qualifying wage threshold until the maintenance period completion date.

c. If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 130 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

**68.2(5) *Determination of sufficient benefits.*** The business shall provide a sufficient package of benefits to each employee holding a created or retained job. The business shall offer a sufficient benefits package to its employees as defined in 261—Chapter 173.

**68.2(6) *Sufficient fiscal impact.*** The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

**68.2(7) *Violations of law.*** If the department finds that a business has a record of violations of law over a period of time that tends to show a consistent pattern as described in 261—Chapter 172, the business shall not qualify for tax incentives and assistance under this program.

**68.2(8) *Competition.*** The department shall consider the impact of the proposed project on other Iowa businesses in competition with the business that is seeking tax incentives and assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business that is seeking tax incentives and assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will negatively impact other existing Iowa businesses including but not limited to displacing employees of the existing business.

**68.2(9) *Other benefits.*** A business may seek benefits and assistance for its project from other applicable federal, state, and local programs in addition to those provided in this program. However, a business which has received assistance for its project from the wage-benefit tax credit program or the enterprise zone program shall not be eligible for tax incentives and assistance under this program. A business which has received assistance for its project from the new jobs and income program or the new capital investment program shall not be eligible for tax incentives and assistance under this program for the same project. However, the business may receive tax incentives and assistance under this program for subsequent projects.

**68.2(10) *Ineligibility—no high quality jobs created or retained.*** If a project is creating or retaining jobs, but none are high quality jobs, then the project is not eligible to receive benefits and assistance under this program.

[**ARC 7557B**, IAB 2/11/09, effective 3/18/09; **ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

### **261—68.3(15) Application process and review.**

**68.3(1) *Application.*** The department shall develop a standardized application and make it available to a business applying for tax incentives and assistance. The application procedures are as follows:

a. An application will not be accepted after project initiation.

b. A signature from the appropriate community official shall be required on the application as indication that the community is aware of and supports the project. For a project with a qualifying investment of \$10 million or more, the community ordinance or resolution approving the project shall accompany the application.

c. Each application will be reviewed by the department. The department may request additional information from the business that is applying for tax incentives and assistance or may use other resources to obtain the needed information.

d. If the business meets the eligibility requirements, the department staff will prepare a report which includes a summary of the project and a recommendation on the amount of tax incentives and assistance to be offered to the business.

**68.3(2) *Wage waiver.*** Rescinded IAB 7/4/07, effective 6/15/07.

**68.3(3) *Benefit values.*** Rescinded IAB 7/4/07, effective 6/15/07.

**68.3(4) *Negotiations.*** The department reserves the right to enter into negotiations with the business regarding the amount of tax incentives and assistance the business shall receive. All forms of tax incentives and assistance available under the program may be subject to negotiations. The department shall consider all of the following factors with respect to entering into negotiations with the business:

*a. Level of need.* The three general justifiable reasons for assistance are as follows:

(1) The business can raise only a portion of the debt and equity necessary to complete the project. A gap between sources and uses exists and state or federal funds or both are needed to fill the gap.

(2) The business can raise sufficient debt and equity to complete the project, but the returns are inadequate to motivate a company decision maker to proceed with the project. Project risks outweigh the rewards.

(3) The business is deciding between a site in Iowa (site A) and a site in another state (site B) for its project. The business argues that the project will cost less at site B and will require a subsidy to equalize costs in order to locate at site A. The objective is to quantify the cost differential between site A and site B.

Projects that have already been initiated will not be considered for funding.

*b. Quality of the jobs.* The department shall place greater emphasis on projects involving created or retained jobs that:

(1) Have a higher wage scale. Businesses that have wage scales substantially higher than those of existing Iowa businesses in that industry shall be considered as providing the highest quality of jobs.

(2) Have a lower turnover rate.

(3) Are full-time or career-type positions.

*c. Percentage of created jobs defined as high quality jobs.* The department will consider the number of high quality jobs to be created versus the total number of created jobs in determining what amount of tax incentives and assistance to offer the business.

*d. Economic impact.* In measuring the economic impact to this state, the department shall place greater emphasis on projects which demonstrate the following:

(1) A business with a greater percentage of sales out of state or of import substitution.

(2) A business with a higher proportion of in-state suppliers.

(3) A project which would provide greater diversification of the state economy.

(4) A business with fewer in-state competitors.

(5) A potential for future job growth.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

## **261—68.4(15) Tax incentives and assistance.**

**68.4(1) Sales and use tax refund.** Pursuant to Iowa Code section 15.331A, the approved business may be entitled to a refund of the sales and use taxes paid under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

*a. Filing a claim.* To receive the refund, the approved business shall file a claim with the department of revenue as follows:

(1) The contractor or subcontractor shall state under oath, on forms provided by the department of revenue, the amount of sales or goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the approved business before final settlement is made.

(2) The approved business shall, not more than 12 months following project completion, make application to the department of revenue for any refund of the amount of the sales and use taxes paid pursuant to Iowa Code chapter 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services.

(3) The eligible business shall inform the department of revenue in writing within two weeks of project completion.

*b. Racks, shelving, and conveyor equipment.* If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may be entitled to a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business

shall, not more than 12 months following project completion, make written application to the department for a refund. The application must include the refund amount being requested and documentation such as invoices or contracts which substantiate the requested amount. The department, in consultation with the department of revenue, will validate the refund amount and instruct the department of revenue to issue the refund.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality jobs program and enterprise zone program benefits shall not exceed \$500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the \$500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year.

**68.4(2) Corporate tax credit for certain sales taxes paid by third-party developer.** Pursuant to Iowa Code section 15.331C, the approved business may claim a corporate tax credit up to an amount equal to the sales and use taxes paid by a third-party developer under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.

*a. Filing a claim.* To receive the tax credit, the approved business shall file a claim with the department as follows:

(1) The third-party developer shall state under oath, on forms provided by the department of revenue, the amount of sales and use taxes paid and submit the forms to the approved business.

(2) The approved business shall, not more than 12 months following project completion, submit the completed forms to the department.

(3) In consultation with the department of revenue, the department shall issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes paid by a third-party developer under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business.

(4) The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate issued by the department is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue.

*b. Racks, shelving, and conveyor equipment.* If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may claim a corporate tax credit up to the amount of sales and use taxes paid by a third-party developer and attributable to racks, shelving, and conveyor equipment. The approved business shall, not more than 12 months following project completion, make written application to the department for a tax credit. The application must include the tax credit amount being requested and documentation from the third-party developer such as invoices or contracts which substantiate the requested amount. The department, in consultation with the department of revenue, will confirm the tax credit amount and issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate issued by the department is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue. Any tax credit in excess of the tax liability for the tax year may be

credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality jobs program and enterprise zone program benefits shall not exceed \$500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the \$500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year.

**68.4(3)** *Value-added property tax exemption.* Pursuant to Iowa Code section 15.332, the community may exempt from taxation all or a portion of the actual value added by improvements to real property directly related to jobs created or retained by the location or expansion of the approved business and used in the operations of the approved business. The exemption may be allowed for a period not to exceed 20 years beginning the year the improvements are first assessed for taxation. For purposes of this subrule, improvements include new construction and rehabilitation of and additions to existing structures. The exemption shall apply to all taxing districts in which the real property is located. The community shall provide the department and the local assessor with a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the authorized exemption.

**68.4(4)** *Investment tax credit.*

*a. Claiming the investment tax credit.* Pursuant to Iowa Code section 15.333, the approved business may claim an investment tax credit equal to a percentage of the new investment directly related to jobs created or retained by the start-up, location, expansion, or modernization of the approved business under the program. The tax credit shall be earned when the qualifying asset is placed in service.

(1) Five-year amortization period. The tax credit shall be amortized equally over a five-year period which the department will, in consultation with the approved business, define. The five-year amortization period will be specified in the agreement referenced in subrule 68.5(1). The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II, III, or V and against the moneys and credits tax imposed in Iowa Code section 533.24.

(2) Flow-through of tax credits. If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or estate or trust.

(3) Seven-year carryforward. A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

*b. Investment qualifying for the tax credit.* For purposes of this subrule, new investment directly related to jobs created or retained by the start-up, location, expansion or modernization of the approved business under the program means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1, subsection 1, paragraphs "e" and "j," purchased for use in the operation of the approved business.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the approved business.

(4) The annual base rent paid to a third-party developer by an approved business for a period equal to the term of the lease agreement but not to exceed the maximum term of the agreement referenced in subrule 68.5(1), provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the approved business. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years.

Pursuant to subrule 68.4(9), the approved business shall not claim a tax credit above the amount defined in the final award documentation.

*c. Refunds.*

(1) Refund of unused tax credit. Subject to prior approval by the department, in consultation with the department of revenue, an approved business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund of all or a portion of an unused tax credit.

(2) IRS Section 521. For purposes of this paragraph, an approved business includes a cooperative, described in Section 521 of the Internal Revenue Code, that is not required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol.

(3) Refund of unused tax credit procedures. For application to receive a refund of all or a portion of an unused tax credit, the following procedures apply:

1. Department approval required. The department will determine whether an approved business's project primarily involves the production of value-added agricultural products or uses biotechnology-related processes.

2. Application for a tax credit certificate. The approved business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those approved businesses that have been issued final award documentation pursuant to subrule 68.4(9) before the May 1 filing date may apply for a tax credit certificate.

The department shall require the cooperative, as described in Section 521 of the Internal Revenue Code, to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. For each cooperative member approved for a tax credit certificate, the computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places. The cooperative shall also submit a total dollar amount of the unused investment tax credit for which the cooperative's members are requesting a tax credit certificate.

(4) Issuance of tax credit certificates. The department shall not issue tax credit certificates to approved businesses in the high quality jobs program and the enterprise zone program which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dollar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000 ( $\$4 \text{ million} / \$8 \text{ million} = 50\% \times \$1 \text{ million} = \$500,000$ ). The department will issue tax credit certificates within a reasonable period of time following the May 15 application deadline.

(5) Claiming the tax credit certificate. Tax credit certificates shall not be valid until the tax year following the date the final award documentation was issued. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the Internal Revenue Code whose approved project primarily involves the production of ethanol. For such cooperative, the individual members of the cooperative are approved to receive the tax credit certificates. The approved business may not claim a tax credit refund unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year in which the tax credit refund is claimed.

(6) Carryforward. An approved business may apply for a tax credit certificate once each year for up to seven years after the final award documentation is issued or until the approved business's unused tax credit is depleted, whichever occurs first. For example, an approved business which receives its final award documentation in October 2005 and has an investment tax credit of \$1 million may apply for a tax

credit certificate in May 2006. If, because of proration of the \$4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 up to seven years or until the credit is depleted, whichever occurs first.

**68.4(5) Insurance premium tax credit.** Pursuant to Iowa Code section 15.333A, the approved business may claim an insurance premium tax credit equal to a percentage of the new investment directly related to jobs created or retained by the start-up, location, expansion, or modernization of the approved business under the program.

*a. Claiming the tax credit.* The tax credit shall be earned when the qualifying asset is placed in service. The tax credit shall be amortized equally over a five-year period which the department will, in consultation with the eligible business, define. The five-year amortization period shall be specified in the agreement referenced in subrule 68.5(1). The tax credit shall be allowed against taxes imposed under Iowa Code chapter 432. A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

*b. Investment qualifying for the tax credit.* For purposes of this subrule, new investment directly related to jobs created or retained by the start-up, location, expansion or modernization of the approved business under the program means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1, subsection 1, paragraphs “e” and “j,” purchased for use in the operation of the approved business.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the approved business.

(4) The annual base rent paid to a third-party developer by an approved business for a period equal to the term of the lease agreement but not to exceed the maximum term of the agreement referenced in subrule 68.5(1), provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer’s costs to build or renovate the building for the approved business. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years.

Pursuant to subrule 68.4(9), the approved business shall not claim a tax credit above the amount defined in the final award documentation.

**68.4(6) Research activities credit.** Pursuant to Iowa Code section 15.335, the approved business may claim a corporate tax credit for increasing research activities in Iowa during the period the approved business is participating in the program.

*a. Calculation.* The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

*b. Alternate calculation.* In lieu of the credit amount computed in subparagraph 68.4(6) “a” (1), the approved business may elect to compute the credit amount for qualified research expenses incurred in Iowa in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer’s federal income tax. The election made under subrule 68.4(6) is for the tax year and the taxpayer may use either the method outlined in paragraph “a” or in this paragraph for any subsequent year.

For purposes of this alternate credit computation method, the credit percentages applicable to the qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

*c. Additional research activities credit.* The credit allowed in this subrule is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33(5). However, if the alternative credit computation method is used in Iowa Code section 422.10 or 422.33(5), the credit allowed in this subrule shall also be computed using that method.

*d. Flow-through of tax credits.* If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, S corporation, limited liability company, or estate or trust.

*e. Definitions.* For purposes of this subrule, "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code except that, for the alternative incremental credit, such amounts are for research conducted within Iowa. For purposes of this subrule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 31, 2005.

*f. Refunds.* Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following year.

*g. Renewable energy generation components.* For purposes of this subrule, "research activities" includes the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. A renewable energy generation component will no longer be considered innovative when more than 200 megawatts of installed effective nameplate capacity has been achieved. Research activities credits awarded under this program and the enterprise zone program for innovative renewable energy generation components shall not exceed \$1 million.

**68.4(7) Maximum tax incentives available.** Tax incentives and assistance awarded under this program are based upon the number of jobs created or retained that pay the qualifying wage threshold for HQJP as established in 261—Chapter 174 and as defined in 261—Chapter 173 and the amount of qualifying investment. The maximum possible award is based on the following schedule:

*a.* No high quality jobs are created or retained but economic activity is furthered by the qualifying investment. For purposes of this paragraph, "economic activity" means a modernization project which will result in increased skills and wages for the current employees; a project involving retained jobs; or a project that involves a waiver, granted by the board pursuant to rule 261—174.6(15E,15G,83GA,SF344), of the qualifying wage threshold calculation if the reason for the waiver is that damages were sustained as a result of a natural disaster in a presidentially declared disaster area.

(1) Less than \$100,000 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Reserved.

(2) \$100,000 to \$499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

(3) \$500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

*b.* 1 to 5 high quality jobs are created or retained.

(1) Less than \$100,000 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 2 percent.

2. Reserved.
- (2) \$100,000 to \$499,999 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 2 percent.
  2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
- (3) \$500,000 or more in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 2 percent.
  2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
  3. Research activities credit.
    - c. 6 to 10 high quality jobs are created or retained.
- (1) Less than \$100,000 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 3 percent.
  2. Reserved.
- (2) \$100,000 to \$499,999 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 3 percent.
  2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
- (3) \$500,000 or more in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 3 percent.
  2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
  3. Research activities credit.
    - d. 11 to 15 high quality jobs are created or retained.
- (1) Less than \$100,000 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 4 percent.
  2. Reserved.
- (2) \$100,000 to \$499,999 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 4 percent.
  2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
- (3) \$500,000 or more in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 4 percent.
  2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
  3. Research activities credit.
    - e. 16 to 30 high quality jobs are created or retained.
- (1) Less than \$100,000 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 5 percent.
  2. Reserved.
- (2) \$100,000 to \$499,999 in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 5 percent.
  2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
- (3) \$500,000 or more in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 4 percent.
  2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
  3. Research activities credit.
    - f. 31 to 40 high quality jobs are created or retained.
- (1) \$10 million or more in qualifying investment.
  1. Investment tax credit or insurance premium tax credit of up to 6 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

g. 41 to 60 high quality jobs are created or retained.

(1) \$10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 7 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

h. 61 to 80 high quality jobs are created or retained.

(1) \$10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 8 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

i. 81 to 100 high quality jobs are created or retained.

(1) \$10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 9 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

j. 101 or more high quality jobs are created or retained.

(1) \$10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 10 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

**68.4(8) Award limitations.** Each calendar year, the department shall not approve more than \$3.6 million worth of investment tax credits and insurance premium tax credits for projects with qualifying investments of less than \$1 million. Tax credits subject to this limitation will be awarded on a first-come, first-served basis.

**68.4(9) Final award amounts.** Rescinded IAB 7/15/09, effective 7/1/09.

[ARC 7557B, IAB 2/11/09, effective 3/18/09; ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—68.5(81GA, HF868) Agreement, compliance and repayment provisions.** Rescinded IAB 7/4/07, effective 6/15/07.

These rules are intended to implement Iowa Code sections 15.326 to 15.336 as amended by 2009 Iowa Acts, Senate File 344.

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[Filed Emergency ARC 7970B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]



CHAPTER 69  
LOAN AND CREDIT GUARANTEE PROGRAM

**261—69.1(15E,81GA,HF868) Purpose.** The purpose of the loan and credit guarantee program is to create incentives and assistance to increase the flow of private capital to targeted industry businesses, microenterprises, and other qualified businesses, to promote industrial modernization and technology adoption, to encourage the retention and creation of jobs, and to encourage the export of goods and services sold by Iowa businesses in national and international markets. The department may invest up to 10 percent of the assets of the loan and credit guarantee fund or \$500,000, whichever is higher, to provide assistance to microenterprises.

**261—69.2(15E,81GA,HF868) Definitions.**

*“Act”* means Iowa Code sections 15E.221 to 15E.227 as amended by 2005 Iowa Acts, House File 868.

*“Board” or “IDED board”* means the Iowa economic development board established in Iowa Code section 15.103 as amended by 2005 Iowa Acts, House File 868, section 4, and composed of 15 voting members and 7 ex officio nonvoting members.

*“Committee”* means the loan and credit guarantee committee described in 261—subrule 1.3(4) and created by the board to review applications requesting assistance from the loan and credit guarantee program and make funding recommendations to the board.

*“Department” or “IDED”* means the Iowa department of economic development.

*“Financial institution”* means a state bank as defined in Iowa Code section 524.103, subsection 33, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state-chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under Iowa Code chapter 534, or a production credit association or such other financial institution as defined by the department for purposes of this chapter.

*“Microenterprise”* means a business providing services with five or fewer full-time equivalent employee positions, and located in a municipality with a population under 50,000 that is not contiguous to a municipality with a population of 50,000 or more.

*“Program”* means the loan and credit guarantee program established in the Act.

*“Qualified business”* means an existing or proposed business entity with an annual average number of employees not exceeding 200 employees. “Qualified business” does not include businesses engaged primarily in retail sales, real estate, or the provision of health care or other professional services. “Qualified business” includes professional services businesses that provide services to targeted industry businesses or other entities. To be considered a qualified business, a professional services business must derive a majority of its revenue from targeted industry businesses.

*“Targeted industry business”* means an existing or proposed business entity, including an emerging small business or qualified business which is operated for profit and which has a primary business purpose of doing business in at least one of the targeted industries designated by the department, which include life sciences, software and information technology, advanced manufacturing, value-added agriculture, and any other industry designated as a targeted industry by the board.

**261—69.3(15E,81GA,HF868) Application and review process.** The department, with the advice of the loan and credit guarantee committee, shall develop and make available a standardized application pertaining to the issuance of loan and credit guarantees. Subject to the availability of funds, the loan and credit guarantee committee will review applications and make recommendations to the board pertaining to the approval of loan and credit guarantee awards.

**69.3(1)** Each participating financial institution shall identify and underwrite potential lending opportunities with qualified businesses, microenterprises, and targeted industry businesses. Upon determination by the financial institution that the business meets the financial institution’s underwriting

criteria, subject to the approval of a loan and credit guarantee, the financial institution shall submit a loan and credit guarantee application and the underwriting information to the department.

**69.3(2)** It shall be the responsibility of the financial institution and the qualified business, microenterprise, or targeted industry business to submit a complete application. The department shall determine when an application is complete. Once the department has determined that an application is complete, the committee and the board shall consider the application as expeditiously as possible.

**69.3(3)** The department may develop an application procedure to allow a qualified business, microenterprise, or targeted industry business to apply directly to the department for a preliminary guarantee determination. A preliminary guarantee determination may be issued by the department, following board approval, subject to the qualified business's, microenterprise's, or targeted industry business's securing a commitment for financing from a financial institution.

**261—69.4(15E,81GA,HF868) Application approval or rejection.** Upon approval of an application, the department shall issue a loan and credit guarantee agreement with a financial institution outlining the terms and conditions upon which the loan will be guaranteed.

**69.4(1)** No guarantee shall become effective until the required fees have been paid. Such payment, along with an executed loan authorization, shall indicate the financial institution's acceptance of the terms of the loan authorization.

**69.4(2)** In the event the board rejects an application, the financial institution and the borrower will be sent notice, including reasons for the rejection.

**261—69.5(15E,81GA,HF868) Terms and conditions.** A loan and credit guarantee provided to a financial institution for a qualified business, microenterprise, or targeted industry business shall not exceed \$1 million. Loan and credit guarantees provided under the program to more than one financial institution for a single qualified business, microenterprise, or targeted industry business shall not exceed \$10 million. A single qualified business, microenterprise, or targeted industry business may have multiple guarantees with multiple financial institutions. The aggregate amount of loan or credit guarantees provided to financial institutions for any single qualified business, microenterprise, or targeted industry business shall not exceed \$10 million.

**69.5(1)** A loan and credit guarantee provided under the program shall be for eligible project costs. Eligible project costs include expenditures for production equipment and machinery, land and real estate, working capital for operations and export transactions, research and development, marketing, engineering and architectural fees, and such other costs as the department may designate.

**69.5(2)** The loan and credit guarantee provided under the program shall be negotiated on a case-by-case basis and in no case shall exceed more than 50 percent of the amount to be loaned to the qualified business, microenterprise, or targeted industry business by the financial institution for the project as described in the loan and credit guarantee application.

**69.5(3)** Interest rate and term of the loan to be secured shall be agreed upon between the financial institution and the borrower, provided that no guarantee exceeds 15 years.

**69.5(4)** Repayment of a guaranteed loan shall be secured by such collateral as the department deems prudent.

**69.5(5)** The covenants and requirements of the loan shall be established by the financial institution and department in accordance with prudent lending practices.

**261—69.6(15E,81GA,HF868) Administrative costs and program fees.** The department shall establish fees for participation in the loan and credit guarantee program.

**69.6(1)** The department shall charge a nonrefundable application fee for a loan and credit guarantee. The department shall set the application fee annually and include the fee information in the application materials for the loan and credit guarantee program. This fee will be payable upon submission of an application for a loan and credit guarantee from a financial institution or a qualified business, microenterprise, or targeted industry business and shall not exceed \$1,000.

**69.6(2)** Upon the approval of a loan and credit guarantee application, the department shall charge a fee for authorization of the loan or credit guarantee. The fee shall be 2.5 percent of the amount of funds to be guaranteed under the program. No loan and credit guarantee agreement will be executed until the fee is received by the department.

**69.6(3)** For a line of credit, the authorization fee shall be one-half percent per year renewable annually for a period not to exceed five years. The guarantee will automatically expire if the fee is not submitted upon renewal of the line of credit.

**261—69.7(15E,81GA,HF868) Administration of guarantees.** A preliminary commitment issued by the department shall be effective for 90 days from the date of issuance. If the contingencies outlined in the preliminary commitment are not met within 90 days, the preliminary commitment will be void.

**69.7(1)** A loan and credit guarantee agreement shall be executed between a financial institution, the borrower and the department. These rules and applicable state laws and regulations shall be part of the agreement. The loan and credit guarantee agreement shall include, but is not limited to, the following:

*a.* Provisions setting forth the responsibilities of the financial institution to prudently underwrite and service insured loans in such a manner as would be the normal and customary practice of a prudent lender making or servicing a loan.

*b.* A requirement that the financial institution notify the department in writing within 5 business days after a borrower's payment is 30 days late and within 15 business days of any other default or event or condition which indicates the loan may be difficult to collect in full. Upon default of the loan, the financial institution, in consultation with the department, shall take such action as may be prudent, including foreclosing on and liquidating collateral.

*c.* The department may, at its discretion, cancel or reduce a loan or credit guarantee if the financial institution demonstrates instances of fraud or gross malfeasance under the loan and credit guarantee agreement.

*d.* Awards may be conditioned upon commitment of other sources of funds necessary to complete the project or upon other matters as determined appropriate by the department.

**69.7(2)** The financial institution and borrower must execute and return the loan and credit guarantee agreement to the department within the time period specified by the department in the agreement. Failure to do so may be cause for the department to terminate the loan and credit guarantee.

**69.7(3)** Any substantive change to a loan and credit guarantee agreement, such as time extensions, budget revisions and significant alteration of the funded project that change the scope, location, objectives or scale of the approved project or changes in terms of credit, shall be considered a request for an amendment. Amendments must be requested in writing by the financial institution. Amendments are not considered valid until approved by the committee and the department and confirmed in writing by IDED following the procedure specified in the contract between the recipient and IDED.

**69.7(4)** Financial institutions shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

**261—69.8(15E,83GA,SF344) Applicability of LCG program after July 1, 2009.**

**69.8(1)** Effective July 1, 2009, the LCG program is rescinded by 2009 Iowa Acts, Senate File 344, section 9.

**69.8(2)** For awards made prior to July 1, 2009, the rules of 261—Chapter 69 shall govern for purposes of loan guarantee contract administration and closeout of contracts. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code sections 15E.221 to 15E.227 and 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 69, and 2005 Iowa Acts, House File 868.

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CHAPTER 71  
TARGETED JOBS WITHHOLDING TAX CREDIT PROGRAM

**261—71.1(403) Definitions.**

“*Act*” means Iowa Code section 403.19A.

“*Board*” means the Iowa economic development board created in Iowa Code section 15.103.

“*Business*” means any professional services or industrial enterprise, including medical treatment facilities, manufacturing facilities, corporate headquarters, and research facilities. “Business” does not include a retail operation or a business which closes or substantially reduces its operation in one area of this state and relocates substantially the same operation to another area of this state.

“*Countywide average wage*” means the average that the department calculates using the most current four quarters of wage and employment information as provided in the quarterly covered wage and employment data report as provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“*Department*” means the Iowa department of economic development.

“*Employee*” means the individual employed in a targeted job that is subject to a withholding agreement.

“*Employer*” means a business creating or retaining targeted jobs in an urban renewal area of a pilot project city pursuant to a withholding agreement.

“*Employer’s taxable capital investment*” means a capital investment in real property, including but not limited to the purchase of land and existing buildings and building construction included in the project, that is subject to taxation by the local taxing authority.

“*Local financial support*” or “*local match*” means cash or in-kind contributions to be used for the project from a private donor, a business, or the pilot project city. “Cash” includes but is not limited to loans, forgivable loans or grants. “In-kind contributions” means contributions directly related to the project and includes but is not limited to the construction of private or public infrastructure or other amenities and improvements.

“*Pilot project city*” means a city that has applied and been approved as a pilot project city pursuant to rule 71.2(403).

“*Qualifying investment*” means a capital investment in real property including the purchase price of land and existing buildings, site preparation, building construction, and long-term lease costs. “Qualifying investment” also means a capital investment in depreciable assets.

“*Targeted job*” means a job in a business which is or will be located in an urban renewal area of a pilot project city that pays a wage at least equal to the countywide average wage. “Targeted job” includes new or retained jobs from Iowa business expansions or retentions within the city limits of the pilot project city and those jobs resulting from established out-of-state businesses, as defined by the department, that are moving to or expanding in Iowa.

“*Urban renewal area*” means the same as defined in Iowa Code section 403.17.

“*Withholding agreement*” means an agreement authorized in rule 71.4(403) between a pilot project city and an employer concerning the targeted jobs withholding tax credit.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 7848B, IAB 6/17/09, effective 7/1/09; ARC 8147B, IAB 9/23/09, effective 10/28/09]

**261—71.2(403) Eligibility requirements.** An eligible city may apply to the department to be designated as a pilot project city. An eligible city is a city that contains three or more census tracts and is located in a county meeting one of the following requirements:

1. A county that borders Nebraska.
2. A county that borders South Dakota.
3. A county that borders a state other than Nebraska or South Dakota.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter)]

**261—71.3(403) Application process and review.**

**71.3(1) *Application.*** The department shall develop a standardized application and make the application available to eligible cities. The application procedures are as follows:

*a.* An eligible city seeking approval as a pilot project city will submit an application to the department. The department shall determine if the application is complete.

*b.* The department will review the application and consider the following criteria:

(1) Need for pilot project status. The city shall demonstrate why status as a pilot project city is necessary, including how the city will utilize the program to attract and retain employers.

(2) Planned and current projects. The city shall provide information on planned and current economic development projects that are taking place or will take place in an urban renewal area. The city shall demonstrate its ability to enter into a withholding agreement with an eligible business within one year of the city's approval as a pilot project city.

(3) Use of withholding funds. If approved as a pilot project city, the city shall indicate how the city plans to utilize withholding funds generated from the program. The city shall provide an estimate of the number of withholding agreements the city anticipates executing, the amount of withholding funds the city expects to generate as a result of the program, and the investment to be leveraged by use of the program.

(4) Urban renewal areas. The city shall identify the number of urban renewal areas in the city and the location of the urban renewal areas where withholding funds may be utilized.

(5) Matching funds. The city shall identify its ability to provide matching funds for projects involving withholding credits, including the potential sources of matching funds.

*c.* A resolution of support from the city applying for approval as a pilot project city is required as part of the application. This resolution shall include approval of the submission of the application to the department for status as a pilot project city.

*d.* The department may request additional information from a city that is applying for pilot project city status or may use other resources to obtain the needed information.

*e.* Applications filed on or after October 1, 2006, shall not be considered.

**71.3(2) *Approval of applications.*** The department shall approve four eligible pilot project cities: one pursuant to 71.2“1,” one pursuant to 71.2“2,” and two pursuant to 71.2“3.” If more than two cities meeting the requirements of 71.2“3” apply to be designated as a pilot project city, the department of management, in consultation with the department, shall determine which two cities hold the most potential to create new jobs or generate the greatest capital in their areas. Department staff will prepare a recommendation for each of the cities to be approved as pilot project cities. The board will make the final decision to approve, defer or deny applications. Once applications are approved by the board, all communities applying for pilot project city status will be notified of the status of their applications.

**71.3(3) *Status as a pilot project city.*** If a pilot project city does not enter into a withholding agreement within one year of its approval as a pilot project city, the city shall lose its status as a pilot project city. Upon such occurrence, the department shall take applications from other eligible cities to replace that city. Another city shall be designated within six months.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter)]

**261—71.4(403) Withholding agreements.**

**71.4(1) *Designated account.*** An approved pilot project city may provide by city ordinance for a designated account for the deposit of funds generated through withholding agreements under the targeted jobs withholding tax credit program.

**71.4(2) *Entering into a withholding agreement.***

*a. Agreement between pilot project city and business.* A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least \$500,000 within the urban renewal area.

*b. Total amount of withholding tax credits.* The withholding agreement shall provide for the total amount of withholding tax credits awarded. An agreement shall not provide for an amount of withholding tax credits that exceeds the amount of qualifying investment made in the project.

*c. Ineligibility if there is competition between pilot project city and non-pilot project city.* A withholding agreement shall not be entered into with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the department.

*d. Option of a business to enter into withholding agreement.* A business shall not be obligated to enter into a withholding agreement with a pilot project city.

*e. 2013 sunset date.* A pilot project city shall not enter into a withholding agreement with a business after June 30, 2013.

*f. Department approval of withholding agreements.* Prior to entering into a withholding agreement with a business, a pilot project city shall request department approval of the withholding agreement. The process for requesting approval from the department is described in subrule 71.5(1).

**71.4(3) Required components of a withholding agreement.** A withholding agreement shall be disclosed to the public and shall contain all of the following:

*a.* A copy of the adopted development agreement between the pilot project city and employer, including how withholding funds generated by the city will be used.

*b.* A list of all other incentives or financial assistance the business has requested or is receiving from other federal, state, or local economic development programs including loans, grants, forgivable loans, and tax credits.

*c.* The amount of assistance provided by the pilot project city for the project.

*d.* Documentation of the approval of the project by local participating authorities.

*e.* The total amount of withholding tax credits awarded.

*f.* The total number of created and retained jobs included in the project.

*g.* The required countywide average wage.

*h.* The total qualifying investment included in the project.

*i.* The total required matching local financial support for the project.

**71.4(4) Length of withholding agreements.** A withholding agreement may have a term of up to ten years.

**71.4(5) Withholding generated through the program.**

*a.* Once a pilot project city and an employer have entered into a withholding agreement, an amount equal to 3 percent of the gross wages paid by the business to each employee under a withholding agreement shall be credited from the payment made by the employer pursuant to Iowa Code Supplement section 422.16. If the amount of withholding by the employer is less than 3 percent of the gross wages paid to the employees covered by the withholding agreement, the employer shall receive a credit against other withholding taxes due by the employer or may carry the credit forward for up to ten years or until depleted, whichever occurs first.

*b.* The employer shall submit the amount of the credit quarterly, in the same manner as withholding payments are made to the department of revenue, to the pilot project city.

*c.* An employee whose wages are subject to a withholding agreement shall receive full credit for the amount withheld under the targeted jobs withholding tax credit program as provided in Iowa Code Supplement section 422.16.

**71.4(6) Use of withholding funds.** A pilot project city shall allocate the withholding funds into a designated account in the special fund for the urban renewal area in which the targeted jobs are located. All funds deposited shall be used or pledged by the pilot project city for an urban renewal project related to the employer pursuant to the withholding agreement.

**71.4(7) Local match requirement.** The intent of the program is to require a pilot project city to contribute to projects that result in an increase in the city's tax collections. If a pilot project city realizes an increase in tax revenues due to the project, then the pilot project city is required to contribute at least 10 percent of the required local match. For example, if a project includes the purchase and remodeling of a building that results in increased tax collections to the pilot project city by an amount equal to 10

percent of the total amount of the withholding tax credit award, then the pilot project city is required to contribute at least 10 percent of the required local match for the project. In cases in which a project would include the purchase of a building but there is no increase in tax collections to the pilot project city, the pilot project city is not required to contribute to the required local match.

*a.* A pilot project city entering into a withholding agreement shall arrange for matching local financial support for the project. The local match required shall be in an amount equal to one dollar for every one dollar of withholding tax credit received by the pilot project city.

*b.* If the project, when completed, will increase the amount of an employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall itself contribute at least 10 percent of the local match amount computed under paragraph "a."

*c.* If the project, when completed, will not increase the amount of the employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall not be required to make a contribution to the local match.

*d.* A pilot project city's contribution, if any, to the local match may include the dollar value of any new tax abatement provided by the city to the business for new construction. For purposes of this paragraph, new construction includes building additions, remodeling, renovations, and updates.

**71.4(8) Termination of a withholding agreement.** Following the termination of a withholding agreement, the employer credits shall cease and any funds received by the pilot project city after the agreement has been terminated shall be remitted to the state treasurer to be deposited in the general fund of the state. The pilot project city shall notify the department of revenue and the department of economic development within 30 days of the termination of the withholding agreement. If the employer does not meet the requirements of the withholding agreement, the agreement shall be terminated and any withholding credits for the employer shall cease. If the employer has created or retained the required number of new jobs under the agreement, and the number of jobs falls below the required level, the employer shall not be considered in default until 18 months after the date of the decrease in new jobs.

**71.4(9) Participation in other programs.** An employer may participate in the Iowa industrial new jobs training program under Iowa Code Supplement section 260E.5 or may claim a supplemental withholding credit under Iowa Code Supplement section 15E.197, at the same time the employer is participating in the targeted jobs withholding tax credit program. The withholding credit under section 260E.5 and the supplemental withholding credit under section 15E.197 shall be collected and disbursed prior to the collection and disbursement of the withholding credit under the targeted jobs withholding tax credit program.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 7847B, IAB 6/17/09, effective 5/21/09; ARC 7848B, IAB 6/17/09, effective 7/1/09; ARC 8147B, IAB 9/23/09, effective 10/28/09]

## **261—71.5(403) Project approval.**

### **71.5(1) Request for department approval of withholding agreement.**

*a. Request for approval form.* Prior to entering into a withholding agreement with an employer, a pilot project city must receive approval from the department. The department shall develop and make available to the pilot project cities a standardized form to request department approval of a proposed withholding agreement. To request department approval of a proposed withholding agreement, a pilot project city shall provide the department with the following information:

(1) A general description of the project, including how the pilot project city will utilize withholding funds generated by the project.

(2) Base employment of the number of full-time equivalent positions at a business as established by the department and the pilot project city, using the business's payroll records, as of the date that a business files an application with a pilot project city for financial assistance under the program.

(3) Information regarding the number of targeted jobs in the project, the wages of the targeted jobs, and the types of jobs created by the project.

(4) A budget for the project, showing the total project cost, the amount of local matching funds committed to the project, and the amount of withholding funds the pilot project city will receive from the project.

(5) A copy of the proposed withholding agreement to be entered into between the pilot project city and the employer.

(6) A letter or resolution of support from the local government showing support for the project.

*b. Timing of submittal.* Requests for department approval of a proposed withholding agreement may be submitted at any time. The department will review requests for approval of a proposed withholding agreement in as timely a manner as possible.

*c. Department action on requests for approval.* The department may approve, deny, or suggest changes to a withholding agreement. The department shall only deny an agreement if the agreement fails to meet the requirements as stated in subrule 71.4(2) or the local match requirement as stated in subrule 71.4(7) or if an employer is not in good standing as to prior or existing agreements with the department. A pilot project city will be notified in writing of the department's decision regarding the proposed withholding agreement.

**71.5(2) Certification to the department of revenue.**

*a.* The employer shall certify to the department of revenue that the targeted jobs withholding tax credit is in accordance with the withholding agreement and shall provide other information the department of revenue may require.

*b.* A pilot project city shall certify to the department of revenue the amount of the targeted jobs withholding tax credit an employer has remitted to the city and shall provide other information the department of revenue may require.

*c.* Notice of any withholding agreement shall be provided promptly to the department of revenue following its execution between a pilot project city and an employer.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 7847B, IAB 6/17/09, effective 5/21/09; ARC 7848B, IAB 6/17/09, effective 7/1/09; ARC 8147B, IAB 9/23/09, effective 10/28/09]

## **261—71.6(403) Reporting requirements.**

**71.6(1) Required reports.**

*a.* At the time the pilot project city submits its budget to the department of management, the pilot project city shall submit to the department of management and the department a description of the activities involving the use of withholding agreements. The description shall include, but not be limited to, the following:

(1) The total number of targeted jobs associated with withholding agreements and the wages of those targeted jobs.

(2) A breakdown of the number of targeted jobs that are associated with Iowa business expansions or retentions within the city limits of the pilot project city and the number of targeted jobs resulting from out-of-state businesses moving to or expanding in Iowa.

(3) The number of withholding agreements and the amount of withholding credits associated with those agreements.

(4) The types of businesses that entered into withholding agreements with the city and the types of businesses that declined the city's proposal to enter into a withholding agreement with the city.

*b.* The pilot project city shall provide information documenting the total amount of payments and receipts from the special fund under the withholding agreement, including all agreements with an employer to suspend, abate, exempt, rebate, refund, or reimburse property taxes, to provide a grant for property taxes, to provide a grant not related to property taxes, or to make a direct payment of taxes. The pilot project city shall submit this information to the department annually by September 1 covering the prior fiscal year (July 1 to June 30). The department shall verify the information provided by the pilot project city. The department will verify job creation or retention using the method described in 261—Chapter 188.

*c.* The department may request additional reports from pilot project cities as necessary to determine the status of the targeted jobs withholding tax credit program.

*d.* The department shall make, at minimum, an annual on-site monitoring visit to each pilot project city to verify the documented information. The pilot project city shall provide the following:

- (1) Payroll records that correspond to the quarterly report provided by the pilot project city for the department of revenue;
- (2) Information substantiating the total amount of qualifying investment made in the project;
- (3) Information substantiating the total amount of local financial support made in the project;
- (4) Payments and receipts as described in paragraph 71.6(1)“*b.*”

**71.6(2) Annual report.** As required by Iowa Code section 15.104(9)“*k,*” the department shall include in its annual report information about the targeted jobs withholding tax credit program. This report is due on January 31 of each year.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 7848B, IAB 6/17/09, effective 7/1/09; ARC 8147B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code section 403.19A.

[Filed emergency 7/19/06—published 8/16/06, effective 7/19/06]

[Filed 9/22/06, Notice 8/16/06—published 10/11/06, effective 11/15/06]

[Filed ARC 7561B (Notice ARC 7249B, IAB 10/8/08), IAB 2/11/09, effective 3/18/09]<sup>1</sup>

[Editorial change: IAC Supplement 3/25/09]

[Filed Emergency ARC 7847B, IAB 6/17/09, effective 5/21/09]

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[Filed ARC 8147B (Notice ARC 7846B, IAB 6/17/09), IAB 9/23/09, effective 10/28/09]

<sup>1</sup> The March 18, 2009, effective date of **ARC 7561B** was delayed 70 days by the Administrative Rules Review Committee at its meeting held March 6, 2009.

CHAPTER 74  
GROW IOWA VALUES FINANCIAL ASSISTANCE PROGRAM

**261—74.1(83GA,SF344) Purpose and administrative procedures.**

**74.1(1) Purpose.** The department shall establish and administer a grow Iowa values financial assistance program for purposes of providing financial assistance from the fund to applicants. The financial assistance shall be provided from moneys credited to the grow Iowa values fund and not otherwise obligated or allocated pursuant to 2009 Iowa Acts, Senate File 344.

**74.1(2) Program funding components.** The program shall consist of the following components:

- a. 130 percent wage component.
- b. 100 percent wage component.
- c. Entrepreneurial component.
- d. Infrastructure component.
- e. Value-added agriculture component.
- f. Disaster recovery component.

**74.1(3) Fiscal impact.** In making awards of financial assistance from the 130 percent wage component and the 100 percent wage component, the department shall calculate the fiscal impact ratio. In reviewing each application to determine the amount of financial assistance to award, the board shall consider the appropriateness of the award to the fiscal impact ratio of the project and to other factors deemed relevant by the board.

**74.1(4) Administrative procedures.** The grow Iowa values financial assistance program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—74.2(83GA,SF344) 130 percent wage component.**

**74.2(1) Eligibility.** In order to qualify for financial assistance under this component of the program, a business shall meet all of the following requirements:

a. The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following requirements:

(1) If the business is creating jobs, the business shall demonstrate that the jobs will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, at least 130 percent of the qualifying wage threshold by the project completion date, and at least 130 percent of the qualifying wage threshold until the maintenance period completion date.

(2) If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 130 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

b. The business shall provide a sufficient package of benefits to each employee holding a created or retained job.

c. The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

d. The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

**74.2(2) Sufficient benefits credit.** A business providing a sufficient package of benefits to each employee holding a created or retained job shall qualify for a credit against any of the 130 percent qualifying wage threshold requirement.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—74.3(83GA,SF344) 100 percent wage component.** In order to qualify for financial assistance under this component of the program, a business shall meet all of the following requirements:

**74.3(1)** The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following qualifying wage thresholds:

*a.* If the business is creating jobs, the business shall demonstrate that the jobs created will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, by the project completion date, and until the maintenance period completion date.

*b.* If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 100 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

**74.3(2)** The business shall provide a sufficient package of benefits to each employee holding a created or retained job.

**74.3(3)** The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

**74.3(4)** The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—74.4(83GA,SF344) Entrepreneurial component.**

**74.4(1) Purpose.** The purpose of this component is to encourage the development of early-stage businesses in conjunction with the delivery of a financial assistance program.

**74.4(2) Definitions.** In addition to the standard definitions in 261—Chapter 173, the following definitions shall apply to this component:

“*Early-stage business*” means a business that has been competing in a particular industry for three years or less.

“*Eligible applicant*” means a business that has consulted with and obtained a letter of endorsement from either a business accelerator approved by the department or from an entrepreneurial development organization recognized by the department.

“*Eligible business*” means an early-stage business that is developing a new product or technology.

**74.4(3) Eligibility.** In order to qualify for financial assistance under the entrepreneurial component of the program, a business shall meet all of the following requirements:

*a.* In order to be eligible for assistance, the business, or proposed business, must be located in the state of Iowa.

*b.* The business shall be an early-stage business.

*c.* If the business is a sole proprietorship or a partnership, all applicable business owners must apply. If the business is a limited liability company, a limited liability partnership, or a corporation, the application must be submitted and signed by an individual who has been authorized by the business to do so.

*d.* The business owner or owners (or appropriate individual(s) in a limited liability company, limited liability partnership or corporation) must consult with and obtain a letter of endorsement from either a business accelerator approved by the department or from an entrepreneurial development organization recognized by the department.

*e.* The individual or business must have a business plan which details the business’s growth strategy, management team, production/management plan, marketing plan, financial plan, and other standard elements of a business plan.

**74.4(4) Local match not required.** A business applying for financial assistance under the entrepreneurial component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

**74.4(5) Funding priorities.** In awarding financial assistance under the entrepreneurial component of the program, the department and the board shall give priority to businesses in those sectors of the Iowa economy with the greatest potential for growth and expansion. Sectors having such potential include but

are not limited to biotechnology, recyclable materials, software development, computer-related products, advanced materials, and advanced manufacturing.

**74.4(6) *Financial assistance.*** An applicant may apply to the department for financial assistance to assist with the applicant's early-stage business growth. The applicant may request up to \$250,000 for early-stage growth activities to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. Assistance will generally be made in staged investments with amounts to be determined by company development, growth, and defined milestones. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, or software or for working capital needs or other business expenses deemed reasonable and appropriate by the department. Awards will be in the form of a loan, royalty agreement, or other form of an equity-like investment. A single recipient is limited to \$250,000 in total financial assistance.

**74.4(7) *Technical assistance.*** Applicants may apply for assistance in paying for consulting or other third-party technical assistance either in conjunction with the request for financial assistance or in a separate application. Applications submitted that are not in conjunction with a request for financial assistance must demonstrate financial need for the technical assistance. Financial need will be determined by the department based on review of the applicant's financial statements, narrative submitted by the applicant outlining the financial need, and other documentation as requested by the department. Awards will be in the form of a grant, loan, royalty agreement, or other form of an equity-like investment. Technical assistance of this nature is limited to no more than \$25,000 per applicant.

**74.4(8) *Application process.*** Applications must be submitted in the format required by the department. Applications, the business plan, and related material shall be submitted online or by mail to the department at the address listed in 261—subrule 175.2(7).

**74.4(9) *Review criteria.***

*a.* Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further action on the request.

*b.* Applications will then be reviewed for content of the business plan and to evaluate the business's viability and potential for growth. The department may consult with the business accelerators or other knowledgeable agencies or individuals as a part of the review process.

*c.* The following items will be reviewed:

(1) Type of business.

1. Highest priority will be given to businesses in sectors of the Iowa economy with the greatest start-up and growth potential for Iowa, including but not limited to:

- Biotechnology (including drugs and pharmaceuticals and value-added agricultural products);
- Recyclable materials;
- Software development and computer-related products;
- Advanced materials; and
- Advanced manufacturing.

2. Assistance may be provided to industries other than those listed in paragraph "1" above; however, the applicant shall provide strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by the department staff to determine eligibility as a targeted industry. Factors that will be considered in determining an industry's benefit to Iowa's economic base include:

- The majority of the products produced by the industry are exported out of Iowa;
- The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;
- The goods produced by the industry diversify Iowa's economy;

- The goods produced by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;

- The industry shows potential for future growth; and
- The functions of the industry do not produce harmful effects for Iowa's natural environment.

Businesses engaged in retail sales, personal services, consulting, franchises, the provision of health care or other professional services, or the distribution of products or services will not be considered targeted industries and are not eligible for the program.

(2) Management team and management expertise. Factors considered for this criterion are whether the applicant(s) has a background (including education, training, work experience, and other factors) that will be helpful and useful in the business in question. The department will also consider the degree to which the applicant's background is fully documented.

(3) Business capitalization. Factors considered for this criterion are the original sources of financing for the business. Although all projects must have at least 50 percent of their financing from sources other than the entrepreneurial component, the department will give preference to those applications in which the other sources of financing are higher than 50 percent.

(4) Strength of business plan. The strength of the business plan is the most important factor in the evaluation of applications. Factors considered for this criterion are the quality of the business plan and how well it addresses all elements of the business, such as:

1. A description of the company and the overall industry;
2. The product and production plan;
3. The market, competition, and the marketing strategy;
4. The management team and business operation;
5. A well-defined project time line;
6. Patent issues (if applicable), critical risks and problems; and
7. Financial information and plan.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

#### **261—74.5(83GA,SF344) Infrastructure component.**

**74.5(1) Eligibility.** In order to qualify for financial assistance under the infrastructure component of the program, a business or community shall be engaged in a physical infrastructure project. For purposes of this component, "physical infrastructure project" means a project that creates necessary infrastructure for economic success throughout Iowa, provides the foundation for the creation of jobs, and involves the investment of a substantial amount of capital. Physical infrastructure projects include but are not limited to projects involving any mode of transportation; public works and utilities such as sewer, water, power, or telecommunications; physical improvements that mitigate, prevent, or eliminate environmental contamination; and other similar projects deemed to be physical infrastructure by the department.

**74.5(2) Local match not required.** A business applying for financial assistance under the infrastructure component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

#### **261—74.6(83GA,SF344) Value-added agriculture component.**

**74.6(1) Purpose.** The purpose of this component is to encourage the increased utilization of agricultural commodities produced in this state. The component shall assist in efforts to revitalize rural regions of this state by committing resources to provide financial assistance to new or existing value-added production facilities.

**74.6(2) Definitions.** In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the value-added agriculture component:

"*Agricultural biomass industry*" means businesses that utilize agricultural commodity crops, agricultural by-products, or animal feedstock in the production of chemicals, protein products, or other high-value products.

"*Agricultural biotechnology industry*" means businesses that utilize scientifically enhanced plants or animals that can be raised by producers and used in the production of high-value products.

“*Agriculture*” means the science, art, and business of cultivating the soil, producing crops and raising livestock.

“*Alternative energy industry*” means businesses involved in the production of ethanol, including gasoline with a mixture of 70 percent or more ethanol, biodiesel, biomass, or hydrogen or in the production of wind energy.

“*Committee*” means the renewable fuels and coproducts advisory committee established pursuant to Iowa Code section 159A.4.

“*Coordinator*” means the administrative head of the office of renewable fuels and coproducts appointed by the department of agriculture and land stewardship as provided in Iowa Code section 159A.3.

“*Coproduct*” means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities and which may include corn gluten feed, distillers grain, solubles, or a feed supplement, or can be used as livestock feed.

“*Farming*” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. “Farming” shall not include the production of timber, forest products, nursery products, or sod; and “farming” shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

“*Fund*” means the renewable fuels and coproducts fund established pursuant to Iowa Code section 159A.7.

“*Innovative*” means a new or different agricultural product or a method of processing agricultural products which is an improvement over traditional methods in a new, different, or unusual way.

“*Livestock production operations*” means the production, feeding and marketing of livestock, poultry and aquaculture. “Livestock production operations” includes, but is not limited to, beef and dairy cattle, swine, sheep, goat, poultry, turkey and equine operations. “Livestock production operations” also includes nontraditional agricultural operations such as ostrich, fallow deer, rabbit, fish and other aquaculture.

“*Office*” means the office of renewable fuels and coproducts created pursuant to Iowa Code section 159A.3.

“*Organic products*” means Iowa-grown or Iowa-raised agricultural products as defined by 21—Chapter 47, Iowa organic program.

“*Person*” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“*Producer-owned, value-added business*” means a person who holds an equity interest in the agricultural business and is personally involved in the production of crops or livestock on a regular, continuous, and substantial basis.

“*Renewable fuel*” means an energy source at least in part derived from an organic compound, capable of powering machinery, including an engine or power plant. “Renewable fuel” includes but is not limited to ethanol-blended or soydiesel fuel.

“*Renewable fuels and coproducts activities*” means either of the following:

1. The research, development, production, promotion, marketing, or consumption of renewable fuels and coproducts.
2. The research, development, transfer, or use of technologies which directly or indirectly increases the supply or demand of renewable fuels and coproducts.

“*Rural region*” means any geographic area which is predominantly rural in nature, that is, having a relatively low population density and where agriculture is the predominant economic activity.

“*Soydiesel fuel*” means a fuel made of processed soybean oil which is mixed with diesel fuel, the mixture being a minimum of 20 percent processed soybean oil.

“*Value-added product*” means a product which, through a series of activities or processes, can be sold at a higher price than its original purchase price.

**74.6(3) Eligibility.** In order to qualify for financial assistance under the value-added agriculture component of the program, a business shall be a production facility engaged in the process of adding

value to agricultural products. Projects considered eligible under this component include but are not limited to innovative agricultural products and processes, innovative and new renewable fuels, agricultural biotechnology, biomass and alternative energy production, and organic products and emerging markets. Financial assistance is available for project development as well as project creation.

*a. Innovative agricultural products and processes.* An application based on this component shall be considered if either of the following applies:

(1) The business will produce a product derived from an agricultural commodity, if the product is not commonly produced in Iowa from an agricultural commodity; or

(2) The business will utilize a process to produce a product derived from an agricultural commodity, if the process is not commonly used in Iowa to produce the product.

For purposes of this paragraph, a product is “not commonly produced” and a process is “not commonly used” if the product or process is not usually, generally, or ordinarily produced or processed in Iowa.

*b. Innovative and new renewable fuels.* Applications for renewable fuel and ethanol production shall be considered by the department for funding. Applications based on ethanol fuel production must meet the following criteria to be considered for funding:

(1) All fermentation, distillation, and dehydration of the ethanol occurs at the proposed facility.

(2) The ethanol produced at the proposed facility is at least 190 proof and is denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner produces at least 190 proof ethanol from the ethanol purchased from the facility.

*c. Agricultural biotechnology, biomass and alternative energy.* Agricultural business facilities in the agricultural biotechnology industry, agricultural biomass industry, and alternative energy industry are eligible for program assistance.

*d. Organic products and emerging markets.* Facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets are eligible for program assistance.

*e. Project development assistance.* The department, at its discretion, may also provide funding for project development related to targeted industries or proposed projects under this program. Feasibility studies and basic research are not eligible for assistance under this program.

*f. Project creation assistance.* This option is for projects that eventually could be eligible for funding within other value-added agriculture component funding areas.

(1) Any person is eligible to apply, except educational or research institutions. However, an educational or research institution may be a partner to an eligible applicant.

(2) The evaluation process will focus on the application of new technology and knowledge to agricultural products and processing and will be based upon the degree to which:

1. The resulting business has potential to increase utilization of agricultural commodities in this state; and

2. The resulting business has potential to increase value-added economic activities within this state.

**74.6(4) Ineligible projects.**

*a.* The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has, in the previous five years, demonstrated a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment.

*b.* The department shall not approve an application for assistance under this component to refinance an existing loan.

*c.* The department shall not directly award financial assistance to support an activity directly related to farming as defined in Iowa Code section 9H.1, including the establishment or operation of a livestock production operation, regardless of whether the activity is related to a renewable fuel production facility.

*d.* An applicant may not receive more than one award under this program for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates

that the funding is to be used for a significant expansion of the project, a new project, or a project which results from previous project development assistance.

*e.* The board and the department shall not award financial assistance under the value-added agriculture component in an amount exceeding 50 percent of the total capital investment in a project.

**74.6(5) Review process.**

*a.* Applications will be reviewed by staff for completeness and eligibility. If the applicant had previously consulted with the coordinator in completion of the application, the department may refer the application to the coordinator for further feasibility studies if deemed necessary. Applications will be reviewed as described in 261—Chapter 175.

*b.* The department may consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry.

*c.* The department reserves the right to informally consult with external resources to assist in the evaluation of projects or to contract with outside consultants, in an amount not to exceed \$20,000 per project, for the same purpose.

**74.6(6) Evaluation criteria.** The department shall evaluate applications based on the following criteria:

*a. Feasibility.* The company must submit a feasible business plan which demonstrates managerial and technical expertise.

*b. Priority components.* The department will review the degree to which the proposed project meets one of the component elements which include:

- (1) Innovative agricultural products and processes.
- (2) Innovative and new renewable fuels.
- (3) Agricultural biotechnology, agricultural biomass and alternative energy.
- (4) Organic products and emerging markets.

*c. Utilization.* The department will review the degree to which the facility will add value to and increase the utilization of agricultural commodities in this state.

*d. Producer ownership.* The level of producer ownership will be given additional consideration.

*e. Rural region.* The department will review the extent to which the existing or proposed facility is located in a rural region of the state.

*f. Local match.* A business applying for financial assistance under the value-added agriculture component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

*g. Need.* The department will review the level of need of the region where the existing facility is located or the proposed facility is to be located.

*h. Coproducts.* The department will review the degree to which the facility produces a coproduct which is marketed in the same locality as the facility.

*i. In-state suppliers.* The department will review the extent to which the facility utilizes in-state suppliers of inputs and feedstocks for processing and manufacturing.

*j. Sales.* The department will review the extent to which the facility sells its products outside the state.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—74.7(83GA,SF344) Disaster recovery component.**

**74.7(1) Eligibility—*for businesses affected by a disaster occurring before July 1, 2009.***

*a. Eligibility requirements.* In order to qualify for financial assistance under the disaster recovery component of the program, a business shall meet all of the following conditions:

(1) The business is located in an area declared a disaster area by a federal official before July 1, 2009.

(2) The business must document that it has sustained substantial physical damage related to the natural disaster. For purposes of this rule, “substantial physical damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(3) The business must commit to bring its employment level up, within six months of the award date, to at least 90 percent of its base employment prior to the closure of the business due to the natural disaster in a federally declared disaster area. The business shall submit payroll records to establish the business's employment base prior to the date of the federal disaster declaration.

(4) The business must commit to paying wages, within six months of the award date, that are no less than the wages paid prior to the closure of the business due to the natural disaster in a federally declared disaster area. The business shall submit payroll records to establish the wages that were paid prior to the date of the federal disaster declaration.

(5) The business must apply for assistance by July 31, 2009.

*b. Project initiation.* The board may elect to fund applications under this component for projects which have been initiated.

*c. Local match.* The board will determine if local match will be needed and what level of local match will be acceptable.

**74.7(2) Eligibility—***for businesses affected by a disaster occurring on or after July 1, 2009.*

*a. Eligibility requirements.* In order to qualify for financial assistance under the disaster recovery component of the program, a business shall meet all of the following conditions:

(1) The business is located in an area declared a disaster area by a federal official on or after July 1, 2009.

(2) The business has sustained substantial physical damage and has closed as the result of a natural disaster. For purposes of this rule, "sustained substantial physical damage" means damage of any origin sustained by a structure or the machinery and equipment contained within whereby the cost of restoring the structure to its before-damaged condition or replacing the machinery and equipment would exceed 50 percent of the market value of the structure or machinery and equipment before the damage occurred. If the business is located in a multitenant building, the market value of the structure before the damage occurred may be prorated based on the percentage of space within the building which the business occupies.

(3) The business must commit to bringing its employment level up, within six months of the award date, to at least 90 percent of its base employment prior to the closure of the business due to the natural disaster in a federally declared disaster area. The business shall submit payroll records to establish the business's employment base prior to the date of the federal disaster declaration.

(4) The business must commit to paying wages, within six months of the award date, that are no less than the wages paid prior to the closure of the business due to the natural disaster in a federally declared disaster area. The business shall submit payroll records to establish the wages that were paid prior to the date of the federal disaster declaration.

(5) The business must apply for assistance within 12 months of the date of the declaration of disaster by a federal official.

*b. Local match not required.* A business applying for financial assistance under this disaster recovery component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county. This paragraph only applies to businesses eligible for assistance under subrule 74.7(2).

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 7978B, IAB 7/29/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 344, section 3.

[Filed Emergency ARC 7970B, IAB 7/15/09, effective 7/1/09]

[Filed Emergency ARC 7978B, IAB 7/29/09, effective 7/1/09]

[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 75  
OPPORTUNITIES AND THREATS PROGRAM

**261—75.1(83GA,SF344) Purpose.** The purpose of the opportunities and threats program is to fund projects that present a unique opportunity for economic development in the state of Iowa or projects that address a situation constituting a threat to continued economic prosperity in Iowa.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—75.2(83GA,SF344) Administrative procedures.** The opportunities and threats program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions, standard program requirements, application review and approval procedures, contracting, contract compliance and job counting, and annual reporting requirements.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—75.3(83GA,SF344) Eligible applicants.** An eligible applicant may be a business, an individual, a development corporation, a nonprofit organization, a council of government as defined in Iowa Code section 28H.1, or a political subdivision in the state of Iowa.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—75.4(83GA,SF344) Review criteria.** When applications are reviewed, the following shall apply:

**75.4(1)** A project shall not be eligible for financial assistance under another state program. If a project is eligible for assistance under another state program, then the project shall not be eligible for funding under this program.

**75.4(2)** The project must represent a unique economic development opportunity or involve a unique threat to economic development in the state of Iowa.

**75.4(3)** An applicant must demonstrate that any financial assistance received under this program leverages additional public or private funds.

**75.4(4)** An applicant must demonstrate that the project will lead to a positive economic impact for the state of Iowa.

**75.4(5)** An applicant must demonstrate financial need for assistance. Financial need may be demonstrated with financial statements, narrative statements outlining the financial need, and any other documentation that demonstrates financial need or that is requested by the department.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—75.5(83GA,SF344) Award criteria.** An award made under this program shall not exceed 50 percent of the total project cost. The minimum award amount is \$25,000. The maximum award amount is \$250,000 per fiscal year. The board may award an amount in excess of \$250,000 if that award is made over multiple fiscal years and the amount committed for each fiscal year within the multiyear award does not exceed \$250,000.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 344, section 4.

[Filed Emergency ARC 7970B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]



CHAPTER 76  
AGGREGATE TAX CREDIT LIMIT FOR  
CERTAIN ECONOMIC DEVELOPMENT PROGRAMS

**261—76.1(83GA,SF483) Authority.** The authority for establishing rules governing the aggregate tax credit limit for certain economic development programs under this chapter is 2009 Iowa Acts, Senate File 483.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09]

**261—76.2(83GA,SF483) Purpose.** The purpose of the aggregate tax credit limit for certain economic development programs is to limit the amount of tax credits awarded during a fiscal year.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09]

**261—76.3(83GA,SF483) Definitions.**

“*Board*” means the Iowa economic development board established in Iowa Code section 15.103.

“*Department*” means the Iowa department of economic development.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09]

**261—76.4(83GA,SF483) Amount of the tax credit cap.** The department shall not authorize tax credit awards made under the programs identified in rule 261—76.5(83GA,SF483) in excess of \$185 million per fiscal year.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09]

**261—76.5(83GA,SF483) Programs subject to the cap.**

**76.5(1)** Awards made under the following economic development programs are subject to the tax credit cap:

- a. The assistive device tax credit program.
- b. The enterprise zone program (business and housing awards).
- c. The film, television, and video project promotion program.
- d. The high quality jobs program.

**76.5(2)** In addition to the programs listed in subrule 76.5(1), the corporate tax research credit under the quality jobs enterprise zone program is also subject to the tax credit cap pursuant to 2009 Iowa Acts, Senate File 483, but this program is no longer utilized by the department. The quality jobs enterprise zone program was replaced with the high quality jobs program.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09]

**261—76.6(83GA,SF483) Allocating the tax credit cap.** At a scheduled meeting of the board prior to the start of a fiscal year, the board will allocate \$185 million among the programs listed in rule 261—76.5(83GA,SF483). The board is not required to allocate a portion of the cap to every program listed. The board may allocate a portion of the cap that is shared by other programs with a common purpose, for example, the business awards made under the enterprise zone program and high quality jobs program. Throughout the fiscal year, the board may review the allocation as necessary, but shall review the allocation at least one time during the fiscal year. Based on its review, the board may make adjustments to the allocation as deemed necessary.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09]

**261—76.7(83GA,SF483) Exceeding the cap.** When the department recommends one or more awards that, when combined with awards already approved during the fiscal year, exceed the \$185 million cap, the board may authorize the department to exceed the cap and approve the award. The aggregate award amount in excess of \$185 million will be counted against the tax credit cap for the following fiscal year.

[ARC 7954B, IAB 7/15/09, effective 7/1/09; ARC 8146B, IAB 9/23/09, effective 10/28/09]

**261—76.8(83GA,SF483) Reporting to the department of revenue.** The department shall submit an initial report to the department of revenue by August 15, 2009, which shows the initial allocation of the \$185 million cap. At the start of each subsequent fiscal year, the department shall prepare a report to

summarize final allocation for the fiscal year that just ended, the total amount of awards made under each program identified in rule 261—76.5(83GA,SF483) during that fiscal year, and the initial allocation for the current fiscal year. The report shall be submitted to the department of revenue on or before August 15 of each year.

[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 483.

[Filed Emergency ARC 7954B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8146B (Notice ARC 7953B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 165  
ALLOCATION OF GROW IOWA VALUES FUND

[Prior to 7/4/07, see 261—Ch 2]

**261—165.1(15G,83GA,SF344) Purpose.** The purpose of the grow Iowa values fund is to provide financial assistance for business incentives, marketing efforts, and other programs and activities designed to spur the economy and improve the quality of life of Iowans. Moneys in the grow Iowa values fund provide financial assistance for allowable departmental purposes; for state parks pursuant to a plan from the department of natural resources (DNR); for the cultural trust fund; for workforce training and economic development funds of the community colleges; for economic development region initiatives; and for financial assistance to the regents for the University of Northern Iowa, Iowa State University, the University of Iowa, a bioscience organization, and private universities. The rules in this chapter apply to financial assistance awarded from the grow Iowa values fund by the board.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—165.2(15G,83GA,SF344) Definitions.** The definitions located in 261—Chapter 173 apply to this chapter.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—165.3(15G,83GA,SF344) Grow Iowa values fund (2009).** The grow Iowa values fund (2009) refers to the fund established by Iowa Code chapter 15G as amended by 2009 Iowa Acts, Senate File 344. The fund includes moneys appropriated to the department by the general assembly for the fund, payments of interest, repayments of moneys loaned, and recaptures of grants and loans made pursuant to the fund, and all moneys accruing to the department from the department's administration of preexisting programs. Pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the fund is under the control of and administered by the department.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—165.4(15G,83GA,SF344) Allocation of annual appropriation for grow Iowa values fund moneys—\$50M.** Pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, \$50 million is appropriated from the grow Iowa values fund to the department each fiscal year for the fiscal period beginning July 1, 2009, and ending June 30, 2015. If the full \$50 million is appropriated in a fiscal year, the fund moneys are allocated as described below. If less than \$50 million is appropriated in a fiscal year, then the amount available will be reduced on a pro-rata basis. The fund moneys are allocated as follows:

1. \$32M—For:
  - Departmental administrative costs,
  - Awards of financial assistance from the grow Iowa values financial assistance program established in 2009 Iowa Acts, Senate File 344, section 3,
    - Marketing,
    - A statewide labor shed study,
    - Responding to opportunities and threats,
    - Technical assistance and information technology,
    - Guarantees in existence as of July 1, 2009, under the loan and credit guarantee program,
    - Renewable fuels infrastructure program for FY 2010 (\$2M), and
    - \$1M for FY 2010 for research and development related to renewable energy pursuant to 2009 Iowa Acts, House File 817.
2. \$3M—For deposit in the innovation and commercialization fund created by 2009 Iowa Acts, Senate File 142.
3. \$5M—To the state board of regents for institutions of higher learning under the control of the state board of regents, for specific activities.
4. \$1M—For projects in targeted state parks, state banner parks and destination parks.
5. \$1M—For the cultural trust fund administered by the department of cultural affairs.

6. \$7M—For workforce training and economic development funds of the community colleges.
7. \$1M—For economic development region initiatives.

**165.4(1)** *Board allocation of appropriation to fund for departmental purposes—\$32M.* Of the annual appropriation to the fund, the board may allocate \$32 million (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) for the following activities:

- a. Departmental administrative costs. The board may allocate a portion of the funds to cover administrative costs. No more than \$600,000 may be allocated for administrative costs.
- b. Awards of financial assistance from the grow Iowa values financial assistance program established in 2009 Iowa Acts, Senate File 344, section 3. The grow Iowa values financial assistance fund consists of six components. The rules for the six components may be found in 261—Chapter 74.
- c. Marketing. The board may allocate a portion of the amount available for departmental purposes for marketing proposals pursuant to Iowa Code section 15G.109.
- d. Statewide labor shed study. The board may allocate a portion of the funds available to authorize a statewide labor shed study in coordination with the department of workforce development.
- e. Responding to opportunities and threats. A portion of the funds may be allocated by the board to respond to opportunities and threats. The rules for this activity are found in 261—Chapter 75.
- f. Technical assistance and information technology. The board may allocate a portion of the funds available for procuring technical assistance from either the public or private sector and for information technology purposes.
- g. Loan guarantees in existence as of July 1, 2009, under the loan and credit guarantee program.
- h. Renewable fuels infrastructure fund established in Iowa Code section 15G.205. For fiscal year 2010, \$2 million shall be allocated to the renewable fuels infrastructure fund established in Iowa Code section 15G.205.
- i. Renewable energy research and development. For fiscal year 2010, \$1 million for research and development related to renewable energy pursuant to 2009 Iowa Acts, House File 817.

**165.4(2)** *Funding to the state board of regents for institutions of higher learning under the control of the state board of regents for specific activities—\$5M.*

a. *Use of funds.* Five million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) is available for financial assistance to institutions of higher learning under the control of the state board of regents (Iowa State University (ISU), University of Iowa (U of I), University of Northern Iowa (UNI)). These funds must be used for capacity building infrastructure in areas related to technology commercialization, for marketing and business development efforts in areas related to technology commercialization, entrepreneurship, and business growth, and for infrastructure projects and programs needed to assist in the implementation of activities under Iowa Code chapter 262B.

(1) In allocating moneys to institutions under the control of the state board of regents, the state board of regents shall require the institutions to provide a one-to-one match of additional moneys for the activities funded with moneys provided under this subrule.

(2) The state board of regents may allocate moneys available under this subrule for financial assistance to a single biosciences development organization determined by the department to possess expertise in promoting the area of bioscience entrepreneurship. The organization must be composed of representatives of both the public and the private sector and shall be composed of subunits or subcommittees in the areas of existing identified biosciences platforms, education and workforce development, commercialization, communication, policy and governance, and finance. Such financial assistance shall be used for purposes of activities related to biosciences and bioeconomy development under Iowa Code chapter 262B and to accredited private universities in this state.

b. *Annual state board of regents report.* Each fiscal year, the state board of regents shall report how the funds were used and allocated among ISU, U of I, UNI, a bioscience organization, and private universities. The report shall be submitted to the department by July 31. In order to determine the impact of the funding applied to accelerate research leading to commercial products/processes and to measure activities that demonstrate successes, the annual report shall include, at a minimum, the following information:

- (1) Research and development commercialization agreements executed with Iowa companies (the number, the dollar amount).
- (2) Corporate sponsored funding for R&D by Iowa companies (the number, the dollar amount).
- (3) University centers and institutes: core laboratory equipment utilized and services provided (hours, samples, dollar amount).
- (4) License and option agreements executed with Iowa companies (the number).
- (5) New Iowa companies formed and jobs created from the result of licensed technologies (the number).
- (6) Revenue to Iowa companies (based on sales) as a result of licensed technologies (the dollar amount).

*c. Board action.* The board shall review the annual report from the state board of regents and accept, or request additional information regarding, the use of the \$5 million allocation from the grow Iowa values fund to the state board of regents. The board will include in its annual grow Iowa values fund report that is required to be submitted by January 31 each year pursuant to Iowa Code section 15.104(9) an evaluation of the annual report received from the state board of regents.

**165.4(3) Funding for projects in targeted state parks, state banner parks and destination parks—\$1M.**

*a. Use of funds.* One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) is available for purposes of providing financial assistance for projects in targeted state parks, state banner parks, and destination parks. For purposes of this subrule, “state banner park” means a park with multiple uses and which focuses on the economic development benefits of a community or area of the state.

*b. Annual DNR plan.* The department of natural resources shall submit a plan to the department for the expenditure of moneys allocated under this subrule. The plan shall focus on improving state parks, state banner parks, and destination parks for economic development purposes.

*c. Board action.* The board shall approve, deny, modify, or defer proposed expenditures under the proposed plan for use of the \$1 million allocation from the grow Iowa values fund for state parks. Upon approval of the plan, a contract shall be executed between the department and the department of natural resources to provide financial assistance to the department of natural resources for support of state parks, state banner parks, and destination parks.

**165.4(4) Funding for the cultural trust fund administered by the department of cultural affairs—\$1M.** One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) shall be allocated by the department for deposit in the Iowa cultural trust fund created in Iowa Code section 303A.4 and administered by the department of cultural affairs. The department shall transfer the moneys allocated from the grow Iowa values fund for this purpose to the treasurer of state.

**165.4(5) Funding for workforce training and economic development funds of the community colleges—\$7M.** Seven million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) is allocated for deposit into the workforce training and economic development funds of the community colleges created pursuant to Iowa Code section 260C.18A. The department shall transfer the moneys allocated from the grow Iowa values fund to the workforce training and economic development fund.

**165.4(6) Funding for economic development region initiatives—\$1M.**

*a. Funds available.* One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) is available for providing assistance to economic development regions. These moneys are allocated as follows:

\$350,000—To ISU, for establishment of small business development centers in certain areas of the state.

\$50,000—To the department, for assistance to Iowa business resource centers authorized in Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

\$600,000—To the department, for financial assistance to economic development regions, for the establishment of a regional economic development revenue-sharing pilot project.

*b. Allocation of \$600,000 for economic development region initiatives.* The board shall annually allocate the \$600,000 available under this subrule for economic development region initiatives. The \$600,000 is available for the following:

(1) Financial assistance to economic development regions. A portion of the \$600,000 may be allocated for financial assistance to economic development regions. An economic development region may apply for:

1. Financial assistance for physical infrastructure needs;

2. Financial assistance to assist an existing business threatened with closure due to the potential consolidation of an out-of-state location;

3. Financial assistance to establish and operate an entrepreneurial initiative.

(2) Regional economic development revenue-sharing pilot project. The department may establish and administer a regional economic development revenue-sharing pilot project for one or more regions. The department shall take into consideration the geographical dispersion of the pilot projects. The department shall provide technical assistance to the regions participating in a pilot project.

(3) Designation as an economic enterprise area. An economic development region may apply to the department for approval to be designated as an economic enterprise area. The department shall approve no more than ten regions as economic enterprise areas.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—165.5(15G,83GA,SF344) Board allocation of other moneys in fund.**

**165.5(1)** *Allocation for administrative and operations costs.* In addition to the moneys appropriated to the fund for departmental purposes pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the board may allocate other moneys credited to the fund pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, for departmental administrative and operations costs. The board may allocate a portion of the moneys accruing to the fund resulting from preexisting programs that were repealed by 2009 Iowa Acts, Senate File 344: CEBA, EVA, VAAPFAP, PIAP, and LCG. Funds may be allocated by the board in an amount necessary to fund administrative and operations costs of the department. This allocation is in addition to any allocations the board makes pursuant to subrule 165.4(1).

**165.5(2)** *Allocation of other moneys for fund purposes.* The board may allocate for other allowable fund purposes a portion of the moneys accruing to the fund resulting from preexisting programs that were repealed by 2009 Iowa Acts, Senate File 344: CEBA, EVA, VAAPFAP, PIAP, and LCG. This allocation is in addition to any allocations the board makes pursuant to subrule 165.4(1).

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—165.6(15G,83GA,SF344) Annual fiscal year allocations by board.**

**165.6(1)** *Annual fiscal year allocations.* At the first scheduled meeting of the board after the start of a fiscal year, the board shall take action on each of the following:

*a. Board allocation of appropriation to fund for departmental purposes—\$32M.* The board shall review the department's recommendation for the annual allocation of the \$32 million (or of such lesser amount if the annual appropriation to the fund is less than \$50 million) for departmental purposes described in subrule 165.4(1).

*b. Board allocation of other moneys in the fund.* The board shall review the department's recommendation for the annual allocation of other moneys in the fund as described in rule 261—165.5(15G,83GA,SF344).

*c. Board allocation among the six components of the grow Iowa values financial assistance program.* The board shall review the department's recommendation for the annual allocation among the six components of the grow Iowa values financial assistance program described in 261—Chapter 74.

**165.6(2)** *Reallocation during fiscal year.* The board may adjust each of the allocations described in subrule 165.6(1) during the fiscal year as necessary.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapter 15G as amended by 2009 Iowa Acts, Senate File 344.

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CHAPTER 173  
STANDARD DEFINITIONS

[IAB 7/4/07, 261—Ch 173 renumbered as 261—Ch 199]

[Prior to 7/4/07, see 261—Ch 168, div V]

**261—173.1(15,15G,83GA,SF344) Applicability.**

**173.1(1) Current programs.** Effective July 1, 2009, this chapter shall apply to the following programs and funding sources:

- a. EDSA (economic development set-aside) program (261—Chapter 23).
- b. EZ (enterprise zone) program (261—Chapter 59).
- c. HQJP (high quality jobs program) (261—Chapter 68).
- d. Grow Iowa values fund—IVF(2009).

**173.1(2) Prior programs—transition provision.** The programs listed in paragraphs “a” to “f” were repealed by 2009 Iowa Acts, Senate File 344, effective July 1, 2009. The rules in effect on June 30, 2009, under this chapter shall apply to the following prior programs until such time as the contracts for these prior programs are closed by the department:

- a. VAAPFAP (value-added agricultural products and processes financial assistance program) (261—Chapter 57).
- b. CEBA (community economic betterment account) program (261—Chapter 53).
- c. EVA (entrepreneurial ventures assistance) program (261—Chapter 60).
- d. TSBFAP (targeted small business financial assistance program) (261—Chapter 55).
- e. PIAP (physical infrastructure assistance program) (261—Chapter 61).
- f. LCG (loan and credit guarantee) program (261—Chapter 69).

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—173.2(15,15G,83GA,SF344) Definitions.**

“*Agricultural products advisory council*” or “*APAC*” means the council which is composed of five members appointed by the secretary of agriculture and five members appointed by the director of the Iowa department of economic development who are experienced in marketing or exporting agricultural commodities or products, financing the export of agricultural commodities or products, or adding value to and the processing of agricultural products as further described in Iowa Code section 15.203 and which reviews value-added agriculture component applications and makes recommendations to the board.

“*Award date*” means the date the board or the director approved an application for direct financial assistance or tax credit incentives.

“*Base employment level*” means the number of full-time equivalent positions at a business, as established by the department and a business using the business’s payroll records, as of the date a business applies for financial assistance. The number of jobs the business has pledged to create and retain shall be in addition to the base employment level.

“*Benefits*” means all of the following nonwage compensation provided to an employee: medical and dental insurance plans, pension, retirement, and profit-sharing plans, child care services, life insurance coverage, vision insurance coverage, and disability insurance coverage.

“*Board*” means the Iowa economic development board established under Iowa Code section 15.103.

“*Business*” means a sole proprietorship, partnership or corporation organized for profit or not for profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

“*County wage*” means the county wage calculation performed by the department pursuant to 2009 Iowa Acts, Senate File 344, section 3.

“*Created job*” means a new, permanent, full-time equivalent (FTE) position added to a business’s payroll in excess of the base employment level at the time of application for assistance.

“*Department*” means the Iowa department of economic development created by Iowa Code section 15.105.

“*Director*” means the director of the Iowa department of economic development.

*“Due diligence committee”* or *“DDC”* means the due diligence committee composed of members of the board whose duties include, but are not limited to, carrying out any duties assigned by the board in relation to programs administered by the department, reviewing applications for financial assistance, conducting a thorough review of proposed projects and making recommendations to the board regarding funding.

*“Employee”* means:

1. An individual filling a full-time position that is part of the payroll of the business receiving financial assistance from any of the programs identified in rule 261—173.1(15,15G,83GA,SF344).
2. A business’s leased or contract employee, provided all of the following elements are satisfied:
  - The business receiving the state financial assistance has a legally binding contract with a third-party provider to provide the leased or contract employee.
  - The contract between the third-party provider and the business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the department as conditions of the financial assistance award to the business.
  - The contract between the third-party provider and the business specifically requires the third-party provider to submit payroll records to the department, in form and content and at the frequency found acceptable to the department, for purposes of verifying that the business’s job creation/retention and benefit requirements are being met.
  - The contract between the third-party provider and the business specifically authorizes the department, or its authorized representatives, to access records related to the funded project.
  - The business receiving the state financial assistance agrees to be contractually liable to the department for the performance or nonperformance of the third-party provider.

*“Equity-like investment”* means the provision of assistance in such a manner that the potential return on investment to the provider varies according to the profitability of the company assisted. This includes but is not limited to: royalty arrangements; warrant arrangements; or other similar forms of investments.

*“Financial assistance”* means assistance in the form of grants, loans, forgivable loans, float loans, equity-like investment, and royalty payments and other forms deemed appropriate by the board, consistent with Iowa law.

*“Fiscal impact ratio”* or *“FIR”* means a ratio calculated by estimating the amount of taxes to be received by the state from a business and dividing the estimate by the estimated cost to the state of providing certain financial incentives to the business, reflecting a ten-year period of taxation and incentives and expressed in terms of current dollars. “Fiscal impact ratio” does not include taxes received by political subdivisions.

*“Full-time equivalent job”* or *“full-time”* means the employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

*“Grant”* means an award of assistance with the expectation that, with the fulfillment of the conditions, terms and obligations of the contract with the department for the project, repayment of funds is not required.

*“ICF”* means the innovation and commercialization fund established by 2009 Iowa Acts, Senate File 142.

*“IVF(2009)”* means the grow Iowa values fund established by Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

*“Loan”* means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A “deferred loan” is one for which the payment for principal, interest, or both, is not required for some specified period. A “forgivable loan” is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions. A “float loan” means a short-term loan (maximum of 30 months) from obligated but unexpended IVF(2009) funds.

*“Loan and credit guarantee committee”* means the loan and credit guarantee committee composed of members of the board and whose duties include, but are not limited to, carrying out any duties assigned by the board in relation to the loan and credit guarantee program administered by the department, reviewing loan and credit guarantee applications and making recommendations to the board regarding funding.

*“Loan guarantee”* means a guarantee of all or part of a loan made by a commercial lender. Payment of all or a portion of the loan guarantee would occur if the business defaults on its repayment of the loan, provided the lender has exhausted standard legal remedies in an attempt to secure repayment from the borrower.

*“Maintenance period”* means the period of time between the project completion date and the maintenance period completion date.

*“Maintenance period completion date”* means the date on which the maintenance period ends. It is the specific date established by the department past the project completion date through which the recipient shall maintain the project, the created jobs, and the retained jobs.

*“Project completion,”* for the EZ and HQJP tax credit programs, for purposes of reporting to the Iowa department of revenue that a project has been completed, means:

1. For new manufacturing facilities, the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility is at least 50 percent of the initial design capacity of the facility.

2. For all other projects, the date of completion of all improvements necessary for the start-up, location, expansion or modernization of a business.

*“Project completion date”* means the specific date established by the department by which a recipient of financial assistance shall have completed all pledged project activities, met its job creation and job retention obligations, and otherwise satisfied the terms and obligations of the contract with the department for a project. (See rule 261—187.3(15) for a listing of the duration of the project completion period and maintenance period for IDED’s job creation and tax credit programs.)

*“Project completion period”* means the period of time between the date financial assistance is awarded (the “award date”) and the project completion date.

*“Project initiation”* means, for all programs and funding sources except EDSA, any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business’s project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation. The costs of any land purchase and site development work incurred prior to the award are not eligible qualifying investment expenses.

*“Qualifying wage threshold”* means the county wage or the regional wage, as calculated by the department, whichever is lower.

*“Regional wage”* means the regional wage calculation performed by the department pursuant to 2009 Iowa Acts, Senate File 344, section 3.

*“Retained job”* means a full-time equivalent permanent position in existence at the time an employer applies for financial assistance which remains continuously filled or authorized to be filled as soon as possible and which is at risk of elimination if the project for which the employer is seeking assistance does not proceed.

*“Sufficient benefits”* means that the employer applying for financial assistance offers to each full-time equivalent permanent position a benefits package that meets one of the following:

1. The employer pays 80 percent of the premium costs for a standard medical and dental plan for single employee coverage with a \$750 maximum deductible; or
2. The employer pays 50 percent of the premium costs for a standard medical and dental plan for employee family coverage with a \$1,500 maximum deductible; or

3. The employer provides medical coverage and pays the monetary equivalent of paragraph “1” or “2” above in supplemental employee benefits. Benefits counted toward monetary equivalent could include medical coverage, dental coverage, vision insurance, life insurance, pension, retirement (401k), profit sharing, disability insurance, child care services, and other nonwage compensation approved by the board.

“*Sufficient benefits credit*” means a benefits credit for which a business qualifies if the business provides sufficient benefits to each employee holding a created or retained job. This credit can be applied against the 130 percent qualifying wage requirement. The credit shall be calculated and applied as follows:

1. By multiplying the qualifying wage threshold of the county in which the business is located by one and three-tenths.
2. By multiplying the result of paragraph “1” by one-tenth.
3. The amount of the result of paragraph “2” shall be credited against the amount of the 130 percent qualifying wage threshold requirement that the business is required to meet.
4. The credit shall not be applied against the 100 percent qualifying wage threshold requirement.

“*Technology commercialization committee*” means the committee established by the board pursuant to Iowa Code section 15.116 to evaluate and approve funding for projects and programs referred to in Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15G as amended by 2009 Iowa Acts, Senate File 344, and 17A.

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[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 174  
WAGE, BENEFIT, AND INVESTMENT REQUIREMENTS  
[Prior to 7/4/07, see 261—Ch 168, div IV]

**261—174.1(15,15G,83GA,SF344) Applicability.** This chapter is applicable to the programs identified in 261—173.1(15,15G,83GA,SF344).

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—174.2(15,15G,83GA,SF344) Annual qualifying wage threshold calculations.**

**174.2(1)** The department will update the county and regional qualifying wage thresholds annually each fiscal year, and these thresholds will become effective on July 1 of each fiscal year.

**174.2(2)** Effective date of county wage and regional wage qualifying thresholds. Businesses that submit a project review form to the department will be subject to county and regional qualifying wage thresholds in effect on the date the department receives the project review form provided that the business's application is received and approved within six months of the date the project review form was received by the department. If more than six months have elapsed, the business will be subject to the wage thresholds in effect on the date the department receives the business's completed application.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—174.3(15,15G,83GA,SF344) Qualifying wage threshold requirements—prior to July 1, 2009.** 2009 Iowa Acts, Senate File 344, became effective on July 1, 2009. 2009 Iowa Acts, Senate File 344, repealed a number of programs administered by the department, established IVF(2009), and transferred moneys from prior programs to the IVF(2009). This resulted in a simplification of state financial assistance programs. The following subrules regarding qualifying wage thresholds apply to awards made on or before June 30, 2009. This rule shall apply to the prior programs and funding sources until such time as the contracts for these prior programs are closed by the department.

**174.3(1) *Qualifying wage threshold requirement—projects receiving IVF(FES) assistance.*** Awards funded during the time period beginning July 1, 2003, but before June 16, 2004, from IVF(FES) shall meet the wage requirements in effect at that time as reflected in the contract between the department and the business. Awards funded after June 16, 2004, using IVF(FES) moneys shall meet the qualifying wage thresholds for the programs through which funding is sought.

**174.3(2) *Qualifying wage threshold requirement—projects receiving IVF (2005) assistance.*** In order to receive financial assistance from the IVF (2005), applicants shall demonstrate that the annual wage, including benefits, of project jobs is at least 130 percent of the average county wage. If an applicant is applying for IVF (2005) moneys, the department will first review the application to ensure that the IVF (2005) wage requirement is met. The department will then review the application for compliance with the requirements of the department program from which financial assistance is to be provided.

**174.3(3) *Qualifying wage threshold requirement—projects funded by program funds (“old money”).*** Prior to July 1, 2003, direct financial assistance programs administered by the department were funded through state appropriations. After the creation of IVF(FES) and IVF (2005), these programs no longer received separate state appropriations. These programs were funded with IVF(FES) and IVF (2005) moneys. Moneys remaining, recaptured or repaid to these program funds remain available for awarding to projects. The department will review an application for compliance with the requirements of the department program from which financial assistance is to be provided.

**174.3(4) *Qualifying wage threshold requirement—projects receiving EDSA funds.*** EDSA is the job creation component of the federal CDBG program. The department will review an application for compliance with the federal CDBG EDSA requirements.

**174.3(5) *Qualifying wage thresholds, by funding source and by program.***

*a. IVF (2005).* Projects that are funded with IVF (2005) moneys through the following programs shall meet the qualifying wage threshold listed below:

| Funding Source:<br><u>IVF (2005)</u> |  | Qualifying Wage<br>Threshold Requirement  | Can benefits value be<br>added to the hourly wage<br>to meet the qualifying<br>wage threshold? |
|--------------------------------------|--|---|--|
| CEBA:                                | Small business gap<br>financing component                                  | 130% of average county wage   | Yes  |
|                                      | New business<br>opportunities and new<br>product development<br>components | 130% of average county wage   | Yes  |
|                                      | Venture project<br>component   | 130% of average county wage   | Yes  |
|                                      | Modernization project<br>component   | 130% of average county wage   | Yes  |
| VAAPFAP                              |  | 130% of average county wage   | Yes  |
| PIAP                                 |  | 130% of average county wage,<br>unless funded through special<br>allocation of PIAP funds, up<br>to \$5 million, established in<br>subrule 61.5(12) | Yes  |
| EVA                                  |  | 130% of average county wage   | Yes  |

b. *IVF(FES) and program funds.* Projects that are funded with IVF(FES) through the following programs or directly from available program fund moneys shall meet the qualifying wage thresholds listed below:

| Funding Source:<br><u>IVF(FES) or Program Funds</u> |  | Qualifying Wage<br>Threshold Requirement  | Can benefits value be<br>added to the hourly wage<br>to meet the qualifying<br>wage threshold? |
|---|--|---|--|
| CEBA:   | Small business gap<br>financing component                                  | 100% of average county wage<br>or average regional wage,<br>whichever is lower<br><br>130% for awards over<br>\$500,000 | No   |
|   | New business<br>opportunities and new<br>product development<br>components | 100% of average county wage<br>or average regional wage,<br>whichever is lower<br><br>130% for awards over<br>\$500,000 | No   |
|   | Venture project<br>component   | 100% of average county wage<br>or average regional wage,<br>whichever is lower  | No   |
|   | Modernization project<br>component   | 100% of average county wage<br>or average regional wage,<br>whichever is lower<br><br>130% for awards over<br>\$500,000 | No   |
| VAAPFAP   |  | No statutory requirement  | Not applicable   |
| PIAP  |  | No statutory requirement  | Not applicable   |
| EVA   |  | No statutory requirement  | Not applicable   |

c. *EDSA*. Projects that are funded with EDSA moneys shall meet the following wage threshold:

| Program Source:<br><u>CDBG</u> | Wage Threshold Requirement   | Can benefits value be added to the hourly wage to meet the wage threshold? |
|--------------------------------|--|--|
| EDSA                           | 100% of average county wage or average regional wage, whichever is lower | No   |

d. *EZ and HQJC*. Tax credit program projects shall meet the following wage thresholds:

| Tax Credit Program | Wage Threshold Requirement  | Can benefits value be added to the hourly wage to meet the wage threshold? |
|--------------------|---|--|
| EZ                 | 90% of average county wage or average regional wage, whichever is lower                           | No   |
| HQJC               | 130% of average county wage<br><br>More benefits are available if the wage rate is 160% or higher | Yes  |

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—174.4(15) IVF (2005) wage waivers; HQJC eligibility requirement waivers.** Rescinded IAB 11/5/08, effective 10/16/08.

**261—174.5(15G,83GA,SF344) Qualifying wage threshold requirements—on or after July 1, 2009.**

**174.5(1)** Projects that are funded through one of the IVF(2009) financial assistance program components shall meet the following qualifying wage thresholds:

| Funding Source: IVF(2009)<br>Grow Iowa Values Financial Assistance Program |                                   | Qualifying Wage Threshold Requirement                    | Credit for sufficient benefits? |
|--|-----------------------------------|--|---------------------------------|
| Program Component:   | 130% wage component               | 130% of county wage or regional wage, whichever is lower | Yes                             |
|  | 100% wage component               | 100% of county wage or regional wage, whichever is lower | No                              |
|  | Entrepreneurial component         | No qualifying wage threshold                             | Not applicable                  |
|  | Infrastructure component          | No qualifying wage threshold                             | Not applicable                  |
|  | Value-added agriculture component | No qualifying wage threshold                             | Not applicable                  |
|  | Disaster recovery component       | No qualifying wage threshold                             | Not applicable                  |

**174.5(2)** HQJP and EZ. Projects funded through the HQJP or EZ tax credit program shall meet the following qualifying wage thresholds:

| Tax Credit Program | Qualifying Wage Threshold Requirement                    | Credit for sufficient benefits? |
|--------------------|--|---------------------------------|
| HQJP               | 130% of county wage or regional wage, whichever is lower | Yes                             |
| EZ                 | 90% of county wage or regional wage, whichever is lower  | No                              |

**174.5(3)** EDSA. Projects that are funded with EDSA moneys shall meet the following wage threshold:

|                      |   |                                 |
|----------------------|---|---------------------------------|
| Program Source: CDBG | Qualifying Wage Threshold Requirement                   | Credit for sufficient benefits? |
| EDSA                 | 90% of county wage or regional wage, whichever is lower | No                              |

**174.5(4)** Higher wage threshold applies if multiple programs are used in a project. Notwithstanding the qualifying wage threshold requirements for each program, if a business is a recipient of financial assistance from more than one program administered by the department and the qualifying wage thresholds are not the same, the business shall be required to pay the higher qualifying wage for the project.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—174.6(15E,15G,83GA,SF344) Wage waiver requests—130 percent wage component and HQJP.**

**174.6(1)** *Waiver of qualifying wage threshold—130 percent wage component.* An applicant may apply to the board for a waiver of the qualifying wage threshold requirements of the 130 percent wage component of the grow Iowa values financial assistance program. The procedures to follow to request such a waiver are described in rule 261—175.5(15,15G,83GA,SF344).

**174.6(2)** *Waiver of HQJP qualifying wage threshold.* A community may apply to the board for a project-specific waiver from the qualifying wage threshold requirement in order to seek tax incentives for an eligible business. The procedures to follow to request such a waiver are described in rule 261—175.5(15,15G,83GA,SF344).

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—174.7(15,15G,83GA,SF344) Job obligations.** Jobs that will be created or retained as a result of a project's receiving state or federal financial assistance or tax credit benefits from the department shall meet the qualifying wage threshold requirements. Jobs that do not meet the qualifying wage threshold requirements will not be counted toward a business's job creation or job retention obligations outlined in the contract between the department and the business. A business's job obligations shall include the business's base employment level and the number of new jobs required to be created above the base employment level.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—174.8(15,15G,83GA,SF344) Benefit requirements—prior to July 1, 2009.** This rule regarding benefit requirements applies to awards made on or before June 30, 2009. This rule shall apply to the prior programs and funding sources until such time as the contracts for these prior programs are closed by the department.

| Program | Benefit Requirement   | Deductible Requirements  | Is a monetary equivalent to benefits allowed?  | Benefits Counted Toward Monetary Equivalent  |
|---------|---|--|--|--|
| EZ      | 80% medical and dental coverage, single coverage <u>only</u> OR the monetary equivalent   | \$750 maximum for single coverage/<br>\$1500 maximum for family coverage | Yes  | -Medical coverage (family portion)<br>-Dental coverage (family portion)<br>-Pension/401(k) (company's average contribution)<br>-Profit-sharing plan<br>-Life insurance<br>-Short-/long-term disability insurance<br>-Vision insurance<br>-Child care |
| HQJC    | No benefit requirement (If, however, the company does not provide 80% medical and dental coverage for a single employee, the award will be reduced by 10%.) | \$750 maximum for single coverage/<br>\$1500 maximum for family coverage | No<br><br>(Providing 80% medical and dental coverage for a single employee is one of eight qualifying criteria the company may use to qualify for the program. Monetary equivalent of other benefits is not considered.) | Not applicable   |

| Program | Benefit Requirement  | Deductible Requirements  | Is a monetary equivalent to benefits allowed? | Benefits Counted Toward Monetary Equivalent   |
|---------|--|--|---|---|
| EDSA    | 80% medical and dental for single employees OR 50% medical and dental for family coverage OR the monetary equivalent | \$750 maximum for single coverage/<br>\$1500 maximum for family coverage | Yes   | -Medical coverage (family portion)<br>-Dental coverage (family portion)<br>-Pension/401(k) (company's average contribution)<br>-Profit-sharing plan<br>-Life insurance<br>-Short-/long-term disability insurance<br>-Vision insurance<br>-Child care<br>-Other documented benefits offered to all employees (i.e., uniforms, tuition reimbursement, etc.) |
| CEBA    | 80% medical and dental for single employees OR 50% medical and dental for family coverage OR the monetary equivalent | \$750 maximum for single coverage/<br>\$1500 maximum for family coverage | Yes   | -Medical coverage (family portion)<br>-Dental coverage (family portion)<br>-Pension/401(k) (company's average contribution)<br>-Profit-sharing plan<br>-Life insurance<br>-Short-/long-term disability insurance<br>-Vision insurance<br>-Child care<br>-Other documented benefits offered to all employees (i.e., uniforms, tuition reimbursement, etc.) |
| VAAPFAP | Not applicable   | Not applicable   | Not applicable                                | Not applicable  |
| PIAP    | Not applicable   | Not applicable   | Not applicable                                | Not applicable  |
| EVA     | Not applicable   | Not applicable   | Not applicable                                | Not applicable  |
| TSBFAP  | Not applicable   | Not applicable   | Not applicable                                | Not applicable  |

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—174.9(15,15G,83GA,SF344) Sufficient benefits requirement—on or after July 1, 2009.** To be eligible to receive state financial assistance or tax credit benefits, applicants shall offer sufficient benefits to each FTE permanent position. “Sufficient benefits” and “sufficient benefits credit” are defined in rule 261—173.2(15,15G,83GA,SF344). An employer may select one of the following options to meet the sufficient benefits requirement:

| Option 1<br>80% Single Coverage   | Option 2<br>50% Family Coverage   | Option 3<br>Monetary Equivalent   |
|---|---|---|
| Pay 80% of premium costs for a standard medical and dental plan, single coverage.<br><br>\$750 maximum deductible | Pay 50% of premium costs for a standard medical and dental plan, family coverage.<br><br>\$1,500 maximum deductible | Provide medical and pay the monetary equivalent of Option 1 or Option 2 in supplemental employee benefits.<br><br>Benefits Counted Toward Monetary Equivalent <ul style="list-style-type: none"> <li>● Medical coverage</li> <li>● Dental coverage</li> <li>● Vision insurance</li> <li>● Life insurance</li> <li>● Pension</li> <li>● 401(k) (company's average contribution)</li> <li>● Short-/long-term disability insurance</li> <li>● Child care services</li> <li>● Other nonwage compensation</li> </ul> |

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—174.10(15,15G,83GA,SF344) Capital investment, qualifying investment for tax credit programs, and investment qualifying for tax credits.**

**174.10(1) Capital investment.** The department reports on the amount of capital investment involved with funded projects. This rule lists the categories of expenditures that are included when the department determines the amount of capital investment associated with a project.

**174.10(2) Qualifying investment for tax credit programs.** For the tax credit programs (EZ and HQJP), there are statutorily required minimum investment thresholds that must be met for the project to be considered to receive an award. Not all expenditures count toward meeting the investment threshold. This rule identifies the categories of expenditures that can be included when the amount of investment is calculated for purposes of meeting program eligibility threshold requirements.

**174.10(3) Investment qualifying for tax credits.** Not all of the expenditures categories used to calculate the investment amount needed to meet program threshold requirements qualify for purposes of claiming the tax credits. The following table identifies the expenditures that do not qualify for tax credits.

|                                    | Capital Investment <sup>1</sup> | Qualifying Investment <sup>2</sup> | Investment Qualifying for Tax Credits <sup>3</sup> |
|------------------------------------|---------------------------------|------------------------------------|--|
| Land acquisition                   | Yes                             | Yes                                | Yes  |
| Site preparation                   | Yes                             | Yes                                | Yes  |
| Building acquisition               | Yes                             | Yes                                | Yes  |
| Building construction              | Yes                             | Yes                                | Yes  |
| Building remodeling                | Yes                             | Yes                                | Yes  |
| Mfg. machinery & equip.            | Yes                             | Yes                                | Yes  |
| Other machinery & equip.           | Yes                             | No                                 | No   |
| Racking, shelving, etc.            | Yes                             | No                                 | No   |
| Computer hardware                  | Yes                             | Yes                                | Yes  |
| Computer software                  | No                              | No                                 | No   |
| Furniture & fixtures               | Yes                             | Yes                                | No   |
| Working capital                    | No                              | No                                 | No   |
| Research & development             | No                              | No                                 | No   |
| Job training                       | No                              | No                                 | No   |
| Capital or synthetic lease         | No                              | Yes                                | Yes  |
| Rail improvements <sup>4</sup>     | Yes                             | Yes                                | Yes  |
| Public infrastructure <sup>5</sup> | Yes                             | Yes                                | Yes  |

<sup>1</sup> “Capital investment” is used to calculate project investment on depreciable assets.

<sup>2</sup> “Qualifying investment” is used to determine eligibility for EZ and HQJC programs.

<sup>3</sup> “Investment qualifying for tax credits” is used to calculate the maximum available tax credit award for a project.

<sup>4</sup> “Rail improvements” includes hard construction costs for rail improvements. (These costs are included as part of construction or site preparation costs.)

<sup>5</sup> “Public infrastructure” includes any publicly owned utility service such as water, sewer, storm sewer or roadway construction and improvements. (These costs are included as part of construction costs.)

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

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CHAPTER 175  
APPLICATION REVIEW AND APPROVAL PROCEDURES

**261—175.1(15,83GA,SF344) Applicability.** This chapter shall apply to the programs listed in rule 261—173.1(15,15G,83GA,SF344) and to other state and federal programs identified in this chapter. This chapter describes the application review and approval procedures and the role of the advisory groups or board committees and identifies the final decision maker for each program.  
[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—175.2(15,83GA,SF344) Application procedures for programs administered by the department.**

**175.2(1) IVF(2009).** Effective July 1, 2009, pursuant to 2009 Iowa Acts, Senate File 344, the grow Iowa values fund was updated, streamlined and simplified, preexisting state financial assistance programs were repealed and previous funding for these programs was transferred to IVF(2009). The fund is administered by the department, and the board has final decision-making authority for IVF(2009) financial assistance awards and other activities.

**175.2(2) IVF (2005).** Rescinded IAB 7/15/09, effective 7/1/09.

**175.2(3) Projects funded by program funds (“old money”).** Rescinded IAB 7/15/09, effective 7/1/09.

**175.2(4) Tax credit programs.** The department administers tax credit programs that provide tax incentives for approved projects. The department will review an application to ensure that the project meets the requirements for the tax credit programs through which an applicant is applying.

**175.2(5) Federal programs.** The department administers federal programs including, but not limited to, the HOME program and the CDBG program. EDSA is the job creation component of the CDBG program. The department will review an application to ensure that the project meets the requirements for the programs through which an applicant is applying.

**175.2(6) Other state programs.** In addition to the programs described herein, the department administers other state programs. The department will review an application to ensure that the project meets the requirements for the tax credit programs through which an applicant is applying.

**175.2(7) Application required.** A business or community seeking financial assistance or tax credit benefits from a department program shall submit an application to the department. The applicant shall comply with the department’s application procedures, processes, rules, and, as applicable, the wage and benefit requirements for that program and its funding source. Application forms and directions for completing the forms are available online at the department’s Web site at [www.iowalifechanging.com](http://www.iowalifechanging.com) or at the department’s offices located at 200 East Grand Avenue, Des Moines, Iowa 50309.  
[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—175.3(15,83GA,SF344) Standard program requirements.** In addition to the eligibility requirements of the individual programs applicable to the financial assistance sought, an applicant shall be subject to all of the following requirements:

**175.3(1) Environmental and worker safety.** The applicant shall submit to the department with its application for financial assistance a report describing all violations of environmental law or worker safety law within the last five years. If, upon review of the application, the board finds that a business has a record of violations of the law, statutes, rules, or regulations that tends to show a consistent pattern, the board shall not make an award of financial assistance to the business unless the board finds either that the violations did not seriously affect public health, public safety, or the environment or, if such violations did seriously affect public health, public safety, or the environment, that mitigating circumstances were present.

**175.3(2) Sustained operations.** The applicant shall not have closed or substantially reduced operations in one area of this state and relocated substantially the same operations in a community in another area of this state. However, this subrule shall not be construed to prohibit a business from expanding its operations in a community if existing operations of a similar nature in this state are not closed or substantially reduced.

**175.3(3) Competition.** The proposed project shall not negatively impact other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for financial assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for financial assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

**175.3(4) Legally authorized employment.** The applicant shall only employ individuals legally authorized to work in this state. In addition to any and all other applicable penalties provided by current law, all or a portion of the assistance received by a business which has received financial assistance under the program and is found to knowingly employ individuals not legally authorized to work in this state is subject to recapture by the department.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—175.4(15,83GA,SF344) Review and approval of applications.**

**175.4(1) Staff review for eligibility.** Applications received by the department will be reviewed by program staff to ensure that documentation of minimum program eligibility requirements has been submitted by the applicant. Complete applications will be forwarded to the appropriate decision maker for action.

**175.4(2) Additional review factors.** In addition to reviewing an application for eligibility, the department and the board may consider additional factors. Upon review of these additional factors, the board may determine that the applicant is ineligible to receive assistance until such time as the pending resolution of any outstanding issues identified by the board. Additional factors to be considered include:

*a. Applicant's past or current performance.* If an applicant has received a prior award(s) from the department, the department and board will take into consideration the applicant's past or current performance under the prior award(s).

*b. Results of due diligence review.* This review will include, but is not limited to, lien searches, reports of violations, lawsuits and other relevant information about the applicant.

*c. Report on environmental law compliance.* This report is required by rule 261—172.1(15A) and applicable program statutes.

*d. Report on violations of law.* This report is required by rule 261—172.2(15A) and applicable program statutes.

**175.4(3) Negotiations.** Department staff may negotiate with the applicant concerning dollar amounts, terms, collateral requirements, conditions of award, or any other elements of the project. The board or director may offer an award in a lesser amount or that is structured in a manner different from that requested. Meeting minimum eligibility requirements does not guarantee that assistance will be offered or provided in the manner sought by the applicant.

**175.4(4) Approval procedures.**

*a. Approval.* Application approval procedures shall comply with statutory requirements for the program or funding source and applicable program rules. The board shall take final action on all applications or activities funded through IVF(2009), HQJP, EZ and other programs as described in the following paragraphs. The director shall take action on all other applications or activities that are not identified as requiring board action. Paragraphs "b" to "e" describe the review and approval processes, by funding source and program.

Key to tables:

APAC – Agricultural policy advisory committee established in Iowa Code section 15.203 as amended by 2009 Iowa Acts, Senate File 344, section 23.

BRN – Brownfield redevelopment advisory council as established in Iowa Code section 15.294.

CWD – Community and workforce development committee created by the board.

DDC – Due diligence committee established by the board pursuant to Iowa Code section 15.103(6).

LCG – Loan and credit guarantee committee established in Iowa Code section 15.103(6) as amended by 2009 Iowa Acts, Senate File 344, section 18.

TSB – Targeted small business advisory council established in Iowa Code section 15.247(8).

TCC – Technology commercialization committee established in Iowa Code section 15.116 as amended by 2009 Iowa Acts, Senate File 344, section 22.

*b. Advisory committee recommendations and final action—state financial assistance programs.* The approval process for applications for financial assistance and any other request for funding from the department’s direct financial assistance programs is as follows:

| PROGRAM   | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|---|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|   | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| Grow Iowa Values Financial Assistance Program:  |                    |     |     |     |     |     |     |                    |          |
| 130% wage component                             |                    |     |     | •   |     |     |     | •                  |          |
| 100% wage component                             |                    |     |     | •   |     |     |     | •                  |          |
| Entrepreneurial component                       |                    |     |     | •   |     |     |     | •                  |          |
| Infrastructure component                        |                    |     |     | •   |     |     |     | •                  |          |
| Value-added agriculture component               | •                  |     |     |     |     |     |     | •                  |          |
| Disaster recovery component                     |                    |     |     | •   |     |     |     | •                  |          |
| Loan and Credit Guarantee Program               |                    |     |     |     | •   |     |     | •                  |          |
| Other Iowa Values Fund (2009) activities:       |                    |     |     |     |     |     |     |                    |          |
| Marketing                                       |                    |     |     |     |     |     |     | •                  |          |
| Labor shed study                                |                    |     |     |     |     |     |     | •                  |          |
| Technical assistance and information technology |                    |     |     |     |     |     |     | •                  |          |
| Opportunities and threats                       |                    |     |     |     |     |     |     | •                  |          |
| All other IVF assistance                        |                    |     |     |     |     |     |     | •                  |          |
| Innovation and Commercialization Fund:          |                    |     |     |     |     |     |     |                    |          |
| Demonstration Fund                              |                    |     |     |     |     |     | •   | •                  |          |
| Information Technology Training Program         |                    |     |     |     |     |     | •   | •                  |          |
| Targeted Industries Internship Program          |                    |     |     |     |     |     | •   | •                  |          |
| Community College Equipment and Training Fund   |                    |     |     |     |     |     | •   | •                  |          |

| PROGRAM  | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|--|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|  | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| Targeted Industries Networking Fund            |                    |     |     |     |     |     | •   | •                  |          |
| Targeted Industries Student Competition Fund   |                    |     |     |     |     |     | •   | •                  |          |
| Targeted Industries Career Awareness Fund      |                    |     |     |     |     |     | •   | •                  |          |
| Lean Manufacturing Institute Program           |                    |     |     |     |     |     | •   | •                  |          |
| Supplier Capacity and Product Database Program |                    |     |     |     |     |     | •   | •                  |          |
| Management Talent Recruitment Program          |                    |     |     |     |     |     | •   | •                  |          |

c. *Advisory committee recommendations and final action—tax credit programs.* The approval process for applications for financial assistance and any other request for funding from the department’s tax credit programs is as follows:

| PROGRAM                                       | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|---|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|   | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| High Quality Jobs                             |                    |     |     | •   |     |     |     | •                  |          |
| Enterprise Zone                               |                    |     |     |     |     |     |     |                    |          |
| Business                                      |                    |     |     | •   |     |     |     | •                  |          |
| Housing                                       |                    |     |     |     |     |     |     |                    | •        |
| Film, Television, and Video Project Promotion |                    |     |     |     |     |     |     |                    | •        |
| Assistive Device Tax Credits                  |                    |     |     |     |     |     |     |                    | •        |

d. *Advisory committee recommendations and final action—federal programs.* The approval process for applications for financial assistance and any other request for funding from the department’s federal programs is as follows:

| PROGRAM                            | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|------------------------------------|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|                                    | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| HOME                               |                    |     |     |     |     |     |     |                    | •        |
| CDBG                               |                    |     |     |     |     |     |     |                    |          |
| EDSA                               |                    |     |     | •   |     |     |     | •                  |          |
| All other CDBG assistance          |                    |     |     |     |     |     |     |                    | •        |
| Neighborhood Stabilization Program |                    |     |     |     |     |     |     |                    | •        |

e. *Advisory committee recommendations and final action—other department-administered programs.* The approval process for applications for financial assistance and any other request for funding from other department-administered programs is as follows:

| PROGRAM  | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|--|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|  | APAC               | BRN | CWD | DDC | LCG | TCC | TSB | Board              | Director |
| Brownfield Redevelopment Program                     |                    | •   |     |     |     |     |     |                    | •        |
| Targeted Small Business Financial Assistance Program |                    |     |     |     |     |     | •   |                    | •        |
| Export Trade Assistance Program                      |                    |     |     |     |     |     |     |                    | •        |
| Accelerated Career Education Program                 |                    |     | •   |     |     |     |     | •                  |          |
| Targeted Jobs Withholding Tax Credit Program         |                    |     |     |     |     |     |     |                    | •        |

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—175.5(15,15G,83GA,SF344) Procedures for waiver of wage and other program requirements.**

**175.5(1) General information.** Within the parameters described in this rule, the board may, for good cause shown, waive qualifying wage threshold requirements. 2009 Iowa Acts, Senate File 344, section 3, permits applicants to apply to the board for a waiver of the qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program. Iowa Code section 15.335A(3) as amended by 2009 Iowa Acts, Senate File 344, section 16, allows a community to apply to the board for a project-specific waiver from the qualifying wage threshold requirement provided in the HQJP in order to seek tax incentives for an eligible business.

**175.5(2) Definition of “good cause.”** For purposes of this rule, “good cause” can include, but is not limited to, documentation of any of the following:

*a. Economic distress.* An applicant can establish good cause by demonstrating that the proposed project is located or plans to locate in an area that has experienced economic distress. Data that can be used to establish economic distress may be based on a combination of factors including, but not limited to:

- (1) A county family poverty rate significantly higher than the state average.
- (2) A county unemployment rate significantly higher than the state average.
- (3) A unique opportunity to use existing unutilized facilities in the community.
- (4) A significant downsizing or closure by one of the community’s major employers.
- (5) An immediate threat posed to the community’s workforce due to the downsizing or closure of a business.

*b. Targeted industry project.* An applicant can establish good cause by demonstrating that the proposed project meets all of the following criteria:

- (1) The business is in one of the state’s targeted industry clusters: life sciences, information solutions, and advanced manufacturing.
- (2) All jobs created as a result of the project have a qualifying wage threshold equal to or greater than 100 percent of the county wage.
- (3) The business is headquartered in Iowa or, as a result of the proposed project, will be headquartered in Iowa. In lieu of the business’s being headquartered in Iowa, the proposed project has unique aspects which will assist the department in meeting one or more of its strategic objectives.

**175.5(3) Request to waive HQJP qualifying wage threshold requirement.**

*a.* Iowa Code section 15.335A(3) as amended by 2009 Iowa Acts, Senate File 344, section 16, authorizes a community to request a project-specific waiver from the qualifying wage threshold requirement in order to seek tax incentives for an eligible business.

*b.* Upon a showing of good cause as defined in subrule 175.5(2), the board may grant a project-specific waiver from the county or regional wage calculations for the remainder of a calendar

year based on county wage or regional wage calculations brought forth by the applicant county including, but not limited to, any of the following:

- (1) The county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.
- (2) The regional wage calculated without wage data from up to two adjacent counties.
- (3) The county wage calculated without wage data from the largest city in the county.
- (4) A qualifying wage guideline for a specific project based upon unusual economic circumstances present in the city or county.
- (5) The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.
- (6) The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

**175.5(4)** *Request to waive qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program.*

a. 2009 Iowa Acts, Senate File 344, section 3, allows applicants to apply to the board for a waiver of the 130 percent wage component of the grow Iowa values financial assistance program.

b. Upon a showing of good cause as defined in subrule 175.5(2), the board may grant a project-specific waiver of the qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program. The board may grant a waiver from the county wage calculations based on county or regional wage calculations brought forth by the applicant including, but not limited to, any of the following:

- (1) The county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.
- (2) The regional wage calculated without wage data from up to two adjacent counties.
- (3) The county wage calculated without wage data from the largest city in the county.
- (4) A qualifying wage threshold for a specific project based upon unusual economic circumstances present in the city or county.
- (5) The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.
- (6) The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

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[Filed Emergency ARC 7970B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

PART VIII  
LEGAL AND COMPLIANCE

CHAPTER 187  
CONTRACTING

[Prior to 7/4/07, see 261—Ch 168, div VI]

**261—187.1(15) Applicability.** This chapter is applicable to the programs identified in 261—173.1(15).

**261—187.2(15) Contract required.**

**187.2(1) Notice of award.** Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

**187.2(2) Contract required.** The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; the jobs to be created or retained; length of the project completion period and maintenance project completion period; the project completion date and maintenance period completion date; conditions to disbursement; a requirement for annual reporting to the department; and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions (“clawback provisions”) to be established on a project-by-project basis.

**187.2(3) Contract-signing deadline.** Successful applicants will be required to execute an agreement with the department within 120 days of the department’s or board’s approval of an award. Failure to do so may result in action by the entity that approved the award (the department or the board) to rescind the award. The 120-day time limit may be extended by the final decision maker that approved the award (the department or the board) for good cause shown.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—187.3(15) Project completion date and maintenance period completion date.**

**187.3(1)** Projects shall be completed by the project completion date and maintained through the end of the maintenance date. The contract will establish the duration of the project period and maintenance period. Requests to change the project completion date and the maintenance period completion date shall follow the process for an amended award or contract as described in rule 261—187.4(15).

**187.3(2)** Projects receiving assistance from programs covered by this chapter shall conform to the time periods established by this rule.

**187.3(3)** By the project completion date, a recipient shall have completed the project as required by the contract. The jobs and project shall be maintained through the end of the maintenance period completion date. The project completion date is calculated by the department from the end of the month during which an award is made. For example, if an award is made on June 13, 2007, the three-year project completion date will be calculated from June 30, 2007. The project completion date for this award would be June 30, 2010. The maintenance period completion date would be June 30, 2012.

**187.3(4)** The following table describes, by program, the length of the project completion period and the maintenance period:

| Program  | Project Completion Period | Maintenance Period | Total Contract Length |
|--|---------------------------|--------------------|-----------------------|
| Grow Iowa Values Financial Assistance Program: |                           |                    |                       |
| 130% wage component                            | 3 years                   | 2 more years       | 5 years               |
| 100% wage component                            | 3 years                   | 2 more years       | 5 years               |
| Entrepreneurial component                      | 3 years                   | 2 more years       | 5 years               |
| Infrastructure component                       | 3 years                   | 2 more years       | 5 years               |
| Value-added agriculture component              | 3 years                   | 2 more years       | 5 years               |



| PROGRAM   | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|---|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|   | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| Technical assistance and information technology |                    |     |     |     |     |     |     | •                  |          |
| Opportunities and threats                       |                    |     |     |     |     |     |     | •                  |          |
| All other IVF assistance                        |                    |     |     |     |     |     |     | •                  |          |
| Innovation and Commercialization Fund:          |                    |     |     |     |     |     |     |                    |          |
| Demonstration Fund                              |                    |     |     |     |     |     | •   | •                  |          |
| Information Technology Training Program         |                    |     |     |     |     |     | •   | •                  |          |
| Targeted Industries Internship Program          |                    |     |     |     |     |     | •   | •                  |          |
| Community College Equipment and Training Fund   |                    |     |     |     |     |     | •   | •                  |          |
| Targeted Industries Networking Fund             |                    |     |     |     |     |     | •   | •                  |          |
| Targeted Industries Student Competition Fund    |                    |     |     |     |     |     | •   | •                  |          |
| Targeted Industries Career Awareness Fund       |                    |     |     |     |     |     | •   | •                  |          |
| Lean Manufacturing Institute Program            |                    |     |     |     |     |     | •   | •                  |          |
| Supplier Capacity and Product Database Program  |                    |     |     |     |     |     | •   | •                  |          |
| Management Talent Recruitment Program           |                    |     |     |     |     |     | •   | •                  |          |

b. *Amendments—tax credit programs.* The approval process to amend an award or a contract for the department’s tax credit programs is as follows:

| PROGRAM                                       | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|---|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|   | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| High Quality Jobs                             |                    |     |     | •   |     |     |     | •                  |          |
| Enterprise Zone                               |                    |     |     |     |     |     |     |                    |          |
| Business                                      |                    |     |     | •   |     |     |     | •                  |          |
| Housing                                       |                    |     |     |     |     |     |     |                    | •        |
| Film, Television, and Video Project Promotion |                    |     |     |     |     |     |     |                    | •        |
| Assistive Device Tax Credits                  |                    |     |     |     |     |     |     |                    | •        |

c. *Amendments—federal programs.* The approval process to amend an award or a contract for the department’s federal programs is as follows:

| PROGRAM                            | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|------------------------------------|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|                                    | APAC               | BRN | CWD | DDC | LCG | TCC | TSB | Board              | Director |
| HOME                               |                    |     |     |     |     |     |     |                    | •        |
| CDBG                               |                    |     |     |     |     |     |     |                    |          |
| EDSA                               |                    |     |     | •   |     |     |     | •                  |          |
| All other CDBG assistance          |                    |     |     |     |     |     |     |                    | •        |
| Neighborhood Stabilization Program |                    |     |     |     |     |     |     |                    | •        |

*d. Amendments—other department-administered programs.* The approval process to amend an award or a contract for other programs administered by the department is as follows:

| PROGRAM  | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|--|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|  | APAC               | BRN | CWD | DDC | LCG | TCC | TSB | Board              | Director |
| Brownfield Redevelopment Program                     |                    | •   |     |     |     |     |     |                    | •        |
| Targeted Small Business Financial Assistance Program |                    |     |     |     |     |     | •   |                    | •        |
| Export Trade Assistance Program                      |                    |     |     |     |     |     |     |                    | •        |
| Accelerated Career Education Program                 |                    |     | •   |     |     |     |     | •                  |          |
| Targeted Jobs Withholding Tax Credit Program         |                    |     |     |     |     |     |     |                    | •        |

**187.4(3)** Amendments and other requests the department is authorized to implement. The department is authorized by the board to take action on nonsubstantive changes, including but not limited to the following:

- a.* Recipient name, address and similar changes.
- b.* Collateral changes that are the same or better security than originally approved by the board or director (e.g., securing a letter of credit to replace a UCC blanket filing) or collateral changes that do not materially and substantially impact the department's security.
- c.* Line item budget changes that do not reduce overall total project costs.
- d.* Loan repayment amounts or due dates that do not extend the final due date of a loan.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

**261—187.5(15) Default.**

**187.5(1)** *Events of default.* The department may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the department may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

- a.* Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.
- b.* A material change in the business ownership or structure that occurs without prior written disclosure and the permission of the department.
- c.* A relocation or abandonment of the business or jobs created or retained through the project.
- d.* Expenditure of funds for purposes not described in the application or authorized in the agreement.
- e.* Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.

- f. Failure of the recipient to fulfill its job obligations.
- g. Failure of the recipient to comply with wage or benefit packages.
- h. Failure of the recipient to perform or comply with the terms and conditions of the contract.
- i. Failure of the recipient to comply with any applicable state rules or regulations.
- j. Failure of the recipient to file the required annual report.

**187.5(2) Layoffs or closures.** If a recipient experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after executing a contract to receive the incentives and assistance, the department may consider this an event of default and the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

**187.5(3) Department actions upon default—direct financial assistance programs.**

a. The department will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the board deems necessary.

c. Determination of appropriate repayment plan. Upon determination that the recipient has not met the contract obligations, the department will notify the recipient of the amount to be repaid to the department. If the enforcement of such penalties would endanger the viability of the recipient, the board may extend the term of the loan to ensure payback, stability, and survival of the recipient. In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, review and approval by the board, committee or director, as applicable, are necessary before the department may finalize the repayment plan with the recipient.

d. The department shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the board, committee or director, as applicable, and described in paragraph “f.”

e. If the department or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the department and the outside counsel regarding scope of counsel’s authorization to accept settlements shall apply. No additional approvals by the board, committee or director shall be required.

f. The tables below describe the approval procedures that shall be followed for all negotiated settlements, write-offs or discontinuance of collection efforts for state direct financial assistance programs, federal programs, and other programs administered by the department.

(1) Direct financial assistance programs:

| PROGRAM  | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|--|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|  | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| Grow Iowa Values Financial Assistance Program: |                    |     |     |     |     |     |     |                    |          |
| 130% wage component                            |                    |     |     | •   |     |     |     | •                  |          |
| 100% wage component                            |                    |     |     | •   |     |     |     | •                  |          |
| Entrepreneurial component                      |                    |     |     | •   |     |     |     | •                  |          |
| Infrastructure component                       |                    |     |     | •   |     |     |     | •                  |          |



| PROGRAM                            | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|------------------------------------|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|                                    | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| EDSA                               |                    |     |     | •   |     |     |     | •                  |          |
| All other CDBG assistance          |                    |     |     |     |     |     |     |                    | •        |
| Neighborhood Stabilization Program |                    |     |     |     |     |     |     |                    | •        |

(3) Other programs administered by the department:

| PROGRAM  | RECOMMENDATION BY: |     |     |     |     |     |     | FINAL DECISION BY: |          |
|--|--------------------|-----|-----|-----|-----|-----|-----|--------------------|----------|
|  | APAC               | BRN | CWD | DDC | LCG | TSB | TCC | Board              | Director |
| Brownfield Redevelopment Program                     |                    | •   |     |     |     |     |     |                    | •        |
| Targeted Small Business Financial Assistance Program |                    |     |     |     |     | •   |     |                    | •        |
| Export Trade Assistance Program                      |                    |     |     |     |     |     |     |                    | •        |
| Accelerated Career Education Program                 |                    |     | •   |     |     |     |     | •                  |          |
| Targeted Jobs Withholding Tax Credit Program         |                    |     |     |     |     |     |     |                    | •        |

**187.5(4) Department actions upon default—tax credit programs.** Collection efforts for tax credit programs are handled by the local community that approved the local tax incentive and the Iowa department of revenue, the state agency responsible for the state tax incentives.

*a. Repayment.* If an eligible business or eligible housing business has received incentives or assistance under the EZ program or the HQJP and fails to meet and maintain any one of the requirements of the program or applicable rules, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

*b. Calculation of repayment due for a business.* If the department, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the tax credit program, the business is subject to repayment of all or a portion of the amount of incentives received.

(1) Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment shall be calculated as follows:

1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

4. If the business has not met the minimum job creation requirements for the tax credit program, the business shall repay all of the incentives and assistance that it has received.

(2) Wages and benefits. If a business fails to comply with the wage or benefit requirements for the tax credit program, the business shall not receive incentives or assistance for each year during which the business is not in compliance.

(3) Capital investment. If a business does not meet the capital investment requirement, repayment shall be calculated as follows:

1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to invest.

2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to invest.

3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to invest.

4. If the business has not met the minimum investment requirement for the tax credit program, the business shall repay all of the incentives and assistance that it has received.

*c. Department of revenue; county/city recovery.* Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under Iowa Code section 15E.193A or 15E.196. The value of state incentives provided under Iowa Code section 15E.193A or 15E.196 includes applicable interest and penalties.

*d. Layoffs or closures.* If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

*e. Extensions.* If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—187.2(15), the department, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

[Filed emergency 6/15/07—published 7/4/07, effective 6/15/07]

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[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 189  
ANNUAL REPORTING

**261—189.1(15) Annual reporting by businesses required (for period ending June 30).** Recipients shall report annually to the department, in form and content acceptable to the department, about the status of the funded project. The report shall include, but not be limited to, data about base employment, qualifying wages, benefits, project costs, capital investment, and compliance with the contract.

**261—189.2(15) January 31 report by IDED to legislature.** IDED's legal and compliance group will use the data it collects from businesses to prepare a report on the programs covered in 261—Chapter 173 to be included in IDED's consolidated annual report, which is due to the legislature by January 31 each year pursuant to Iowa Code section 15.104(9) as amended by 2009 Iowa Acts, Senate File 344, section 20.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

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CHAPTER 98  
FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I  
GENERAL PROVISIONS

**281—98.1(256,257) Definitions.** For the purposes of this chapter, the following definitions apply:

*“Budgetary allocation”* means the portion of the funding that is specifically earmarked for a particular purpose or designated program and which, in the case of the general fund, has been rolled into, or added to, the school district cost per pupil or school district regular program cost. Budgetary allocations may include both state aid and property tax. Budgetary allocations increase budget authority on the first day of the fiscal year for which the allocation has been certified or on the date that the school budget review committee approves modified allowable growth for a specific purpose or program; the budget authority remains even if the full amount of revenue is not received or if the local board does not levy a cash reserve. There is no assumption that a school district or area education agency will receive the same amount of revenue as it has received in budget authority due to delinquent property taxes, cuts in state aid, or legislative decisions to fund other instructional programs off the top of state aid. The school district or area education agency must expend the full amount of budget authority for the specific purposes for which it was earmarked. When the school district or state cost per pupil is transferred from one school district to another school district in the form of tuition as required by the Iowa Code, any budgetary allocation that is included in the school district or state cost per pupil shall be considered transferred to the receiving school district and shall be expended for the specific purpose for which it was earmarked.

*“Categorical funding”* means financial support from state and federal governments that is targeted for particular categories of students, special programs, or special purposes. This support is in addition to school district or area education agency general purpose revenue, is beyond the basic educational program, and most often has restrictions on its use. Where categorical funding requires a local match, that local match also is considered to be categorical funding. Categorical funding includes both grants in aid and budgetary allocations. Although grants in aid and budgetary allocations are both categorical funding, they are defined separately to distinguish unique characteristics of each type of categorical funding.

*“Grants in aid”* means financial support, usually from state or federal appropriations, that is either allocated to the school district or area education agency or for which a school district or area education agency applies. This support is paid separately from state foundation aid. In the general fund, grants in aid become miscellaneous income and increase budget authority when the support is received as revenue.

*“Supplement, not supplant”* means that the categorical funding shall be in addition to general purpose revenues; that categorical funding shall not be used to provide services required by federal or state law, administrative rule, or local policy; and that general purpose revenues shall not be diverted for other purposes because of the availability of categorical funding. Supplanting is presumed to have occurred if the school district or area education agency uses categorical funding to provide services that it was required to make available under other categorical funding or law, or uses categorical funding to provide services that it provided in prior years from general purpose revenues, or uses categorical funding to provide services to a particular group of children or programs for which it uses general purpose revenues to provide the same or similar services to other groups of children or programs. These presumptions are rebuttable if the school district or area education agency can demonstrate that it would not have provided the services in question with general purpose revenues if the categorical funding had not been available. [ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.2(256,257) General finance.** The categorical funding provided for various purposes to school districts and area education agencies includes general financial characteristics that are detailed in the following subrules.

**98.2(1) Indirect cost recovery.** Categorical funding provided by the state to school districts or area education agencies is not eligible for indirect cost recovery unless the Iowa Code section authorizing

the funding or allocation expressly states that indirect cost recovery is permitted from that source. If the Iowa Code permits indirect cost recovery, the school district or area education agency shall utilize its restricted indirect cost rate developed by the department for federal programs from data submitted by the school district or area education agency on its certified annual report.

**98.2(2) *Restriction on supplanting.*** Categorical funding shall supplement, but shall not supplant, expenditures in the appropriate fund into which the categorical funding is deposited and accounted for, unless the Iowa Code section authorizing the funding or allocation expressly states that supplanting is permitted from that source.

**98.2(3) *Mandatory carryforward.*** Any portion of categorical funding provided by the state that is not expended by the end of the fiscal year in which it was received by or for which it was allocated to the school district or area education agency shall be carried forward as a reserved fund balance and added to the subsequent year's budget for that purpose. The funding can only be expended for the purposes permitted for that categorical funding. Where a local match is required for categorical funding, the amount unexpended at the end of the fiscal year that is carried forward shall not be used as part of the required local match.

**98.2(4) *Discontinued funding.*** In the event that a categorical funding source is discontinued and an unexpended balance remains, the school district or area education agency shall carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes which were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period.

**98.2(5) *Expenditures.*** Expenditures from categorical funding shall be limited to direct costs of providing the program or service for which the funding was intended. Expenditures shall not include costs that are allocated costs or that are considered indirect costs or overhead. Expenditures for the functions of administration, business and central services, operation and maintenance of plant, transportation, enterprise and community service operations, facility acquisition and construction, or debt service generally are not allowed from categorical funding unless expressly allowed by the Iowa Code or if the expenditure represents a direct, allowable cost. In order for costs of administration, business and central services, operation and maintenance of plant, transportation, or enterprise and community service operations to be considered direct costs, the costs must be necessary because of something that is unique to the program that is causing the need for the service, not otherwise needed or not otherwise provided to similar programs; the costs must be in addition to those which are normally incurred; and the costs must be measurable directly without allocating. Where a local match is required for categorical funding, that local match requirement shall not be met by the use of other categorical funding except where expressly allowed by the Iowa Code. Expenditures shall not include reimbursing the school district or area education agency for expenditures it paid in a previous year in excess of the funding available for that year.

**98.2(6) *Restriction on duplication.*** The school district or area education agency shall not charge the same cost to more than one funding source.

**98.2(7) *Excess expenditures.*** The school district or area education agency shall not charge to categorical funding more expenditures than the total of the current year's funding or allocation plus any carryforward balance from the previous year.

**98.2(8) *Commingling prohibited.*** Categorical funding shall not be commingled with other funding. All categorical funding shall be accounted for separately from other funding. School districts and area education agencies shall use a project code and program code as defined by Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as appropriate or required.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

281—98.3 to 98.10 Reserved.

DIVISION II  
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

**281—98.11(257) Categorical and noncategorical student counts.** The certified enrollment data collection includes both student counts related to budgetary allocations for the subsequent budget year that are provided for the purpose of offering a program that is in addition to the basic educational program for a specific category of students and student counts that are general in nature and can be used for any legal general fund purpose. Student counts that are general in nature are used to generate funding through the school aid foundation formula and are not intended to fund a specific program or a specific category of students. General student counts include the basic enrollment of full-time resident students.

Counts for part-time nonpublic students participating in public school classes pursuant to Iowa Code section 257.6(3) and counts for part-time dual enrolled competent private instruction students in grades 9 through 12 are the full-time equivalent enrollment of a regularly enrolled student. Counts for dual enrolled competent private instruction students in grades lower than grade 9 are the legislatively set equivalent of a regularly enrolled full-time student. Counts for part-time nonpublic students and for part-time dual enrolled competent private instruction students in grades 9 through 12 who participate in the postsecondary enrollment option Act classes are the full-time equivalent of a regularly enrolled student based on cost. Because these counts are the full-time equivalent of a regularly enrolled student, and are not in addition to the full-time equivalent, the funding generated within the school aid foundation formula based on these counts is considered general in nature.

Student counts related to categorical budgetary allocations are those that generate funding intended to be used for only that specific category of students being counted or for the specific program for which the additional counts are authorized in the Iowa Code.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.12(257,299A) Home school assistance program.** The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program that is provided to regularly enrolled students by the school district.

**98.12(1) Appropriate uses of categorical funding.** Because the program is specifically instructional, expenditures generally are limited to the functions of instruction, student support services and staff support services. Appropriate uses of HSAP funding include, but are not limited to, the following:

- a. Salary and benefits for the supervising teacher of HSAP students. If the teacher is a part-time HSAP teacher and a part-time regular classroom teacher, then the portion of time that is related to HSAP may be charged to the program, but the portion of time that is related to the regular classroom shall not.
- b. Staff development for the HSAP teacher.
- c. Travel for the HSAP teacher.
- d. Resources, materials, software, supplies, and purchased services that:
  - (1) Are necessary to provide the services of home school assistance, and
  - (2) Will remain with the school district for its K-12 home school assistance program.

**98.12(2) Inappropriate uses of categorical funding.** Inappropriate uses of the home school assistance program funding include, but are not limited to, indirect costs or use charges; operational or maintenance costs; capital expenditures; student transportation; administrative costs; dual enrollment program costs, including postsecondary enrollment options Act classes, even if for the same student who is in HSAP; or any other expenditures not directly related to HSAP. The HSAP shall not provide moneys or resources paid for with HSAP funding to parents or students utilizing the program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter)]

**281—98.13(256C,257) Statewide voluntary four-year-old preschool program.** The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

**98.13(1) *Appropriate uses of categorical funding.*** Because the program is specifically instructional, expenditures generally are limited to the functions of instruction, student support services and staff support services, but include expenditures required in 281—Chapter 16.

**98.13(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the statewide voluntary four-year-old preschool program funding include, but are not limited to, indirect costs or use charges, capital expenditures other than equipment, facility acquisition, debt service, operational or maintenance costs or administrative costs that supplant, or any other expenditures not directly related to providing the statewide voluntary four-year-old preschool program or that supplant existing public funding for preschool programming.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.14(257) *Supplementary weighting.*** Supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of students and staff between school districts and providing postsecondary opportunities for qualified students. It is assumed that supplementary weighting covers only a portion of the costs of sharing or providing postsecondary opportunities and shall be fully expended within the fiscal year. Therefore, school districts are not required to account for the supplementary weighting funding separate from the general purpose revenues.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.15(257) *Operational function sharing supplementary weighting.*** Operational function sharing supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of management-level staff. It is assumed that operational function sharing supplementary weighting covers only a portion of the costs of sharing management-level staff and shall be fully expended within the five-year period of sharing. Therefore, school districts are not required to account for the operational function sharing supplementary weighting funding separate from the general purpose revenues.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.16(257,280) *Limited English proficiency (LEP) weighting.*** Limited English proficiency weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of limited English proficiency students above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant modified allowable growth to continue funding of the excess costs beyond the four years of weighting. Funding for the limited English proficiency weighting and the modified allowable growth for limited English proficiency programs are both categorical funding and may have different restrictions than the federal limited English proficiency funding.

**98.16(1) *Appropriate uses of categorical funding.*** Appropriate uses of funding for the limited English proficiency program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures include, but are not limited to, salaries and benefits of teachers and paraeducators; instructional supplies, textbooks, and technology; classroom interpreters; support services to students served in limited English proficiency programs above the services provided to pupils in regular programs; support services to instructional staff such as targeted professional development, curriculum development or academic student assessment; and support services provided to parents of limited English proficiency students and community services specific to limited English proficiency.

**98.16(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of funding for the limited English proficiency program include, but are not limited to, indirect costs, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the limited English proficiency program beyond the scope of the regular classroom.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.17(256B,257) Special education weighting.** Special education weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of students. Further information on the special education program is provided in 281—Chapter 41.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.18(257) At-risk formula supplementary weighting.** At-risk formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of at-risk and alternative school secondary students pursuant to Iowa Code section 257.11(4)“a.”

**98.18(1) Appropriate uses of categorical funding.** Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain at-risk pupils’ programs, which may include alternative school programs, and include, but are not limited to:

a. Salary and benefits for the teacher(s) of students participating in the at-risk or alternative school programs and salary and benefits for guidance counselors or a dean of students dedicated to working directly and exclusively with identified students beyond the services provided by the school district to students who are not identified as at risk. If the teacher (or counselor) is part-time at-risk and part-time regular classroom teacher (counselor), then the portion of time that is related to the at-risk program may be charged to the program, but the portion of time that is related to the regular classroom shall not.

b. Professional development for all teachers and staff working with at-risk students and programs involving intervention strategies.

c. Research-based resources, materials, software, supplies, and purchased services that meet all of the following criteria:

- (1) Meet the needs of K through 12 identified students at risk,
- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed in the school district’s at-risk program plan, and
- (4) Will remain with the K through 12 at-risk program.

**98.18(2) Inappropriate uses of categorical funding.** Inappropriate uses of the at-risk formula supplementary weighting funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs other than those related to a separate school located off site and where the administrator is assigned exclusively to this program, or any other expenditures not directly related to providing the at-risk or alternative school program beyond the scope of the regular classroom program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.19(257) Reorganization incentive weighting.** Reorganization incentive weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting reorganization of school districts to increase student learning opportunities. It is assumed that reorganization incentive weighting covers only a portion of the costs of reorganizing and shall be fully expended within the fiscal year. Therefore, school districts are not required to account for the reorganization incentive weighting funding separate from the general purpose revenues.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.20(257) Gifted and talented program.** Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the allowable growth percentage. This amount must account for not more than 75 percent of the school district’s total gifted and talented program budget. The school district must also provide a local match from the school district’s regular program district cost and the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, and all donations and grants shall be accounted for as categorical funding.

The purpose of the gifted and talented funding described in Iowa Code section 257.46 is to provide for identified gifted students' needs beyond those provided by the regular school program pursuant to each gifted student's individualized plan. The funding shall be used only for expenditures that are directly related to providing the gifted and talented program.

**98.20(1) *Appropriate uses of categorical funding.*** Appropriate uses of the gifted and talented program funding include, but are not limited to:

*a.* Salary and benefits for the teacher of gifted and talented students. If the teacher is a part-time gifted and talented and a part-time regular classroom teacher, then the portion of time that is related to the gifted and talented program may be charged to the program, but the portion of time that is related to the regular classroom shall not.

*b.* Staff development for the gifted and talented teacher.

*c.* Resources, materials, software, supplies, and purchased services that meet all of the following criteria:

- (1) Meet the needs of K through 12 identified students,
- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed on the gifted students' individualized plans, and
- (4) Will remain with the K through 12 gifted and talented program.

**98.20(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the gifted and talented program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the gifted and talented program beyond the scope of the regular classroom.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.21(257) Returning dropout and dropout prevention program.** Returning dropout and dropout prevention programs are funded through a school district-initiated request to the school budget review committee for modified allowable growth pursuant to Iowa Code sections 257.38 to 257.41. This amount must account for not more than 75 percent of the school district's total dropout prevention budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total dropout prevention budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, the local match, and all donations and grants shall be accounted for as categorical funding.

**98.21(1) *Purpose of categorical funding.*** The purpose of the dropout prevention funding is to provide funding to meet the needs of identified students at risk of dropping out of school beyond the instructional program and services provided by the regular school program. The funding shall be used only for expenditures that are directly related to the returning dropout and dropout prevention program.

*a.* Returning dropouts are resident pupils who have been enrolled in a public or nonpublic school in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

*b.* Potential dropouts are resident pupils who are enrolled in a public or nonpublic school who demonstrate poor school adjustment as indicated by two or more of the following:

- (1) High rate of absenteeism, truancy, or frequent tardiness.
- (2) Limited or no extracurricular participation or lack of identification with school, including but not limited to expressed feelings of not belonging.
- (3) Poor grades, including but not limited to failing in one or more school subjects or grade levels.
- (4) Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.
- (5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

**98.21(2) *Appropriate uses of categorical funding.*** Appropriate uses of the returning dropout and dropout prevention program funding include, but are not limited to:

*a.* Salary and benefits for the teacher(s) of students participating in the dropout prevention programs, alternative programs, and alternative schools, and salary and benefits for guidance counselors or a dean of students dedicated to working directly and exclusively with identified students to provide services beyond those provided by the school district to students who are not identified as at risk of becoming dropouts. If the teacher (or counselor) is a part-time dropout prevention and part-time regular classroom teacher (counselor), then the portion of time that is related to the dropout prevention program may be charged to the program, but the portion of time that is related to the regular classroom shall not.

*b.* Professional development for all teachers and staff working with at-risk students and programs involving dropout prevention strategies.

*c.* Research-based resources, materials, software, supplies, and purchased services that meet all of the following criteria:

- (1) Meet the needs of K through 12 identified students at risk of dropping out or returning dropouts,
- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed in the school district's dropout prevention plan, and
- (4) Will remain with the K through 12 returning dropout and dropout prevention program.

**98.21(3) *Inappropriate uses of categorical funding.*** Inappropriate uses of the returning dropout and dropout prevention program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs other than those related to a separate school located off site and where the administrator is assigned exclusively to this program, or any other expenditures not directly related to providing the returning dropout and dropout prevention program beyond the scope of the regular classroom.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.22(257) Use of the unexpended general fund balance.** The unexpended general fund balance is commonly called the secretary's balance and refers to the fund balance remaining in the general fund at the end of the fiscal year.

**98.22(1) *Authorization required.*** The school budget review committee may authorize a school district to spend a reasonable and specified amount from its unexpended general fund balance for either of the following purposes:

*a.* Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the school district have approved a bond issue as provided by law or the tax levy provided in Iowa Code section 298.2.

*b.* The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under Iowa Code chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

**98.22(2) *Appropriate uses of categorical funding.*** Appropriate uses of the unexpended general fund balance include a transfer from the general fund to the capital projects fund in the amount approved by the school budget review committee. The moneys in the capital projects fund shall be used exclusively for furnishing, equipping or constructing a new building or for demolishing an unused building.

**98.22(3) *Inappropriate uses of categorical funding.*** Inappropriate uses of the unexpended general fund balance include, but are not limited to, expenditures for salaries or recurring costs.

**98.22(4) *Mandatory reversion of unused funding.*** The portion of the unexpended general fund balance which is authorized to be transferred and expended shall increase budget authority. However, any part of the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended general fund balance, and budget authority will be reduced by the amount not actually spent.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.23(256D,257) Iowa early intervention block grant.** Beginning with the fiscal year 2009-2010, the Iowa early intervention block grant program is converted from a grants-in-aid categorical funding to a budgetary allocation categorical funding. The program's goals for kindergarten

through grade 3 are to provide the resources needed to reduce class sizes in basic skills instruction to the state goal of 17 students for every one teacher; provide direction and resources for early intervention efforts by school districts to achieve a higher level of student success in the basic skills, especially reading skills; and increase communication and accountability regarding student performance.

**98.23(1) *Appropriate uses of categorical funding.*** Appropriate uses of the Iowa early intervention block grant funding include providing programs, instructional support, and materials at the kindergarten through grade 3 level that include but are not limited to the following:

- a. Additional licensed instructional staff;
- b. Additional support for students, such as before- and after-school programs, tutoring, and intensive summer programs;
- c. The acquisition and administration of diagnostic reading assessments;
- d. The implementation of research-based instructional intervention programs for students needing additional support;
- e. The implementation of all-day, everyday kindergarten programs; and
- f. The provision of intensive training programs to classroom teachers to improve reading instruction and professional development in best practices.

**98.23(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the Iowa early intervention block grant program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, or administrative costs.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.24(257,294A) Educational excellence, Phase II.** Beginning with the fiscal year 2009-2010, the educational excellence Phase II program is converted from a grants-in-aid categorical funding to a budgetary allocation categorical funding. Phase II of the educational excellence program is for the purpose of improving teacher salaries. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district, and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

**98.24(1) *Appropriate use of categorical funding.*** Appropriate use of the educational excellence Phase II program funding is limited to additional salary for teachers and the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, payments on the additional salary. Educational excellence Phase II program funding shall be fully expended in the fiscal year for which it is allocated; however, in the event that a small amount is remaining and it would not be cost-effective to reallocate the remainder to teachers in the fiscal year, the school district or area education agency shall carry forward the remainder and add it to the amount to be allocated to teachers in the subsequent fiscal year.

**98.24(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the educational excellence Phase II program funding include any expenditures other than additional salary for teachers and the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, payments on the additional salary.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.25(257,284) Educator quality basic salary.** Beginning with the fiscal year 2009-2010, the educator quality basic salary program is converted from a grants-in-aid categorical funding to a budgetary allocation categorical funding. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district, and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

**98.25(1) *Appropriate use of categorical funding.*** Appropriate use of the educator quality basic salary program funding is limited to additional salary for teachers and the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, payments on the additional salary,

and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code subsection 282.10(4). Educator quality basic salary funding shall be fully expended in the fiscal year for which it is allocated; however, in the event that a small amount is remaining, and it would not be cost-effective to reallocate the remainder to teachers in the fiscal year, the school district or area education agency shall carry forward the remainder and add it to the amount to be allocated to teachers in the subsequent fiscal year.

**98.25(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the educator quality basic salary program funding include any expenditures other than additional salary for teachers and the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, payments on the additional salary and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code subsection 282.10(4).

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.26(257,284) Educator quality professional development.** Beginning with the fiscal year 2009-2010, the educator quality professional development program, including core curriculum professional development, is converted from a grants-in-aid categorical funding to a budgetary allocation categorical funding.

**98.26(1) *Appropriate uses of categorical funding.*** Appropriate uses of the educator quality professional development funding are limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; pay for substitute teachers, professional development materials, speakers, and professional development content; costs associated with implementing the individual professional development plans; and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code subsection 282.10(4). The use of the funds shall be balanced between school district, attendance center, and individual professional development plans, and every reasonable effort to provide equal access to all teachers shall be made.

**98.26(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of educator quality professional development funding include, but are not limited to, any expenditures that supplant professional development opportunities the school district otherwise makes available.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.27 to 98.39** Reserved.

DIVISION III  
APPROPRIATE USE OF GRANTS IN AID

**281—98.40(256,257,298A) Grants in aid.** The state provides a large amount of categorical funding for various purposes to school districts and area education agencies in the form of grants in aid. Only those grants in aid allocated to a substantial number of the school districts and area education agencies through the department of education are included in these rules.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.41(257,294A) Educational excellence, Phase I.** Phase I of the educational excellence program is for the purpose of supporting the regular compensation for teachers.

**98.41(1) *Appropriate use of categorical funding.*** Appropriate use of the educational excellence Phase I program funding is limited to regular salary for teachers and the amount required to pay the employers' share of the federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, payments on the additional regular salary. Educational excellence Phase I program funding is to be fully expended in the fiscal year for which it is allocated.

**98.41(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the educational excellence Phase I program funding include any expenditures other than regular salary for teachers and the amount required to pay the employers' share of the federal social security and the Iowa public employees'

retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, payments on the regular salary.  
[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.42(257,284) Beginning teacher mentoring and induction program.** The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers.

**98.42(1) *Appropriate uses of categorical funding.*** Appropriate uses of the beginning teacher mentoring and induction program funding include costs to provide each mentor of a beginning teacher with the statutory award for participation in the school district's or area education agency's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district or area education agency.

**98.42(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of beginning teacher mentoring and induction program funding include any costs not listed in subrule 98.42(1) as appropriate uses.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.43(257,284A) Beginning administrator mentoring and induction program.** The purpose of the beginning administrator mentoring and induction program is to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

**98.43(1) *Appropriate uses of categorical funding.*** Appropriate uses of the beginning administrator mentoring and induction program funding include costs to provide each mentor with the statutory award for participation in the school district's beginning administrator mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district.

**98.43(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of beginning administrator mentoring and induction program funding shall include any costs that are not listed in subrule 98.43(1) as appropriate uses.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.44(257,301) Nonpublic textbook services.** Textbooks adopted and purchased by a school district shall, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools.

**98.44(1) *Appropriate uses of categorical funding.*** The appropriate use of the nonpublic textbook services funding shall be for the public school district to purchase nonsectarian textbooks for the use of pupils attending accredited nonpublic schools located within the boundaries of the public school district. "Textbook" means books and loose-leaf or bound manuals, systems of reusable instructional materials or combinations of books and supplementary instructional materials which convey information to the student or otherwise contribute to the learning process, or electronic textbooks, including but not limited to computer software, applications using computer-assisted instruction, interactive videodisc, and other computer courseware and magnetic media.

In the event that a participating accredited nonpublic school physically relocates to another school district, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code shall be transferred to the school district in which the accredited nonpublic school has relocated and may be made available to the accredited nonpublic school by the

school district in which the nonpublic school has relocated. Funds distributed to a former school district for purposes of purchasing textbooks and that are unexpended shall also be transferred from the former school district to the school district in which the accredited nonpublic school has relocated.

**98.44(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of nonpublic textbook services funding include, but are not limited to, reimbursements to accredited nonpublic schools for purchases made by the accredited nonpublic school, sectarian textbooks, computer hardware, installation of hardware or other purchased services, teacher manuals or any other materials not available to the students attending the accredited nonpublic school, or any other expenditure that does not fit the definition of textbook. Funding provided for one nonpublic school located within the boundaries of the public school district shall not be used for another accredited nonpublic school, even if the accredited nonpublic school is associated with the same parent organization.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.45 to 98.59** Reserved.

DIVISION IV  
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

**281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds.** Tax levies or funds that are required by law to be expended only for the specific items listed in statute shall be accounted for in a similar way to categorical funding. Each fund is mutually exclusive and completely independent of any other fund. No fund shall be used as a clearing account for another fund, and no fund may retire the debt of another fund unless specifically authorized in statute.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund.** All moneys received by a school corporation from taxes and other sources shall be accounted for in the general fund, except moneys required by law to be accounted for in another fund. If another fund specifically lists an expenditure to that other fund, it is assumed not to be appropriate to the general fund unless statute expressly states that it is an appropriate general fund expenditure. Each school district and each area education agency shall have only one general fund.

**98.61(1) *Sources of revenue in the general fund.*** Sources of revenue in the general fund include all moneys not required by law to be accounted for in another fund and interest on the investment of those moneys. Proceeds from the sale or disposition of property other than real property, proceeds from the lease of real or other property, compensation or rent received for the use of school property, sales of school supplies, and sales or rentals of textbooks shall be accounted for in the general fund. Proceeds for loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the general fund. Any revenue or receipt described in law as “miscellaneous income” or related to modified allowable growth is restricted to the general fund.

**98.61(2) *Appropriate uses of the general fund.*** Appropriate expenditures in the general fund include, but are not limited to, the following:

- a. Providing day-to-day operations to the district or area education agency, such as salaries, employee benefits, purchased services, supplies, and expenditures for instructional equipment.
- b. Purchasing school buses from unobligated funds on hand.
- c. Establishing and maintaining dental clinics for children and offering courses of instruction on oral hygiene.
- d. Employing public health nurses.
- e. Funding insurance agreements if the district has not certified a district management levy.
- f. Purchasing books and other supplies to be loaned, rented, or sold at cost to students.
- g. Purchasing safety eye-protective devices and safety ear-protective devices.

*h.* Purchasing bonds and premiums for bonds for employees who have custody of funds belonging to the school district or area education agency or funds derived from extracurricular activities and other sources in the conduct of their duties.

*i.* Paying assessed costs related to changes in boundaries, reorganization, or dissolution.

*j.* Publishing the notices and estimates and the actual and necessary expenses of preparing the budget.

*k.* Engraving and printing school bonds, in the case of a school district.

*l.* Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48 and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, where the original proceeds were accounted for in the general fund.

*m.* Transferring interest and principal to the debt service fund when due for lease purchase agreements related to capital projects authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

*n.* Funding asbestos projects including the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, and developing of management plans and record-keeping requirements relating to the presence of asbestos in school buildings and its removal or encapsulation.

*o.* Funding energy conservation projects entered into with the department of natural resources or its duly authorized agents or representatives pursuant to Iowa Code section 473.20, in the case of a school district.

*p.* Transferring to a capital projects fund as authorized by the school budget review committee, in the case of a school district.

*q.* Transferring to a capital projects fund as funds are due to be expended on a capital project authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

*r.* Paying any other costs not required to be accounted for in another fund.

**98.61(3)** *Inappropriate uses of the general fund.* Inappropriate expenditures in the general fund include the following:

*a.* Purchasing land or improvements other than land for student construction projects.

*b.* Purchasing or constructing buildings or for capital improvements to real property except under special circumstances authorized by the school budget review committee, in the case of a school district, or except as authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

*c.* Modifying or remodeling school buildings or classrooms even if to make them accessible.

*d.* Paying interest and principal on long-term indebtedness for which the original proceeds were not accounted for in the general fund.

*e.* Funding lease-purchases.

*f.* Purchasing portable buildings.

*g.* Paying individuals or private organizations that are not audited and allowed and related to goods received or services rendered.

*h.* Paying other costs that are not operating or current expenditures for public education and are not expressly authorized in the Iowa Code.

**98.61(4)** *Special levies.* The general fund includes two special levy programs available to school districts, but not to area education agencies, that are restricted by the Iowa Code.

*a.* *Instructional support program.* The instructional support program is a district-initiated program to provide additional funding to the district's general fund.

(1) Appropriate uses of instructional support program funding. Moneys received by a district for the instructional support program may be used for any general fund purpose except those listed as inappropriate uses in paragraph "b," subparagraph (2).

(2) Inappropriate uses of instructional support program funding. Moneys received by a district for the instructional support program shall not be used as, or in a manner which has the effect of, supplanting funds authorized to be received under Iowa Code sections 257.41 (returning dropouts and dropout prevention programs), 257.46 (gifted and talented programs), 298.4 (management fund levy),

and 298.2 (physical plant and equipment fund levy), or to cover any deficiencies in funding for special education instructional services resulting from the application of the special education weighting plan under Iowa Code section 256B.9.

*b. Educational improvement program.* The educational improvement program is a district-initiated program available to districts in special circumstances to provide additional funding to the district's general fund if the district already has the instructional support program in place.

(1) Appropriate uses of educational improvement program funding. Moneys received by a district for the educational improvement program may be used for any general fund purpose.

(2) Inappropriate uses of educational improvement program funding. Inappropriate uses of educational improvement program funding include any expenditure not appropriate to the general fund. [ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.62(279,296,298,670) Management fund.** The purpose of this fund is to pay the costs of unemployment benefits; early retirement benefits; insurance agreements; liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards; and judgments or settlements relating to such liability. The authority to establish a management fund is available to school districts but not to area education agencies.

**98.62(1) Sources of revenue in the management fund.** Sources of revenue in the management fund include a property tax and interest on the investment of those moneys.

**98.62(2) Appropriate uses of the management fund.** Appropriate expenditures in the management fund include the following:

- a.* Costs of unemployment benefits as provided in Iowa Code section 96.31.
- b.* Costs of liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards.
- c.* Costs of a final court judgment entered against the district or a settlement made for a tort liability claim including interest accruing on the judgment or settlement to the expected date of payment.
- d.* Costs, including prepaid costs, of insurance agreements to protect the school districts from tort liability, loss of property, environmental hazards, or other risk associated with operations, but not including employee benefit plans.
- e.* Costs of early retirement benefits to employees under Iowa Code section 279.46 to pay a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging employees to retire before the normal retirement date for employees within the age range of 55 to 65 who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar.
- f.* Costs of a physical inventory conducted solely for the purpose of insurance.
- g.* Transfers to the debt service fund for payment of principal and interest when due on general obligation bonds issued under Iowa Code section 296.7 to protect the school district from tort liability, loss of property, environmental hazards, or other risk associated with operations.
- h.* Transfers to the appropriate fund for the portion of an insurance claim which was eligible under the insurance agreement but was denied because it was within the deductible limit.

**98.62(3) Inappropriate uses of the management fund.** Inappropriate expenditures in the management fund include the following:

- a.* Costs for employee health benefit plans.
- b.* Costs to conduct physical inventories of property for purposes other than insurance.
- c.* Costs to conduct actuarial studies.
- d.* Costs for supplies or capital outlay.
- e.* Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45.
- f.* Any other costs not expressly authorized in the Iowa Code.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.63(298) Library levy fund.** The board of directors of a school district in which there is no free public library may contract with any free public library for the free use of such library by the residents

of the school district and pay the library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the agreed-upon consideration.

**98.63(1) Sources of revenue in the library levy fund.** Sources of revenue in the library levy fund include a property tax not to exceed \$0.20 per \$1000 of assessed value of the taxable property of the district and interest on the investment of those moneys.

**98.63(2) Appropriate uses of the library levy fund.** Appropriate expenditures in the library levy fund include expenditures necessary to provide a free public library.

**98.63(3) Inappropriate uses of the library levy fund.** Inappropriate expenditures in the library levy fund include the following:

- a. Capital expenditures related to land or buildings.
- b. Debt service.
- c. Any other costs not necessary to provide a free public library.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund.** The physical plant and equipment levy (PPEL) consists of the regular PPEL not to exceed \$0.33 per \$1000 of assessed valuation and a voter-approved PPEL not to exceed \$1.34 per \$1000 of assessed valuation, for a total of \$1.67. The authority to establish a PPEL fund is available to school districts but not to area education agencies.

**98.64(1) Sources of revenue in the PPEL fund.** Sources of revenue in the PPEL fund include a property tax, income surtax, and interest on the investment of those moneys, and proceeds from loan agreements in anticipation of the collection of the voter-approved property. Proceeds from the condemnation, sale or disposition of real property are revenue to the PPEL fund. Proceeds from loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the PPEL fund. If the school board intends to enter into a rental, lease, or loan agreement, only a property tax shall be levied for those purposes.

**98.64(2) Appropriate uses of the PPEL fund.** Appropriate expenditures in the PPEL fund include the following:

- a. Purchase of grounds including the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental in the property acquisition.
- b. Improvement of grounds including grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements.
- c. Construction of schoolhouses or buildings.
- d. Construction of roads to schoolhouses or buildings.
- e. Purchasing, leasing, or lease-purchasing a single unit of equipment or a single unit of technology exceeding \$500 in value per unit. "Single unit of equipment" means both equipment and furnishings and does not include bulk purchases or multiple purchases of units. The cost limitation for a single unit of equipment does not apply to recreational equipment or equipment that becomes an integral part of real property such as furnaces, boilers, water heaters, and central air-conditioning units that are included in repairs to a building.
- f. Transferring to debt service for payments, when due, of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.
- g. Procuring or acquisition of library facilities.
- h. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and the additions to existing schoolhouses. "Repairing" means restoring an existing structure or thing

to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance. “Reconstructing” means rebuilding or restoring as an entity a thing which was lost or destroyed.

- i.* Energy conservation projects.
- j.* Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48, for loans in anticipation of the collection of the voter-approved property under Iowa Code section 297.36, and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, when the original proceeds were accounted for in the PPEL fund.
- k.* The rental of facilities under Iowa Code chapter 28E.
- l.* Purchase of transportation equipment for transporting students.
- m.* Purchase of buildings or lease-purchase option agreements for school buildings.
- n.* Purchase of equipment for recreational purposes.
- o.* Payments to a municipality or other entity as required under Iowa Code section 403.19, subsection 2.
- p.* Asbestos projects including costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, development of management plans and record-keeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation.
- q.* Purchase, erect, or acquire a building for use as a school meal facility, and equip a building for that use.

**98.64(3)** *Inappropriate uses of the PPEL fund.* Inappropriate expenditures in the PPEL fund include the following:

- a.* Student construction.
- b.* Salaries and benefits.
- c.* Travel.
- d.* Supplies.
- e.* Facility, vehicle, or equipment maintenance.
- f.* Printing costs or media services.
- g.* Any other purpose not expressly authorized in the Iowa Code.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.65(276,300) Public educational and recreational levy (PERL) fund.** Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and on the grounds of the district. Financial support for the community education program shall be provided from funds raised pursuant to Iowa Code chapter 300 and from any private funds and any federal funds made available for the purpose of implementing community education. The authority to establish a levy for a PERL fund is available to school districts but not to area education agencies.

**98.65(1)** *Sources of revenue in the PERL fund.* Sources of revenue in the PERL fund include a property tax levy not to exceed \$0.135 per \$1000 of assessed valuation, any appropriation by the agencies involved in a cooperative effort under Iowa Code chapter 28E, federal grants, donations, and interest on the investment of those moneys.

**98.65(2)** *Appropriate uses of the PERL fund.* Appropriate expenditures in the PERL fund include the following:

- a.* Establishing and maintaining free public recreation places and playgrounds, including necessary accommodations.
- b.* Providing free public educational and recreational activities.
- c.* Establishing and supervising a free community education program.
- d.* Providing a community education director if a community education program is established.

**98.65(3)** *Inappropriate uses of the PERL fund.* Inappropriate expenditures in the PERL fund include the following:

*a.* Programs for which a fee may be charged such as before- and after-school programs and preschool programs.

*b.* Any other costs not necessary to provide free programs for community education and for public recreation places, playgrounds, and programs.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.66(257,279,298A,565) District support trust fund.** The district support trust fund is used to account for moneys received in trust where those moneys, both principal and interest, are to benefit the school district. The school district or area education agency shall not transfer its own resources to a district support trust fund. If the school district or area education agency has more than one district support trust, it will use locally assigned project codes pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to identify the different trusts in the same fund. The district support trust fund is not an irrevocable trust. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in the district support trust fund. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility as the trustee.

**98.66(1)** *Sources of revenue in the district support trust fund.* Sources of revenue in the district support trust fund include donations of cash, investment instruments, property, and interest on investments held. In a district support trust fund, both principal and interest are available to benefit the school district's programs.

**98.66(2)** *Appropriate uses of the district support trust fund.* Appropriate expenditures in the district support trust fund include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

**98.66(3)** *Inappropriate uses of the district support trust fund.* Inappropriate expenditures in the district support trust fund include transfers to nonprofit or private organizations or any expenditure which is not consistent with the terms of the agreement, legal to a school district, or for the benefit of the school district.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.67(257,279,298A,565) Permanent funds.** Permanent funds are used to account for resources received that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the school district's programs. The school district or area education agency shall not transfer its own resources to a permanent fund. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in permanent funds. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility of the moneys.

**98.67(1)** *Sources of revenue in the permanent funds.* Sources of revenue in the permanent funds include donations of cash, investment instruments, property, and interest on investments held. In permanent funds, only interest is available to benefit the school district's programs.

**98.67(2)** *Appropriate uses of the permanent funds.* Appropriate expenditures in the permanent funds include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

**98.67(3)** *Inappropriate uses of the permanent funds.* Inappropriate expenditures in the permanent funds include transfers to nonprofit or private organizations, expenditure from principal, or any

expenditure which is not consistent with the terms of the agreement, or legal to a school district, or for the benefit of the school district, or any expenditure from the principal portion.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.68(76,274,296,298,298A) Debt service fund.** A debt service fund is used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest. A school district or area education agency shall have only one debt service fund.

**98.68(1) Sources of revenue in the debt service fund.** Sources of revenue in the debt service fund include the levy on taxable property authorized by the voters pursuant to Iowa Code section 298.21 and necessary to service bonds that mature in the current year, transfers from other funds for payments of interest and principal when due that are required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code, and earnings from temporary investment of moneys in the debt service fund.

**98.68(2) Appropriate uses of the debt service fund.** Appropriate expenditures in the debt service fund include the following:

*a.* Payment of principal and interest of the lawful bonded indebtedness maturing in the current year as it becomes due. In determining how much is necessary to service bonds that mature in the current year, the board of directors shall consider the amount of earnings from temporary investments of debt service funds and beginning cash balances.

*b.* Payment of costs of registration of public bonds or obligations.

*c.* Payment of additional amounts as the board deems necessary to apply on the principal.

*d.* Payment of principal and interest when due that are required under a loan agreement, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code other than bonded indebtedness paid from resources transferred for that purpose to the debt service fund from other funds.

*e.* Payment of transfers to the PPEL fund by board resolution when funds remain in the debt service fund after payment of the entire balance of outstanding debt in accordance with the original purpose of the bonded indebtedness and after return of any excess amount transferred into the debt service fund from another fund or other indebtedness. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund pursuant to Iowa Code subsection 278.1(1)“e.”

**98.68(3) Inappropriate uses of the debt service fund.** Inappropriate expenditures in the debt service fund include payment of debt issued by one fund from resources transferred from a different fund unless expressly authorized by the Iowa Code and any other expenditure not listed in subrule 98.68(2).

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.69(76,273,298,298A,423E,423F) Capital projects fund.** Capital projects funds are used to account for financial resources to acquire or construct major capital facilities and to account for revenues from the previous local option sales and services tax for school infrastructure and the current state sales and services tax for school infrastructure. Boards of directors of school districts are authorized to establish more than one capital projects fund as necessary.

**98.69(1) Sources of revenue in the capital projects fund.** Sources of revenue in a capital projects fund include sale of general obligation bonds, grants and donations for capital facility projects, and transfers from other funds which authorized indebtedness for capital facility projects or which initiated a capital facility project or which received grants or other funding for capital projects, and tax receipts or revenue bonds issued for the state sales and services tax for school infrastructure. In the case of an area education agency, transfers from the general fund to a capital projects fund are limited to payments from proceeds accounted for in the general fund when payments are due on a capital project under a lease-purchase agreement pursuant to Iowa Code subsection 273.3(7).

**98.69(2) Appropriate uses of the capital projects fund.**

*a.* Appropriate expenditures in a capital projects fund, excluding state/local option sales and services tax for school infrastructure fund, include the following:

(1) Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, or teachers' or superintendents' home(s).

(2) Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

(3) Transferring to the PPEL fund or debt service fund by board resolution any balance remaining in a capital projects fund after the capital project is completed and after return of any excess amount transferred into the capital projects fund from another fund. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund or debt service fund pursuant to Iowa Code subsection 278.1(1) "e."

b. Appropriate expenditures in the state/local option sales and services tax for the school infrastructure capital projects fund shall be expended in accordance with a valid revenue purpose statement if a valid revenue purpose statement exists, otherwise appropriate expenditures include the following in order:

(1) Payment of principal and interest on revenue bonds issued pursuant to Iowa Code sections 423E.5 and 423F.4 for which the revenue has been pledged.

(2) Reduction of debt service levies.

(3) Reduction of regular and voter-approved PPEL levies.

(4) Reduction of the PERL levy.

(5) Reduction of any schoolhouse tax levy under Iowa Code subsection 278.1(1) "e."

(6) Any authorized infrastructure purpose of the district pursuant to Iowa Code subsection 423F.3(6), which includes the following:

1. Payment or retirement of outstanding general obligation bonded indebtedness issued for school infrastructure purposes.

2. Payment or retirement of outstanding revenue bonds issued for school infrastructure purposes.

3. Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, remodeling, or demolition of a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, or school bus garage.

4. Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

5. Expenditures listed in Iowa Code section 298.3.

6. Expenditures listed in Iowa Code section 300.2.

**98.69(3) *Inappropriate uses of the capital projects fund.*** Inappropriate expenditures in a capital projects fund include student construction or any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the state/local options sales and services tax supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than 100 pupils in the high school without a certificate of need issued by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act. Expenditures from the state/local options sales and services tax revenues have the same restriction as expenditures from the supplemental school infrastructure amount, excluding the restriction on payments for bonds issued for new construction.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.70(279,280,298A) Student activity fund.** The student activity fund must be established in any school district receiving moneys from student-related activities such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys collected through school activities are public funds that are the property of the school district and are under the financial control of the school board. Upon dissolution of an activity, such as

a graduating class or student club, the surplus must be used to support other student activities in the student activity fund. Prudent and proper accounting of all receipts and expenditures in these accounts is the responsibility of the board. School districts may maintain subsidiary records for student activities if those records are reconciled to the official records on a monthly basis; however, all official accounting records of the student activity fund shall be maintained within the school district's chart of account pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies.

**98.70(1) Sources of revenue in the student activity fund.** Sources of revenue in the student activity fund include income derived from student activities such as gate receipts, ticket sales, admissions, student club dues, donations, fund-raising events, and any other receipts derived from student body cocurricular or extracurricular activities, contests, and exhibitions as well as interest on the investment of those moneys.

**98.70(2) Appropriate uses of the student activity fund.** Appropriate expenditures in the student activity fund include ordinary and necessary expenses of operating school district-sponsored and district-supervised student cocurricular and extracurricular activities, including purchasing services from another school district to provide for the eligibility of enrolled students in interscholastic activities provided by the other school district when that school district does not provide an interscholastic activity for its students.

**98.70(3) Inappropriate uses of the student activity fund.** Inappropriate expenditures in the student activity fund include the following:

- a. Maintenance of funds raised by outside organizations.
- b. The cost of bonds for employees having custody of funds derived from cocurricular and extracurricular activities in the conduct of their duties. These are costs to the general fund.
- c. Expenditures that lack public purpose.
- d. Payments to any private organization unless a fundraiser was held expressly for that purpose and the purpose of the fundraiser was specifically identified.
- e. Transfers to any other fund of any surplus within the fund.
- f. Payments more properly accounted for in another fund such as public tax funds, trust funds, state and federal grants, textbook/library book fines, fees, rents, purchases or sales, sales of school supplies, or curricular activities.
- g. Use of the student activity fund as a clearing account for any other fund.
- h. Cash payments to student members of activity groups.
- i. The cost of optional equipment or customizing uniforms.
- j. The cost of uniforms when the following two tests are not met:
  - (1) The activity is a part of the school's educational program, and
  - (2) The wearing of the uniform or equipment is necessary in order to participate.
- k. Hospital or medical claims for student injuries or procurement of student medical insurance.
- l. Optional costs related to activities that are not necessary to the cocurricular and extracurricular program such as promotional costs.
- m. Membership fees in student activity-related associations if the fees are optional, i.e., nonmember schools may participate in sponsored events.
- n. Costs to participate in or to allow students to participate in any cocurricular and extracurricular interscholastic athletic contest or competition not sponsored or administered by either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.71(256B,257,298A) Special education instruction fund.** The special education instruction fund is used to account for the revenues and expenditures of the special education instructional program that an area education agency provides for its member districts under Iowa Code subsection 273.9(2). This does not include special education support services as provided by Iowa Code subsection 273.9(3) which are accounted for in the general fund.

**98.71(1)** *Sources of revenue in the special education instruction fund.* Sources of revenue in the special education instruction fund include tuition charged to districts with students in the special education instruction program and interest on the investment of those moneys.

**98.71(2)** *Appropriate uses of the special education instruction fund.* Appropriate expenditures in the special education instruction fund include those authorized to a school district pursuant to Iowa Code chapter 256B and 281—Chapter 41.

**98.71(3)** *Inappropriate uses of the special education instruction fund.* Inappropriate expenditures in the special education instruction fund include expenditures not allowed to school districts pursuant to Iowa Code chapter 256B and 281—Chapter 41.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.72(282,298A) Juvenile home program instruction fund.** The juvenile home program instruction fund is used to account for the revenues and expenditures for the educational program for students residing in juvenile homes as provided by Iowa Code section 282.30. The juvenile home program supplements, but does not supplant expenditures required of an area education agency under Iowa Code chapter 273. Revenues and expenditures related to federal or state grants serving students in the juvenile homes that supplement, rather than supplant the juvenile home program are included in the general fund, rather than the juvenile home fund.

**98.72(1)** *Sources of revenue in the juvenile home program instruction fund.* Sources of revenue in the juvenile home program instruction fund include an advance paid pursuant to Iowa Code section 282.31, tuition billed to resident districts, grants in aid and interest on the investment of those moneys.

**98.72(2)** *Appropriate uses of the juvenile home program instruction fund.* Appropriate expenditures in the juvenile home program instruction fund include ordinary and necessary expenditures to provide an instructional program to students residing in juvenile homes.

**98.72(3)** *Inappropriate uses of the juvenile home program instruction fund.* Inappropriate expenditures in the juvenile home program instruction fund include the following:

- a. Costs estimated or allocated that are expenditures of the agency, such as insuring agency property.
- b. Costs that are not ordinary and necessary to provide instruction.
- c. Debt service.
- d. Capital outlay related to facilities.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.73(283A,298A) School nutrition fund.** All school districts shall operate or provide for the operation of lunch programs at all attendance centers in the school district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

**98.73(1)** *Sources of revenue in the school nutrition fund.* Sources of revenue in the school nutrition fund include food sales to pupils and adults, ancillary food services, state and federal grants in aid for the operation of a nutrition program, gifts, sales of services to other funds, donated government commodities, and interest on investment of school nutrition fund moneys. Also included are fees charged for providing food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board. The charges for such services must be no less than the actual costs involved in providing the services including the value of donated government commodities.

**98.73(2)** *Appropriate uses of the school nutrition fund.* Appropriate expenditures in the school nutrition fund include the following:

- a. Expenditures necessary to operate a school breakfast or lunch program such as salaries and benefits for employees necessary to operate the food service program, food, purchased services, supplies, and school nutrition equipment not included in Iowa Code section 283A.9.
- b. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board of directors of the school district if those costs are reimbursed by another fund, organization, or individual.

**98.73(3) *Inappropriate uses of the school nutrition fund.*** Inappropriate expenditures in the school nutrition fund include the following:

*a.* Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises at less than actual costs involved in providing the services including the value of donated government commodities.

*b.* Operating transfers to any other fund.

*c.* Costs to purchase, construct, reconstruct, repair, remodel, or otherwise acquire or equip a building for use as a school meal facility. These costs are permitted from the PPEL fund.

*d.* Costs estimated or allocated that are expenditures of the district.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.74(279,298A) Child care and before- and after-school programs fund.** The board of directors of a school district may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade 6 before and after school, or to both.

**98.74(1) *Sources of revenue in the child care fund.*** Sources of revenue in the child care fund include a fee established by the board for the cost of participation in the program. The fee shall be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. The board may require the parent or guardian to furnish transportation of the child. If the board does not establish a fee, it must finance the program through grants or donations. The board may utilize or make application for program subsidies from any existing child care funding streams.

**98.74(2) *Appropriate uses of the child care fund.*** Appropriate expenditures in the child care fund include salaries and benefits for employees necessary to operate the child care program or before- and after-school program, purchased services, supplies, and equipment.

**98.74(3) *Inappropriate uses of the child care fund.*** Inappropriate expenditures in the child care fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the child care program or before- and after-school program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.75(298A) Regular education preschool fund.** The board of directors of a school district may establish a preschool for students who are not of school age.

**98.75(1) *Sources of revenue in the regular education preschool fund.*** Sources of revenue in the regular education preschool fund include a fee established by the board for the cost of participation in the program. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. If the board does not establish a fee, it must finance the program through grants or donations. The statewide voluntary four-year-old preschool program established under Iowa Code chapter 256C shall not be accounted for in the regular education preschool fund.

**98.75(2) *Appropriate uses of the regular education preschool fund.*** Appropriate expenditures in the regular education preschool fund include salaries and benefits for employees necessary to operate the regular education preschool program, purchased services, instructional supplies, and instructional equipment.

**98.75(3) *Inappropriate uses of the regular education preschool fund.*** Inappropriate expenditures in the regular education preschool fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the regular education preschool program or before- and after-school program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.76(298A) Student construction fund.** If the board of directors of a school district establishes a construction program whereby students learn a construction trade and the facility constructed is sold to

cover costs of construction, the revenues and expenses will be accounted for in the student construction fund.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.77(298A) Other enterprise funds.** Enterprise funds are used to account for any activity for which a fee is charged to external users for goods and services. Enterprise funds are required to be used to account for any activity whose principal revenue sources are fees and charges to recover the costs of providing goods or services where those fees and charges are permitted by the Iowa Code. Funds discussed in rules 281—98.73(283A,298A) through 281—98.76(298A) are enterprise funds. In addition, enterprise funds include those activities related to community service enterprises or enterprises that support the school curricular program. Community service enterprises are activities provided by the district for a fee to the general community or segment of the community that are not in the PERL or library funds such as public libraries, community pool, community wellness center, and community or adult education. Enterprises that support the school program include activities such as a student farm, greenhouse, cooperative purchasing, school stores, or major resale activities.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.78 to 98.81** Reserved.

**281—98.82(298A) Internal service funds.** Internal service funds are used to account for the financing of services provided within the district to provide goods or services to other funds, component units, or other governments on a cost-reimbursement basis. The use of an internal service fund is appropriate only for activities in which the agency, school district or area education agency is the predominant participant in the activity. If the district or area education agency is not the primary user of the goods or services provided by the internal service fund, then the activity should be accounted for in an enterprise fund rather than an internal service fund. Internal service funds include, but are not limited to, self-insurance funds, flex-benefit (cafeteria) plan funds, print shops, health reimbursement arrangements (HRAs), central warehousing and purchasing, and central data processing.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.83 to 98.91** Reserved.

**281—98.92(257,279,298A,565) Private purpose trust funds.** Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district shall use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to separately account for the trusts. The district or area education agency shall not transfer its own resources to a private purpose trust fund.

**98.92(1) Sources of revenue in private purpose trust funds.** Sources of revenue in the private purpose trust fund include donations of cash, investment instruments, property, and interest on investments held.

**98.92(2) Appropriate uses of private purpose trust funds.** Appropriate expenditures in the private purpose trust fund include those that are consistent with the terms of the agreement or are for the benefit of a private purpose other than the school district. None of the expenditures will be for the benefit of the school district's programs.

**98.92(3) Inappropriate uses of private purpose trust funds.** Inappropriate expenditures in the private purpose trust fund include any expenditure which is not consistent with the terms of the agreement, not legal to a school district, or that benefits the school district's programs.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.93(298A) Other trust funds.** Trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. The school district or area education agency shall not transfer its own resources to a trust fund. Other trust funds may include but not be limited to pension trust funds and investment trust funds. Pension trust funds are used to account for resources that are required to be held in trust for members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other benefit plans. Typically, these pension trust funds are used to account for local pension and other employee benefit funds that are provided by a school district in lieu of or in addition to any state retirement system. Investment trust funds are used to account for the external portion (i.e., the portion that does not belong to the school district) of investment pools operated by the school district.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.94 to 98.100** Reserved.

**281—98.101(298A) Agency funds.** Agency funds are used to account for funds that are held in a custodial capacity by the school district for individuals, private organizations, or other governments. Agency funds may include moneys collected for another government, a grant consortium when the school district serves as fiscal agent for the other school districts but has no managerial responsibilities, or funds for a teacher or a parent-teacher organization which has its own federal identification number (FIN). In an agency fund, the school district or area education agency merely renders a service as a custodian of the assets for the organization owning the assets and the school district or area education agency is not an owner. Agency funds typically involve only the receipt, temporary investment and remittance of assets to their rightful owners.

**98.101(1) Sources of receipts in agency funds.** Sources of receipts in the agency funds include temporary receipts of cash, investment instruments, property, and interest on investments held.

**98.101(2) Appropriate uses of agency funds.** Appropriate disbursements from an agency fund depend on the nature of the rightful owners' conditions or the responsibilities of the custodian. Typically, disbursement will involve remittance of assets to their rightful owners or to a third party on behalf and at the request of the rightful owners. The school district cannot disburse more funds at any point in time than it has received from the rightful owner.

**98.101(3) Inappropriate uses of agency funds.** Inappropriate disbursements from agency funds include any disbursement which is not consistent with the terms of the agreement, not legal to a school district, or that exceeds the amount of funds that have been received from the rightful owner or on behalf of the rightful owner.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.102 to 98.110** Reserved.

**281—98.111(24,29C,257,298A) Emergency levy fund.** A school district may levy a tax for the emergency fund upon the approval of the state appeals board. Once the levy has been received, the district may request approval of the school budget review committee to transfer the funds to any other fund of the district for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in Iowa Code subsection 29C.2(1).

**98.111(1) Sources of revenue in the emergency levy fund.** Sources of revenue for the emergency levy fund include a tax levy not to exceed \$0.27 per \$1000 of assessed value of taxable property, and interest on those moneys.

**98.111(2) Appropriate uses of emergency levy fund.** Appropriate expenditures in the emergency levy fund include only transfers to other funds for the purpose of meeting deficiencies in a fund arising within two years of a disaster and upon the approval of the school budget review committee.

**98.111(3) *Inappropriate uses of emergency levy fund.*** Inappropriate expenditures in the emergency levy fund include any expenditures other than a transfer to another fund and any transfer not approved by the school budget review committee.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.112(275) Equalization levy fund.** If necessary to equalize the division of liabilities and distribution of assets in a reorganization, merger, or dissolution, the board of a school district may provide for the levy of additional taxes upon the property of the former district so as to effect equalization pursuant to Iowa Code section 275.31. Once the levy has been received, the district shall transfer the funds before the end of the fiscal year to the funds for which equalization was necessary and for which the taxes were levied.

**98.112(1) *Sources of revenue for the equalization levy fund.*** Sources of revenue for the equalization levy fund include a tax levy pursuant to Iowa Code section 275.31, and interest on those moneys.

**98.112(2) *Appropriate uses of the equalization levy fund.*** Appropriate expenditures from the equalization levy fund are limited to transfers to the funds, in the same proportion, for which equalization was necessary and for which the taxes were levied.

**98.112(3) *Inappropriate uses of the equalization levy fund.*** Inappropriate uses of the equalization levy fund would include transfers to any fund for which equalization was not required or for which the equalization tax was not levied and any uses other than transfers.

[ARC 8054B, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter)]

These rules are intended to implement Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298, 298A, 299A, 300, 301, 423E, 423F, 565, and 670 and sections 11.6(1)“a”(1), 256C.4(1)“c,” and 256D.4(3).

[Filed ARC 8054B (Notice ARC 7781B, IAB 5/20/09), IAB 8/26/09, effective 9/30/09]<sup>1</sup>

[Editorial change: IAC Supplement 9/23/09]

<sup>1</sup> September 30, 2009, effective date of 281—98.12(257,299A) and 281—98.112(275) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 8, 2009.

**STATUS OF WOMEN DIVISION[435]**

Created within the Human Rights Department [421] by Iowa Code section 601K.52  
 Prior to 7/15/87, See Status of Women [800]

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CHAPTER 67  
GENERAL PROVISIONS FOR ELDER GROUP HOMES, ASSISTED LIVING PROGRAMS,  
AND ADULT DAY SERVICES

**481—67.1(231B,231C,231D) Definitions.** The following definitions apply to this chapter and to 481—Chapters 68, 69, and 70.

*“Activities of daily living”* means the following self-care tasks: bathing, dressing, grooming, eating, transferring, toileting, and ambulation.

*“Ambulatory”* or *“ambulation”* means physically and cognitively able to walk without aid of another person.

*“Applicable requirements”* means Iowa Code chapters 135C, 231B, 231C, 231D, 235B, 235E, and 562A, this chapter, and 481—Chapters 68, 69, and 70, as applicable, and includes any other applicable administrative rules and provisions of the Iowa Code.

*“Applicant or certificate holder”* means the owner and operator of a program. If a program is operated under an operating agreement, both the owner and the operator are the applicant or certificate holder. If a program is leased, the lessee is the applicant or certificate holder.

*“Assistance”* means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall be construed to mean the tenant has participated in the task or activity.

*“Blueprint”* means copies of all completed drawings, schedules, and specifications that have been certified, sealed, and signed by an Iowa-licensed architect or Iowa-licensed engineer of record. The department may allow electronic transfer of blueprints pursuant to policy.

*“Dementia”* means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and includes memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

*“Department”* means the department of inspections and appeals.

*“Director”* means the director of the department of inspections and appeals.

*“Elope”* means that a tenant who has impaired decision-making ability leaves the program without the knowledge or authorization of staff.

*“Global Deterioration Scale”* or *“GDS”* means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

*“Health care professional”* means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed in Iowa by the respective licensing board.

*“Health-related care”* means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis. “Health-related care” includes nurse-delegated assistance.

*“Human service professional”* means an individual with a bachelor’s degree in a human service field including, but not limited to: human services, gerontology, social work, sociology, psychology, or family science. Two years of experience in a human service field may be substituted for up to two years of the required education. For example, an individual with an associate’s degree in a human service field and two years of experience in a human service field is a human service professional.

*“Impaired decision-making ability”* means a lack of capacity to make safe and prudent decisions regarding one’s own routine safety as determined by the program manager or nurse or means having a GDS score of four or above.

*“Instrumental activities of daily living”* means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

*“Medication setup”* means assistance with various steps of medication administration to support a tenant’s autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original containers into suitable medication dispensing containers, reminder containers, or medication cups.

*“Modification”* means any addition to or change in physical dimensions or structure, except as incidental to the customary maintenance of the physical structure of the program’s facility.

*“Monitoring”* means an on-site evaluation of a program, a complaint investigation, or a program-reported incident investigation performed by the department to determine compliance with applicable requirements. A monitor who performs a monitoring for the department shall be a registered nurse, human service professional, or another person with program-related expertise.

*“Nurse-delegated assistance”* means delegation of tasks or activities by a registered nurse or licensed practical nurse. The nurse retains accountability for the delegation process and the decision to delegate. A licensed practical nurse is allowed to delegate within the scope of the nurse’s license (subrule 655—6.2(5), paragraph “c”) with the supervision of a registered nurse.

*“Nurse delegation”* means the action of a nurse to direct competent individuals to perform selected nursing tasks in selected situations pursuant to subrule 655—6.2(5), paragraph “c.” The decision of a nurse to delegate is based on the delegation process, including assessment, planning, implementation, supervision, and evaluation of the tenant, nursing tasks, personnel, and the situation. The nurse retains accountability for the delegation process and the decision to delegate. Licensed practical nurses are allowed to delegate within the scope of their license with the supervision of a registered nurse.

*“Occupancy agreement”* or *“contractual agreement”* means a written contract entered into between a program and a tenant that clearly describes the rights and responsibilities of the program and the tenant and other information required by applicable requirements. An occupancy agreement may include a separate signed lease and signed service agreement.

*“Part-time or intermittent care”* means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for a temporary period of time with a predictable end within 21 days; or licensed nursing services and professional therapies that do not exceed 28 hours per week or, for adult day services, 4 hours per day and are provided in combination with nurse-delegated assistance with medications or activities of daily living.

*“Personal care”* means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, and grooming that are essential to the health and welfare of a tenant.

*“Physician extender”* means nurse practitioners, clinical nurse specialists, and physician assistants.

*“Preponderance of the evidence”* means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true.

*“Program”* means one or more of the following, as applicable: an elder group home as defined in Iowa Code section 231B.1 and 481—Chapter 68, an assisted living program as defined in Iowa Code section 231C.1 and 481—Chapter 69, or adult day services as defined in Iowa Code section 231D.1 and 481—Chapter 70.

*“Qualified professional”* means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling, or electrical contractor who furnishes regular service to such equipment.

*“Recognized accrediting entity”* means a nationally recognized accrediting entity that the department recognizes as having specific program standards equivalent to the program standards established by the department.

*“Regulatory insufficiency”* means a violation of an applicable requirement.

*“Remodeling”* means a modification of any part of an existing building, an addition of a new wing or floor to an existing building, or a conversion of an existing building.

*“Routine”* means more often than not or on a regular customary basis.

*“Self-administration”* means a tenant’s taking personal responsibility for all phases of medication except for any component assigned to the program under medication setup, and may include the tenant’s use of an automatic pill dispenser.

“*Service plan*” means the document that defines all services necessary to meet the needs and preferences of a tenant, whether or not the services are provided by the program or other service providers.

“*Significant change*” means a major decline or improvement in the tenant’s status which does not normally resolve itself without further interventions by staff or by implementing standard disease-related clinical interventions that have an impact on the tenant’s mental, physical, or functional health status.

“*Substantial compliance*” means a level of compliance with applicable requirements such that any identified regulatory insufficiency poses no greater risk to tenant health or safety than the potential for causing minimal harm.

“*Tenant*” means an individual who receives services through a program. In the context of adult day services, “tenant” means a participant as defined in 481—Chapter 70.

“*Tenant advocate*” means the office of long-term care resident’s advocate established in Iowa Code section 231.42.

“*Tenant’s legal representative*” means a person appointed by the court to act on behalf of a tenant or a person acting pursuant to a power of attorney. In the context of adult day services, “tenant’s legal representative” means a participant’s legal representative as defined in 481—Chapter 70.

“*Waiver*” means action taken by the department that suspends in whole or in part the requirements or provisions of a rule.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.2(231B,231C,231D) Program policies and procedures, including those for incident reports.** A program’s policies and procedures must meet the minimum standards set by applicable requirements. The program shall follow the policies and procedures established by a program. All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse.

**67.2(1)** The program’s policies and procedures on incident reports, at a minimum, shall include the following:

- a. The program shall have available incident report forms for use by program staff.
- b. An incident report shall be in detail and shall be provided on an incident report form.
- c. The person in charge at the time of the incident shall prepare and sign the report.
- d. The incident report shall include statements from individuals, if any, who witnessed the incident.
- e. All accidents or unusual occurrences within the program’s building or on the premises that affect tenants shall be reported as incidents.
- f. A copy of the completed incident report shall be kept on file on the program’s premises for a minimum of three years.

**67.2(2)** The program’s policies and procedures on allegations of dependent adult abuse shall be consistent with Iowa Code chapter 235E and rules adopted pursuant to that chapter and, at a minimum, shall include:

- a. Reporting requirements for staff and employees, and
- b. Requirements that the victim and alleged abuser be separated.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.3(231B,231C,231D) Tenant rights.** All tenants have the following rights:

**67.3(1)** To be treated with consideration, respect, and full recognition of personal dignity and autonomy.

**67.3(2)** To receive care, treatment and services which are adequate and appropriate.

**67.3(3)** To receive respect and privacy in the tenant’s medical care program. Personal and medical records shall be confidential, and the written consent of the tenant shall be obtained for the records’ release to any individual, including family members, except as needed in case of the tenant’s transfer to a health care facility or as required by law or a third-party payment contract.

**67.3(4)** To be free from mental and physical abuse.

**67.3(5)** To receive from the manager and staff of the program a reasonable response to all requests.

**67.3(6)** To associate and communicate privately and without restriction with persons and groups of the tenant's choice, including the tenant advocate, on the tenant's initiative or on the initiative of the persons or groups at any reasonable hour.

**67.3(7)** To manage the tenant's own financial affairs unless a tenant's legal representative has been appointed for the purpose of managing the tenant's financial affairs.

**67.3(8)** To present grievances and recommend changes in program policies and services, personally or through other persons or in combination with others, to the program's staff or person in charge without fear of reprisal, restraint, interference, coercion, or discrimination.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.4(231B,231C,231D) Program notification to the department.** The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available:

**67.4(1)** Of any accident causing major injury. For the purposes of this rule, "major injury" shall also mean a substantial injury.

*a.* "Major injury" shall be defined as any injury which:

- (1) Results in death; or
- (2) Requires admission to a higher level of care for treatment, other than for observation; or
- (3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the tenant, and the tenant's prognosis.

*b.* The following are not reportable accidents:

- (1) An ambulatory tenant who falls when neither the program nor its employees have culpability related to the fall, even if the tenant sustains a major injury; or
- (2) Spontaneous fractures; or
- (3) Hairline fractures.

**67.4(2)** When damage to the program is caused by a natural or other disaster.

**67.4(3)** When there is an act that causes major injury to a tenant or when a program has knowledge of a pattern of acts committed by the same tenant on another tenant that results in any physical injury. For the purposes of this subrule, "pattern" means two or more times within a 30-day period.

**67.4(4)** When a tenant elopes from a program.

**67.4(5)** When a tenant attempts suicide, regardless of injury.

**67.4(6)** When a fire occurs in a program and the fire requires the notification of emergency services, requires full or partial evacuation of the program, or causes physical injury to a tenant.

**67.4(7)** When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapters 235B and 235E, which require reporting of dependent adult abuse.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.5(231B,231C,231D) Medications.** Each program shall follow its own written medication policy, which shall include the following:

**67.5(1)** The program shall not prohibit a tenant from self-administering medications.

**67.5(2)** A tenant shall self-administer medications unless:

*a.* The tenant or the tenant's legal representative delegates in the occupancy agreement or signed service plan any portion of medication setup to the program.

*b.* The tenant delegates medication setup to someone other than the program.

*c.* The program assumes partial control of medication setup at the direction of the tenant. The medication plan shall not be implemented by the program unless the program's registered nurse deems it appropriate under applicable requirements, including those in 655—Chapter 6 governing nurse delegation. The program's registered nurse must agree to the medication plan.

**67.5(3)** A tenant shall keep medications in the tenant's possession unless the tenant or the tenant's legal representative, if applicable, delegates in the occupancy agreement or signed service plan partial or complete control of medications to the program. The service plan shall include the tenant's choice related to storage.

**67.5(4)** When a tenant has delegated medication administration to the program, the program shall maintain a list of the tenant's medications. If the tenant self-administers medications, the tenant may choose to maintain a list of medications in the tenant's apartment or to disclose a current list of medications to the program for the purpose of emergency response. If the tenant discloses a medication list to the program in case of an emergency, the tenant remains responsible for the accuracy of the list.

**67.5(5)** When medication setup is delegated to the program by the tenant, staff via nurse delegation may transfer medications from the original prescription containers or unit dosing into medication reminder boxes or medication cups.

**67.5(6)** When medications are administered traditionally by the program:

*a.* The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by unlicensed assistive personnel in accordance with requirements in 655—Chapter 6 governing nurse delegation.

*b.* Medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

*c.* The program shall maintain a list of each tenant's medications and document the medications administered.

**67.5(7)** Narcotics protocol shall be determined by the program's registered nurse.  
[ARC 8174B, IAB 9/23/09, effective 1/1/10]

#### **481—67.6(231B,231C,231D) Another business or activity located in a program.**

**67.6(1)** A business or activity serving persons other than tenants of a program is allowed in a designated part of the physical structure in which the program is located if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

**67.6(2)** A business or activity conducted in the designated part of the physical structure in which the program is located shall not interfere with the use of the program by tenants or with services provided to tenants or disturb tenants.

**67.6(3)** A business or activity conducted in the designated part of the physical structure in which the program is located shall not reduce access, space, services, or staff available to tenants or necessary to meet the needs of tenants.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

#### **481—67.7(231B,231C,231D) Waiver of criteria for retention of a tenant in the program.**

**67.7(1)** *Time-limited waiver.* Upon receipt of a program's request for waiver of the criteria for retention of a tenant, the department may grant a waiver of the criteria under applicable requirements for a time-limited basis. Absent extenuating circumstances, a waiver of the criteria for retention of a tenant is limited to a period of six months or less.

**67.7(2)** *Waiver petition procedures.* The following procedures shall be used to request and to receive approval of a waiver from criteria for the retention of a tenant:

*a.* A program shall submit the waiver request on a form and in a manner designated by the department as soon as it becomes apparent that a tenant exceeds retention criteria pursuant to an evaluation by a health care or human service professional.

*b.* The department shall respond in writing to a waiver request within 15 working days of receipt of all required documentation. In consultation with the program, the department may take an additional 15 working days to report its determination regarding the waiver request.

*c.* The program shall provide to the department within 5 working days written notification of any changes in the condition of the tenant as described in the approved waiver request.

**67.7(3) Factors for consideration for waiver of criteria for retention of a tenant.** In addition to the criteria established in Iowa Code subsection 17A.9A(2), the following factors may be demonstrative in determining whether the criteria for issuance of a waiver have been met.

*a.* It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program;

*b.* The program is able to provide the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants;

*c.* The department shall only issue a waiver if the waiver will not jeopardize the health, safety, security or welfare of the tenant, program staff, or other tenants; and

*d.* The tenant has been diagnosed with a terminal illness and has been admitted to hospice, and the tenant exceeds the criteria for retention and admission for a temporary period of less than six months. A terminal diagnosis means the tenant is within six months of the end of life.

**67.7(4) Conditional waiver.** A conditional waiver may be granted contingent upon the department's receipt of additional information or performance of monitoring.

*a.* If a waiver has been in effect for six months, a monitoring shall be conducted to determine whether the tenant meets the criteria to continue on a waiver.

*b.* The department may seek additional information during the period to determine if a waiver should be granted.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.8(231B,231C,231D) All other waiver requests.** Waiver requests relating to topics other than retention of a tenant in a program shall be filed in accordance with 481—Chapter 6.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.9(231B,231C,231D) Staffing.**

**67.9(1)** A sufficient number of trained staff shall be available at all times to fully meet tenants' identified needs.

**67.9(2)** All staff shall be able to implement the accident, fire safety, and emergency procedures.

**67.9(3)** Pursuant to Iowa Code section 135C.33, a prospective employee of a program shall have a criminal history check, dependent adult abuse check, and child abuse check performed before the prospective employee begins work. If a prospective employee has a criminal history or an abuse history, the prospective employee shall not be employed by the program unless the department of human services has performed an evaluation and determined that the record does not warrant the employment prohibition. Proof of the preemployment background check shall be maintained in the program's employee file. The program must meet all requirements of Iowa Code section 135C.33 and administrative rules adopted pursuant to Iowa Code section 135C.33.

**67.9(4)** The program shall have training and staffing plans on file and shall maintain documentation of training received by program staff.

**67.9(5)** Any nursing services shall be provided in accordance with Iowa Code chapter 152 and 655—Chapter 6.

**67.9(6)** A staff member shall not be designated as attorney-in-fact, guardian, conservator, or representative payee for a tenant unless the staff member is related to the tenant by blood, marriage, or adoption.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.10(17A,231B,231C,231D) Monitoring, plans of correction, and requests for reconsideration.**

**67.10(1) Frequency of monitoring.** The department shall monitor a certified program at least once during the program's certification period.

**67.10(2) Accessibility of records and program areas.** All records and areas of the program deemed necessary to determine compliance with the applicable requirements for certification shall be accessible to the department for purposes of monitoring.

**67.10(3) Standard for determining whether a regulatory insufficiency exists.** The department shall use a preponderance-of-the-evidence standard when determining whether a regulatory insufficiency exists. A preponderance-of-the-evidence standard does not require that the monitor shall have personally witnessed the alleged violation.

**67.10(4) Preliminary report.** When a regulatory insufficiency is found, a preliminary report detailing the insufficiency shall be sent by the department to the program within 20 working days. The department shall send the report by certified mail.

**67.10(5) Plan of correction.** Within 10 working days following receipt of the preliminary report, the program shall submit a plan of correction to the department.

*a. Contents of plan.* The plan of correction shall include: elements detailing how the program will correct each regulatory insufficiency, what measures will be taken to ensure the problem does not recur, how the program plans to monitor performance to ensure compliance, and any other required information.

*b. Review of plan.* The department shall review the plan of correction within 10 working days. The department may request additional information or suggest revisions to the plan. Once an acceptable plan of correction has been received, the department shall issue a final report within 10 working days and shall determine whether any enforcement action related to the program's continued certification is necessary.

**67.10(6) Request for reconsideration.** Within 10 working days of receiving the preliminary report, the program may submit a request for reconsideration in response to a regulatory insufficiency. Regardless of whether a request for reconsideration is submitted, a plan of correction must be submitted.

*a.* The request may include additional information to support the request for reconsideration.

*b.* The department shall review the request for reconsideration and additional information and determine whether to withdraw or modify the regulatory insufficiency.

*c.* The department shall accept a request for reconsideration if the additional information submitted by the program shows by a preponderance of the evidence that the regulatory insufficiency did not exist at the time of the monitoring.

*d.* The department's decision regarding a request for reconsideration shall be reflected in the final report.

**67.10(7) Final report.** The final report issued after the plan of correction and request for reconsideration have been considered may be appealed in accordance with the department's appeal procedures in rule 481—67.13(17A,231B,231C,231D). The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found.

**67.10(8) Monitoring revisit.** The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

#### **481—67.11(231B,231C,231D) Complaint and program-reported incident report investigation procedure.**

**67.11(1) Complaints.** The process for filing a complaint is as follows:

*a.* Any person with concerns regarding the operation or service delivery of a program may file a complaint with the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; by use of the complaint hotline, 1-877-686-0027; by facsimile sent to (515)281-7106; or through the Web site address: [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do).

*b.* When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant to the appropriate investigatory entity.

*c.* The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the program or tenant; and the reason for the complaint. The complainant's name shall be confidential

information and shall not be released by the department. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the program. If the department, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, the department may dismiss the complaint.

**67.11(2) *Program-reported incident reports.*** When the program is required pursuant to applicable requirements to report an incident, the program shall make the report to the department via:

*a.* The Web-based reporting tool accessible from the following Internet site, [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Complaints” tab;

*b.* Mail by sending the complaint to the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

*c.* The complaint hotline, 1-877-686-0027; or

*d.* Facsimile sent to (515)281-7106.

**67.11(3) *Time frames for investigation of complaints or program-reported incident reports.*** Upon receipt of a complaint or program-reported incident report made in accordance with this rule, the department shall conduct a preliminary review of the complaint or report to determine if a potential regulatory insufficiency has occurred. If a potential regulatory insufficiency exists, the department shall institute a monitoring of the program within 20 working days unless there is the possibility of immediate danger, in which case the department shall institute a monitoring of the program within 2 working days of receipt of the complaint or incident report.

**67.11(4) *Standard for determining whether a complaint is substantiated.*** The department shall apply a preponderance-of-the-evidence standard in determining whether or not a complaint or program-reported incident report is substantiated.

**67.11(5) *Notification of program and complainant.*** The department shall notify the program and, if known, the complainant of the final report regarding the complaint investigation. The department and the program shall follow the procedures outlined in subrules 67.10(2) through 67.10(7).

**67.11(6) *Notification of accrediting entity.*** In addition, for any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, the department shall notify the accrediting entity by the most expeditious means possible of any actions taken by the department with respect to certification enforcement.

**67.11(7) *Notification of complainant when complaint not investigated.*** The department shall notify the complainant, if known, if the department does not investigate a complaint. The reasons for not investigating the complaint shall be included in the notification.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.12(17A,231B,231C,231D) Enforcement action.** In all cases, if a regulatory insufficiency has been identified, the program shall comply with the plan of correction requirements in subrule 67.10(5). In addition, the department may take enforcement actions pursuant to this rule as a result of the program’s noncompliance with applicable requirements.

**67.12(1) *Types of enforcement action.*** The department’s enforcement action may include: denial, suspension, or revocation of a certification; issuance of a conditional certification and the placement of conditions upon a certificate such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

**67.12(2) *Conditional certification.*** In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certification for a period of up to one year. A conditional certificate shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

*a.* The department shall specify the regulatory insufficiency in the notice of enforcement action.

*b.* The department shall notify the tenant advocate when a conditional certificate is issued and when a conditional certification is lifted.

*c.* During the period of a conditional certification, the department shall conduct a monitoring to verify compliance prior to making the final certification decision.

- d. The department shall issue reports pursuant to rule 481—67.10(17A,231B,231C,231D).
- e. Failure by the program to adhere to the plan of correction may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.
- f. A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department. Once the program is in substantial compliance with applicable requirements, the department shall lift the conditional certificate.

**67.12(3) Civil penalties.**

a. *When civil penalties may be issued.* Civil penalties may be issued when the director finds that any of the following has occurred:

(1) Noncompliance results in imminent danger or substantial probability of resultant death or physical harm. A program that is in noncompliance with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than \$10,000.

(2) A program has failed to comply, and the noncompliance has a direct relationship to the health, safety, or security of tenants. Following receipt of a final report from the department, a program which continues to fail or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than \$5,000.

(3) The program prevents or interferes with enforcement. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000.

b. *Factors in determining the amount of a civil penalty.* The department shall consider the following factors when determining the amount of a civil penalty:

(1) The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);

(2) The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediate previous certification period);

(3) The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;

(4) The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;

(5) The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;

(6) The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;

(7) The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;

(8) The rights of tenants to make informed decisions;

(9) Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

c. *Civil penalties due.* The department may assess a civil penalty, which shall be paid to the department within 30 days following the program's receipt of the final notice of the enforcement action. The program may appeal the decision in accordance with rule 481—67.13(17A,231B,231C,231D).

d. *Automatic reduction of civil penalty if paid timely and no hearing is requested or request for hearing is withdrawn.* If a program has been assessed a civil penalty, does not request a formal hearing pursuant to rule 481—67.13(17A,231B,231C,231D) or has withdrawn the request for a formal hearing within 30 days of the notice or service, and the civil penalty is paid within 30 days of receipt of notice or service, the amount of the civil penalty shall be reduced by 35 percent. The notice of civil penalty shall include a statement to this effect.

*e. Suspension of civil penalty pending hearing.* If the program appeals the civil penalty, the civil penalty shall be deemed suspended until a final agency decision is reached in accordance with rule 481—67.13(17A,231B,231C,231D) and 481—Chapter 10.

*f. Duplicate penalties prohibited.* The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

**67.12(4) Immediate suspension of certificate.** When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

**67.12(5) Immediate imposition of enforcement action.** When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program if the department finds that tenants' health and safety would still be protected. The program may request a hearing pursuant to rule 481—67.13(17A,231B,231C,231D) on the immediate enforcement action, but the immediate enforcement action remains in effect regardless of the request for hearing.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.13(17A,231B,231C,231D) Notice, hearings, and appeals.**

**67.13(1)** Effective date and status of enforcement action if a hearing is requested. An enforcement action described in rule 481—67.12(17A,231B,231C,231D) shall be effected by delivery of a notice of enforcement action setting forth the particular reasons for such action to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service. The enforcement action shall become effective 30 days after the mailing or service of the notice unless the applicant or certificate holder, within such 30-day period, gives the department written notice requesting a hearing, in which case the notice shall be deemed to be suspended. If, however, an enforcement action has been implemented immediately in accordance with subrule 67.12(4) or 67.12(5), the enforcement action remains in effect regardless of a request for hearing.

**67.13(2)** Final report containing a finding of a regulatory insufficiency. A final report issued pursuant to rule 481—67.10(17A,231B,231C,231D) shall be delivered to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service. If a regulatory insufficiency is noted, the final report shall include particular reasons for the finding that a regulatory insufficiency exists.

**67.13(3)** Hearings shall be conducted by the administrative hearings division of the department pursuant to Iowa Code chapter 17A and 481—Chapter 10.

**67.13(4)** At any time during or prior to a hearing, the department may rescind or modify the notice of enforcement action or final report.

**67.13(5)** Appeals. All appeals authorized under applicable requirements shall be conducted pursuant to 481—Chapter 10.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.14(17A,231B,231C,231D) Judicial review.** Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.15(17A,231C,231D) Emergency removal of tenants.** If the department determines that the health or safety of tenants is in jeopardy and the tenants need to be removed from the program, the department shall use the following procedures to ensure a safe and orderly transfer.

**67.15(1)** The department shall notify the department of human services, the tenant advocate, the appropriate area agency on aging, and other agencies as necessary and appropriate:

- a.* To alert them to the need to transfer tenants from a program;
- b.* To request assistance in identifying alternative programs or other appropriate settings; and

c. To contact the tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

**67.15(2)** The department shall notify the program of the immediate need to transfer tenants and of any assistance available, in coordination with the appropriate parties under subrule 67.15(1).

**67.15(3)** The department, in conjunction with other agencies as necessary and appropriate, shall proceed with the transfer of tenants.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.16(231C) Nursing assistant work credit.**

**67.16(1)** A person who is certified as a nursing assistant, including a medication aide, and who is supervised by a registered nurse may submit information to the department to obtain credit toward maintaining certification for working in a program. A program may add an employee to the direct care worker registry by calling (515)281-4077 or by registering through the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

**67.16(2)** A program shall complete and submit to the department a direct care worker registry application for each certified nursing assistant who works in the program. A registered nurse employed by the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

**67.16(3)** A program shall complete and submit to the department a direct care worker registry quarterly employment report whenever a change in the employment of a certified nursing assistant occurs. The report form may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.17(231B,231C,231D) Public or confidential information.**

**67.17(1) Public information.**

a. *Public disclosure of findings.* The program shall post a notice stating that copies of the final report resulting from a monitoring are available via the department’s Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do). The program shall post the notice in a prominent location on the premises of the program. Copies shall also be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; telephone (515)281-6325.

b. *Open records.* The following records are open records available for inspection:

- (1) Certification applications, certification status, and accompanying materials;
- (2) Final findings of state monitorings, including a monitoring that results from a complaint or program-reported incident;
- (3) Reports from the state fire marshal;
- (4) Plans of correction submitted by a program;
- (5) Official notices of certification sanctions, including enforcement actions;
- (6) Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 481—67.10(17A,231B,231C,231D), 481—67.12(17A,231B,231C,231D), and 481—67.13(17A,231B,231C,231D);
- (7) Waivers, including the department’s approval and denial letter and any letter requesting the waiver.

**67.17(2) Confidential information.** Confidential information includes the following:

a. Information that does not comprise a final report resulting from a monitoring, complaint investigation, or program-reported incident investigation. Information which does not comprise a final report may be made public in a legal proceeding concerning a denial, suspension or revocation of certification;

b. Names of all complainants;

c. Names of tenants of a program, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator; and

d. Social security numbers or employer identification numbers (EIN).

**67.17(3) Redaction of confidential information.** If a record normally open for inspection contains confidential information, the confidential information shall be redacted before the records are provided for inspection.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

**481—67.18(231B,231C,231D) Training related to Alzheimer’s disease and similar forms of irreversible dementia.** Effective July 1, 2010, or when administrative rules are adopted pursuant to Iowa Code section 231.62, whichever is later, all programs shall comply with the requirements set forth in administrative rule to implement Iowa Code section 231.62 for Alzheimer’s disease and dementia education.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapters 231B, 231C and 231D.

[Filed ARC 8174B (Notice ARC 7877B, IAB 6/17/09), IAB 9/23/09, effective 1/1/10]

CHAPTER 68  
ELDER GROUP HOMES

**481—68.1(231B) Definitions.** In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231B, the following definitions apply.

“*Applicable requirements*” means Iowa Code chapter 231B, this chapter and 481—Chapter 67 and includes any other applicable administrative rules and provisions of the Iowa Code.

“*Committee*” means a resident advocate committee established by 321—Chapter 9.

“*Elder*” means a person 60 years of age or older.

“*Elder group home*” or “*EGH*” means a single-family residence that is operated by a person who is providing room, board, and personal care and may provide health-related services to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity and that is staffed by an on-site manager 24 hours per day seven days per week.

“*Household occupant*” means a tenant and all others who reside in the EGH.

“*In the proximate area*” means located within a five minutes or less response time.

“*Maximal assistance with activities of daily living*” means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

“*Medically unstable*” means that a tenant has a condition or conditions:

1. Indicating physiological frailty as determined by the program’s staff in consultation with a physician or physician extender;
2. Resulting in two or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring supervision by a registered nurse more than once a week of the tenant for more than 21 days.

For example, a tenant who has a condition such as congestive heart failure which results in two or more significant hospitalizations during a quarter and which requires that the tenant receive frequent supervision may be considered medically unstable.

“*On-site manager*” means the person on duty responsible for direct supervision or provision of tenant care. The on-site manager may be any household occupant over 18 years of age, except a tenant, who is qualified to perform the necessary duties.

“*Personal care provider*” means an individual who, in return for remuneration, assists with the essential activities of daily living which the tenant can perform personally only with difficulty.

“*Program*” means an elder group home.

“*Unmanageable incontinence*” means a condition that requires staff provision of total care for an incontinent tenant who lacks the ability to assist in bladder or bowel continence care.

“*Unmanageable verbal abuse*” means repeated verbalizations against tenants or staff that persist despite all interventions and that negatively affect the program. “Unmanageable verbal abuse” includes but is not limited to threats, frequent use of profane language, or unwelcome sexually oriented remarks.

“*Usable floor space*” means open floor space that is not under fixtures, furniture or other barriers and is available for walking or wheelchair use.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.2(231B) Program certification and posting requirements.**

**68.2(1) Certification requirements.** A program may obtain certification by meeting all applicable requirements. For the purpose of these rules, certification is equivalent to licensure.

**68.2(2) Posting requirements.** A program’s current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.3(231B) Certification—application process.**

**68.3(1)** The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**68.3(2)** The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

**68.3(3)** The appropriate fee as stated in Iowa Code section 231B.17 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

**68.3(4)** The department shall consider the application when all supporting documents and fees are received.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.4(231B) Certification—application content.** An application for certification or recertification of an EGH shall include the following:

**68.4(1)** A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

**68.4(2)** A statement affirming that the individuals listed in subrule 68.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**68.4(3)** A statement disclosing whether any of the individuals listed in subrule 68.4(1) have or have had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1, or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

**68.4(4)** The policy and procedure for evaluation of each tenant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant shall be included.

**68.4(5)** The policy and procedure for service plans.

**68.4(6)** The policy and procedure for addressing medication needs of tenants.

**68.4(7)** The policy and procedure for accidents and emergency response.

**68.4(8)** The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

**68.4(9)** The policy and procedure for transportation.

**68.4(10)** The policy and procedure for staffing and training.

**68.4(11)** The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

**68.4(12)** The policy and procedure for managing risk and upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others.

**68.4(13)** The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

**68.4(14)** The tenant occupancy agreement and all attachments.

**68.4(15)** If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

**68.4(16)** A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

**68.4(17)** The fee set forth in Iowa Code section 231B.17.  
[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.5(231B) Initial certification process.**

**68.5(1)** Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether or not the proposed program meets applicable requirements.

**68.5(2)** If, based upon the review of the complete application including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept tenants.

**68.5(3)** Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

**68.5(4)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**68.5(5)** The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

**68.5(6)** The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

**68.5(7)** If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.  
[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.6(231B) Expiration of program certification.**

**68.6(1)** Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

**68.6(2)** The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.  
[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.7(231B) Recertification process.** To obtain recertification, a program shall:

**68.7(1)** Submit one copy of the completed application, including the information required in rule 481—68.4(231B), associated documentation, and the recertification fee as listed in Iowa Code section 231B.17 to the department at the address stated in subrule 68.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

**68.7(2)** Submit additional documentation that each of the following has been inspected and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.  
[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.8(231B) Notification of recertification.**

**68.8(1)** The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information.

After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

**68.8(2)** The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

**68.8(3)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**68.8(4)** If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

**68.8(5)** If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

**68.8(6)** If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

**68.8(7)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.9(231B) Listing of all certified programs.** The department shall maintain a list of all certified programs, which is available online at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Entities Book” tab.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.10(231B) Transfer of certification.**

**68.10(1)** Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program's certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

**68.10(2)** The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

**68.10(3)** The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.11(231B) Cessation of program operation.**

**68.11(1)** If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department and the tenant advocate of the date on which the program will cease operation, which includes seeking decertification.

**68.11(2)** If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department and the tenant advocate at least 90 days prior to expiration of the certification.

**68.11(3)** At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly transfer or transition of all tenants within the 90-day period specified by subrule 68.11(2).

**68.11(4)** The department may conduct a monitoring during the 90-day period to ensure the safety of tenants during the transfer process or transition process.

**68.11(5)** The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

**68.11(6)** When a program ceases operation, which includes seeking decertification, tenant advocates shall be allowed by the program to privately meet with tenants to provide education and service options. [ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.12(231B) Occupancy agreement.**

**68.12(1)** The occupancy agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the tenant or the tenant's legal representative to understand.

**68.12(2)** In addition to the requirements of Iowa Code section 231B.5, the written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. The telephone number for filing a complaint with the department.
- b. The telephone number for the office of the tenant advocate.
- c. The telephone number for reporting dependent adult abuse.
- d. A copy of the program's statement on tenants' rights.
- e. A statement that the program will notify the tenant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.
- f. A copy of the program's admission and transfer criteria.

**68.12(3)** The occupancy agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

**68.12(4)** A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

**68.12(5)** A copy of the most current occupancy agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.13(231B) Evaluation of tenant.**

**68.13(1)** *Evaluation prior to occupancy.* A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and becoming a household occupant to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

**68.13(2)** *Evaluation within 30 days of occupancy and with significant change.* A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy. A program shall also evaluate each tenant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the tenant has not exhibited a significant change.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.14(231B) Criteria for admission and retention of tenants.**

**68.14(1)** *Persons who may not be admitted or retained.* A program shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
- b. Requires routine, one-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:

- (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
- (2) Displays behavior that places another tenant at risk; or
  - d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
  - e. Is under the age of 18; or
  - f. Requires more than part-time or intermittent health-related care; or
  - g. Has unmanageable incontinence on a routine basis despite an individualized toileting program; or
  - h. Is medically unstable; or
  - i. Requires maximal assistance with activities of daily living; or
  - j. Is physically or mentally unable to immediately and without aid of another travel a normal path to safety, including the ascent and descent of stairs from the tenant's bedroom or bathroom.

**68.14(2) *Disclosure of additional occupancy and transfer criteria.*** A program may have additional occupancy or transfer criteria if the criteria are disclosed in the written occupancy agreement prior to the tenant's occupancy.

**68.14(3) *Assistance with transfer from the program.*** A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer from the program when the tenant exceeds the program's criteria for admission and retention.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

#### **481—68.15(231B) Involuntary transfer from the program.**

**68.15(1) *Program initiation of transfer.*** If a program initiates the involuntary transfer of a tenant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the tenant or tenant's legal representative contests the transfer, the following procedures shall apply:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer the tenant and of the reason for the transfer and shall include the contact information for the tenant advocate.

b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification and notify the tenant's treating physician, if any.

c. Pursuant to statute, the tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

**68.15(2) *Transfer pursuant to results of monitoring or complaint or program-reported incident investigation by the department.*** If one or more tenants are identified as exceeding the admission and retention criteria for tenants and need to be transferred as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

a. *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any tenant who exceeds admission and retention criteria.

b. *Notification of others.* Each identified tenant, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

c. *Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary transfer proceedings, the program's internal appeal process in subrule 68.15(1) shall be utilized for appeals.

*d. Program disagreement with the department's finding.* If the program does not agree with the department's finding that the tenant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the tenant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

(1) Consideration of response. Within 10 working days of receipt of the program's response for each identified tenant, the department shall consider the response and make a final finding regarding the continued retention of a tenant.

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision. In addition, the department shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

(4) Effect of the filing of an appeal. If an appeal is filed, the tenant who exceeds admission and retention criteria shall be allowed to continue living in the EGH until all administrative appeals have been exhausted. Appeals filed that relate to the tenant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the tenant's needs shall be provided during that period of time.

(5) Request for waiver of criteria for retention of a tenant in a program. To allow a tenant to remain in the program, the program may request a waiver of criteria for retention of a tenant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report. [ARC 8175B, IAB 9/23/09, effective 1/1/10]

#### **481—68.16(231B) Tenant documents.**

**68.16(1)** Documentation for each tenant shall be maintained by the program and shall include:

*a.* An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of beginning participation; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

*b.* Application forms;

*c.* The initial evaluations and updates;

*d.* A nutritional assessment as necessary;

*e.* The initial individual service plan and updates;

*f.* Signed authorizations for permission to release medical information, photographs, or other media information as necessary;

*g.* A signed authorization for the tenant to receive emergency medical care as necessary;

*h.* A signed managed risk policy and signed managed risk consensus agreements, if any;

*i.* When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;

*j.* Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);

*k.* Advance health care directives as applicable;

*l.* A complete copy of the tenant's occupancy agreement, including any updates;

*m.* A written acknowledgment that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;

*n.* A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;

*o.* Incident reports involving the tenant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the tenant's medical record);

*p.* A copy of waivers of admission or retention criteria, if any;

*q.* When the tenant is unable to advocate on the tenant's own behalf or the tenant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and

*r.* Authorizations for the release of information, if any.

**68.16(2)** The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant.

**68.16(3)** All records shall be protected from loss, damage and unauthorized use.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

#### **481—68.17(231B) Service plans.**

**68.17(1)** A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 68.13(1) and 68.13(2) and shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

**68.17(2)** Prior to the tenant's signing the occupancy agreement and becoming a household occupant, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan.

**68.17(3)** When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of the tenant's occupancy and as needed with significant change, but not less than annually.

*a.* If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

*b.* If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

*c.* If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

**68.17(4)** The service plan shall be individualized and shall indicate, at a minimum:

*a.* The tenant's identified needs and preferences for assistance;

*b.* Any services and care to be provided pursuant to the occupancy agreement;

*c.* The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy; and

*d.* Preferences, if any, of the tenant or the tenant's legal representative for nursing facility care, if the need for nursing facility care presents itself during the elder group home occupancy.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.18(231B) Nurse review.** If a tenant does not receive personal or health-related care, but an observed significant change in the tenant's condition occurs, a nurse review shall be conducted. If a tenant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

**68.18(1)** To monitor, at least every 90 days, or after a significant change in the tenant's condition, any tenant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription

medication orders are current and that the prescription medications are administered consistent with such orders; and

**68.18(2)** To ensure that health care professionals' orders are current for tenants who receive health care professional-directed care from the program; and

**68.18(3)** To assess and document the health status of each tenant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the tenant's health status; and

**68.18(4)** To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—68.17(231B), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a tenant, nurse review is not required.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.19(231B) Staffing.** In addition to the general staffing requirements in rule 481—67.9 (231B,231C,231D), the following requirements apply to staffing in programs.

**68.19(1)** The program shall be staffed by an on-site manager 24 hours per day, seven days per week.

**68.19(2)** Personal care providers shall have completed, at minimum, a home care aide training program that meets the requirements and criteria established in 641—Chapter 80.

**68.19(3)** The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

**68.19(4)** Personal care providers and nursing staff may be employed by the program or obtained through a contract with a home health agency or other service provider. Regardless of the source, the staff must meet all applicable requirements.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.20(231B) Managed risk policy and managed risk consensus agreements.** The program shall have a managed risk policy. The managed risk policy shall be provided to the tenant along with the occupancy agreement. The managed risk policy shall include the following:

**68.20(1)** An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others; and

**68.20(2)** A consensus-based process to address specific risk situations. Program staff and the tenant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the tenant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the tenant's file.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.21(231B) Transportation.** When transportation services are provided directly or under contract with the program:

**68.21(1)** The vehicle shall be accessible and appropriate to the tenants who use it, with consideration for any physical disabilities and impairments.

**68.21(2)** Every tenant transported shall have a seat in the vehicle, except for a tenant who remains in a wheelchair during transport.

**68.21(3)** Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-using passengers.

**68.21(4)** Wheelchairs shall be secured when the vehicle is in motion.

**68.21(5)** During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

**68.21(6)** The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another

state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.22(231B) Identification of veteran’s benefit eligibility.**

**68.22(1)** Within 30 days of a tenant’s participation in an elder group home that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the tenant or the tenant’s personal representative whether the tenant is a veteran or whether the tenant is the spouse, widow, or dependent of a veteran and shall document the response.

**68.22(2)** If the program determines that the tenant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the tenant’s name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

**68.22(3)** If a tenant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.23(231B) Resident advocate committees.** Resident advocate committees for EGHs shall be governed by 321—Chapter 9 unless otherwise required in this chapter.

**68.23(1) Committee placement.** A resident advocate committee shall be established by the commission on aging for each program certified in accordance with this chapter.

**68.23(2) Committee visitations.** The committee shall visit the program assigned to it within one month of the admission of the first tenant as well as a minimum of once and maximum of four times annually thereafter.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.24(231B) Life safety—emergency policies and procedures and structural safety requirements.**

**68.24(1)** The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

- a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Procedures for fire drills;
- g. Regulations regarding smoking;
- h. Monitoring and testing of smoke-control systems;
- i. Tenant evacuation procedures; and
- j. Procedures for reporting and documentation.

**68.24(2)** The program’s structure and procedures and the facility in which a program is located shall meet the requirements adopted for elder group homes in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

**68.24(3)** The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding and shall control the maximum water temperature for tenants with cognitive impairment or dementia or at a tenant’s request.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.25(231B) Structural standards.**

**68.25(1)** The EGH shall be safe, sanitary, well-ventilated, and properly lighted, heated, and cooled; and shall comply with all applicable state and local housing ordinances for family residences and with fire safety rules promulgated by the state fire marshal.

**68.25(2)** In addition to meeting the requirements in subrule 68.25(1), the EGH shall meet the following standards:

*a. General.*

(1) The home, furnishings and fixtures shall be clean, in good repair and appropriate for the tenants.  
(2) Stairways shall have handrails of a circumference, length, texture, strength and stability that can reasonably be expected to provide tenant support.

(3) A functioning light shall be provided in each room, stairway and exit; all light bulbs shall be protected from breakage or removal with appropriate covers.

(4) The yard, fire exits and exterior steps shall be kept free of obstructions and shall be accessible and appropriate to the condition of the tenants.

(5) There shall be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the tenants at one time; common space shall not be located in the basement or garage, unless such space was constructed for that purpose. Additional common living space may be required if wheelchairs, walkers or other durable medical equipment is to be accommodated. For an EGH constructed or remodeled after July 1, 2005, there shall be 300 square feet of usable floor space.

(6) Interior and exterior doorways used by tenants shall be wide enough to accommodate wheelchairs and walkers if tenants with impaired mobility are in residence.

(7) Hot and cold water at each tub, shower, and sink shall be in sufficient supply to meet the needs of the tenants and staff.

(8) Grab bars shall be present for each toilet, tub and shower. Access to toilet and bathing facilities shall be barrier-free. Toilet and bathing facilities shall provide individual privacy.

(9) A telephone shall be available and accessible for tenants' use in a manner that allows for privacy for all calls.

*b. Safety.*

(1) All combustion appliances shall be used and maintained properly and shall be inspected annually by a qualified technician for carbon monoxide emissions and any other hazards to health and safety;

(2) Extension cord wiring shall not be used in place of permanent electrical fixtures or outlets.

*c. Sanitation requirements.*

(1) A public water supply shall be utilized if available. If a nonmunicipal water source is used, the owner or on-site manager must show documentation from the state laboratory that the water supply is potable and is tested as required by the rules of the environmental protection commission of the department of natural resources.

(2) Septic tanks or other nonmunicipal wastewater disposal systems shall be in good working order and shall comply with state and local regulations for wastewater treatment.

(3) Garbage and refuse shall be suitably stored and disposed of by a sanitation company providing service in the area.

(4) If laundry service is provided, soiled linens and clothing shall be stored in containers in an area separate from food storage, kitchen and dining areas.

(5) Sanitation for household pets and other domestic animals shall be adequate to prevent health and safety hazards.

(6) There shall be adequate control of insects and rodents.

(7) Reasonable and prudent precautions for infection control shall be taken, including washing hands and exposed portions of arms with soap and hot water immediately before engaging in food preparation and meal service and before and after providing personal care.

(8) There shall be at least one toilet and one sink for every four household occupants. A minimum of one sink and toilet is required on each floor occupied by tenants. A sink shall be located near each

toilet. For an EGH constructed or remodeled after July 1, 2005, there shall be at least one toilet and one sink for every two household occupants, with a minimum of one toilet and one sink on each floor occupied by tenants.

(9) At least one tub or shower is required for each six household occupants. For an EGH constructed or remodeled after July 1, 2005, there shall be at least one tub or one shower for every four household occupants.

*d. Bedroom requirements.*

(1) Each tenant bedroom shall:

1. Have a door that opens directly to a hallway or common use area without passage through another bedroom or common bathroom;

2. Be adequately ventilated, heated, cooled and lighted;

3. Have at least 70 square feet of usable floor space, excluding any area where a sloped ceiling does not allow a person to stand upright. For an EGH constructed or remodeled after July 1, 2005, each tenant bedroom shall have at least 100 square feet of usable floor space;

4. Provide individual privacy and be occupied by one tenant, unless an alternative arrangement is agreed to in the occupancy agreement by the tenant or the tenant's legal representative;

5. Be on ground level for tenants with impaired mobility;

6. Be in sufficiently close proximity to the on-site manager to ensure that tenants are able to alert the on-site manager to nighttime needs or emergencies, or be equipped with a call system.

(2) Owners, operators, on-site managers, their family members, and personal care providers shall not use as bedrooms areas that are designated as living areas or as tenant bedrooms;

(3) Common living space and tenant bedrooms shall not be used for storage areas.

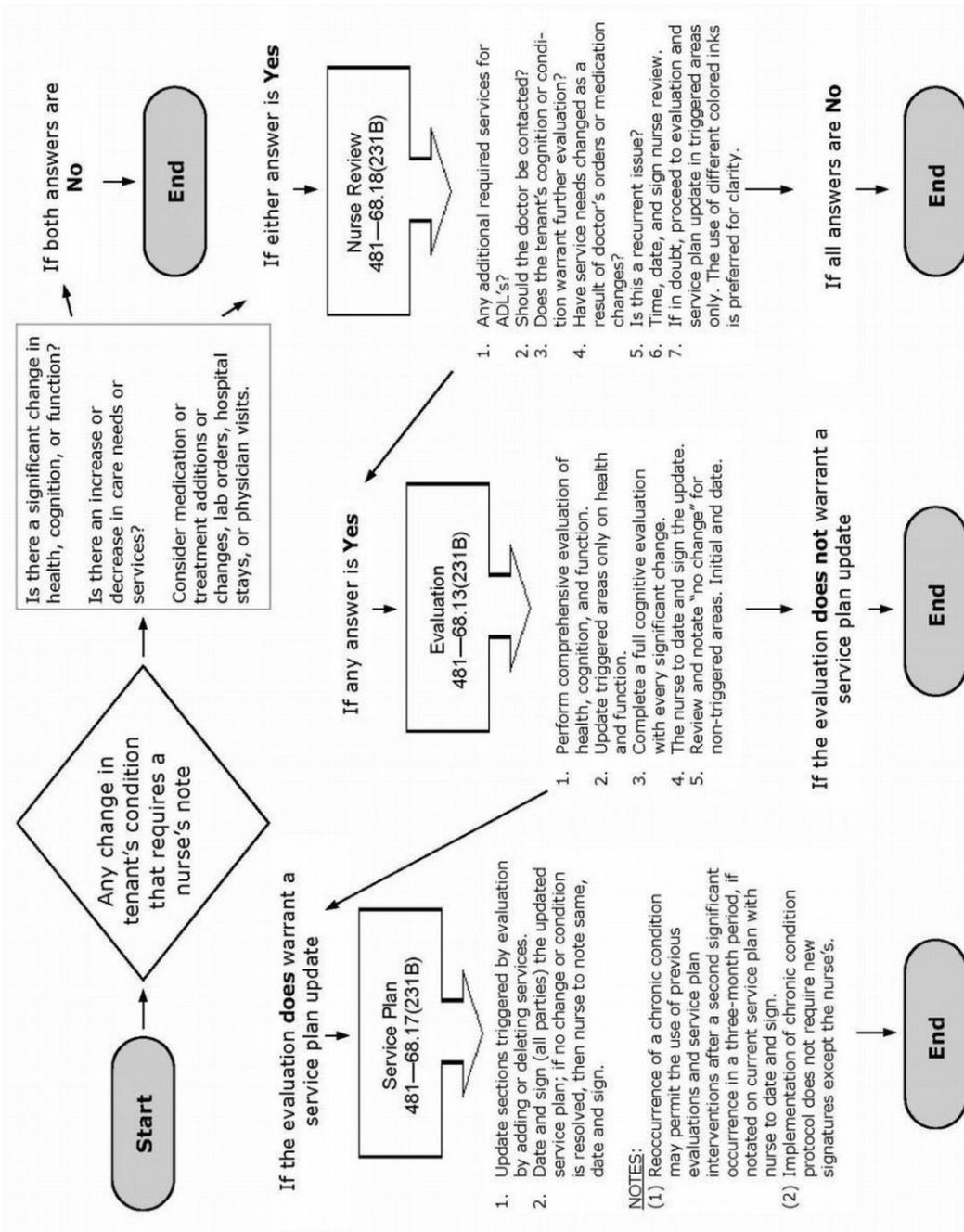
[ARC 8175B, IAB 9/23/09, effective 1/1/10]

**481—68.26(231B) Landlord and tenant Act.** Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to all EGHs under this chapter.

[ARC 8175B, IAB 9/23/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 231B.

Table A



[Filed ARC 8175B (Notice ARC 7960B, IAB 7/15/09), IAB 9/23/09, effective 1/1/10]



CHAPTER 69  
ASSISTED LIVING PROGRAMS

**481—69.1(231C) Definitions.** In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231C, the following definitions apply.

“*Accredited*” means that the program has received accreditation from an accreditation entity recognized in subrule 69.14(1).

“*Applicable requirements*” means Iowa Code chapter 231C, this chapter, and 481—Chapter 67 and includes any other applicable administrative rules and provisions of the Iowa Code.

“*Assisted living*” or “*program*” means provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure which provides a homelike environment. “Assisted living” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “Assisted living” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. “Assisted living” includes 24 hours per day response staff to meet scheduled and unscheduled or unpredictable needs in a manner that promotes maximum dignity and independence and provides supervision, safety, and security.

“*CARF*” means the Commission on Accreditation of Rehabilitation Facilities.

“*Cognitive disorder*” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet the criteria for dementia, delirium, or amnesic disorder.

“*Dementia-specific assisted living program*” means an assisted living program certified under this chapter that:

1. Serves fewer than 55 tenants and has 5 or more tenants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more tenants and 10 percent or more of the tenants have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
3. Holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“*Dwelling unit*” means an apartment, group of rooms or single room which is occupied as separate living quarters or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building, and which has direct access from the outside of the building or through a common hall.

“*In the proximate area*” means located within a five minutes or less response time.

“*Maximal assistance with activities of daily living*” means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

“*Medically unstable*” means that a tenant has a condition or conditions:

1. Indicating physiological frailty as determined by the program’s staff in consultation with a physician or physician extender;
2. Resulting in three or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring frequent supervision of the tenant for more than 21 days by a registered nurse.

For example, a tenant who has a condition such as congestive heart failure which results in three or more significant hospitalizations during a quarter and which requires that the tenant receive frequent supervision may be considered medically unstable.

“*Nonaccredited*” means that the program has been certified under the provisions of this chapter but has not received accreditation from an accreditation entity recognized in subrule 69.14(1).

“*Unmanageable incontinence*” means a condition that requires staff provision of total care for an incontinent tenant who lacks the ability to assist in bladder or bowel continence care.

“*Unmanageable verbal abuse*” means repeated verbalizations against tenants or staff that persist despite all interventions and that negatively affect the program. “Unmanageable verbal abuse” includes but is not limited to threats, frequent use of profane language, or unwelcome sexually oriented remarks. [ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.2(231C) Program certification.** A program may obtain certification by meeting all applicable requirements. In addition, a program may be voluntarily accredited by a recognized accreditation entity. For the purpose of these rules, certification is equivalent to licensure.

**69.2(1) Posting requirements.** A program’s current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

**69.2(2) Dementia-specific programs and door alarms.** If a program meets the definition of a dementia-specific assisted living program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—69.30(231C), subrules 69.29(2) and 69.29(4), paragraph 69.35(1) “d,” and subrule 69.32(2), which includes the requirements relating to door alarms. [ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.3(231C) Certification of a nonaccredited program—application process.**

**69.3(1)** The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**69.3(2)** The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

**69.3(3)** The appropriate fee as stated in Iowa Code section 231C.18 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

**69.3(4)** The department shall consider the application when all supporting documents and fees are received.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.4(231C) Nonaccredited program—application content.** An application for certification or recertification of a nonaccredited program shall include the following:

**69.4(1)** A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

**69.4(2)** A statement affirming that the individuals listed in subrule 69.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**69.4(3)** A statement disclosing whether any of the individuals listed in subrule 69.4(1) have or have had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1, or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure, certification, or registration or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

**69.4(4)** The policy and procedure for evaluation of each tenant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant shall be included.

**69.4(5)** The policy and procedure for service plans.

**69.4(6)** The policy and procedure for addressing medication needs of tenants.

**69.4(7)** The policy and procedure for accidents and emergency response.

**69.4(8)** The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

**69.4(9)** The policy and procedure for activities.

**69.4(10)** The policy and procedure for transportation.

**69.4(11)** The policy and procedure for staffing and training.

**69.4(12)** The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

**69.4(13)** The policy and procedure for managing risk and upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others.

**69.4(14)** The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

**69.4(15)** The policy and procedure related to life safety requirements for a dementia-specific program as required by subrule 69.32(2).

**69.4(16)** The tenant occupancy agreement and all attachments.

**69.4(17)** If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

**69.4(18)** A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

**69.4(19)** The fee set forth in Iowa Code section 231C.18.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

#### **481—69.5(231C) Initial certification process for a nonaccredited program.**

**69.5(1)** Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether or not the proposed program meets applicable requirements.

**69.5(2)** If, based upon the review of the complete application including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept tenants.

**69.5(3)** Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

**69.5(4)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**69.5(5)** The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

**69.5(6)** The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

**69.5(7)** If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

#### **481—69.6(231C) Expiration of the certification of a nonaccredited program.**

**69.6(1)** Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

**69.6(2)** The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.7(231C) Recertification process for a nonaccredited program.** To obtain recertification, a program shall:

**69.7(1)** Submit one copy of the completed application, including the information required in rule 481—69.4(231C), associated documentation, and the recertification fee as listed in Iowa Code section 231C.18 to the department at the address stated in subrule 69.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

**69.7(2)** Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.8(231C) Notification of recertification for a nonaccredited program.**

**69.8(1)** The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

**69.8(2)** The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

**69.8(3)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**69.8(4)** If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

**69.8(5)** If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

**69.8(6)** If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

**69.8(7)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.9(231C) Certification or recertification of an accredited program—application process.**

**69.9(1)** An applicant for certification or recertification of a program accredited by a recognized accrediting entity shall:

*a.* Submit a completed application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

*b.* Submit a copy of the current accreditation outcome from the recognized accrediting entity.

*c.* Apply for certification or recertification within 90 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

*d.* Maintain compliance with life safety requirements pursuant to this chapter.

*e.* Submit the appropriate fees as set forth in Iowa Code section 231C.18.

**69.9(2)** The department shall not consider an application until it is complete and includes all supporting documentation and the appropriate fees.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.10(231C) Certification or recertification of an accredited program—application content.** An application for certification or recertification of an accredited program shall include the following:

**69.10(1)** A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

**69.10(2)** A statement affirming that the individuals listed in subrule 69.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**69.10(3)** A statement disclosing whether any of the individuals listed in subrule 69.10(1) have or have had an ownership interest in a program, adult day services program, elder group home, home health agency, licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

**69.10(4)** A copy of the current accreditation outcome from the recognized accrediting entity.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.11(231C) Initial certification process for an accredited program.**

**69.11(1)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine and notify the accredited program whether or not the accredited program meets applicable requirements and whether or not certification will be issued.

**69.11(2)** If the decision is to certify, a certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

**69.11(3)** If the decision is to deny certification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

**69.11(4)** Unless conditionally issued, suspended or revoked, certification for a program shall expire at the end of the time period specified on the certificate.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.12(231C) Recertification process for an accredited program.**

**69.12(1)** The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

**69.12(2)** To obtain recertification, an accredited program shall submit one copy of the completed application, associated documentation, and the administrative fee as stated in Iowa Code section 231C.18 to the department at the address stated in subrule 69.9(1) at least 90 calendar days prior to the expiration of the program's certification.

**69.12(3)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements and make a recertification decision.

**69.12(4)** The department shall notify the accredited program within 10 working days of the final recertification decision.

*a.* If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

*b.* If the decision is to deny recertification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

**69.12(5)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.13(231C) Listing of all certified programs.** The department shall maintain a list of all certified programs, which is available online at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do) under the “Entities Book” tab.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.14(231C) Recognized accrediting entity.**

**69.14(1)** The department designates CARF as a recognized accrediting entity for programs.

**69.14(2)** To apply for designation by the department as a recognized accrediting entity for programs, an accrediting entity shall submit a letter of request, and its standards shall, at minimum, meet the applicable requirements for programs.

**69.14(3)** The designation shall remain in effect for as long as the accreditation standards continue to meet, at minimum, the applicable requirements for programs.

**69.14(4)** An accrediting entity shall provide annually to the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 120 working days after the publications are released.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.15(231C) Requirements for an accredited program.** Each accredited program that is certified by the department shall:

**69.15(1)** Provide the department a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

**69.15(2)** Notify the department by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the program and any actions taken by the accrediting entity with respect thereto.

**69.15(3)** Notify the department immediately of the expiration, suspension, revocation or other loss of the program’s accreditation.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.16(231C) Maintenance of program accreditation.**

**69.16(1)** An accredited program shall continue to be recognized for certification by the department if both of the following requirements are met:

*a.* The program complies with the requirements outlined in rule 481—69.15(231C).

*b.* The program maintains its voluntary accreditation status for the duration of the time-limited certification period.

**69.16(2)** A program that does not maintain its voluntary accreditation status must become certified by the department prior to any lapse in accreditation.

**69.16(3)** A program that does not maintain its voluntary accreditation status and is not certified by the department prior to any lapse in voluntary accreditation shall cease operation as a program.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.17(231C) Transfer of certification.**

**69.17(1)** Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program’s certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

**69.17(2)** The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

**69.17(3)** The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.18(231C) Structural and life safety reviews of a building for a new program.**

**69.18(1)** Before a building is constructed or remodeled for use in a new program, the department shall review the blueprints for compliance with requirements pursuant to this chapter. Construction or remodeling includes new construction, remodeling of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**69.18(2)** A program applicant shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231C.18 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

**69.18(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**69.18(4)** The department shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**69.18(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department to state how any noncompliance will be resolved.

**69.18(6)** Upon final notification by the department that the blueprints meet structural and life safety requirements, construction or remodeling of the building may commence.

**69.18(7)** The department shall schedule an on-site visit of the building site with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for certification.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.19(231C) Structural and life safety review prior to the remodeling of a building for a certified program.**

**69.19(1)** Before a building for a certified program is remodeled, the department shall review the blueprints for compliance with requirements set forth in rule 481—69.35(231C). Remodeling includes modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**69.19(2)** A certified program shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231C.18 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

**69.19(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**69.19(4)** The department shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**69.19(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department in 20 working days to state how any noncompliance will be resolved.

**69.19(6)** Upon final notification by the department that the blueprints meet structural and life safety requirements, remodeling of the building may commence.

**69.19(7)** The department shall schedule an on-site visit of the building with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance

with the approved blueprints. Any noncompliance must be resolved prior to approval for continued certification or recertification of the program.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.20(231C) Cessation of program operation.**

**69.20(1)** If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department and the tenant advocate of the date on which the program will cease operation, which includes seeking decertification.

**69.20(2)** If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department and the tenant advocate at least 90 days prior to expiration of the certification.

**69.20(3)** At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly transfer or transition of all tenants within the 90-day period specified by subrule 69.20(2).

**69.20(4)** The department may conduct a monitoring during the 90-day period to ensure the safety of tenants during the transfer process or transition process.

**69.20(5)** The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

**69.20(6)** When a program ceases operation, which includes seeking decertification, tenant advocates shall be allowed by the program to privately meet with tenants to provide education and service options.  
[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.21(231C) Occupancy agreement.**

**69.21(1)** The occupancy agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the tenant or the tenant's legal representative to understand.

**69.21(2)** In addition to the requirements of Iowa Code section 231C.5, the written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. The telephone number for filing a complaint with the department.
- b. The telephone number for the office of the tenant advocate.
- c. The telephone number for reporting dependent adult abuse.
- d. A copy of the program's statement on tenants' rights.
- e. A statement that the tenant landlord law applies to assisted living programs.
- f. A statement that the program will notify the tenant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.

**69.21(3)** The occupancy agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

**69.21(4)** A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

**69.21(5)** A copy of the most current occupancy agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.22(231C) Evaluation of tenant.**

**69.22(1)** *Evaluation prior to occupancy.* A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit in order to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective

tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

**69.22(2) *Evaluation within 30 days of occupancy and with significant change.*** A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy. A program shall also evaluate each tenant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the tenant has not exhibited a significant change.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.23(231C) Criteria for admission and retention of tenants.**

**69.23(1) *Persons who may not be admitted or retained.*** A program shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
  - b. Requires routine, two-person assistance with standing, transfer or evacuation; or
  - c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:
    - (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
    - (2) Displays behavior that places another tenant at risk; or
  - d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
  - e. Is under the age of 18; or
  - f. Requires more than part-time or intermittent health-related care; or
  - g. Has unmanageable incontinence on a routine basis despite an individualized toileting program;
- or
- h. Is medically unstable; or
  - i. Requires maximal assistance with activities of daily living.

**69.23(2) *Disclosure of additional occupancy and transfer criteria.*** A program may have additional occupancy or transfer criteria if the criteria are disclosed in the written occupancy agreement prior to the tenant's occupancy.

**69.23(3) *Assistance with transfer from the program.*** A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer from the program when the tenant exceeds the program's criteria for admission and retention.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.24(231C) Involuntary transfer from the program.**

**69.24(1) *Program initiation of transfer.*** If a program initiates the involuntary transfer of a tenant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the tenant or tenant's legal representative contests the transfer, the following procedures shall apply:

- a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer the tenant and of the reason for the transfer and shall include the contact information for the tenant advocate.
- b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification and notify the tenant's treating physician, if any.
- c. Pursuant to statute, the tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.
- d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

**69.24(2)** *Transfer pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more tenants are identified as exceeding the admission and retention criteria for tenants and need to be transferred as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

*a. Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any tenant who exceeds admission and retention criteria.

*b. Notification of others.* Each identified tenant, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

*c. Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary transfer proceedings, the program's internal appeal process in subrule 69.24(1) shall be utilized for appeals.

*d. Program disagreement with the department's finding.* If the program does not agree with the department's finding that the tenant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the tenant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements, including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

(1) *Consideration of response.* Within 10 working days of receipt of the program's response for each identified tenant, the department shall consider the response and make a final finding regarding the continued retention of a tenant.

(2) *Amending the regulatory insufficiency.* If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) *Retaining regulatory insufficiency.* If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision. In addition, the department shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

(4) *Effect of the filing of an appeal.* If an appeal is filed, the tenant who exceeds admission and retention criteria shall be allowed to continue living at the program until all administrative appeals have been exhausted. Appeals filed that relate to the tenant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the tenant's needs shall be provided during that period of time.

(5) *Request for waiver of criteria for retention of a tenant in a program.* To allow a tenant to remain in the program, the program may request a waiver of criteria for retention of a tenant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report. [ARC 8176B, IAB 9/23/09, effective 1/1/10]

#### **481—69.25(231C) Tenant documents.**

**69.25(1)** Documentation for each tenant shall be maintained by the program and shall include:

*a.* An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of occupancy; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

*b.* Application forms;

- c.* The initial evaluations and updates;
- d.* A nutritional assessment as necessary;
- e.* The initial individual service plan and updates;
- f.* Signed authorizations for permission to release medical information, photographs, or other media information as necessary;
- g.* A signed authorization for the tenant to receive emergency medical care as necessary;
- h.* A signed managed risk policy and signed managed risk consensus agreements, if any;
- i.* When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;
- j.* Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);
- k.* Advance health care directives as applicable;
- l.* A complete copy of the tenant's occupancy agreement, including any updates;
- m.* A written acknowledgment that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
- n.* A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;
- o.* Incident reports involving the tenant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the tenant's medical record);
- p.* A copy of waivers of admission or retention criteria, if any;
- q.* When the tenant is unable to advocate on the tenant's own behalf or the tenant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and
- r.* Authorizations for the release of information, if any.

**69.25(2)** The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant.

**69.25(3)** All records shall be protected from loss, damage and unauthorized use.  
[ARC 8176B, IAB 9/23/09, effective 1/1/10]

#### **481—69.26(231C) Service plans.**

**69.26(1)** A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 69.22(1) and 69.22(2) and shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

**69.26(2)** Prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan.

**69.26(3)** When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of the tenant's occupancy and as needed with significant change, but not less than annually.

*a.* If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

*b.* If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

*c.* If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

**69.26(4)** The service plan shall be individualized and shall indicate, at a minimum:

- a. The tenant's identified needs and preferences for assistance;
- b. Any services and care to be provided pursuant to the occupancy agreement;
- c. The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy;
- d. For tenants who are unable to plan their own activities, including tenants with dementia, planned and spontaneous activities based on the tenant's abilities and personal interests; and
- e. Preferences, if any, of the tenant or the tenant's legal representative for nursing facility care, if the need for nursing facility care presents itself during the assisted living program occupancy.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.27(231C) Nurse review.** If a tenant does not receive personal or health-related care, but an observed significant change in the tenant's condition occurs, a nurse review shall be conducted. If a tenant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

**69.27(1)** To monitor, at least every 90 days, or after a significant change in the tenant's condition, any tenant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

**69.27(2)** To ensure that health care professionals' orders are current for tenants who receive health care professional-directed care from the program; and

**69.27(3)** To assess and document the health status of each tenant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the tenant's health status; and

**69.27(4)** To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—69.26(231C), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a tenant, nurse review is not required.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.28(231C) Food service.**

**69.28(1)** The program shall provide or coordinate with other community providers to provide a hot or other appropriate meal(s) at least once a day or shall make arrangements for the availability of meals.

**69.28(2)** Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

**69.28(3)** Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 $\frac{1}{3}$  percent if the program provides one meal per day;
- b. A minimum of 66 $\frac{2}{3}$  percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

**69.28(4)** Therapeutic diets may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by the Iowa Dietetic Association shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for food preparation and service for therapeutic diets.

**69.28(5)** Personnel who are employed by or contract with the program and who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection.

*a.* In addition to the requirements above, a minimum of one person directly responsible for food preparation shall have successfully completed a state-approved food protection program by:

- (1) Obtaining certification as a dietary manager; or
- (2) Obtaining certification as a food protection professional; or
- (3) Successfully completing a course meeting the requirements for a food protection program

included in the Food Code adopted pursuant to Iowa Code chapter 137F. Another course may be substituted if the course's curriculum includes substantially similar competencies to a course that meets the requirements of the Food Code and the provider of the course files with the department a statement indicating that the course provides substantially similar instruction as it relates to sanitation and safe food handling.

*b.* If the person is in the process of completing a course or certification listed in paragraph "*a.*" the requirement relating to completion of a state-approved food protection program shall be considered to have been met.

**69.28(6)** Programs engaged in the preparation and service of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and service of food and shall be licensed pursuant to Iowa Code chapter 137F.

**69.28(7)** Programs may have an on-site dietitian. Programs may secure menus and a dietitian through other methods.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.29(231C) Staffing.** In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

**69.29(1)** Each tenant shall have access to a 24-hour personal emergency response system that automatically identifies the tenant in distress and can be activated with one touch.

**69.29(2)** In lieu of providing access to a personal emergency response system, a program serving one or more tenants with cognitive disorder or dementia shall follow a system, program, or written staff procedures that address how the program will respond to the emergency needs of the tenant(s).

**69.29(3)** The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

**69.29(4)** A dementia-specific assisted living program shall have one or more staff persons who monitor tenants as indicated in each tenant's service plan. The staff shall be awake and on duty 24 hours a day on site and in the proximate area. The staff shall check on tenants as indicated in the tenants' service plans.

**69.29(5)** All programs employing a new program manager after January 1, 2010, shall require the manager within six months of hire to complete an assisted living management class whose curriculum includes at least six hours of training specifically related to Iowa rules and laws on assisted living programs. Managers who have completed a similar training prior to January 1, 2010, shall not be required to complete additional training to meet this requirement.

**69.29(6)** All programs employing a new delegating nurse after January 1, 2010, shall require the delegating nurse within six months of hire to complete an assisted living manager class or assisted living nursing class whose curriculum includes at least six hours of training specifically related to Iowa rules and laws on assisted living. A minimum of one delegating nurse from each program must complete the training. If there are multiple delegating nurses and only one delegating nurse completes the training, the delegating nurse who completes the training shall train the other delegating nurses in the Iowa rules and laws on assisted living. As of January 1, 2011, all programs shall have a minimum of one delegating nurse who has completed the training described in this subrule.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.30(231C) Dementia-specific education for program personnel.**

**69.30(1)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of eight hours of dementia-specific education and training within 30 days of either employment or the beginning date of the contract, as applicable.

**69.30(2)** The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with instrumental activities of daily living;
- h. The importance of the service plan and social history information;
- i. Skills in working with challenging tenants;
- j. Techniques for simplifying, cueing, and redirecting;
- k. Staff support and stress reduction; and
- l. Medication management and nonpharmacological interventions.

**69.30(3)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of eight hours of dementia-specific continuing education annually.

**69.30(4)** An employee or contractor who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 69.30(1).

**69.30(5)** Dementia-specific training shall include hands-on training and may include any of the following: classroom instruction, Web-based training, and case studies of tenants in the program.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.31(231C) Managed risk policy and managed risk consensus agreements.** The program shall have a managed risk policy. The managed risk policy shall be provided to the tenant along with the occupancy agreement. The managed risk policy shall include the following:

**69.31(1)** An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others; and

**69.31(2)** A consensus-based process to address specific risk situations. Program staff and the tenant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the tenant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the tenant's file.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.32(231C) Life safety—emergency policies and procedures and structural safety requirements.**

**69.32(1)** The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

- a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Procedures for fire drills;
- g. Regulations regarding smoking;
- h. Monitoring and testing of smoke-control systems;
- i. Tenant evacuation procedures; and
- j. Procedures for reporting and documentation.

**69.32(2)** An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

*a.* Written procedures regarding alarm systems and appropriate staff response when a tenant's service plan indicates a risk of elopement or a tenant exhibits wandering behavior.

*b.* Written procedures regarding appropriate staff response if a tenant with cognitive disorder or dementia is missing.

**69.32(3)** The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for assisted living programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

**69.32(4)** The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding and shall control the maximum water temperature for tenants with cognitive impairment or dementia or at a tenant's request.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.33(231C) Transportation.** When transportation services are provided directly or under contract with the program:

**69.33(1)** The vehicle shall be accessible and appropriate to the tenants who use it, with consideration for any physical disabilities and impairments.

**69.33(2)** Every tenant transported shall have a seat in the vehicle, except for a tenant who remains in a wheelchair during transport.

**69.33(3)** Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-using passengers.

**69.33(4)** Wheelchairs shall be secured when the vehicle is in motion.

**69.33(5)** During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

**69.33(6)** The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

**69.33(7)** Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.34(231C) Activities.**

**69.34(1)** The program shall provide appropriate activities for each tenant. Activities shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

**69.34(2)** Activities shall be planned to support the tenant's service plan and shall be consistent with the program statement and occupancy policies.

**69.34(3)** A written schedule of activities shall be developed at least monthly and made available to tenants and their legal representatives.

**69.34(4)** Tenants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.35(231C) Structural requirements.**

**69.35(1) General requirements.**

*a.* The structure of the program shall be designed and operated to meet the needs of the tenants.

*b.* The buildings and grounds shall be well-maintained, clean, safe and sanitary.

*c.* Programs shall have private dwelling units with a single-action, lockable entrance door.

*d.* A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the lock on an entrance door and shall disable or remove the lock if its presence presents a danger to the health and safety of the tenant.

*e.* The structure in which a program is housed shall be built, at a minimum, of Type V (111) construction as provided in Section 22.3.1.3.3 and Sections 6.2.1A to 6.2.2 of NFPA 101, Life Safety Code, 2003 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, or as required in administrative rules promulgated by the state fire marshal.

*f.* Programs may have individual cooking facilities within the private dwelling units. Any program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or easily remove appliances and shall disable or remove them if their presence presents a danger to the health and safety of the tenant or others.

**69.35(2)** *Programs certified prior to July 4, 2001.* Facilities for programs certified prior to July 4, 2001, shall meet the following requirements:

*a.* Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

*b.* Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.

*c.* A dwelling unit used for double occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.

*d.* The program shall have a minimum of 15 square feet of common area per tenant.

**69.35(3)** *New construction built on or after July 4, 2001.* Programs operated in new construction built on or after July 4, 2001, shall meet the following requirements:

*a.* Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

*b.* Each dwelling unit used for single occupancy shall have a total square footage of not less than 240 square feet of floor area, excluding bathrooms and door swing.

*c.* A dwelling unit used for double occupancy shall have a total square footage of not less than 340 square feet of floor area, excluding bathrooms and door swing.

*d.* Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the sink or bathing facility water control and shall disable or remove the water control if its presence presents a danger to the health and safety of the tenant.

*e.* The program shall have a minimum of 25 square feet of common space per tenant.

*f.* Self-closing doors are not required for individual dwelling units, whether in a general or dementia-specific setting, unless the authority with jurisdiction determines that the level of hazard has increased to require the installation of closure hardware (for example, presence of a stove, range or oven).

**69.35(4)** *Structure being converted to or remodeled for use by a program on or after July 4, 2001.* A program operating in a structure that was converted or remodeled for use for a program on or after July 4, 2001, shall meet the following requirements:

*a.* Each dwelling unit shall have at least one room that has not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

*b.* Each dwelling unit used for single occupancy shall have a total square footage of not less than 190 square feet of floor area, excluding bathrooms and door swing.

*c.* A dwelling unit used for double occupancy shall have a total square footage of not less than 290 square feet of floor area, excluding bathrooms and door swing.

*d.* The program shall have dedicated for use by tenants a minimum of 15 square feet of common area per tenant.

*e.* Each dwelling unit shall have a bathroom, including but not limited to a toilet, sink and bathing facility.

*f.* Each sleeping room shall have a minimum of 5.7 square feet of operable window. Waiver of this requirement may be granted by the state fire marshal or designee.  
[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.36(231C) Dwelling units in dementia-specific programs.** Dementia-specific programs are exempt from the requirements in subrules 69.35(2) to 69.35(4) as follows:

**69.36(1)** For a program built in a family or neighborhood design:

*a.* Each dwelling unit used for single occupancy shall have a total square footage of not less than 150 square feet of floor area, excluding a bathroom; and

*b.* Each dwelling unit used for double occupancy shall have a total square footage of not less than 250 square feet of floor area, excluding a bathroom.

**69.36(2)** Dementia-specific programs may choose not to provide bathing facilities in the dwelling units.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.37(231C) Landlord and tenant Act.** Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to programs under this chapter.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

**481—69.38(83GA,SF203) Identification of veteran's benefit eligibility.**

**69.38(1)** Within 30 days of a tenant's admission to an assisted living program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the tenant or the tenant's personal representative whether the tenant is a veteran or whether the tenant is the spouse, widow, or dependent of a veteran and shall document the response.

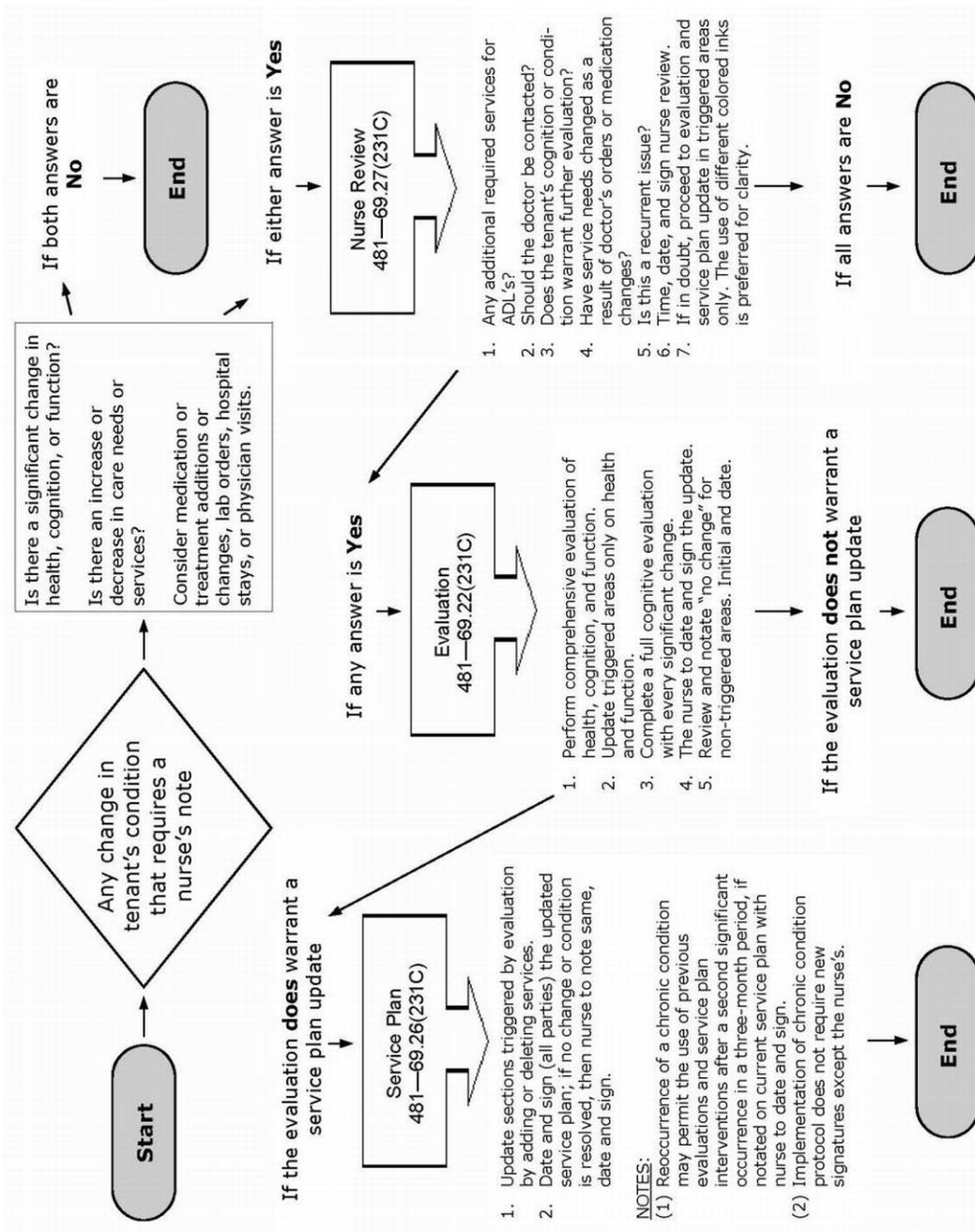
**69.38(2)** If the program determines that the tenant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the tenant's name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

**69.38(3)** If a tenant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

[ARC 8176B, IAB 9/23/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 231C.

Table A



[Filed ARC 8176B (Notice ARC 7878B, IAB 6/17/09), IAB 9/23/09, effective 1/1/10]

CHAPTER 70  
ADULT DAY SERVICES

**481—70.1(231D) Definitions.** In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231D, the following definitions apply.

“*Accredited*” means that the program has received accreditation from an accreditation entity recognized in subrule 70.14(1).

“*Adult day services*” or “*adult day services program*” or “*program*” means an organized program providing a variety of health-related care, social services, and other related support services for 16 hours or less in a 24-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

“*Applicable requirements*” means Iowa Code chapter 231D, this chapter, and 481—Chapter 67 and includes any other applicable administrative rules and provisions of the Iowa Code.

“*CARF*” means the Commission on Accreditation of Rehabilitation Facilities.

“*Cognitive disorder*” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

“*Contractual agreement*” means a written agreement between the program and the participant or legal representative.

“*Dementia-specific adult day services program*” means an adult day services program certified under this chapter that:

1. Serves fewer than 55 participants and has 5 or more participants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more participants and 10 percent or more of the participants have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
3. Holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“*Functional impairment*” means a psychological, cognitive, or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

“*Maximal assistance with activities of daily living*” means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

“*Medically unstable*” means that a participant has a condition or conditions:

1. Indicating physiological frailty as determined by the program’s staff in consultation with a physician or physician extender;
2. Resulting in three or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring frequent supervision of the participant for more than 21 days by a registered nurse.

For example, a participant who has a condition such as congestive heart failure which results in three or more significant hospitalizations during a quarter and which requires that the participant receive frequent supervision may be considered medically unstable.

“*Nonaccredited*” means that the program has been certified under the provisions of this chapter but has not received accreditation from the accreditation entity recognized in subrule 70.14(1).

“*Participant*” means an individual who is the recipient of services provided by an adult day services program.

“*Participant’s legal representative*” means a person appointed by the court to act on behalf of a participant, or a person acting pursuant to a power of attorney.

“*Unmanageable incontinence*” means a condition that requires staff provision of total care for an incontinent participant who lacks the ability to assist in bladder or bowel continence care.

“*Unmanageable verbal abuse*” means repeated verbalizations against participants or staff that persist despite all interventions and negatively affect the program. “Unmanageable verbal abuse” includes but is not limited to threats, frequent use of profane language, or unwelcome sexually oriented remarks.

“*Visiting day(s)*” means up to 16 hours in a two-day period during which a person may visit a program prior to admission for the purpose of assessing eligibility for the program and personal satisfaction.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.2(231D) Program certification.** A program may obtain certification by meeting all applicable requirements. In addition, a program may be voluntarily accredited by a recognized accreditation entity. For the purpose of these rules, certification is equivalent to licensure.

**70.2(1) Posting requirements.** A program’s current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

**70.2(2) Dementia-specific programs and door alarms.** If a program meets the definition of a dementia-specific adult day services program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—70.30(231D) and in subrule 70.32(2), which includes the requirements relating to door alarms.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.3(231D) Certification of a nonaccredited program—application process.**

**70.3(1)** The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**70.3(2)** The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

**70.3(3)** The appropriate fee as stated in Iowa Code section 231D.4 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

**70.3(4)** The department shall consider the application when all supporting documents and fees are received.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.4(231D) Nonaccredited program—application content.** An application for certification or recertification of a nonaccredited program shall include the following:

**70.4(1)** A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

**70.4(2)** A statement affirming that the individuals listed in subrule 70.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**70.4(3)** A statement disclosing whether any of the individuals listed in subrule 70.4(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

**70.4(4)** The policy and procedure for evaluation of each participant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each participant shall be included.

**70.4(5)** The policy and procedure for service plans.

**70.4(6)** The policy and procedure for addressing medication needs of participants.

**70.4(7)** The policy and procedure for accidents and emergency response.

**70.4(8)** The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

**70.4(9)** The policy and procedure for activities.

**70.4(10)** The policy and procedure for transportation.

**70.4(11)** The policy and procedure for staffing and training.

**70.4(12)** The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

**70.4(13)** The policy and procedure for managing risk and upholding participant autonomy when participant decision making results in poor outcomes for the participant or others.

**70.4(14)** The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

**70.4(15)** The policy and procedure related to life safety requirements for a dementia-specific program as required by subrule 70.32(2).

**70.4(16)** The participant contractual agreement and all attachments.

**70.4(17)** If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

**70.4(18)** A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

**70.4(19)** The fee set forth in Iowa Code section 231D.4.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.5(231D) Initial certification process for a nonaccredited program.**

**70.5(1)** Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether the proposed program meets applicable requirements.

**70.5(2)** If, based upon the review of the complete application, including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept participants.

**70.5(3)** Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

**70.5(4)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**70.5(5)** The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

**70.5(6)** The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

**70.5(7)** If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.6(231D) Expiration of the certification of a nonaccredited program.**

**70.6(1)** Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

**70.6(2)** The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.7(231D) Recertification process for a nonaccredited program.** To obtain recertification, a program shall:

**70.7(1)** Submit one copy of the completed application, including the information required in rule 481—70.4(231D), associated documentation, and the recertification fee as listed in Iowa Code section 231D.4 to the department at the address stated in subrule 70.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

**70.7(2)** Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.8(231D) Notification of recertification for a nonaccredited program.**

**70.8(1)** The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

**70.8(2)** The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

**70.8(3)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**70.8(4)** If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

**70.8(5)** If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

**70.8(6)** If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

**70.8(7)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.9(231D) Certification or recertification of an accredited program—application process.**

**70.9(1)** An applicant for certification or recertification of a program accredited by a recognized accrediting entity shall:

*a.* Submit a completed application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

*b.* Submit a copy of the current accreditation outcome from the recognized accrediting entity.

*c.* Apply for certification or recertification within 90 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

*d.* Maintain compliance with life safety requirements pursuant to this chapter.

*e.* Submit the appropriate fees as set forth in Iowa Code section 231D.4.

**70.9(2)** The department shall not consider an application until it is complete and includes all supporting documentation and the appropriate fees.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.10(231D) Certification or recertification of an accredited program—application content.** An application for certification or recertification of an accredited program shall include the following:

**70.10(1)** A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

**70.10(2)** A statement affirming that the individuals listed in subrule 70.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**70.10(3)** A statement disclosing whether any of the individuals listed in subrule 70.10(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

**70.10(4)** A copy of the current accreditation outcome from the recognized accrediting entity.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.11(231D) Initial certification process for an accredited program.**

**70.11(1)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine and notify the accredited program whether the accredited program meets applicable requirements and whether certification will be issued.

**70.11(2)** If the decision is to certify, a certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

**70.11(3)** If the decision is to deny certification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

**70.11(4)** Unless conditionally issued, suspended or revoked, certification for a program shall expire at the end of the time period specified on the certificate.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.12(231D) Recertification process for an accredited program.**

**70.12(1)** The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

**70.12(2)** To obtain recertification, an accredited program shall submit one copy of the completed application, associated documentation, and the administrative fee as stated in Iowa Code section 231D.4 to the department at the address stated in subrule 70.9(1) at least 90 calendar days prior to the expiration of the program's certification.

**70.12(3)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements and make a recertification decision.

**70.12(4)** The department shall notify the accredited program within 10 working days of the final recertification decision.

*a.* If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

*b.* If the decision is to deny recertification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

**70.12(5)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.13(231D) Listing of all certified programs.** The department shall maintain a list of all certified programs, which is available online at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Entities Book” tab.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.14(231D) Recognized accrediting entity.**

**70.14(1)** The department designates CARF as a recognized accrediting entity for programs.

**70.14(2)** To apply for designation by the department as a recognized accrediting entity for programs, an accrediting entity shall submit a letter of request, and its standards shall, at minimum, meet the applicable requirements for programs.

**70.14(3)** The designation shall remain in effect for as long as the accreditation standards continue to meet, at minimum, the applicable requirements for programs.

**70.14(4)** An accrediting entity shall provide annually to the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 120 working days after the publications are released.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.15(231D) Requirements for an accredited program.** Each accredited program that is certified by the department shall:

**70.15(1)** Provide the department a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

**70.15(2)** Notify the department by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the program and any actions taken by the accrediting entity with respect thereto.

**70.15(3)** Notify the department immediately of the expiration, suspension, revocation or other loss of the program’s accreditation.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.16(231D) Maintenance of program accreditation.**

**70.16(1)** An accredited program shall continue to be recognized for certification by the department if both of the following requirements are met:

*a.* The program complies with the requirements outlined in rule 481—70.15(231D).

*b.* The program maintains its voluntary accreditation status for the duration of the time-limited certification period.

**70.16(2)** A program that does not maintain its voluntary accreditation status must become certified by the department prior to any lapse in accreditation.

**70.16(3)** A program that does not maintain its voluntary accreditation status and is not certified by the department prior to any lapse in voluntary accreditation shall cease operation as a program.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.17(231D) Transfer of certification.**

**70.17(1)** Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program's certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

**70.17(2)** The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

**70.17(3)** The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.18(231D) Structural and life safety reviews of a building for a new program.**

**70.18(1)** Before a building is constructed or remodeled for use in a new program, the department shall review the blueprints for compliance with requirements pursuant to this chapter. Construction or remodeling includes new construction, remodeling of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**70.18(2)** A program applicant shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

**70.18(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**70.18(4)** The department shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**70.18(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department to state how any noncompliance will be resolved.

**70.18(6)** Upon final notification by the department that the blueprints meet structural and life safety requirements, construction or remodeling of the building may commence.

**70.18(7)** The department shall schedule an on-site visit of the building site with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for certification.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.19(231D) Structural and life safety review prior to the remodeling of a building for a certified program.**

**70.19(1)** Before a building for a certified program is remodeled, the department shall review the blueprints for compliance with requirements set forth in rule 481—70.35(231D). Remodeling includes modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**70.19(2)** A certified program shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

**70.19(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**70.19(4)** The department shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**70.19(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department in 20 working days to state how any noncompliance will be resolved.

**70.19(6)** Upon final notification by the department that the blueprints meet structural and life safety requirements, remodeling of the building may commence.

**70.19(7)** The department shall schedule an on-site visit of the building with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for continued certification or recertification of the program.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.20(231D) Cessation of program operation.**

**70.20(1)** If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department of the date on which the program will cease operation, which includes seeking decertification.

**70.20(2)** If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department at least 90 days prior to expiration of the certification.

**70.20(3)** At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly discharge or transition of all participants within the 90-day period specified by subrule 70.20(2).

**70.20(4)** The department may conduct a monitoring during the 90-day period to ensure the safety of participants during the discharge process or transition process.

**70.20(5)** The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.21(231D) Contractual agreement.**

**70.21(1)** The contractual agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the participant or the participant's legal representative to understand.

**70.21(2)** In addition to the requirements of Iowa Code section 231D.17, the written contractual agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. The telephone number for filing a complaint with the department.
- b. The telephone number for reporting dependent adult abuse.
- c. A copy of the program's statement on participants' rights.
- d. A statement that the program will notify the participant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.
- e. A copy of the program's admission and discharge criteria.

**70.21(3)** The contractual agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

**70.21(4)** A copy of the contractual agreement shall be provided to the participant or the participant's legal representative, if any, and a copy shall be kept by the program.

**70.21(5)** A copy of the most current contractual agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the contractual agreement is available to all persons upon request.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.22(231D) Evaluation of participant.**

**70.22(1)** *Evaluation prior to participation.* A program shall evaluate each prospective participant's functional, cognitive and health status prior to the participant's signing the contractual agreement and participating in the program, with the exception of visiting day(s), to determine the participant's eligibility for the program, including whether the services needed are available. The cognitive

evaluation shall be appropriate to the population served. When the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the participant subsequently returns to the participant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

**70.22(2) *Evaluation within 30 days of participation and with significant change.*** A program shall evaluate each participant's functional, cognitive and health status within 30 days of the participant's beginning participation in the program. A program shall also evaluate each participant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the participant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the participant has not exhibited a significant change.

**70.22(3) *Requirements for visiting day(s).*** Evaluation of the participant is not required during visiting day(s), but the program shall provide the participant or the participant's legal representative with a written explanation of the expectations for the visiting day(s).

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.23(231D) Criteria for admission and retention of participants.**

**70.23(1) *Persons who may not be admitted or retained.*** A program shall not knowingly admit or retain a participant who:

- a. Is bed-bound; or
  - b. Requires routine, three-person assistance with standing, transfer or evacuation; or
  - c. Is dangerous to self or other participants or staff, including but not limited to a participant who:
    - (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
    - (2) Displays behavior that places another participant at risk; or
  - d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
  - e. Is under the age of 18; or
  - f. Requires more than part-time or intermittent health-related care; or
  - g. Has unmanageable incontinence on a routine basis despite an individualized toileting program;
- or
- h. Is medically unstable; or
  - i. Requires maximal assistance with activities of daily living.

**70.23(2) *Disclosure of additional participation and discharge criteria.*** A program may have additional participation or discharge criteria if the criteria are disclosed in the written contractual agreement prior to the participant's participation in the program.

**70.23(3) *Assistance with discharge from the program.*** A program shall provide assistance to a participant and the participant's legal representative, if applicable, to ensure a safe and orderly discharge from the program when the participant exceeds the program's criteria for admission and retention.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.24(231D) Involuntary discharge from the program.**

**70.24(1) *Program initiation of discharge.*** If a program initiates the involuntary discharge of a participant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the participant or participant's legal representative contests the discharge, the following procedures shall apply:

- a. The program shall notify the participant or participant's legal representative, in accordance with the contractual agreement, of the need to discharge the participant and of the reason for the discharge.
- b. If, following the internal appeal process, the program upholds the discharge decision, the participant or participant's legal representative may utilize other remedies authorized by law to contest the discharge.

**70.24(2)** *Discharge pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more participants are identified as exceeding the admission and retention criteria for participants and need to be discharged as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

*a. Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any participant who exceeds admission and retention criteria.

*b. Notification of others.* Each identified participant, the participant's legal representative, if applicable, and other providers of services to the participant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

*c. Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary discharge proceedings, the program's internal appeal process in subrule 70.24(1) shall be utilized for appeals.

*d. Program disagreement with the department's finding.* If the program does not agree with the department's finding that the participant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the participant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements, including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

(1) Consideration of response. Within 10 working days of receipt of the program's response for each identified participant, the department shall consider the response and make a final finding regarding the continued retention of a participant.

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision.

(4) Effect of the filing of an appeal. If an appeal is filed, the participant who exceeds admission and retention criteria shall be allowed to continue to participate in the program until all administrative appeals have been exhausted. Appeals filed that relate to the participant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the participant's needs shall be provided during that period of time.

(5) Request for waiver of criteria for retention of a participant in a program. To allow a participant to continue to participate in the program, the program may request a waiver of criteria for retention of a participant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

#### **481—70.25(231D) Participant documents.**

**70.25(1)** Documentation for each participant shall be maintained by the program and shall include:

*a.* A participation record including the participant's name, birth date, and home address; identification numbers; date of beginning participation; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

*b.* Application forms;

*c.* The initial evaluations and updates;

- d.* A nutritional assessment as necessary;
- e.* The initial individual service plan and updates;
- f.* Signed authorizations for permission to release medical information, photographs, or other media information as necessary;
- g.* A signed authorization for the participant to receive emergency medical care as necessary;
- h.* A signed managed risk policy and signed managed risk consensus agreements, if any;
- i.* When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;
- j.* Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);
- k.* Advance health care directives as applicable;
- l.* A complete copy of the participant's contractual agreement, including any updates;
- m.* A written acknowledgment that the participant or the participant's legal representative, if applicable, has been fully informed of the participant's rights;
- n.* A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;
- o.* Incident reports involving the participant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the participant's medical record);
- p.* A copy of waivers of admission or retention criteria, if any;
- q.* When the participant is unable to advocate on the participant's own behalf or the participant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and
- r.* Authorizations for the release of information, if any.

**70.25(2)** The program records relating to a participant shall be retained for a minimum of three years after the discharge or death of the participant.

**70.25(3)** All records shall be protected from loss, damage and unauthorized use.  
[ARC 8177B, IAB 9/23/09, effective 1/1/10]

#### **481—70.26(231D) Service plans.**

**70.26(1)** A service plan shall be developed for each participant based on the evaluations conducted in accordance with subrules 70.22(1) and 70.22(2) and shall be designed to meet the specific service needs of the individual participant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

**70.26(2)** Prior to the participant's signing the contractual agreement and participating in the program, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the participant and, at the participant's request, with other individuals identified by the participant, and, if applicable, with the participant's legal representative. All persons who develop the plan and the participant or the participant's legal representative shall sign the plan.

**70.26(3)** When a participant needs personal care or health-related care, the service plan shall be updated within 30 days of the participant's participation and as needed with significant change, but not less than annually.

*a.* If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

*b.* If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

*c.* If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

**70.26(4)** The service plan shall be individualized and shall indicate, at a minimum:

- a. The participant's identified needs and preferences for assistance;
- b. Any services and care to be provided pursuant to the contractual agreement;
- c. The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy; and
- d. For participants who are unable to plan their own activities, including participants with dementia, planned and spontaneous activities based on the participant's abilities and personal interests.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.27(231D) Nurse review.** If a participant does not receive personal or health-related care, but an observed significant change in the participant's condition occurs, a nurse review shall be conducted. If a participant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

**70.27(1)** To monitor, at least every 90 days, or after a significant change in the participant's condition, any participant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

**70.27(2)** To ensure that health care professionals' orders are current for participants who receive health care professional-directed care from the program; and

**70.27(3)** To assess and document the health status of each participant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the participant's health status; and

**70.27(4)** To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—70.26(231D), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a participant, nurse review is not required.  
[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.28(231D) Food service.**

**70.28(1)** The program shall provide or coordinate with other community providers to provide a hot or other appropriate meal(s) at least once a day or shall make arrangements for the availability of meals, unless otherwise noted in the contractual agreement.

**70.28(2)** Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

**70.28(3)** Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33½ percent if the program provides one meal per day;
- b. A minimum of 66⅔ percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

**70.28(4)** Therapeutic diets may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by the Iowa Dietetic Association shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for food preparation and service for therapeutic diets.

**70.28(5)** Personnel who are employed by or contract with the program and who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection.

a. In addition to the requirements above, a minimum of one person directly responsible for food preparation shall have successfully completed a state-approved food protection program by:

(1) Obtaining certification as a dietary manager; or  
 (2) Obtaining certification as a food protection professional; or  
 (3) Successfully completing a course meeting the requirements for a food protection program included in the Food Code adopted pursuant to Iowa Code chapter 137F. Another course may be substituted if the course's curriculum includes substantially similar competencies to a course that meets the requirements of the Food Code and the provider of the course files with the department a statement indicating that the course provides substantially similar instruction as it relates to sanitation and safe food handling.

*b.* If the person is in the process of completing a course or certification listed in paragraph “*a*,” the requirement relating to completion of a state-approved food protection program shall be considered to have been met.

**70.28(6)** Programs engaged in the preparation and service of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and service of food and shall be licensed pursuant to Iowa Code chapter 137F.

**70.28(7)** Programs may have an on-site dietitian. Programs may secure menus and a dietitian through other methods.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.29(231D) Staffing.** In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

**70.29(1)** No fewer than two staff persons who monitor participants shall be awake and on duty during all hours of operation when two or more participants are participating in the program.

**70.29(2)** The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

**70.29(3)** A program that serves one or more participants with cognitive disorders or dementia shall follow written procedures that address how the program will respond to the emergency needs of the participants.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.30(231D) Dementia-specific education for program personnel.**

**70.30(1)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of eight hours of dementia-specific education and training within 30 days of either employment or the beginning date of the contract, as applicable.

**70.30(2)** The dementia-specific education or training shall include, at a minimum, the following:

- a.* An explanation of Alzheimer's disease and related disorders;
- b.* The program's specialized dementia care philosophy and program;
- c.* Skills for communicating with persons with dementia;
- d.* Skills for communicating with family and friends of persons with dementia;
- e.* An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f.* The importance of planned and spontaneous activities;
- g.* Skills in providing assistance with instrumental activities of daily living;
- h.* The importance of the service plan and social history information;
- i.* Skills in working with challenging participants;
- j.* Techniques for simplifying, cueing, and redirecting;
- k.* Staff support and stress reduction; and
- l.* Medication management and nonpharmacological interventions.

**70.30(3)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of eight hours of dementia-specific continuing education annually.

**70.30(4)** An employee or contractor who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 70.30(1).

**70.30(5)** Dementia-specific training shall include hands-on training and may include any of the following: classroom instruction, Web-based training, and case studies of participants in the program.  
[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.31(231D) Managed risk policy and managed risk consensus agreements.** The program shall have a managed risk policy. The managed risk policy shall be provided to the participant along with the contractual agreement. The managed risk policy shall include the following:

**70.31(1)** An acknowledgment of the shared responsibility for identifying and meeting the needs of the participant and the process for managing risk and for upholding participant autonomy when participant decision making results in poor outcomes for the participant or others; and

**70.31(2)** A consensus-based process to address specific risk situations. Program staff and the participant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the participant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the participant's file.  
[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.32(231D) Life safety—emergency policies and procedures and structural safety requirements.**

**70.32(1)** The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

- a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Procedures for fire drills;
- g. Regulations regarding smoking;
- h. Monitoring and testing of smoke-control systems;
- i. Participant evacuation procedures; and
- j. Procedures for reporting and documentation.

**70.32(2)** An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

- a. Written procedures regarding alarm systems and appropriate staff response when a participant's service plan indicates a risk of elopement or a participant exhibits wandering behavior.
- b. Written procedures regarding appropriate staff response if a participant with cognitive disorder or dementia is missing.

**70.32(3)** The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for adult day services programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

**70.32(4)** The program shall have the means to control the maximum temperature of water at sources accessible by a participant to prevent scalding and shall control the maximum water temperature for participants with cognitive impairment or dementia or at a participant's request.  
[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.33(231D) Transportation.** When transportation services are provided directly or under contract with the program:

**70.33(1)** The vehicle shall be accessible and appropriate to the participants who use it, with consideration for any physical disabilities and impairments.

**70.33(2)** Every participant transported shall have a seat in the vehicle, except for a participant who remains in a wheelchair during transport.

**70.33(3)** Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-using passengers.

**70.33(4)** Wheelchairs shall be secured when the vehicle is in motion.

**70.33(5)** During loading and unloading of a participant, the driver shall be in the proximate area of the participants in a vehicle.

**70.33(6)** The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

**70.33(7)** Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

#### **481—70.34(231D) Activities.**

**70.34(1)** The program shall provide appropriate activities for each participant. Activities shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

**70.34(2)** Activities shall be planned to support the participant's service plan and shall be consistent with the program statement and participation policies.

**70.34(3)** A written schedule of activities shall be developed at least monthly and made available to participants and their legal representatives.

**70.34(4)** Participants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

#### **481—70.35(231D) Structural requirements.**

**70.35(1)** The structure, equipment and physical environment of the program shall be designed and operated to meet the needs of the participants. The building, grounds and equipment shall be well-maintained, clean, safe and sanitary.

**70.35(2)** There shall be at least one toilet for every ten participants and staff members.

**70.35(3)** Toilets and bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

**70.35(4)** There shall be a ratio of at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand-washing facilities shall be readily accessible to participants and staff.

**70.35(5)** Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

**70.35(6)** Signaling emergency call devices shall be installed or placed in all bathroom areas, restroom stalls and showers, if any.

**70.35(7)** A telephone shall be available to participants to make and receive calls in a private manner and for emergency purposes.

**70.35(8)** A storage area(s) shall be provided for storage of program supplies and participants' possessions, which shall be stored in such a manner that, when not in use, will prevent personal injury to participants and staff.

**70.35(9)** The program shall provide a separate area to permit privacy for evaluations and to isolate participants who become ill.

**70.35(10)** The program shall meet other building and public safety codes, including:

a. The Americans with Disabilities Act.

- b.* Applicable regulations of the Occupational Safety and Health Administration.
- c.* Rules pertaining to accessibility contained in the state building code in 661—Chapter 302 and provisions of the state building code relating to persons with disabilities.
- d.* Other applicable provisions of the state building code and local building codes.

**70.35(11)** The program shall meet the requirements in subrule 70.32(4).  
[ARC 8177B, IAB 9/23/09, effective 1/1/10]

**481—70.36(231D) Identification of veteran’s benefit eligibility.**

**70.36(1)** Within 30 days of a participant’s participation in an adult day services program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the participant or the participant’s personal representative whether the participant is a veteran or whether the participant is the spouse, widow or dependent of a veteran and shall document the response.

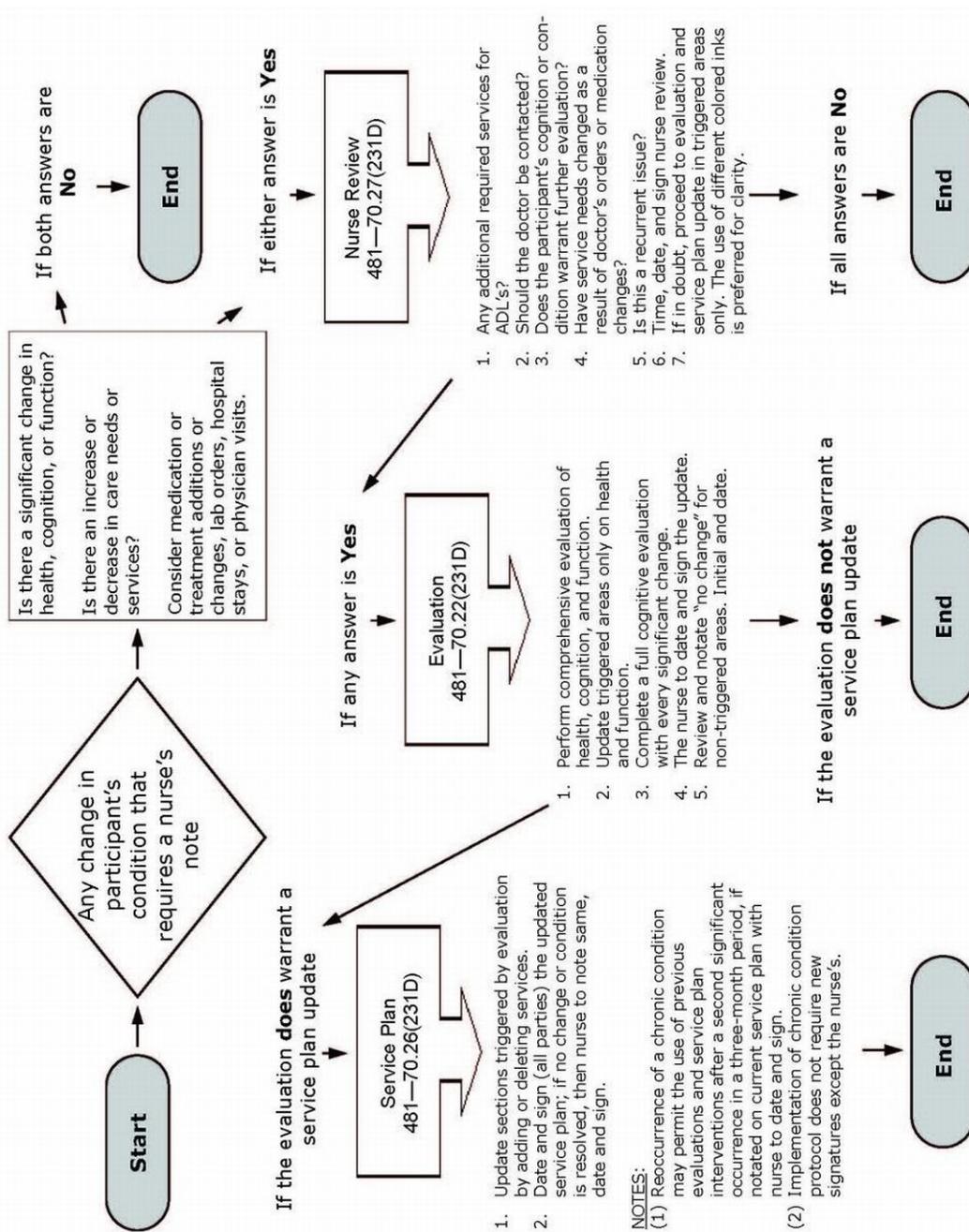
**70.36(2)** If the program determines that the participant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the participant’s name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

**70.36(3)** If a participant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 231D.

Table A



[Filed ARC 8177B (Notice ARC 7959B, IAB 7/15/09), IAB 9/23/09, effective 1/1/10]



**PROFESSIONAL LICENSURE DIVISION[645]**

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

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CHAPTER 5  
FEES

**645—5.1(147,152D) Athletic training license fees.** All fees are nonrefundable.

5.1(1) License fee for license to practice athletic training is \$120.

5.1(2) Temporary license fee for license to practice athletic training is \$120.

5.1(3) Biennial license renewal fee for each biennium is \$120.

5.1(4) Late fee for failure to renew before expiration is \$60.

5.1(5) Reactivation fee is \$180.

5.1(6) Duplicate or reissued license certificate or wallet card fee is \$20.

5.1(7) Verification of license fee is \$20.

5.1(8) Returned check fee is \$25.

5.1(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

**645—5.2(147,158) Barbering license fees.** All fees are nonrefundable.

5.2(1) License fee for an initial license to practice barbering, license by endorsement, license by reciprocity or an instructor's license is \$120.

5.2(2) Biennial renewal fee for a barber license or barber instructor license is \$60.

5.2(3) Temporary permit fee is \$12.

5.2(4) Examination fee is \$60.

5.2(5) Demonstrator permit fee is \$45 for the first day and \$12 for each day thereafter for which the permit is valid.

5.2(6) Barber school license fee is \$600.

5.2(7) Barber school annual renewal fee is \$300.

5.2(8) Barbershop license fee is \$72.

5.2(9) Biennial renewal fee for a barbershop license is \$72.

5.2(10) Late fee for failure to renew before expiration is \$60.

5.2(11) Reactivation fee for a barber license is \$120.

5.2(12) Reactivation fee for a barbershop license is \$132.

5.2(13) Reactivation fee for a barber school license is \$360.

5.2(14) Duplicate or reissued license certificate or wallet card fee is \$20.

5.2(15) Verification of license fee is \$20.

5.2(16) Returned check fee is \$25.

5.2(17) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 158.

**645—5.3(147,154D) Behavioral science license fees.** All fees are nonrefundable.

5.3(1) License fee for license to practice marital and family therapy or mental health counseling is \$120.

5.3(2) Temporary license fee for license to practice marital and family therapy or mental health counseling is \$120.

5.3(3) Biennial license renewal fee for each biennium is \$120.

5.3(4) Late fee for failure to renew before expiration is \$60.

5.3(5) Reactivation fee is \$180.

5.3(6) Duplicate or reissued license certificate or wallet card fee is \$20.

5.3(7) Verification of license fee is \$20.

5.3(8) Returned check fee is \$25.

5.3(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 154D and 272C.

**645—5.4(151) Chiropractic license fees.** All fees are nonrefundable.

- 5.4(1) License fee for license to practice chiropractic is \$270.
  - 5.4(2) Fee for issuance of annual temporary certificate is \$120.
  - 5.4(3) Biennial license renewal fee is \$120.
  - 5.4(4) Late fee for failure to renew before the expiration date is \$60.
  - 5.4(5) Reactivation fee is \$180.
  - 5.4(6) Duplicate or reissued license certificate or wallet card fee is \$20.
  - 5.4(7) Fee for verification of license is \$20.
  - 5.4(8) Returned check fee is \$25.
  - 5.4(9) Disciplinary hearing fee is a maximum of \$75.
- This rule is intended to implement Iowa Code chapters 17A, 151 and 272C.

**645—5.5(147,157) Cosmetology arts and sciences license fees.** All fees are nonrefundable.

- 5.5(1) License fee for license to practice cosmetology arts and sciences, license by endorsement, license by reciprocity, or an instructor's license is \$60.
- 5.5(2) Biennial license renewal fee for each license for each biennium is \$60.
- 5.5(3) Late fee for failure to renew before expiration is \$60.
- 5.5(4) Reactivation fee for applicants licensed to practice cosmetology is \$120; for salons, \$144; and for schools, \$330.
- 5.5(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.5(6) Fee for verification of license is \$20.
- 5.5(7) Returned check fee is \$25.
- 5.5(8) Disciplinary hearing fee is a maximum of \$75.
- 5.5(9) Fee for license to conduct a school teaching cosmetology arts and sciences is \$600.
- 5.5(10) Fee for renewal of a school license is \$270 annually.
- 5.5(11) Salon license fee is \$84.
- 5.5(12) Biennial license renewal fee for each salon license for each biennium is \$84.
- 5.5(13) Demonstrator and not-for-profit temporary permit fee is \$42 for the first day and \$12 for each day thereafter that the permit is valid.
- 5.5(14) An initial fee or a reactivation fee for certification to administer microdermabrasion or utilize a certified laser product or an intense pulsed light (IPL) device is \$25 for each type of procedure or certified laser product or IPL device.
- 5.5(15) An initial fee or a reactivation fee for certification of cosmetologists to administer chemical peels is \$25.

This rule is intended to implement Iowa Code section 147.80 and chapter 157.

**645—5.6(147,152A) Dietetics license fees.** All fees are nonrefundable.

- 5.6(1) License fee for license to practice dietetics, license by endorsement, or license by reciprocity is \$120.
- 5.6(2) Biennial license renewal fee for each biennium is \$120.
- 5.6(3) Late fee for failure to renew before expiration is \$60.
- 5.6(4) Reactivation fee is \$180.
- 5.6(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.6(6) Verification of license fee is \$20.
- 5.6(7) Returned check fee is \$25.
- 5.6(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152A and 272C.

**645—5.7(147,154A) Hearing aid dispensers license fees.** All fees are nonrefundable.

- 5.7(1) Application fee for a license to practice by examination, endorsement, or reciprocity is \$156.

**5.7(2)** Examination fee (check or money order made payable to the International Hearing Society) is \$95.

**5.7(3)** Renewal of license fee is \$60.

**5.7(4)** Temporary permit fee is \$42.

**5.7(5)** Late fee is \$60.

**5.7(6)** Reactivation fee is \$120.

**5.7(7)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.7(8)** Verification of license fee is \$20.

**5.7(9)** Returned check fee is \$25.

**5.7(10)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapter 154A.

**645—5.8(147) Massage therapy license fees.** All fees are nonrefundable.

**5.8(1)** License fee for license to practice massage therapy is \$120.

**5.8(2)** Biennial license renewal fee for each biennium is \$60.

**5.8(3)** Temporary license fee for up to one year is \$120.

**5.8(4)** Late fee for failure to renew before expiration is \$60.

**5.8(5)** Reactivation fee is \$120.

**5.8(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.8(7)** Verification of license fee is \$20.

**5.8(8)** Returned check fee is \$25.

**5.8(9)** Disciplinary hearing fee is a maximum of \$75.

**5.8(10)** Initial application fee for approval of massage therapy education curriculum is \$120.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

**645—5.9(147,156) Mortuary science license fees.** All fees are nonrefundable.

**5.9(1)** License fee for license to practice funeral directing is \$120.

**5.9(2)** Biennial funeral director's license renewal fee for each biennium is \$120.

**5.9(3)** Late fee for failure to renew before expiration is \$60.

**5.9(4)** Reactivation fee for a funeral director is \$180 and for a funeral establishment or cremation establishment is \$150.

**5.9(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.9(6)** Verification of license fee is \$20.

**5.9(7)** Returned check fee is \$25.

**5.9(8)** Disciplinary hearing fee is a maximum of \$75.

**5.9(9)** Funeral establishment or cremation establishment fee is \$90.

**5.9(10)** Three-year renewal fee of funeral establishment or cremation establishment is \$90.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 156 and 272C.

**645—5.10(147,155) Nursing home administrators license fees.** All fees are nonrefundable.

**5.10(1)** License fee for license to practice nursing home administration is \$120.

**5.10(2)** Biennial license renewal fee for each license for each biennium is \$60.

**5.10(3)** Late fee for failure to renew before expiration is \$60.

**5.10(4)** Reactivation fee is \$120.

**5.10(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.10(6)** Verification of license fee is \$20.

**5.10(7)** Returned check fee is \$25.

**5.10(8)** Disciplinary hearing fee is a maximum of \$75.

**5.10(9)** Provisional license fee is \$120.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 155.

**645—5.11(147,148B) Occupational therapy license fees.** All fees are nonrefundable.

**5.11(1)** License fee for an OT or OTA license to practice occupational therapy is \$120.

**5.11(2)** Biennial license renewal fee to practice occupational therapy is \$60.

**5.11(3)** Biennial license renewal fee for an occupational therapy assistant is \$60.

**5.11(4)** Late fee for failure to renew before expiration is \$60.

**5.11(5)** Reactivation fee is \$120.

**5.11(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.11(7)** Verification of license fee is \$20.

**5.11(8)** Returned check fee is \$25.

**5.11(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148B and 272C.

**645—5.12(147,154) Optometry license fees.** All fees are nonrefundable.

**5.12(1)** License fee for license to practice optometry, license by endorsement, or license by reciprocity is \$300.

**5.12(2)** Biennial license renewal fee for each biennium is \$144.

**5.12(3)** Late fee for failure to renew before expiration date is \$60.

**5.12(4)** Reactivation fee is \$204.

**5.12(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.12(6)** Verification of license fee is \$20.

**5.12(7)** Returned check fee is \$25.

**5.12(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

**645—5.13(147,148A) Physical therapy license fees.** All fees are nonrefundable.

**5.13(1)** License fee for license to practice physical therapy or as a physical therapist assistant is \$120.

**5.13(2)** Biennial license renewal fee for a physical therapist is \$60.

**5.13(3)** Biennial license renewal fee for a physical therapist assistant is \$60.

**5.13(4)** Late fee for failure to renew before expiration is \$60.

**5.13(5)** Reactivation fee is \$120.

**5.13(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.13(7)** Verification of license fee is \$20.

**5.13(8)** Returned check fee is \$25.

**5.13(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148A and 272C.

**645—5.14(148C) Physician assistants license fees.** All fees are nonrefundable.

**5.14(1)** Application fee for a license is \$120.

**5.14(2)** Fee for a temporary license is \$120.

**5.14(3)** Renewal of license fee is \$120.

**5.14(4)** Late fee for failure to renew before expiration is \$60.

**5.14(5)** Reactivation fee is \$180.

**5.14(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.14(7)** Fee for verification of license is \$20.

**5.14(8)** Returned check fee is \$25.

**5.14(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148C and 272C.

**645—5.15(147,149) Podiatry license fees.** All fees are nonrefundable.

**5.15(1)** License fee for license to practice podiatry, license by endorsement, license by reciprocity or temporary license is \$120.

**5.15(2)** Biennial license renewal fee is \$168 for each biennium.

- 5.15(3) Late fee for failure to renew before expiration is \$60.
- 5.15(4) Reactivation fee is \$228.
- 5.15(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.15(6) Verification of license fee is \$20.
- 5.15(7) Returned check fee is \$25.
- 5.15(8) Disciplinary hearing fee is a maximum of \$75.
- 5.15(9) Temporary license renewal fee is \$84 per year.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 149 and 272C.

**645—5.16(147,154B) Psychology license fees.** All fees are nonrefundable.

- 5.16(1) License fee for license to practice psychology is \$120.
- 5.16(2) Biennial license renewal fee is \$170.
- 5.16(3) Late fee for failure to renew before expiration is \$60.
- 5.16(4) Reactivation fee is \$230.
- 5.16(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.16(6) Verification of license fee is \$20.
- 5.16(7) Returned check fee is \$25.
- 5.16(8) Disciplinary hearing fee is a maximum of \$75.
- 5.16(9) Processing fee for exemption to licensure is \$60.
- 5.16(10) Certification fee for a health service provider is \$60.
- 5.16(11) Biennial renewal fee for certification as a certified health service provider in psychology is \$60.

5.16(12) Reactivation fee for certification as a certified health service provider in psychology is \$60.  
This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154B and 272C.

**645—5.17(147,152B) Respiratory care license fees.** All fees are nonrefundable.

5.17(1) Initial or endorsement license fee to practice respiratory care is \$120, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

- 5.17(2) Biennial license renewal fee for each biennium is \$60.
- 5.17(3) Late fee for failure to renew before expiration is \$60.
- 5.17(4) Reactivation fee is \$120, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) if the license has been on inactive status for two or more years.
- 5.17(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.17(6) Verification of license fee is \$20.
- 5.17(7) Returned check fee is \$25.
- 5.17(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152B and 272C.

**645—5.18(147,154E) Sign language interpreters and transliterators license fees.** All fees are nonrefundable.

- 5.18(1) License fee for license to practice interpreting or transliterating is \$120.
- 5.18(2) License fee for temporary license to practice interpreting or transliterating is \$120.
- 5.18(3) Biennial license renewal fee for each biennium is \$120.
- 5.18(4) Late fee for failure to renew before expiration is \$60.
- 5.18(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.18(6) Verification of license fee is \$20.
- 5.18(7) Returned check fee is \$25.
- 5.18(8) Disciplinary hearing fee is a maximum of \$75.

**5.18(9)** Reactivation fee is \$180.

This rule is intended to implement Iowa Code chapters 17A, 147, 154E and 272C.

**645—5.19(147,154C) Social work license fees.** All fees are nonrefundable.

**5.19(1)** License fee for license to practice social work is \$120.

**5.19(2)** Biennial license renewal fee for a license at the bachelor's level is \$72; at the master's level, \$120; and independent level, \$144.

**5.19(3)** Late fee for failure to renew before expiration is \$60.

**5.19(4)** Reactivation fee for the bachelor's level is \$132; for the master's level, \$180; and independent level, \$204.

**5.19(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.19(6)** Verification of license fee is \$20.

**5.19(7)** Returned check fee is \$25.

**5.19(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154C and 272C.

**645—5.20(147) Speech pathology and audiology license fees.** All fees are nonrefundable.

**5.20(1)** License fee for license to practice speech pathology or audiology, temporary clinical license, license by endorsement, or license by reciprocity is \$120.

**5.20(2)** Biennial license renewal fee for each biennium is \$96.

**5.20(3)** Late fee for failure to renew before expiration is \$60.

**5.20(4)** Reactivation fee is \$156.

**5.20(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.20(6)** Verification of license fee is \$20.

**5.20(7)** Returned check fee is \$25.

**5.20(8)** Disciplinary hearing fee is a maximum of \$75.

**5.20(9)** Temporary clinical license renewal fee is \$60.

**5.20(10)** Temporary permit fee is \$30.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

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## BEHAVIORAL SCIENTISTS

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CHAPTER 31  
LICENSURE OF MARITAL AND FAMILY THERAPISTS  
AND MENTAL HEALTH COUNSELORS

[Prior to 1/30/02, see 645—Chapter 30]

**645—31.1(154D) Definitions.** For purposes of these rules, the following definitions shall apply:

“*ACA*” means the American Counseling Association.

“*Active license*” means a license that is current and has not expired.

“*AMFTRB*” means the Association of Marital and Family Therapy Regulatory Boards.

“*Board*” means the board of behavioral science.

“*CCE*” means the Center for Credentialing and Education, Inc.

“*Course*” means three graduate semester credit hours.

“*CRCC*” means the Commission on Rehabilitation Counselor Certification.

“*Department*” means the department of public health.

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

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

“*Licensee*” means any person licensed to practice as a marital and family therapist or mental health counselor in the state of Iowa.

“*License expiration date*” means September 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of marital and family therapists and mental health counselors who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*NBCC*” means the National Board for Certified Counselors.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 31.16(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of behavioral science to license persons who have the same or similar qualifications to those required in Iowa.

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

“*Temporary license*” means a license to practice marital and family therapy or mental health counseling under direct supervision of a qualified supervisor as determined by the board by rule to fulfill the postgraduate supervised clinical experience requirement in accordance with this chapter.

**645—31.2(154D) Requirements for permanent and temporary licensure.** The following criteria shall apply to licensure:

**31.2(1)** The applicant shall complete a board-approved application. Application forms may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Behavioral Science, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**31.2(2)** The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

**31.2(3)** Each application shall be accompanied by the appropriate fees payable to the Board of Behavioral Science. The fees are nonrefundable.

**31.2(4)** No application will be considered by the board until official copies of academic transcripts sent directly from the school to the board of behavioral science have been received by the board or an equivalency evaluation completed by the Center for Credentialing and Education, Inc. (CCE) has been received by the board. The applicant shall present proof of meeting the educational requirements. Documentation of such proof shall be on file in the board office with the application and include one of the following:

*a.* For licensure as a marital and family therapist, an official transcript verifying completion of a marital and family therapy program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) as defined in subrule 31.4(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.4(2).

*b.* For licensure as a mental health counselor, an official transcript verifying completion of a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) as defined in subrule 31.6(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.6(2).

**31.2(5)** The candidate for permanent licensure shall have the examination score sent directly from the testing service to the board. If the candidate for temporary licensure has not completed the examination prior to issuance of a temporary license, the candidate must successfully complete the examination before the temporary license expires.

**31.2(6)** The candidate for permanent licensure shall submit the required attestation of supervision forms documenting clinical experience as required in rule 645—31.5(154D) for marital and family therapy and rule 645—31.7(154D) for mental health counseling.

**31.2(7)** The candidate for temporary licensure for the purpose of fulfilling the postgraduate supervised clinical experience requirement must submit the Supervised Clinical Experience: Approval and Attestation form to the board and receive approval of the candidate's supervisor(s) prior to licensure. The temporary licensee must notify the board immediately in writing of any proposed change in supervisor(s) and obtain approval of any change in supervisor(s). Within 30 days of completion of the supervised clinical experience, the attestation of the completed supervised experience must be submitted to the board office.

**31.2(8)** A temporary license for the purpose of fulfilling the postgraduate supervised clinical experience requirement is valid for three years and may be renewed at the discretion of the board.

**31.2(9)** A licensee who was issued an initial permanent license within six months prior to the renewal shall not be required to renew the license until the renewal date two years later.

**31.2(10)** Incomplete applications that have been on file in the board office for more than two years shall be:

- a.* Considered invalid and shall be destroyed; or
- b.* Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

[ARC 8152B, IAB 9/23/09, effective 10/28/09]

**645—31.3(154D) Examination requirements.** The following criteria shall apply to the written examination(s):

**31.3(1)** In order to qualify for licensing, the applicant:

*a.* For a marital and family therapist license shall take and pass the Association of Marital and Family Therapy Regulatory Board (AMFTRB) Examination in Marital and Family Therapy.

*b.* For a mental health counselor license shall take and pass the National Counselor Examination of the NBCC, or the National Clinical Mental Health Counselor Examination of the NBCC, or the Certified Rehabilitation Counselor Examination of the CRCC.

**31.3(2)** Examination information will be provided when the applicant has been approved to take the examination.

**31.3(3)** The board will notify the applicant in writing of examination results.

**31.3(4)** Persons determined by the board not to have performed satisfactorily may apply for reexamination.

**31.3(5)** The passing score on the written examination shall be the passing point criterion established by the appropriate national testing authority at the time the test was administered.

**645—31.4(154D) Educational qualifications for marital and family therapists.** The applicant must present proof of meeting the following educational requirements for licensure as a marital and family therapist:

**31.4(1) Accredited program.** Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

**31.4(2) Content-equivalent program.** Applicants must present an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in a mental health, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education, which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. After March 31, 2009, graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. In order to qualify as a "content-equivalent" degree, a graduate transcript must document:

*a.* At least 9 semester hours or the equivalent in each of the three areas listed below:

(1) Theoretical foundations of marital and family therapy systems. Any course which deals primarily in areas such as family life cycle; theories of family development; marriage or the family; sociology of the family; families under stress; the contemporary family; family in a social context; the cross-cultural family; youth/adult/aging and the family; family subsystems; individual, interpersonal relationships (marital, parental, sibling).

(2) Assessment and treatment in family and marital therapy. Any course which deals primarily in areas such as family therapy methodology; family assessment; treatment and intervention methods; overview of major clinical theories of marital and family therapy, such as communications, contextual, experiential, object relations, strategic, structural, systemic, transgenerational.

(3) Human development. Any course which deals primarily in areas such as human development; personality theory; human sexuality. One course must be psychopathology.

*b.* At least 3 semester hours or the equivalent in each of the two areas listed below:

(1) Ethics and professional studies. Any course which deals primarily in areas such as professional socialization and the role of the professional organization; legal responsibilities and liabilities;

independent practice and interprofessional cooperation; ethical issues in marital and family counseling; and family law.

(2) Research. Any course which deals primarily in areas such as research design, methods, statistics; research in marital and family studies and therapy.

If the applicant has taught a graduate-level course as outlined above at a college or university accredited by an agency recognized by the United States Department of Education or the Council on Professional Accreditation, that course will be credited toward the course requirements.

c. A graduate-level clinical practicum in marital and family therapy of at least 300 clock hours is required for all applicants.

[ARC 7673B, IAB 4/8/09, effective 4/30/09]

#### **645—31.5(154D) Clinical experience requirements for marital and family therapists.**

**31.5(1)** The supervised clinical experience shall:

a. Be a minimum of two years or the equivalent of full-time, postgraduate supervised clinical work experience in marital and family therapy;

b. Be completed following the practicum, internship, and all graduate coursework, with the exception of the thesis;

c. Include successful completion of 3,000 hours of marital and family therapy that shall include at least 1,500 hours of direct client contact and 200 hours of clinical supervision. Applicants who entered a program of study prior to July 1, 2010, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of marital and family therapy conducted in person with couples, families and individuals;

d. Include at least 100 of the 200 hours of clinical supervision as individual supervision;

e. Have 50 percent (100 hours) of the clinical supervision conducted in person; and

f. Have only supervised clinical contact credited for this requirement.

**31.5(2)** To meet the requirements of the supervised clinical experience:

a. The supervisee must:

(1) Meet with the supervisor for a minimum of four hours per month;

(2) Offer documentation of supervised hours signed by the supervisor;

(3) Compute part-time employment on a prorated basis for the supervised professional experience;

(4) Have the background, training, and experience that is appropriate to the functions performed;

(5) Have supervision that is clearly distinguishable from personal psychotherapy and is contracted in order to serve professional/vocational goals;

(6) Have individual supervision that shall be in person with no more than one supervisor to two supervisees;

(7) Have group supervision that may be completed with up to ten supervisees and a supervisor; and

(8) Not participate in the following activities which are deemed unacceptable for clinical supervision:

1. Peer supervision, i.e., supervision by a person of equivalent, but not superior, qualifications, status, and experience.

2. Supervision, by current or former family members, or any other person, in which the nature of the personal relationship prevents, or makes difficult, the establishment of a professional relationship.

3. Administrative supervision, e.g., clinical practice performed under administrative rather than clinical supervision of an institutional director or executive.

4. A primarily didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar.

5. Consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for current clinical practice in an appropriate clinical situation.

b. The supervisor shall:

(1) Be an Iowa-licensed marital and family therapist with a minimum of three years of clinical experience following licensure; or

(2) Be a supervisor or supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; or

(3) Be licensed under Iowa Code chapter 147 and have a minimum of three years of full-time professional work experience, including experience in marital and family therapy, as approved by the board; and

(4) Meet a minimum of four hours per month with the supervisee; and

(5) Provide training that is appropriate to the functions to be performed; and

(6) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and

(7) Not supervise any marital and family therapy or permit the supervisee to engage in any therapy which the supervisor cannot perform competently.

**31.5(3)** An applicant who has obtained American Association for Marriage and Family Therapy clinical membership and has provided a transcript sent directly from the school to the board is considered to have met the educational and clinical experience requirements of rules 31.4(154D) and 31.5(154D).

[ARC 7673B, IAB 4/8/09, effective 4/30/09; ARC 8152B, IAB 9/23/09, effective 10/28/09]

**645—31.6(154D) Educational qualifications for mental health counselors.** The applicant must present proof of meeting the following educational requirements for a mental health counselor:

**31.6(1) Accredited program.** Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or equivalent quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

**31.6(2) Content-equivalent program.** Applicants must present an official transcript verifying completion of a master's degree or a doctoral degree from a college or university accredited by an agency recognized by the United States Department of Education which is content-equivalent to a master's degree in counseling with emphasis in mental health counseling. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. After March 31, 2009, graduates from non-CACREP-accredited mental health counseling programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. The degree will be considered as "content-equivalent" if it includes 60 semester hours (or equivalent quarter hours) and successful completion of graduate-level coursework in each of the following areas:

*a. Professional identity.* Studies that provide an understanding of all of the following aspects of professional functioning:

(1) History and philosophy of the counseling profession, including significant factors and events;

(2) Professional roles, functions, and relationships with other providers of human services;

(3) Technological competence and computer literacy;

(4) Professional organizations, primarily ACA, its divisions, branches, and affiliates, including membership benefits, activities, services to members, and current emphases;

(5) Professional credentialing, including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues;

(6) Public and private policy processes, including the role of the professional counselor in advocating on behalf of the profession;

(7) Advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients; and

(8) Ethical standards of ACA and related entities, and applications of ethical and legal considerations in professional counseling.

*b. Social and cultural diversity.* Studies that provide an understanding of the cultural context of relationships, issues, and trends in a multicultural and diverse society related to such factors as culture, ethnicity, nationality, age, gender, sexual orientation, mental and physical characteristics, education, family values, religious and spiritual values, socioeconomic status and unique characteristics of individuals, couples, families, ethnic groups, and communities including all of the following:

(1) Multicultural and pluralistic trends, including characteristics and concerns between and within diverse groups nationally and internationally;

(2) Attitudes, beliefs, understandings, and acculturative experiences, including specific experiential learning activities;

(3) Individual, couple, family, group, and community strategies for working with diverse populations and ethnic groups;

(4) Counselors' roles in social justice, advocacy and conflict resolution, cultural self-awareness, the nature of biases, prejudices, processes of intentional and unintentional oppression and discrimination, and other culturally supported behaviors that are detrimental to the growth of the human spirit, mind or body;

(5) Theories of multicultural counseling, theories of identity development, and multicultural competencies; and

(6) Ethical and legal considerations.

*c. Human growth and development.* Studies that provide an understanding of the nature and needs of individuals at all developmental levels, including all of the following:

(1) Theories of individual and family development and transitions across the life span;

(2) Theories of learning and personality development;

(3) Human behavior including an understanding of developmental crises, disability, exceptional behavior, addictive behavior, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior;

(4) Strategies for facilitating optimum development over the life span; and

(5) Ethical and legal considerations.

*d. Career development.* Studies that provide an understanding of career development and related life factors, including all of the following:

(1) Career development theories and decision-making models;

(2) Career, avocational, educational, occupational and labor market information resources, visual and print media, computer-based career information systems, and other electronic career information systems;

(3) Career development program planning, organization, implementation, administration, and evaluation;

(4) Interrelationships among and between work, family, and other life roles and factors including the role of diversity and gender in career development;

(5) Career and educational planning, placement, follow-up, and evaluation;

(6) Assessment instruments and techniques that are relevant to career planning and decision making;

(7) Technology-based career development applications and strategies, including computer-assisted career guidance and information systems and appropriate worldwide Web sites;

(8) Career counseling processes, techniques, and resources, including those applicable to specific populations; and

(9) Ethical and legal considerations.

*e. Helping relationships.* Studies that provide an understanding of counseling and consultation processes, including all of the following:

(1) Counselor and consultant characteristics and behaviors that influence helping processes including age, gender, and ethnic differences, verbal and nonverbal behaviors and personal characteristics, orientations, and skills;

(2) An understanding of essential interviewing and counseling skills so that the student is able to develop a therapeutic relationship, establish appropriate counseling goals, design intervention strategies, evaluate client outcome, and successfully terminate the counselor-client relationship. Studies will also facilitate student self-awareness so that the counselor-client relationship is therapeutic and the counselor maintains appropriate professional boundaries;

(3) Counseling theories that provide the student with a consistent model(s) to conceptualize client presentation and select appropriate counseling interventions. Student experiences should include an examination of the historical development of counseling theories, an exploration of affective, behavioral, and cognitive theories, and an opportunity to apply the theoretical material to case studies. Students will also be exposed to models of counseling that are consistent with current professional research and practice in the field so that they can begin to develop a personal model of counseling;

(4) A systems perspective that provides an understanding of family and other systems theories and major models of family and related interventions. Students will be exposed to a rationale for selecting family and other systems theories as appropriate modalities for family assessment and counseling;

(5) A general framework for understanding and practicing. Student experiences should include an examination of the historical development of consultation, an exploration of the stages of consultation and the major models of consultation, and an opportunity to apply the theoretical material to case presentations. Students will begin to develop a personal model of consultation;

(6) Integration of technological strategies and applications within counseling and consultation processes; and

(7) Ethical and legal considerations.

*f. Group work.* Studies that provide both theoretical and experiential understanding of group purpose, development, dynamics, counseling theories, group counseling methods and skills, and other group approaches, including all of the following:

(1) Principles of group dynamics, including group process components, developmental stage theories, group members' roles and behaviors, and therapeutic factors of group work;

(2) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(3) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(4) Group counseling methods, including group counselor orientations and behaviors, appropriate selection criteria and methods, and methods of evaluation of effectiveness;

(5) Approaches used for other types of group work, including task groups, psychoeducational groups, and therapy groups;

(6) Professional preparation standards for group leaders; and

(7) Ethical and legal considerations.

*g. Assessment.* Studies that provide an understanding of individual and group approaches to assessment and evaluation, including the following:

(1) Historical perspectives concerning the nature and meaning of assessment;

(2) Basic concepts of standardized and nonstandardized testing and other assessment techniques including norm-referenced and criterion-referenced assessment, environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(3) Statistical concepts, including scales of measurement, measures of central tendency, indices of variability, shapes and types of distributions, and correlations;

(4) Reliability (i.e., theory of measurement error, models of reliability, and the use of reliability information);

(5) Validity (i.e., evidence of validity, types of validity, and the relationship between reliability and validity);

(6) Age, gender, sexual orientation, ethnicity, language, disability, culture, spirituality, and other factors related to the assessment and evaluation of individuals, groups, and specific populations;

(7) Strategies for selecting, administering, and interpreting assessment and evaluation instruments and techniques in counseling;

(8) An understanding of general principles and methods of case conceptualization, assessment, or diagnoses of mental and emotional status; and

(9) Ethical and legal considerations.

*h. Research and program evaluation.* Studies that provide an understanding of research methods, statistical analysis, needs assessment, and program evaluation, including all of the following:

(1) The importance of research and opportunities and difficulties in conducting research in the counseling profession;

(2) Research methods such as qualitative, quantitative, single-case designs, action research, and outcome-based research;

(3) Use of technology and statistical methods in conducting research and program evaluation, assuming basic computer literacy;

(4) Principles, models, and applications of needs assessment, program evaluation, and use of findings to effect program modifications;

(5) Use of research to improve counseling effectiveness; and

(6) Ethical and legal considerations.

*i. Diagnosis and treatment planning.* Studies that provide an understanding of individual and group approaches to assessment and evaluation. Studies in this area include, but are not limited to, the following:

(1) The principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual;

(2) The established diagnostic criteria for mental or emotional disorders that describe treatment modalities and placement criteria within the continuum of care;

(3) The impact of co-occurring substance use disorders on medical and psychological disorders;

(4) The relevance and potential biases of commonly used diagnostic tools as related to multicultural populations;

(5) The appropriate use of diagnostic tools, including the current edition of the Diagnostic and Statistical Manual, to describe the symptoms and clinical presentation of clients with mental or emotional impairments; and

(6) The ability to conceptualize accurate multi-axial diagnoses of disorders presented by clients and how to communicate the differential diagnosis to clients' managed care and insurance companies or other third-party payers.

*j. Psychopathology.* Studies that provide an understanding of emotional and mental disorders experienced by persons of all ages, characteristics of disorders, and common nosologies of emotional and mental disorders utilized within the U.S. health care system for diagnosis and treatment planning. Studies in this area include, but are not limited to, the following:

(1) Study of cognitive, behavioral, physiological and interpersonal mechanisms for adapting to change and to stressors;

(2) Role of genetic, physiological, cognitive, environmental and interpersonal factors, and their interactions, on development of the form, severity, course and persistence of the various types of disorders and dysfunction;

(3) Research methods and findings pertinent to the description, classification, diagnosis, origin, and course of disorders and dysfunction;

(4) Theoretical perspectives relevant to the origin, development, and course and outcome for the forms of behavior disorders and dysfunction; and

(5) Methods of intervention or prevention used to minimize and modify maladaptive behaviors, disruptive and distressful cognition, or compromised interpersonal functioning associated with various forms of maladaptation.

*k. Practicum.* A graduate-level clinical supervised counseling practicum in which students must complete supervised practicum experiences that total a minimum of 100 clock hours prior to receiving

the master's degree. The practicum provides for the development of counseling skills under supervision. The student's practicum includes all of the following:

- (1) Forty hours of direct service with clients, including experience in individual counseling and group work;
- (2) Weekly interaction with an average of one hour per week of individual and triadic supervision which occurs regularly over a minimum of one academic term by a program faculty member or a supervisor working under the supervision of a program faculty member;
- (3) An average of one and one-half hours per week of group supervision that is provided on a regular schedule over the course of the student's practicum by a program faculty member or a supervisor under the supervision of a program faculty member; and
- (4) Evaluation of the student's performance throughout the practicum including a formal evaluation after the student completes the practicum.

*l. Internship.* A graduate-level clinical supervised counseling internship that requires students to complete a supervised internship of 600 clock hours that is begun after successful completion of the student's practicum and prior to receiving the master's degree. The internship provides an opportunity for the student to perform, under supervision, a variety of counseling activities that a professional counselor is expected to perform. The student's internship includes all of the following:

- (1) A minimum of 240 hours of direct service with clientele appropriate to the program of study;
- (2) A minimum of one hour per week of individual supervision and triadic supervision, throughout the internship, usually performed by the on-site supervisor;
- (3) A minimum of one and one-half hours per week of group supervision, throughout the internship, usually performed by a program faculty member supervisor;
- (4) The opportunity for the student to become familiar with a variety of professional activities in addition to direct service (e.g., record keeping, supervision, information and referral, in-service and staff meetings);
- (5) The opportunity for the student to develop program-appropriate audiotapes or videotapes, or a combination of both, of the student's interactions with clients for use in supervision;
- (6) The opportunity for the student to gain supervised experience in the use of a variety of professional resources such as assessment instruments, technologies, print and nonprint media, professional literature, and research; and
- (7) A formal evaluation of the student's performance during the internship by a program faculty member in consultation with the site supervisor.

If the applicant has taught a graduate-level course as outlined above at a college or university accredited by an agency recognized by the United States Department of Education or the Council on Professional Accreditation, that course may be credited toward the course requirement.

**31.6(3)** *Foreign-trained marital and family therapists or mental health counselors.* Foreign-trained marital and family therapists or mental health counselors shall:

*a.* Provide an equivalency evaluation of their educational credentials by the following: International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone (310)258-9451; Web site [www.ierf.org](http://www.ierf.org) or E-mail at [info@ierf.org](mailto:info@ierf.org). The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

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

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

[ARC 7673B, IAB 4/8/09, effective 4/30/09]

#### **645—31.7(154D) Clinical experience requirements for mental health counselors.**

**31.7(1)** The supervised clinical experience shall:

- a.* Be a minimum of two years or the equivalent of full-time, postgraduate supervised professional work experience in mental health counseling;

*b.* Be completed following completion of the practicum, internship, and all graduate coursework, with exception of the thesis;

*c.* Include successful completion of at least 3,000 hours of mental health counseling that shall include at least 1,500 hours of direct client contact and 200 hours of clinical supervision. Applicants who entered a program of study prior to July 1, 2010, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of mental health counseling conducted in person with couples, families and individuals;

*d.* Include at least 100 of the 200 hours of supervision as individual supervision;

*e.* Include 50 percent (100 hours) of all clinical supervision in person; and

*f.* Have only supervised clinical contact credited for this requirement.

**31.7(2)** To meet the requirements of the supervised clinical experience:

*a.* The supervisee must:

(1) Meet with the supervisor a minimum of four hours per month;

(2) Offer documentation of supervised hours signed by the supervisor;

(3) Compute part-time employment on a prorated basis for the supervised professional experience;

(4) Have the background, training, and experience that are appropriate to the functions performed;

(5) Have supervision that is clearly distinguishable from personal counseling and is contracted in order to serve professional/vocational goals;

(6) Have individual supervision that shall be in person with no more than one supervisor to two supervisees;

(7) Have group supervision that may be completed with up to ten supervisees and a supervisor; and

(8) Not participate in the following activities which are deemed unacceptable for clinical supervision:

1. Peer supervision, i.e., supervision by a person of equivalent, but not superior, qualifications, status, and experience.

2. Supervision, by current or former family members, or any other person, in which the nature of the personal relationship prevents, or makes difficult, the establishment of a professional relationship.

3. Administrative supervision, e.g., clinical practice performed under administrative rather than clinical supervision of an institutional director or executive.

4. A primarily didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar.

5. Consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for current clinical practice in an appropriate clinical situation.

*b.* The supervisor:

(1) May be a licensed mental health counselor in Iowa with at least three years of postlicensure clinical experience; or

(2) Shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; or

(3) May be an alternate supervisor who possesses qualifications equivalent to a licensed mental health counselor with at least three years of postlicensure clinical experience, including mental health professionals licensed pursuant to Iowa Code chapter 147; and

(4) Shall meet a minimum of four hours per month with the supervisee; and

(5) Shall provide training that is appropriate to the functions to be performed; and

(6) Shall ensure that therapeutic work is done under the professional supervision of a supervisor; and

(7) Shall not supervise any mental health counselor or permit the supervisee to engage in any therapy which the supervisor cannot perform competently.

**31.7(3)** Rescinded IAB 7/6/05, effective 8/10/05.

**31.7(4)** An applicant who has obtained Certified Clinical Mental Health Counselor status with the National Board for Certified Counselors (NBCC) and submits a transcript sent directly from the school to the board is considered to have met the educational and clinical experience requirements of rules 31.6(154D) and 31.7(154D).

[ARC 7673B, IAB 4/8/09, effective 4/30/09; ARC 8152B, IAB 9/23/09, effective 10/28/09]

**645—31.8(154D) Licensure by endorsement.** An applicant who has been a licensed marriage and family therapist or mental health counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of licensure requirements that are similar to those required in Iowa;
4. Provides official transcripts sent directly from the school to the board verifying completion of a master's degree of 45 hours or equivalent if the applicant entered a program of study prior to July 1, 2010, or verifying completion of a master's degree of 60 hours or equivalent if the applicant entered a program of study on or after July 1, 2010, or the appropriate doctoral degree. After March 31, 2009, graduates from a non-CACREP-accredited mental health counselor program or a non-COAMFTE-accredited marital and family therapy program shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation;

5. Supplies satisfactory evidence of the candidate's qualifications in writing on the prescribed forms by the candidate's supervisors. If verification of clinical experience is not available, the board may consider submission of documentation from the state in which the applicant is currently licensed or equivalent documentation of supervision; and

6. Provides verification(s) of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

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

7. In lieu of the requirements listed in paragraphs "3" through "5" of this rule, a mental health counselor applicant may provide to the board evidence that the applicant has demonstrated appropriate qualifications at either tier 1 or tier 2 of the National Credentials Registry of the American Association of State Counseling Boards. The mental health counselor applicant shall have the National Credentials Registry of the American Association of State Counseling Boards send directly to the board official verification that the applicant has met the qualifications.

[ARC 7673B, IAB 4/8/09, effective 4/30/09]

**645—31.9(147) Licensure by reciprocal agreement.** Rescinded IAB 1/14/09, effective 2/18/09.

**645—31.10(147) License renewal.**

**31.10(1)** The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of an even-numbered year and end on September 30 of the next even-numbered year. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

**31.10(2)** An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

**31.10(3)** A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—32.2(272C) and the mandatory reporting requirements of subrule 31.10(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

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

*c.* An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

**31.10(4)** Mandatory reporter training requirements.

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

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

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

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

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

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

- (1) Is engaged in active duty in the military service of this state or the United States.
- (2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

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

**31.10(5)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

**31.10(6)** A person licensed to practice as a marital and family therapist or mental health counselor shall keep the person's license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

**31.10(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.3(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**31.10(8)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice mental health counseling or marital and family therapy in Iowa until the license is reactivated. A licensee who practices mental health counseling or marital and family therapy in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

**645—31.11(272C) Exemptions for inactive practitioners.** Rescinded IAB 7/6/05, effective 8/10/05.

**645—31.12(147) Licensee record keeping.**

**31.12(1)** A licensee shall maintain sufficient, timely, and accurate documentation in client records.

**31.12(2)** For purposes of this rule, “client” means the individual, couple, family, or group to whom a licensee provides direct clinical services.

**31.12(3)** A licensee’s records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

**31.12(4)** Clinical services. A licensee who provides clinical services in any employment setting, including private practice, shall:

*a.* Store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee’s employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all client records for a minimum of seven years after the date of the client’s discharge or death, or, in the case of a minor, for three years after the client reaches the age of majority under state law or seven years after the date of the client’s discharge or death, whichever is longer.

*b.* Maintain timely records that include subjective and objective data, an assessment, a treatment plan, and any revisions to the assessment or plan made during the course of treatment.

*c.* Provide the client with reasonable access to records concerning the client. A licensee who is concerned that a client’s access to the client’s records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. A licensee may limit a client’s access to the client’s records, or portions of the records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both the client’s request for access and the licensee’s rationale for withholding some or all of a record shall be documented in the client’s records.

*d.* Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

**31.12(5)** Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

**31.12(6)** Correction of records.

*a. Hard-copy records.* Original notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the original record, it must be crossed out with a single, nondeleting line and be initialed and dated by the licensee.

*b. Electronic records.* If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

**31.12(7)** Confidentiality and transfer of records. Marital and family therapists or mental health counselors shall preserve the confidentiality of client records in accordance with their respective rules of conduct and with federal and state law. Upon receipt of a written release or authorization signed by the client, the licensee shall furnish such therapy records, or copies of the records, as will be beneficial for the future treatment of that client. A fee may be charged for duplication of records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

**31.12(8)** Retirement, death or discontinuance of practice.

*a.* If a licensee is retiring or discontinuing practice and is the owner of a practice, the licensee shall notify in writing all active clients and, upon knowledge and agreement of the clients, shall make reasonable arrangements with those clients to transfer client records, or copies of those records, to the succeeding licensee.

*b.* Upon a licensee’s death:

(1) The licensee’s employer or representative must ensure that all client records are transferred to another licensee or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The licensee's employer or representative shall notify each active client that the client's records will be transferred to another licensee or entity that will retain custody of the records and that, at the client's written request, the records will be sent to the licensee or entity of the client's choice.

**31.12(9)** Nothing stated in this rule shall prohibit a licensee from conveying or transferring the licensee's client records to another licensed individual who is assuming a practice, provided that written notice is furnished to all clients.

**645—31.13(147) Duplicate certificate or wallet card.** Rescinded IAB 1/14/09, effective 2/18/09.

**645—31.14(147) Reissued certificate or wallet card.** Rescinded IAB 1/14/09, effective 2/18/09.

**645—31.15(17A,147,272C) License denial.** Rescinded IAB 1/14/09, effective 2/18/09.

**645—31.16(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**31.16(1)** Submit a reactivation application on a form provided by the board.

**31.16(2)** Pay the reactivation fee that is due as specified in 645—Chapter 5.

**31.16(3)** Provide verification of current competence to practice mental health counseling or marital and family therapy by satisfying one of the following criteria:

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

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

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

(2) Verification of completion of 40 hours of continuing education within two years of the application for reactivation.

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

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

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

(2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

**645—31.17(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 31.16(17A,147,272C) prior to practicing mental health counseling or marital and family therapy in this state.

**645—31.18(154D) Marital and family therapy and mental health counselor services subject to regulation.** Marital and family therapy and mental health counselor services provided to an individual in this state through telephonic, electronic or other means, regardless of the location of the marital and

family therapy and mental health counselor, shall constitute the practice of marital and family therapy and mental health counseling and shall be subject to regulation in Iowa.

These rules are intended to implement Iowa Code chapters 17A, 147, 154D and 272C.

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<sup>◇</sup> Two or more ARCs

<sup>1</sup> February 18, 2009, effective date of amendments to 645—31.4(154D) to 645—31.8(154D), **ARC 7476B**, Items 5 to 9, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 6, 2009.



## PHARMACY BOARD[657]

[Prior to 2/10/88, see Pharmacy Examiners, Board of [620], renamed Pharmacy Examiners Board[657]  
under the “umbrella” of Public Health Department by 1986 Iowa Acts, ch 1245; renamed by 2007 Iowa Acts, Senate File 74]

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CHAPTER 6  
GENERAL PHARMACY PRACTICE  
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 2]

**657—6.1(155A) Purpose and scope.** A general pharmacy is a location where a pharmacist provides pharmaceutical services or dispenses pharmaceutical products to patients in accordance with pharmacy laws. This chapter does not apply to a hospital pharmacy as defined in 657—Chapter 7. The requirements of these rules for general pharmacy practice are in addition to the requirements of 657—Chapter 8 and other rules of the board relating to services provided by the pharmacy.

**657—6.2(155A) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the following:

1. Ensuring that the pharmacy utilizes an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services.
2. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy.
3. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy.
4. Ensuring that a pharmacist performs prospective drug use review as specified in rule 657—8.21(155A).
5. Ensuring that a pharmacist provides patient counseling as specified in rule 6.14(155A).
6. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel.
7. Delivering drugs to the patient or the patient's agent.
8. Ensuring that patient medication records are maintained as specified in rule 6.13(155A).
9. Training pharmacy technicians and supportive personnel.
10. Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy.
11. Distributing and disposing of drugs from the pharmacy.
12. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.
13. Establishing and maintaining effective controls against the theft or diversion of prescription drugs and records for such drugs.
14. Establishing and implementing policies and procedures for all operations of the pharmacy.
15. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.
16. Ensuring that there is adequate space within the prescription department or a locked room not accessible to the public for the storage of prescription drugs, devices, and controlled substances and to support the operations of the pharmacy.

**657—6.3(155A) Reference library.** References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. The Iowa Pharmacy Law and Information Manual.
2. A patient information reference that includes or provides patient information in compliance with rule 6.14(155A).
3. A reference on drug interactions.
4. A general information reference.
5. A drug equivalency reference.
6. A reference on natural or herbal medicines.
7. The readily accessible telephone number of a poison control center that serves the area.

8. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

**657—6.4(155A) Exemption from duplicate requirements.** A pharmacy established in the same location as another licensed pharmacy and with direct and immediate access to required references, patient counseling area, refrigerator, or sink with hot and cold running water may utilize the references, counseling area, refrigerator, or sink of the other pharmacy to satisfy the requirements of rule 6.3(155A), subrule 6.14(3), or rule 657—8.5(155A), paragraphs “1” and “2.”

**657—6.5 and 6.6** Reserved.

**657—6.7(124,155A) Security.** While on duty, each pharmacist shall be responsible for the security of the prescription department, including provisions for effective control against theft of, diversion of, or unauthorized access to prescription drugs, records for such drugs, and patient records as provided in 657—Chapter 21.

**6.7(1) Department locked.** The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on site except as provided in subrule 6.7(2).

**6.7(2) Temporary absence of pharmacist.** In the temporary absence of the pharmacist, only the pharmacist in charge may designate persons who may be present in the prescription department to perform technical and nontechnical functions designated by the pharmacist in charge. Activities identified in subrule 6.7(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours. In the absence of the pharmacist, the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will be dispensed until the pharmacist returns.

**6.7(3) Activities prohibited in absence of pharmacist.** Activities which shall not be designated and shall not be performed during the temporary absence of the pharmacist include:

- a. Dispensing or distributing any prescription drugs or devices to patients or others.
- b. Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.
- c. Conducting prospective drug use review or evaluating a patient’s medication record for purposes identified in rule 657—8.21(155A).
- d. Providing patient counseling, consultation, or drug information.
- e. Making decisions that require a pharmacist’s professional judgment such as interpreting or applying information.
- f. Transferring prescriptions to or from other pharmacies.

**657—6.8(124,155A) Prescription processing documentation.** All prescriptions shall be dated and assigned a unique identification number that shall be recorded on the original prescription. The original prescription, whether transmitted orally, electronically, or in writing, shall be retained by the pharmacy filling the prescription. Refill documentation shall include date of refill and the initials or other unique identification of the pharmacist. The name, strength, and either the manufacturer’s name or the National Drug Code (NDC) of the actual drug product dispensed shall be maintained and be readily retrievable.

**657—6.9(124,155A) Transfer of prescription.** The transmission of a prescription drug order from a pharmacy to a pharmacy engaged in centralized prescription filling or processing on behalf of the originating pharmacy pursuant to the requirements of 657—Chapter 18 shall not constitute the transfer of a prescription. Upon the request of a patient or the patient’s caregiver, a pharmacy shall transfer original prescription drug order information and prescription refill information to a pharmacy designated by the patient or the patient’s caregiver, central fill or processing pharmacies excepted, subject to the following requirements:

**6.9(1) Schedule III, IV, or V prescriptions.** The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis except as provided in subrule 6.9(9).

**6.9(2) *Noncontrolled substances prescriptions.*** The transfer of original prescription drug order information for noncontrolled prescription drugs between pharmacies is permissible as long as the number of transfers does not exceed the number of originally authorized refills and the original prescription is still valid.

**6.9(3) *Communication.*** The transfer is communicated directly between pharmacists, directly between pharmacist-interns under the direct supervision of pharmacists at the respective pharmacies, directly between a pharmacist and a pharmacist-intern under the direct supervision of a pharmacist, or as authorized in subrule 6.9(9).

**6.9(4) *Prescriptions maintained.*** Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

**6.9(5) *Record of transfer out.*** The pharmacist or pharmacist-intern transferring the prescription drug order information shall:

- a. Invalidate the prescription drug order;
- b. Record on or with the invalidated prescription drug order the following information:
  - (1) The name, address, and, for a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;
  - (2) The name of the pharmacist or pharmacist-intern receiving the prescription drug order information;
  - (3) The name of the pharmacist or pharmacist-intern transferring the prescription drug order information; and
  - (4) The date of the transfer.

**6.9(6) *Original prescription status.*** The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

**6.9(7) *Controlled substance prescription status.*** The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.

**6.9(8) *Record of transfer received.*** The pharmacist or pharmacist-intern receiving the transferred prescription drug order information shall:

- a. Indicate that the prescription drug order has been transferred;
- b. Record on or with the transferred prescription drug order the following information:
  - (1) Original date of issuance and date of dispensing, if different from date of issuance;
  - (2) Original prescription number;
  - (3) Number of valid refills remaining, the date of last refill, and, for a controlled substance, the dates and locations of all previous refills;
  - (4) Name, address, and, for a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred;
  - (5) The date of the transfer;
  - (6) Name of the pharmacist or pharmacist-intern receiving the prescription drug order information;
  - (7) Name of the pharmacist or pharmacist-intern transferring the prescription drug order information; and
  - (8) If transferring a controlled substance prescription from a pharmacy utilizing a shared electronic database system as described in subrule 6.9(9) to a pharmacy outside that shared system, the pharmacy name, location, DEA registration number, and prescription number from which the prescription was originally filled.

**6.9(9) *Electronic transfer between pharmacies.*** Pharmacies electronically accessing the same prescription drug order records via a real-time, on-line database may electronically transfer prescription information, including controlled substance prescription information, up to the maximum refills permitted by law and the prescriber's authorization, if the following requirements are met.

- a. The data processing system shall have a mechanism to send the transferring pharmacy a message containing the following information:
  - (1) The fact that the prescription drug order was transferred;

(2) The unique identification number of the prescription drug order transferred;

(3) The name, address, and DEA registration number of the pharmacy to which the prescription drug order was transferred and the name of the pharmacist or pharmacist-intern receiving the prescription information; and

(4) The date and time of transfer.

*b.* A pharmacist or pharmacist-intern under the direct supervision of a pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or logbook containing the information required on the message, or by a notation in the electronic message that includes the unique identification of the pharmacist or pharmacist-intern and the date of review, as soon as practical, but in no event more than 72 hours from the time of such transfer.

*c.* For transfers of controlled substance prescriptions, all information requirements included in subrules 6.9(1) and 6.9(3) through 6.9(8) shall be satisfied in the electronic system. Transfers of controlled substance prescriptions shall also identify the pharmacy name, address, DEA registration number, and prescription number from which the prescription was originally filled.

[ARC 7634B, IAB 3/11/09, effective 4/15/09; ARC 8169B, IAB 9/23/09, effective 10/28/09]

### **657—6.10(126,155A) Prescription label requirements.**

**6.10(1) Required information.** The label affixed to or on the dispensing container of any prescription drug or device dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

- a.* Serial number (a unique identification number of the prescription);
- b.* The name, telephone number, and address of the pharmacy;
- c.* The name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner;
- d.* The name of the prescribing practitioner;
- e.* The date the prescription is dispensed;
- f.* The directions or instructions for use, including precautions to be observed;
- g.* Unless otherwise directed by the prescriber, the label shall bear the name, strength, and quantity of the drug dispensed.

(1) If a pharmacist selects an equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label shall identify the generic drug and may identify the brand name drug for which the selection is made, such as “(generic name) Generic for (brand name product).”

(2) If a pharmacist selects a brand name drug product for a generic drug product prescribed by a practitioner, the prescription container label shall identify the brand name drug product dispensed and may identify the generic drug product ordered by the prescriber, such as “(brand name product) for (generic name)”;

*h.* The initials or other unique identification of the dispensing pharmacist.

**6.10(2) Exceptions.** The requirements of subrule 6.10(1) do not apply to unit dose dispensing systems, 657—22.1(155A); sterile products, 657—Chapter 13; and patient med paks, 657—22.5(126,155A).

**657—6.11 and 6.12** Reserved.

### **657—6.13(155A) Patient record system.**

**6.13(1) Information required.** A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist shall be responsible for obtaining, recording, and maintaining the following information:

- a.* Full name of the patient for whom the drug is intended;
- b.* Address and telephone number of the patient;
- c.* Patient’s age or date of birth;

- d. Patient's gender;
- e. Known allergies;
- f. Significant patient information including a list of all prescription drug orders dispensed by the pharmacy during the two years immediately preceding the most recent entry showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber; and
- g. Pharmacist comments relevant to the individual's drug therapy, including:
  - (1) Known drug reactions,
  - (2) Identified idiosyncrasies,
  - (3) Known chronic conditions or disease states of the patient,
  - (4) The identity of any other drugs, over-the-counter drugs, herbals, other alternative medications, or devices currently being used by the patient that may relate to prospective drug review.

**6.13(2) *Record retained.*** A patient record shall be maintained for a period of not less than two years from the date of the last entry in the patient record. This record may be a hard copy or a computerized form.

**6.13(3) *Confidential.*** Information in the patient record shall be deemed to be confidential and may be released only as provided in rule 657—8.16(124,155A).

**657—6.14(155A) Patient counseling and instruction.**

**6.14(1) *Counseling required.*** Upon receipt of a new prescription drug order and following a prospective drug use review pursuant to 657—8.21(155A), a pharmacist shall counsel each patient or patient's caregiver. An offer to counsel shall not fulfill the requirements of this rule. Patient counseling shall be on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

- a. The name and description of the drug;
- b. The dosage form, dose, route of administration, and duration of drug therapy;
- c. Intended use of the drug, if known, and expected action;
- d. Special directions and precautions for preparation, administration, and use by the patient;
- e. Common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- f. Techniques for self-monitoring drug therapy;
- g. Proper storage;
- h. Prescription refill information;
- i. Action to be taken in the event of a missed dose;
- j. Pharmacist comments relevant to the individual's drug therapy including any other information peculiar to the specific patient or drug.

**6.14(2) *Instruction.*** A pharmacist may instruct patients and demonstrate procedures for self-monitoring of medical conditions and for self-administration of drugs.

**6.14(3) *Counseling area.*** A pharmacy shall contain an area which is suitable for confidential patient counseling. Such area shall:

- a. Be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;
- b. Be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

**6.14(4) *Oral counseling not practicable.*** If in the pharmacist's professional judgment oral counseling is not practicable, the pharmacist may use alternative forms of patient information. "Not practicable" refers to patient variables including, but not limited to, the absence of the patient or patient's caregiver, the patient's or caregiver's hearing impairment, or a language barrier. "Not practicable" does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume. Alternative forms of patient information may include written information leaflets, pictogram labels, video programs, or information generated by electronic data processing equipment. When used in place of oral counseling, alternative forms of patient information shall advise the patient or caregiver

that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone or collect telephone call. A combination of oral counseling and alternative forms of counseling is encouraged.

**6.14(5) Exception.** Patient counseling, as described above, shall not be required for inpatients of an institution where other licensed health care professionals are authorized to administer the drugs.

**6.14(6) Refusal of consultation.** A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation. A patient's or caregiver's refusal of consultation shall be documented by the pharmacist. The absence of any record of a refusal of the pharmacist's attempt to counsel shall be presumed to signify that the offer was accepted and that counseling was provided.

**657—6.15(124,126) Return of drugs and other items.** For the protection of the public health and safety, prescription drugs and devices, controlled substances, and items of personal contact nature may be returned to the pharmacy for reuse or resale only as herein provided:

**6.15(1) Integrity maintained.** Prescription drugs and devices may be returned, exchanged, or resold only if, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised.

**6.15(2) Controlled substances.** Under no circumstances shall pharmacy personnel accept from a patient or a patient's agent any controlled substances for return, exchange, or resale except to the same patient.

**6.15(3) Unit dose returns.** Prescription drugs dispensed in unit dose packaging, excluding controlled substances, may be returned and reused as authorized in 657—subrule 22.1(6).

**6.15(4) Personal contact items.** Pharmacy personnel shall not accept for reuse or resale any items of personal contact nature that have been removed from the original package or container after sale.

**657—6.16(124,155A) Records.** Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or rules of the board shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record except as specifically identified by law or rule. Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements and 657—Chapter 10.

**6.16(1) Combined records.** If controlled substances, prescription drugs, or nonprescription drug items are listed on the same record, the controlled substances shall be asterisked, red-lined, or in some other manner made readily identifiable from all other items appearing on the records.

**6.16(2) Prescriptions maintained.** The original prescription drug order shall be maintained for a period of two years following the date of last activity on the prescription.

**6.16(3) Number imprinted.** The original hard-copy prescription shall be imprinted with the prescription or control number assigned to the prescription drug order.

**6.16(4) Alternative data retention system.** Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

*a.* The records maintained in the alternative system contain all of the information required on the manual record;

*b.* The data processing system is capable of producing a hard copy of the record, within two business days, upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies; and

*c.* The information maintained in the alternative system is not obscured or rendered illegible due to security features of the original hard-copy record.

[ARC 7636B, IAB 3/11/09, effective 4/15/09]

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, 155A.31, and 155A.33 through 155A.36.

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<sup>◇</sup> Two or more ARCs



CHAPTER 7  
HOSPITAL PHARMACY PRACTICE  
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 12]

**657—7.1(155A) Purpose and scope.** Hospital pharmacy means and includes a pharmacy licensed by the board and located within any hospital, health system, institution, or establishment which maintains and operates organized facilities for the diagnosis, care, and treatment of human illnesses to which persons may or may not be admitted for overnight stay at the facility. A hospital is a facility licensed pursuant to Iowa Code chapter 135B. This chapter does not apply to a pharmacy located within such a facility for the purpose of providing outpatient prescriptions. A pharmacy providing outpatient prescriptions is and shall be licensed as a general pharmacy subject to the requirements of 657—Chapter 6. The requirements of these rules for hospital pharmacy practice apply to all hospitals, regardless of size or type, and are in addition to the requirements of 657—Chapter 8 and other rules of the board relating to services provided by the pharmacy.

**657—7.2(155A) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the items identified in this rule. A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge. Where 24-hour operation of the pharmacy is not feasible, a pharmacist shall be available on an “on call” basis. The pharmacist in charge, at a minimum, shall be responsible for:

1. Ensuring that the pharmacy utilizes an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services.
2. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy and sufficient to ensure adequate levels of quality patient care services. Drug dispensing by nonpharmacists shall be minimized and eliminated wherever possible.
3. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy.
4. Ensuring that a pharmacist performs therapeutic drug monitoring and drug use evaluation.
5. Ensuring that a pharmacist provides drug information to other health professionals and to patients.
6. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel.
7. Delivering drugs to the patient or the patient’s agent.
8. Ensuring that patient medication records are maintained as specified in rule 7.10(124,155A).
9. Training pharmacy technicians and supportive personnel.
10. Ensuring adequate and appropriate pharmacist oversight and supervision of pharmacy technicians and supportive personnel.
11. Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy.
12. Distributing and disposing of drugs from the pharmacy.
13. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.
14. Establishing and maintaining effective controls against the theft or diversion of prescription drugs, controlled substances, and records for such drugs.
15. Preparing a written operations manual governing pharmacy functions; periodically reviewing and revising those policies and procedures to reflect changes in processes, organization, and other pharmacy functions; and ensuring that all pharmacy personnel are familiar with the contents of the manual.
16. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.

**657—7.3(155A) Reference library.** References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. The Iowa Pharmacy Law and Information Manual.
2. A patient information reference that includes or provides patient information in compliance with rule 657—6.14(155A).
3. A reference on drug interactions.
4. A general information reference.
5. A drug equivalency reference.
6. An injectable-drug compatibility reference.
7. A drug identification reference to enable identification of drugs brought into the facility by patients.
8. The readily accessible telephone number of a poison control center that serves the area.
9. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served. For example, the treatment of pediatric patients and oncology patients would require additional references unique to those specialties.

**657—7.4 and 7.5** Reserved.

**657—7.6(124,155A) Security.** The pharmacy shall be located in an area or areas that facilitate the provision of services to patients and shall be integrated with the facility's communication and transportation systems. The following conditions must be met to ensure appropriate control over drugs and chemicals in the pharmacy:

**7.6(1) Pharmacist responsibility.** Each pharmacist, while on duty, shall be responsible for the security of the pharmacy area, including provisions for effective control against theft of, diversion of, or unauthorized access to drugs or devices, controlled substances, records for such drugs, and patient records as provided in 657—Chapter 21. Policies and procedures shall identify the minimum amount of time that a pharmacist is available at the hospital pharmacy.

**7.6(2) Access when pharmacist absent.** When the pharmacist is absent from the facility, the pharmacy is closed. Policies and procedures shall be established that identify who will have access to the pharmacy when the pharmacy is closed and the procedures to be followed for obtaining drugs, devices, and chemicals to fill an emergent need during the pharmacist's absence.

*a.* The pharmacist in charge may designate pharmacy technicians who may be present in the pharmacy to perform technical and nontechnical functions designated by the pharmacist in charge. Activities identified in paragraph “*d*” of this subrule may not be performed when the pharmacy is closed.

*b.* If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician to perform designated functions when the pharmacy is closed, the technician may assist another authorized, licensed health care professional to locate a drug or device pursuant to an emergent need. The pharmacy technician may not dispense or deliver the drug, chemical, or device to the licensed health care professional. The licensed health care professional shall comply with established policies and procedures for obtaining drugs, devices, and chemicals when the pharmacy is closed. The licensed health care professional shall not ask or expect the pharmacy technician to verify that the appropriate drug, chemical, or device has been obtained from the pharmacy.

*c.* A pharmacy technician who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the technician worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each entry shall be dated and each daily record shall be signed by the pharmacy technician who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.

*d.* Activities which shall not be performed by a pharmacy technician when the pharmacist is absent from the facility include:

(1) Dispensing, delivering, or distributing any prescription drugs or devices to patients or others, including health care professionals, prior to pharmacist verification. Verification by a nurse or other licensed health care professional shall not supplant verification by a pharmacist.

(2) Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

(3) Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.21(155A).

(4) Providing patient counseling, consultation, or drug information.

(5) Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.

(6) Preparing compounded drug products for immediate administration by other hospital staff or health care professionals without verification by a pharmacist.

**7.6(3) *Locked areas.*** All pharmacy areas where drugs or devices are maintained or stored and where a pharmacist is not continually present shall be locked.

**7.6(4) *Verification by pharmacist.*** When the pharmacy is open, patient-specific drugs or devices shall not be distributed prior to the pharmacist's final verification and approval.

**7.6(5) *Drugs or devices in patient care areas.*** Drugs or devices maintained or stored in patient care areas shall be in locked storage unless the patient care unit is staffed by health care personnel and the medication area is visible to staff at all times.

**657—7.7(155A) Verification by pharmacist when pharmacy is closed.** A hospital pharmacy may contract with another pharmacy for remote pharmacist preview and verification of patient-specific drugs or devices ordered for a patient when the hospital pharmacy is closed. Contracted services may include pharmacist order entry pursuant to subrule 7.8(3). Pharmacies entering into a contract or agreement pursuant to this rule shall comply with the following requirements:

**7.7(1) *Nonsupplanting service.*** A contract or agreement for remote pharmacist services shall not relieve the hospital pharmacy from employing or contracting with a pharmacist to provide routine pharmacy services within the facility. The activities authorized by this rule are intended to supplement hospital pharmacy services when the pharmacy is closed and are not intended to eliminate the need for an on-site hospital pharmacy or pharmacist.

**7.7(2) *Hospital-staff pharmacist.*** Nothing in this rule shall prohibit a pharmacist employed by or contracting with a hospital pharmacy for on-site services from also providing remote preview and verification of patient-specific drugs or devices ordered for a patient when the hospital pharmacy is closed. A pharmacist previewing and verifying drug or device orders from a remote location shall have access to patient information pursuant to subrule 7.7(4) or 7.7(5), shall have access to the prescriber as provided in subrule 7.7(6), and shall be identified on the drug or device order as provided in subrule 7.7(7).

**7.7(3) *Licenses required.*** A pharmacy contracting with a hospital pharmacy to provide services pursuant to this rule shall maintain with the board a current Iowa pharmacy license. A remote pharmacist providing pharmacy services as an employee or agent of a contracting pharmacy pursuant to this rule shall be licensed to practice pharmacy in Iowa.

**7.7(4) *Electronic access to patient information.*** The remote pharmacist shall have secure electronic access to the hospital pharmacy's patient information system and to all other electronic systems that the on-site pharmacist has access to when the pharmacy is open. The remote pharmacist shall receive training in the use of the hospital's electronic systems.

**7.7(5) *Nonelectronic patient information.*** If a hospital's patient information is not maintained in an electronic data system or if the hospital pharmacy is not able to provide remote electronic access to the patient information system, the hospital pharmacy may petition for a waiver of subrule 7.7(4) pursuant to 657—Chapter 34 and this subrule. In addition to the information required pursuant to 657—Chapter 34, the petition for waiver shall identify the hospital pharmacy's alternative to the electronic sharing of patient information, shall explain in detail how the alternative method will ensure timely provision of patient information necessary for the remote pharmacist to effectively review the patient's drug regimen

and history, and shall detail the processes involved in the alternative proposal including identification of all individuals involved in each of those processes.

**7.7(6) *Access to prescriber.*** The remote pharmacist shall be able to contact the prescriber to discuss any concerns identified during the pharmacist's review of the patient's information.

**7.7(7) *Pharmacist identified.*** The record of each patient-specific drug or device order processed pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the preview and verification of the order.

**657—7.8(124,126,155A) Drug distribution and control.** Policies and procedures governing drug distribution and control shall be developed by the pharmacist in charge with input from other involved hospital staff such as physicians and nurses, from committees such as the pharmacy and therapeutics committee or its equivalent, and from any related patient care committee. It is essential that the pharmacist in charge or designee routinely be available to or on all patient care areas to establish rapport with the personnel and to become familiar with and contribute to medical and nursing procedures relating to drugs.

**7.8(1) *Drug preparation.*** The pharmacist shall institute the control procedures needed to ensure that patients receive the correct drugs at the proper times. Adequate quality assurance procedures shall be developed.

*a.* Hospitals shall utilize a unit dose dispensing system pursuant to rule 657—22.1(155A). All drugs dispensed by the pharmacist for administration to patients shall be in single unit or unit dose packages if practicable unless the dosage form or drug delivery device makes it impracticable to package the drug in a unit dose or single unit package.

(1) The pharmacist in charge shall establish policies and procedures that identify situations when drugs may be dispensed in other than unit dose or single unit packages outside the unit dose dispensing system.

(2) The need for nurses to manipulate drugs prior to their administration shall be minimized.

*b.* Pharmacy personnel shall, except as specified in policies and procedures, prepare all sterile products in conformance with 657—Chapter 13.

*c.* Pharmacy personnel shall compound or prepare drug formulations, strengths, dosage forms, and packages useful in the care of patients.

**7.8(2) *Drug formulary.*** The pharmacist in charge shall maintain a current formulary of drug products approved for use in the institution and shall be responsible for specifications for those drug products and for selecting their source of supply.

**7.8(3) *Medication orders.*** Except as provided in subrule 7.8(14), a pharmacist shall receive a copy of the original medication order for review except when the prescriber directly enters the medication order into an electronic medical record system or when the prescriber issues a verbal medication order directly to a registered nurse or pharmacist who then enters the order into an electronic medical record system. If an individual other than the prescriber enters a medication order into an electronic medical record system, the pharmacist shall review and verify the entry against the original order before the drug is dispensed except for emergency use, when the pharmacy is closed, or when the original order is a verbal order from the prescriber to the registered nurse or pharmacist, or as provided in rule 7.7(155A). When the pharmacy is closed, a registered nurse or pharmacist may enter a medication order into an electronic medical record system for the purpose of creating an electronic medication administration record and a pharmacist shall verify the entry against the original medication order as soon as practicable. Hospitalwide and pharmacy stand-alone computer systems shall be secure against unauthorized entry. The use of abbreviations and chemical symbols on medication orders shall be discouraged but, if used, shall be limited to abbreviations and chemical symbols approved by the appropriate patient care committee.

**7.8(4) *Stop order.*** A written policy or other system concerning stop orders shall be established to ensure that medication orders are not inappropriately continued.

**7.8(5) *Emergency drug supplies and floor stock.*** Supplies of drugs for use in medical emergencies shall be immediately available at each nursing unit or service area as specified in policies and procedures. Authorized stocks shall be periodically reviewed in a multidisciplinary manner. All drug storage areas

within the hospital shall be routinely inspected to ensure that no outdated or unusable items are present and that all stock items are properly labeled and stored.

**7.8(6) *Disaster services.*** The pharmacy shall be prepared to provide drugs and pharmaceutical services in the event of a disaster affecting the availability of drugs or internal access to drugs or access to the pharmacy.

**7.8(7) *Drugs brought into the institution.*** The pharmacist in charge shall determine those circumstances when patient-owned drugs brought into the institution may be administered to a hospital patient and shall establish policies and procedures governing the use and security of drugs brought into the institution. Procedures shall address identification of the drug and methods for ensuring the integrity of the product prior to permitting its use by the patient. The use of patient-owned drugs shall be minimized to the greatest extent possible.

**7.8(8) *Samples.*** The use of drug samples within the institution shall be eliminated to the extent possible. Sample use is prohibited for hospital inpatient use. If the use of drug samples is permitted for hospital outpatients, that use of samples shall be controlled and the samples shall be distributed through the pharmacy or through a process developed in cooperation with the pharmacy and the institution's appropriate patient care committee, subject to oversight by the pharmacy.

**7.8(9) *Investigational drugs.*** If investigational drugs are used in the institution:

- a. A pharmacist shall be a member of the institutional review board.
- b. The pharmacy shall be responsible, in cooperation with the principal investigator, for providing information about investigational drugs used in the institution and for the distribution and control of those drugs.

**7.8(10) *Hazardous drugs and chemicals.*** The pharmacist, in cooperation with other hospital staff, shall establish policies and procedures for handling drugs and chemicals that are known occupational hazards. The procedures shall maintain the integrity of the drug or chemical and protect hospital personnel.

**7.8(11) *Leave meds.*** Labeling of prescription drugs for a patient on leave from the facility for a period in excess of 24 hours shall comply with 657—subrule 6.10(1). The dispensing pharmacy shall be responsible for packaging and labeling leave meds in compliance with this subrule.

**7.8(12) *Discharge meds.*** Drugs authorized for a patient being discharged from the facility shall be labeled in compliance with 657—subrule 6.10(1) before the patient removes those drugs from the facility premises. The dispensing pharmacy shall be responsible for packaging and labeling discharge meds in compliance with this subrule.

**7.8(13) *Own-use outpatient prescriptions.*** If the hospital pharmacy dispenses own-use outpatient prescriptions, the pharmacy shall comply with all requirements of 657—Chapter 6 except rule 657—6.1(155A).

**7.8(14) *Influenza and pneumococcal vaccines.*** As authorized by federal law, a written or verbal patient-specific medication administration order shall not be required prior to administration to an adult patient of influenza and pneumococcal polysaccharide vaccines pursuant to physician-approved hospital policy and after the patient has been assessed for contraindications. Administration shall be recorded in the patient's medical record.

[ARC 8170B, IAB 9/23/09, effective 10/28/09]

**657—7.9(124,155A) Drug information.** The pharmacy is responsible for providing the institution's staff and patients with accurate, comprehensive information about drugs and their use and shall serve as its center for drug information.

**7.9(1) *Staff education.*** The pharmacist shall keep the institution's staff well informed about the drugs used in the institution and their various dosage forms and packagings.

**7.9(2) *Patient education.*** The pharmacist shall help ensure that all patients are given adequate information about the drugs that they receive. This is particularly important for ambulatory, home care, and discharged patients. These patient education activities shall be coordinated with the nursing and medical staffs and patient education department, if any.

**657—7.10(124,155A) Ensuring rational drug therapy.** An important aspect of pharmaceutical services is that of maximizing rational drug use. The pharmacist, in concert with the medical staff, shall develop policies and procedures for ensuring the quality of drug therapy.

**7.10(1) Patient profile.** Sufficient patient information shall be collected, maintained, and reviewed by the pharmacist to ensure meaningful and effective participation in patient care. This requires that a drug profile be maintained for each patient receiving care at the hospital. A pharmacist-conducted drug history from patients may be useful in this regard.

*a.* Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice.

*b.* The pharmacist shall review each patient's current drug regimen and directly communicate any suggested changes to the prescriber.

**7.10(2) Adverse drug events.** The pharmacist, in cooperation with the appropriate patient care committee, shall develop a mechanism for the reporting and review, by the committee or other appropriate medical group, of adverse drug events. The pharmacist shall be informed of all reported adverse drug events occurring in the facility. Adverse drug events include but need not be limited to adverse drug reactions and medication errors.

**657—7.11** Reserved.

**657—7.12(124,126,155A) Drugs dispensed to patients as a result of an emergency room visit.** In those facilities with 24-hour pharmacy services, only a pharmacist or prescribing practitioner may dispense any drugs to an outpatient, including emergency department patients. In those facilities without 24-hour pharmacy services, or in those facilities without outpatient pharmacy services or when the facility's outpatient pharmacy is closed, the following procedures shall be observed in dispensing drugs:

**7.12(1) Patients examined in emergency room.** Drugs shall be dispensed only to patients who have been examined in the emergency room.

**7.12(2) Accountability.** Drugs shall be dispensed only in accordance with the system of control and accountability for drugs administered or dispensed from the emergency room.

*a.* The system shall be developed and supervised by the pharmacist in charge and the facility's emergency department committee, or a similar group or person responsible for policy in that department.

*b.* The system shall identify drugs of the nature and type to meet the immediate needs of emergency room patients.

*c.* Controlled substances maintained in the emergency room are kept for use by, or at the direction of, prescribers in the emergency room. In order to receive a controlled substance, a patient must be examined in the emergency room by a prescriber who shall determine the need for the drug. It is not permissible under state and federal requirements for a prescriber to see a patient outside the emergency room setting, or talk to the patient on the telephone, and then proceed to call the emergency room and order the administration of a stocked controlled substance upon the patient's arrival at the emergency room. A prescriber may authorize, without again examining the patient, the administration of additional doses of a previously authorized drug to a patient presenting to the emergency department within 24 hours of the patient's examination and treatment in the emergency department.

*d.* In an emergency situation when a health care practitioner authorized to prescribe controlled substances is not available on site and regardless of the provisions of paragraph "c," the emergency room nurse may examine the patient in the emergency room and contact the on-call prescriber. The on-call prescriber may then authorize the nurse to administer a controlled substance to the patient pending the arrival of the prescriber. As soon as possible, the prescriber shall examine the patient in the emergency room and determine the patient's further treatment needs.

*e.* The pharmacist in charge is responsible for maintaining accurate records of dispensing of drugs from the emergency room, and for ensuring the accuracy of prepackaged drugs and the complete and accurate labeling of prepackaged drugs pursuant to subrule 7.12(3).

*f.* Except as provided in subrule 7.12(6), a practitioner who authorizes dispensing to a patient of a prescription drug from the emergency department drug supply is responsible for the accuracy of the dispensed drug and for the accurate completion of label information pursuant to subrule 7.12(4).

**7.12(3) *Prepackaging.*** Except as provided in subrule 7.12(6), drugs dispensed in greater than a 24-hour supply may be dispensed only in prepackaged quantities not to exceed a 72-hour supply or the minimum prepackaged quantity in suitable containers. Prepackaged drugs shall be prepared pursuant to the requirements of 657—22.3(126). Drugs dispensed pursuant to this subrule shall be appropriately labeled as required in subrule 7.12(4), including necessary auxiliary labels.

**7.12(4) *Labeling.*** Except as provided in subrule 7.12(6), at the time of delivery of the drug, the practitioner shall appropriately complete the label, such that the dispensing container bears a label with at least the following information:

- a.* Name and address of the hospital;
- b.* Date dispensed;
- c.* Name of prescriber;
- d.* Name of patient;
- e.* Directions for use;
- f.* Name and strength of drug.

**7.12(5) *Delivery of drug to patient.*** Except as provided in subrule 7.12(6), the practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient or patient's caregiver. The practitioner, or a licensed nurse under the supervision of the practitioner, shall explain the correct use of the drug and shall explain to the patient that the dispensing is for an emergency or starter supply of the drug. If additional quantities of the drug are required to complete the needed course of treatment, the prescriber shall provide the patient with a prescription for the additional quantities.

**7.12(6) *Use of InstyMeds dispensing system.*** A hospital located in an area of the state where 24-hour outpatient pharmacy services are not available within 15 miles of the hospital may implement the InstyMeds dispensing system in the hospital emergency department only as provided by this subrule.

*a.* Access to the dispensing machine for the purposes of stocking, inventory, and monitoring shall be limited to pharmacists, pharmacy technicians, and pharmacist-interns.

*b.* The InstyMeds dispensing system shall be used only in the hospital emergency department for the benefit of patients examined or treated in the emergency department.

*c.* The dispensing machine shall be located in a secure and professionally appropriate environment.

*d.* The stock of drugs maintained and dispensed utilizing the InstyMeds dispensing system shall be limited to acute care drugs provided in appropriate quantities for a 72-hour supply or the minimum commercially available package size, except that antimicrobials may be dispensed in a quantity to provide the full course of therapy.

*e.* Drugs dispensed utilizing the InstyMeds dispensing system shall be appropriately labeled as provided in 657—subrule 6.10(1), paragraphs “*a*” through “*g*.”

*f.* Prior to authorizing the dispensing of a drug utilizing the InstyMeds dispensing system, the prescriber shall offer the patient the option of being provided a prescription that may be filled at the pharmacy of the patient's choice.

*g.* When appropriate for an acute condition, the prescriber shall provide to the patient or the patient's agent a prescription for the remainder of drug therapy beyond the supply available utilizing the InstyMeds dispensing system. During consultation with the patient or the patient's agent, the prescriber shall clearly explain the appropriate use of the drug supplied, the need to have a prescription for any additional supply of the drug filled at a pharmacy of the patient's choice, and the need to complete the full course of drug therapy.

*h.* The pharmacy shall, in conjunction with the hospital emergency department, implement policies and procedures to ensure that a patient utilizing the InstyMeds dispensing system has been positively identified.

*i.* The hospital pharmacist shall review the printout of drugs provided utilizing the InstyMeds dispensing system within 24 hours unless the pharmacy is closed, in which case the printout shall be reviewed during the first day the pharmacy is open following the provision of the drugs. The purpose of the review is to identify any dispensing errors, to determine dosage appropriateness, and to complete a retrospective drug use review of any antimicrobials dispensed in a quantity greater than a 72-hour supply. Any discrepancies found shall be addressed by the pharmacy's continuous quality improvement program.

**657—7.13(124,155A) Records.** Every inventory or other record required to be kept under this chapter or other board rules or under Iowa Code chapters 124 and 155A shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record unless a longer retention period is specified for the particular inventory or record.

**7.13(1) Medication order information.** Each original medication order contained in inpatient records shall bear the following information:

- a.* Patient name and identification number;
- b.* Drug name, strength, and dosage form;
- c.* Directions for use;
- d.* Date ordered;
- e.* Practitioner's signature or electronic signature or that of the practitioner's authorized agent.

**7.13(2) Medication order maintained.** The original medication order shall be maintained with the medication administration record in the medical records of the patient following discharge.

**7.13(3) Documentation of drug administration.** Each dose of medication administered shall be properly recorded in the patient's medical record.

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, 155A.31, and 155A.33 through 155A.36.

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<sup>◇</sup> Two or more ARCs

CHAPTER 8  
UNIVERSAL PRACTICE STANDARDS  
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 6]

**657—8.1(155A) Purpose and scope.** The requirements of these rules apply to all Iowa-licensed pharmacists and to all pharmacies providing the services addressed in this chapter to patients in Iowa and are in addition to rules of the board relating to specific types of pharmacy licenses issued by the board.

**657—8.2(155A) Pharmaceutical care.** Pharmaceutical care is a comprehensive, patient-centered, outcomes-oriented pharmacy practice in which the pharmacist accepts responsibility for assisting the prescriber and the patient in optimizing the patient's drug therapy plan and works to promote health, to prevent disease, and to optimize drug therapy. Pharmaceutical care does not include the prescribing of drugs without the consent of the prescribing practitioner.

**8.2(1) Drug therapy problems.** In providing pharmaceutical care, the pharmacist shall strive to identify, resolve, and prevent drug therapy problems.

**8.2(2) Drug therapy plan.** In providing pharmaceutical care, the pharmacist shall access and evaluate patient-specific information, identify drug therapy problems, and utilize that information in a documented plan of therapy that assists the patient or the patient's caregiver in achieving optimal drug therapy. In concert with the patient, the patient's prescribing practitioner, and the patient's other health care providers, the pharmacist shall assess, monitor, and suggest modifications of the plan as appropriate.

**8.2(3) Eligibility.** Any Iowa-licensed pharmacist may practice pharmaceutical care.

**657—8.3(155A) Responsibility.**

**8.3(1) Pharmacy operations.** The pharmacy and the pharmacist in charge share responsibility for ensuring that all operations of the pharmacy are in compliance with federal and state laws, rules, and regulations relating to pharmacy operations and the practice of pharmacy.

**8.3(2) Practice functions.** The pharmacist is responsible for all functions performed in the practice of pharmacy. The pharmacist maintains responsibility for any and all delegated functions including functions delegated to pharmacist-interns, pharmacy technicians, and other supportive personnel.

**8.3(3) Pharmacist-documented verification.** The pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

**657—8.4(155A) Pharmacist identification.**

**8.4(1) Display of pharmacist license.** During any period the pharmacist is working in a pharmacy, each pharmacist shall display, in a position visible to the public, an original license to practice pharmacy. A current license renewal certificate, which may be a photocopy of an original renewal certificate, shall be displayed with the original license.

**8.4(2) Identification codes.** A permanent log of the initials or codes identifying by name each dispensing pharmacist, pharmacist-intern, and pharmacy technician shall be maintained for a minimum of two years and shall be available for inspection and copying by the board or its representative. The initials or identification code shall be unique to the individual to ensure that each pharmacist, pharmacist-intern, and pharmacy technician can be identified.

**8.4(3) Temporary or intermittent pharmacy staff.** The pharmacy shall maintain a log of all pharmacists, pharmacist-interns, and pharmacy technicians who have worked at that pharmacy and who are not regularly staffed at that pharmacy. Such log shall include the dates and shifts worked by each pharmacist, pharmacist-intern, and pharmacy technician and shall be available for inspection and copying by the board or its representative for a minimum of two years following the date of the entry.

**8.4(4) Identification badge.** A pharmacist shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacist and includes at least the pharmacist's first name.

**657—8.5(155A) Environment and equipment requirements.** There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy. Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available.

**8.5(1) Refrigeration.** The pharmacy shall maintain one or more refrigeration units. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration, and a thermometer shall be maintained in the refrigerator to verify the temperature.

**8.5(2) Sink.** The pharmacy shall have a sink with hot and cold running water located within the pharmacy department and available to all pharmacy personnel; the sink shall be maintained in a sanitary condition.

**8.5(3) Secure barrier.** The pharmacy department shall be surrounded by a physical barrier capable of being securely locked to prevent entry when the department is closed. A secure barrier may be constructed of other than a solid material with a continuous surface if the openings in the material are not large enough to permit removal of items from the pharmacy department by any means. Any material used in the construction of the barrier shall be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The plans and specifications of the barrier shall be submitted to the board for approval prior to the start of construction. The board may also require on-site inspection of the facility or pharmacy department prior to the pharmacy's opening or relocation. The pharmacy department shall be closed and secured in the absence of the pharmacist except as provided in rule 657—6.7(124,155A) or 657—7.6(124,155A).

**8.5(4) Orderly and clean.** The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner.

**8.5(5) Light and ventilation.** The pharmacy shall be properly lighted and ventilated.

**8.5(6) Temperature and humidity.** The temperature and humidity of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

**8.5(7) Other equipment.** The pharmacist in charge shall ensure the availability of any other equipment necessary for the particular practice of pharmacy and to meet the needs of the patients served by the pharmacy.

**8.5(8) Bulk counting machines.** Unless bar-code scanning is required and utilized to verify the identity of each stock container of drugs utilized to restock a counting machine cell or bin, a pharmacist shall verify the accuracy of the drugs to be restocked prior to filling the counting machine cell or bin. A record identifying the individual who verified the drugs to be restocked, the individual who restocked the counting machine cell or bin, and the date shall be maintained. The pharmacy shall have a method to calibrate and verify the accuracy of the counting device and shall, at least quarterly, verify the accuracy of the device and maintain a dated record identifying the individual who performed the quarterly verification.

**657—8.6(155A) Health of personnel.** Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of the drug dispensing, preparation, compounding, or storage areas. Any person shown, either by medical examination or pharmacist determination, to have an apparent illness or open lesions that may adversely affect the quality or safety of a drug product or another individual shall be excluded from direct contact with components, bulk drug substances, drug product containers, closures, in-process materials, drug products, and patients until the condition is corrected or determined by competent medical personnel not to jeopardize the quality or safety of drug products or patients. All personnel who normally assist the pharmacist shall be instructed to report to the pharmacist any health conditions that may have an adverse effect on drug products or may pose a health or safety risk to others.

**657—8.7(155A) Procurement, storage, and recall of drugs and devices.**

**8.7(1) Source.** Procurement of prescription drugs and devices shall be from a drug wholesaler licensed by the board to distribute to Iowa pharmacies or, on a limited basis, from another licensed pharmacy or licensed practitioner located in the United States.

**8.7(2) Sufficient stock.** A pharmacy shall maintain sufficient stock of drugs and devices to fulfill the foreseeable needs of the patients served by the pharmacy.

**8.7(3) Manner of storage.** Drugs and devices shall be stored in a manner to protect their identity and integrity.

**8.7(4) Storage temperatures.** All drugs and devices shall be stored at the proper temperature, as defined by the following terms:

*a. "Controlled room temperature"* means temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

*b. "Cool"* means temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit). Drugs and devices may be stored in a refrigerator unless otherwise specified on the labeling;

*c. "Refrigerate"* means temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and

*d. "Freeze"* means temperature maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

**8.7(5) Product recall.** There shall be a system for removing from use, including unit dose, any drugs and devices subjected to a product recall.

**657—8.8(124,155A) Out-of-date drugs or devices.** Any drug or device bearing an expiration date shall not be dispensed for use beyond the expiration date of the drug or device. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are properly disposed of.

**657—8.9(124,155A) Records.** Every inventory or other record required to be maintained by a pharmacy pursuant to board rules or Iowa Code chapters 124 and 155A shall be maintained and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record unless a longer retention period is specified for the particular record or inventory. The following records shall be maintained for at least two years.

**8.9(1) Drug supplier invoices.** All pharmacies shall maintain supplier invoices of prescription drugs and controlled substances upon which the actual date of receipt of the controlled substances by the pharmacist or other responsible individual is clearly recorded.

**8.9(2) Drug supplier credits.** All pharmacies shall maintain supplier credit memos for controlled substances and prescription drugs.

**657—8.10** Reserved.

**657—8.11(147,155A) Unethical conduct or practice.** The provisions of this rule apply to licensed pharmacies, licensed pharmacists and registered pharmacist-interns.

**8.11(1) Misrepresentative deeds.** A pharmacist shall not make any statement intended to deceive, misrepresent or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

**8.11(2) Undue influence.**

*a.* A pharmacist shall not accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from a prescriber of prescription drugs or any other person or corporation in which one or more such prescribers have a proprietary or beneficial interest sufficient to permit them to directly or indirectly exercise supervision or control over the pharmacist in the pharmacist's professional responsibilities and duties or over the pharmacy wherein the pharmacist practices.

*b.* The prohibition in paragraph "a" shall not apply until April 23, 2006, to a pharmacist who is working at a prescriber-owned pharmacy location licensed as of April 23, 1981.

*c.* A prescriber may employ a pharmacist to provide nondispensing, drug information, or other cognitive services.

**8.11(3) *Lease agreements.*** A pharmacist shall not lease space for a pharmacy under any of the following conditions:

*a.* From a prescriber of prescription drugs or a group, corporation, association, or organization of such prescribers on a percentage of income basis;

*b.* From a group, corporation, association, or organization in which prescribers have majority control or have directly or indirectly a majority beneficial or proprietary interest on a percentage of income basis; or

*c.* If the rent is not reasonable according to commonly accepted standards of the community in which the pharmacy will be located.

**8.11(4) *Nonconformance with law.*** A pharmacist shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

**8.11(5) *Freedom of choice/solicitation/kickbacks/fee-splitting and imprinted prescription blanks or forms.*** A pharmacist or pharmacy shall not enter into any agreement which negates a patient's freedom of choice of pharmacy services. A pharmacist or pharmacy shall not participate in prohibited agreements with any person in exchange for recommending, promoting, accepting, or promising to accept the professional pharmaceutical services of any pharmacist or pharmacy. "Person" includes an individual, corporation, partnership, association, firm, or other entity. "Prohibited agreements" includes an agreement or arrangement that provides premiums, "kickbacks," fee-splitting, or special charges as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy. "Kickbacks" includes, but is not limited to, the provision of medication carts, facsimile machines, any other equipment, or preprinted forms or supplies for the exclusive use of a facility or practitioner at no charge or billed below reasonable market rate. A pharmacist shall not provide, cause to be provided, or offer to provide to any person authorized to prescribe prescription blanks or forms bearing the pharmacist's or pharmacy's name, address, or other means of identification, except that a hospital may make available to hospital staff prescribers, emergency department prescribers, and prescribers granted hospital privileges for the prescribers' use during practice at or in the hospital generic prescription blanks or forms bearing the name, address, or telephone number of the hospital pharmacy.

**8.11(6) *Discrimination.*** It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, gender, gender identity, sexual orientation, marital status, age, national origin, physical or mental disability, or disease state when providing pharmaceutical services.

**8.11(7) *Claims of professional superiority.*** A pharmacist shall not make a claim, assertion, or inference of professional superiority in the practice of pharmacy which cannot be substantiated, or claim an unusual, unsubstantiated capacity to supply a drug or professional service to the community.

**8.11(8) *Unprofessional conduct or behavior.*** A pharmacist shall not exhibit unprofessional behavior in connection with the practice of pharmacy or refuse to provide reasonable information or answer reasonable questions for the benefit of the patient. Unprofessional behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

**657—8.12(126,147) Advertising.** Prescription drug price and nonprice information may be provided to the public by a pharmacy so long as the information is not false or misleading and is not in violation of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1. All charges for services to the consumer must be stated.
2. The effective dates for the prices listed shall be stated.
3. No reference shall be made to controlled substances listed in Schedules II through V of the latest revision of the Iowa uniform controlled substances Act and the rules of the Iowa board of pharmacy.

**657—8.13(135C,155A) Personnel histories.** Pursuant to the requirements of Iowa Code section 135C.33, the provisions of this rule shall apply to any pharmacy employing any person to provide patient care services in a patient's home. For the purposes of this rule, "employed by the pharmacy" shall include any individual who is paid to provide treatment or services to any patient in the patient's home, whether the individual is paid by the pharmacy or by any other entity such as a corporation, a temporary staffing agency, or an independent contractor. Specifically excluded from the requirements of this rule are individuals such as delivery persons or couriers who do not enter the patient's home for the purpose of instructing the patient or the patient's caregiver in the use or maintenance of the equipment, device, or drug being delivered, or who do not enter the patient's home for the purpose of setting up or servicing the equipment, device, or drug used to treat the patient in the patient's home.

**8.13(1) Applicant acknowledgment.** The pharmacy shall ask the following question of each person seeking employment in a position that will provide in-home services: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" The applicant shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The applicant shall indicate, by signed acknowledgment, that the applicant has been informed that such record checks will be conducted.

**8.13(2) Criminal history check.** Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall submit to the department of public safety a form specified by the department of public safety and receive the results of a criminal history check.

**8.13(3) Abuse history checks.** Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall submit to the department of human services a form specified by the department of human services and receive the results of a dependent adult abuse record check. The pharmacy may submit to the department of human services a form specified by the department of human services to request a child abuse history check.

*a.* A person who has a criminal record, founded dependent adult abuse report, or founded child abuse report shall not be employed by a pharmacy to provide in-home services unless the department of human services has evaluated the crime or founded abuse report, has concluded that the crime or founded abuse does not merit prohibition from such employment, and has notified the pharmacy that the person may be employed to provide in-home services.

*b.* The pharmacy shall keep copies of all record checks and evaluations for a minimum of two years following receipt of the record or for a minimum of two years after the individual is no longer employed by the pharmacy, whichever is greater.

**657—8.14(155A) Training and utilization of pharmacy technicians.** All Iowa-licensed pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians appropriate to the practice of pharmacy at that licensed location. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

**657—8.15(155A) Delivery of prescription drugs and devices.** Prescription drug orders, prescription devices, and completed prescription drug containers may be delivered, in compliance with all laws, rules, and regulations relating to the practice of pharmacy, to patients at any place of business licensed as a pharmacy.

**8.15(1) Alternative methods.** A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient's caregiver as follows:

- a.* At the office or home of the prescriber.
- b.* At the residence of the patient or caregiver.
- c.* At the hospital or medical care facility in which a patient is confined.
- d.* At an outpatient medical care facility where the patient receives treatment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the outpatient medical care facility;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization;

(3) A prescription authorized by a prescriber not treating the patient at the outpatient medical care facility may be transmitted to the pharmacy by the authorized agent via facsimile provided that the means of transmission does not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the prescription and provided that the original written prescription is delivered to the pharmacy prior to delivery of the filled prescription to the patient; and

(4) The outpatient medical care facility shall store the patient's filled prescriptions in a secure area pending delivery to the patient.

*e.* At the patient's or caregiver's place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, the prescriber, or an authorized agent identified in the written authorization; and

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

**8.15(2) Policies and procedures required.** Every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements as defined by subrule 8.7(4).

[ARC 7636B, IAB 3/11/09, effective 4/15/09]

#### **657—8.16(124,155A) Confidential information.**

**8.16(1) Definition.** "Confidential information" means information accessed or maintained by the pharmacy in the patient's records which contains personally identifiable information that could be used to identify the patient. This includes but is not limited to patient name, address, telephone number, and social security number; prescriber name and address; and prescription and drug or device information such as therapeutic effect, diagnosis, allergies, disease state, pharmaceutical services rendered, medical information, and drug interactions, regardless of whether such information is communicated to or from the patient, is in the form of paper, is preserved on microfilm, or is stored on electronic media.

**8.16(2) Release of confidential information.** Confidential information in the patient record may be released only as follows:

*a.* Pursuant to the express written authorization of the patient or the order or direction of a court.

*b.* To the patient or the patient's authorized representative.

*c.* To the prescriber or other licensed practitioner then caring for the patient.

*d.* To another licensed pharmacist when the best interests of the patient require such release.

*e.* To the board or its representative or to such other persons or governmental agencies duly authorized by law to receive such information.

A pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any persons requesting confidential patient information pursuant to this rule are entitled to receive that information.

**8.16(3) Exceptions.** Nothing in this rule shall prohibit pharmacists from releasing confidential patient information as follows:

*a.* Transferring a prescription to another pharmacy upon the request of the patient or the patient's authorized representative.

*b.* Providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is clearly marked as a copy and not to be filled.

*c.* Providing drug therapy information to physicians or other authorized prescribers for their patients.

*d.* Disclosing information necessary for the processing of claims for payment of health care operations or services.

**8.16(4) System security and safeguards.** To maintain the integrity and confidentiality of patient records and prescription drug orders, any system or computer utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders.

**8.16(5) Record disposal.** Disposal of any materials containing or including patient-specific or confidential information shall be conducted in a manner to preserve patient confidentiality.

**657—8.17 and 8.18** Reserved.

**657—8.19(124,126,155A) Manner of issuance of a prescription drug or medication order.** A prescription drug order or medication order may be transmitted from a prescriber to a pharmacy in written form, orally including telephone voice communication, or by electronic transmission in accordance with applicable federal and state laws and rules. Any prescription drug order or medication order provided to a patient in written or printed form shall include the original, handwritten signature of the prescriber except as provided in rule 657—21.7(124,155A).

**8.19(1) Verification.** The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription drug order or medication order consistent with federal and state laws and rules. In exercising professional judgment, the prescribing practitioner and the pharmacist shall take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries.

**8.19(2) Transmitting agent.** The prescribing practitioner may authorize an agent to transmit to the pharmacy a prescription drug order or medication order orally or by electronic transmission provided that the name of the transmitting agent is included in the order.

*a. New order.* A new written or electronically prepared and transmitted prescription drug or medication order shall be manually or electronically signed by the prescriber. If transmitted by the prescriber's agent, the name and title of the transmitting agent shall be included in the order.

*b. Refill order or renewal order.* An authorization to refill a prescription drug or medication order, or to renew or continue an existing drug therapy, may be transmitted to a pharmacist through oral communication, in writing, or by electronic transmission initiated by or directed by the prescriber.

(1) If the transmission is completed by the prescriber's agent and the name and title of the transmitting agent is included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the order differs in any manner from the original order, such as a change of the drug strength, dosage form, or directions for use, the prescriber shall sign the order as provided by paragraph "a."

**8.19(3) Receiving agent.** Regardless of the means of transmission to a pharmacy, only a pharmacist, a pharmacist-intern, or a pharmacy technician shall be authorized to receive a prescription drug or medication order from a practitioner or the practitioner's agent.

**8.19(4) Legitimate purpose.** The pharmacist shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation and without a valid preexisting patient-practitioner relationship.

**8.19(5) Refills.** A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued. A refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription drug order.

[ARC 8171B, IAB 9/23/09, effective 10/28/09]

**657—8.20(155A) Valid prescriber/patient relationship.** Prescription drug orders and medication orders shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient

relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, the order loses its validity and the pharmacist, on becoming aware of the situation, shall cancel the order and any remaining refills. The pharmacist shall, however, exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the prescribed drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new order can be issued.

**657—8.21(155A) Prospective drug use review.** For purposes of promoting therapeutic appropriateness and ensuring rational drug therapy, a pharmacist shall review the patient record, information obtained from the patient, and each prescription drug or medication order to identify:

1. Overutilization or underutilization;
2. Therapeutic duplication;
3. Drug-disease contraindications;
4. Drug-drug interactions;
5. Incorrect drug dosage or duration of drug treatment;
6. Drug-allergy interactions;
7. Clinical abuse/misuse;
8. Drug-prescriber contraindications.

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem and shall, if necessary, include consultation with the prescriber. The review and assessment of patient records shall not be delegated to staff assistants but may be delegated to registered pharmacist-interns under the direct supervision of the pharmacist.

**657—8.22 to 8.25** Reserved.

**657—8.26(155A) Continuous quality improvement program.** Each pharmacy licensed to provide pharmaceutical services to patients in Iowa shall implement or participate in a continuous quality improvement program or CQI program. The CQI program is intended to be an ongoing, systematic program of standards and procedures to detect, identify, evaluate, and prevent medication errors, thereby improving medication therapy and the quality of patient care. A pharmacy that participates as an active member of a hospital or corporate CQI program that meets the objectives of this rule shall not be required to implement a new program pursuant to this rule.

**8.26(1) Reportable program events.** For purposes of this rule, a reportable program event or program event means a preventable medication error resulting in the incorrect dispensing of a prescribed drug received by or administered to the patient and includes but is not necessarily limited to:

- a. An incorrect drug;
- b. An incorrect drug strength;
- c. An incorrect dosage form;
- d. A drug received by the wrong patient;
- e. Inadequate or incorrect packaging, labeling, or directions; or
- f. Any incident related to a prescription dispensed to a patient that results in or has the potential to result in serious harm to the patient.

**8.26(2) Responsibility.** The pharmacist in charge is responsible for ensuring that the pharmacy utilizes a CQI program consistent with the requirements of this rule. The pharmacist in charge may delegate program administration and monitoring, but the pharmacist in charge maintains ultimate responsibility for the validity and consistency of program activities.

**8.26(3) Policies and procedures.** Each pharmacy shall develop, implement, and adhere to written policies and procedures for the operation and management of the pharmacy's CQI program. A copy of the pharmacy's CQI program description and policies and procedures shall be maintained and readily available to all pharmacy personnel. The policies and procedures shall address, at a minimum, a planned process to:

- a. Train all pharmacy personnel in relevant phases of the CQI program;

- b. Identify and document reportable program events;
- c. Minimize the impact of reportable program events on patients;
- d. Analyze data collected to assess the causes and any contributing factors relating to reportable program events;
- e. Use the findings to formulate an appropriate response and to develop pharmacy systems and workflow processes designed to prevent and reduce reportable program events; and
- f. Periodically, but at least annually, meet with appropriate pharmacy personnel to review findings and inform personnel of changes that have been made to pharmacy policies, procedures, systems, or processes as a result of CQI program findings.

**8.26(4) *Event discovery and notification.*** As provided by the procedures of the CQI program, the pharmacist in charge or appropriate designee shall be informed of and review all reported and documented program events. All pharmacy personnel shall be trained to immediately inform the pharmacist on duty of any discovered or suspected program event. When the pharmacist on duty determines that a reportable program event has occurred, the pharmacist shall ensure that all reasonably necessary steps are taken to remedy any problems or potential problems for the patient and that those steps are documented. Necessary steps include, but are not limited to, the following:

- a. Notifying the patient or the patient's caregiver and the prescriber or other members of the patient's health care team as warranted;
- b. Identifying and communicating directions or processes for correcting the error; and
- c. Communicating instructions for minimizing any negative impact on the patient.

**8.26(5) *CQI program records.*** All CQI program records shall be maintained on site at the pharmacy or shall be accessible at the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the record. When a reportable program event occurs or is suspected to have occurred, the program event shall be documented in a written or electronic storage record created solely for that purpose. Records of program events shall be maintained in an orderly manner and shall be filed chronologically by date of discovery.

- a. The program event shall initially be documented as soon as practicable by the staff member who discovers the event or is informed of the event.
- b. Program event documentation shall include a description of the event that provides sufficient information to permit categorization and analysis of the event and shall include:
  - (1) The date and time the program event was discovered and the name of the staff person who discovered the event; and
  - (2) The names of the individuals recording and reviewing or analyzing the program event information.

**8.26(6) *Program event analysis and response.*** The pharmacist in charge or designee shall review each reportable program event and determine if follow-up is necessary. When appropriate, information and data collected and documented shall be analyzed, individually and collectively, to assess the cause and any factors contributing to the program event. The analysis may include, but is not limited to, the following:

- a. A consideration of the effects on the quality of the pharmacy system related to workflow processes, technology utilization and support, personnel training, and both professional and technical staffing levels;
- b. Any recommendations for remedial changes to pharmacy policies, procedures, systems, or processes; and
- c. The development of a set of indicators that a pharmacy will utilize to measure its program standards over a designated period of time.

**657—8.27 to 8.29** Reserved.

**657—8.30(126,155A) Sterile products.** Rescinded IAB 6/6/07, effective 7/11/07.

**657—8.31** Reserved.

**657—8.32(124,155A) Individuals qualified to administer.** The board designates the following as qualified individuals to whom a practitioner may delegate the administration of prescription drugs. Any person specifically authorized under pertinent sections of the Iowa Code to administer prescription drugs shall construe nothing in this rule to limit that authority.

1. Persons who have successfully completed a medication administration course.
2. Licensed pharmacists.

**657—8.33(147,155A) Supervision of pharmacists who administer adult immunizations.** A physician may prescribe via written protocol adult immunizations for influenza and pneumococcal vaccines for administration by an authorized pharmacist if the physician meets these requirements for supervising the pharmacist.

**8.33(1) Definitions.**

a. *“Authorized pharmacist”* means an Iowa-licensed pharmacist who has documented that the pharmacist has successfully completed an organized course of study in a college or school of pharmacy or an Accreditation Council for Pharmacy Education (ACPE)-approved continuing pharmaceutical education program on vaccine administration that:

- (1) Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers;
- (2) Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current Centers for Disease Control and Prevention guidelines, and provides instruction and experiential training in the following content areas:

1. Standards for immunization practices;
2. Basic immunology and vaccine protection;
3. Vaccine-preventable diseases;
4. Recommended immunization schedules;
5. Vaccine storage and management;
6. Informed consent;
7. Physiology and techniques for vaccine administration;
8. Pre- and post-vaccine assessment and counseling;
9. Immunization record management; and
10. Management of adverse events, including identification, appropriate response, documentation, and reporting.

b. *“Vaccine”* means a specially prepared antigen which, upon administration to a person, will result in immunity and, specifically for the purposes of this rule, shall mean influenza and pneumococcal vaccines.

c. *“Written protocol”* means a physician’s order for one or more patients that contains, at a minimum, the following:

- (1) A statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of adult immunizations for influenza and pneumococcus;
- (2) A statement identifying the individual authorized pharmacist;
- (3) A statement that forbids an authorized pharmacist from delegating the administration of adult immunizations to anyone other than another authorized pharmacist, a registered pharmacist-intern under the direct personal supervision of the authorized pharmacist, or a registered nurse;
- (4) A statement identifying the vaccines that may be administered by an authorized pharmacist, the dosages, and the route of administration;
- (5) A statement identifying the activities an authorized pharmacist shall follow in the course of administering adult immunizations, including:
  1. Procedures for determining if a patient is eligible to receive the vaccine;
  2. Procedures for determining the appropriate scheduling and frequency of drug administration in accordance with applicable guidelines;

3. Procedures for record keeping and long-term record storage including batch or identification numbers;

4. Procedures to follow in case of life-threatening reactions; and

5. Procedures for the pharmacist and patient to follow in case of reactions following administration.

(6) A statement that describes how the authorized pharmacist shall report the administration of adult immunizations, within 30 days, to the physician issuing the written protocols and to the patient's primary care physician if one has been designated by the patient. In case of serious complications, the authorized pharmacist shall notify the physicians within 24 hours and submit a VAERS report to the bureau of immunizations, Iowa department of public health. (VAERS is the Vaccine Advisory Event Reporting System.) A serious complication is one that requires further medical or therapeutic intervention to effectively protect the patient from further risk, morbidity, or mortality.

**8.33(2) *Supervision.*** A physician who prescribes adult immunizations to an authorized pharmacist for administration shall adequately supervise that pharmacist. Physician supervision shall be considered adequate if the delegating physician:

a. Ensures that the authorized pharmacist is prepared as described in subrule 8.33(1), paragraph "a";

b. Provides a written protocol that is updated at least annually;

c. Is available through direct telecommunication for consultation, assistance, and direction, or provides physician backup to provide these services when the physician supervisor is not available;

d. Is an Iowa-licensed physician who has a working relationship with an authorized pharmacist within the physician's local provider service area.

**8.33(3) *Administration of other adult immunizations by pharmacists.*** A physician may prescribe, for an individual patient by prescription or medication order, other adult immunizations to be administered by an authorized pharmacist.

This rule is intended to implement Iowa Code sections 147.76, 155A.3, 155A.4, and 272C.3.

**657—8.34(155A) Collaborative drug therapy management.** An authorized pharmacist may only perform collaborative drug therapy management pursuant to protocol with a physician pursuant to the requirements of this rule. The physician retains the ultimate responsibility for the care of the patient. The pharmacist is responsible for all aspects of drug therapy management performed by the pharmacist.

**8.34(1) *Definitions.***

"*Authorized pharmacist*" means an Iowa-licensed pharmacist whose license is in good standing and who meets the drug therapy management criteria defined in this rule.

"*Board*" means the board of pharmacy.

"*Collaborative drug therapy management*" means participation by an authorized pharmacist and a physician in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

"*Collaborative practice*" means that a physician may delegate aspects of drug therapy management for the physician's patients to an authorized pharmacist through a community practice protocol. "Collaborative practice" also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and hospital clinic patients through a hospital practice protocol.

"*Community practice protocol*" means a written, executed agreement entered into voluntarily between an authorized pharmacist and a physician establishing drug therapy management for one or more of the pharmacist's and physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 8.34(2).

"*Community setting*" means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

"*Drug therapy management criteria*" means one or more of the following:

1. Graduation from a recognized school or college of pharmacy with a doctor of pharmacy (Pharm.D.) degree;
2. Certification by the Board of Pharmaceutical Specialties (BPS);
3. Certification by the Commission for Certification in Geriatric Pharmacy (CCGP);
4. Successful completion of a National Institute for Standards in Pharmacist Credentialing (NISPC) disease state management examination and credentialing by the NISPC;
5. Successful completion of a pharmacy residency program accredited by the American Society of Health-System Pharmacists (ASHP); or
6. Approval by the board of pharmacy.

*“Hospital clinic”* means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital’s P&T committee.

*“Hospital pharmacist”* means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital’s P&T committee.

*“Hospital practice protocol”* means a written plan, policy, procedure, or agreement that authorizes drug therapy management between hospital pharmacists and physicians within a hospital and the hospital’s clinics as developed and determined by the hospital’s P&T committee. Such a protocol may apply to all pharmacists and physicians at a hospital or the hospital’s clinics or only to those pharmacists and physicians who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 8.34(3).

*“IBM”* means the Iowa board of medicine.

*“P&T committee”* means a committee of the hospital composed of physicians, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

*“Physician”* means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist’s activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician’s practice.

*“Therapeutic interchange”* means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

**8.34(2) Community practice protocol.**

*a.* An authorized pharmacist shall engage in collaborative drug therapy management with a physician only under a written protocol that has been identified by topic and has been submitted to the board or a committee authorized by the board. A protocol executed after July 1, 2008, will no longer be required to be submitted to the board; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBM.

*b.* The community practice protocol shall include:

(1) The name, signature, date, and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal authorized pharmacist shall be designated in the protocol.

(2) The name, signature, date, and contact information for each physician who may prescribe drugs and is responsible for supervising a patient’s drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol

shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the patient's physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the patient's physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for securing the patient's written consent. If the patient's consent is not secured by the physician, the authorized pharmacist shall secure such and notify the patient's physician within 24 hours.

(6) Circumstances that shall cause the authorized pharmacist to initiate communication with the physician including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests, and physical findings upon which the authorized pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy management protocol to be reviewed, updated, and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the authorized pharmacist is to provide to the physician and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame within which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing, and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the authorized pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or an authorized pharmacist.

(17) A description of the mechanism for the pharmacist and the physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

*c.* Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least one authorized pharmacist and at least one physician.

*d.* The collaborative drug therapy protocol must be filed with the board, kept on file in the pharmacy, and be made available upon request of the board or the IBM. After July 1, 2008, protocols shall no longer be filed with the board but shall be maintained in the pharmacy and made available to the board and the IBM upon request.

*e.* A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the board. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the board of changes in a protocol but the written notification shall be maintained in the pharmacy and made available upon request of the board or the IBM.

*f.* The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the

consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient shall be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

**8.34(3) Hospital practice protocol.**

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by the hospital's pharmacists.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of pharmacists and physicians who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the P&T committee authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

**657—8.35(155A) Pharmacy license.** A pharmacy license issued by the board is required for all sites where prescription drugs are offered for sale or dispensed under the supervision of a pharmacist. A pharmacy license issued by the board is also required for all sites where drug information or other cognitive pharmacy services, including but not limited to drug use review and patient counseling, are provided by a pharmacist. The board may issue any of the following types of pharmacy licenses: a general pharmacy license, a hospital pharmacy license, a special or limited use pharmacy license, or a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy practice except when specific exemptions have been granted. Applicants for general or hospital pharmacy practice shall comply with board rules regarding general or hospital pharmacy practice except when specific exemptions have been granted. Any pharmacy located within Iowa that dispenses controlled substances must also register pursuant to 657—Chapter 10.

**8.35(1) Exemptions.** Applicants who are granted exemptions shall be issued a "general pharmacy license with exemption," a "hospital pharmacy license with exemption," a "nonresident pharmacy license with exemption," or a "limited use pharmacy license with exemption" and shall comply with

the provisions set forth by that exemption. A written petition for exemption from certain licensure requirements shall be submitted pursuant to the procedures and requirements of 657—Chapter 34 and will be determined on a case-by-case basis.

**8.35(2) Limited use pharmacy license.** Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.

**8.35(3) Application form.** Application for licensure and license renewal shall be on forms provided by the board. The application for a pharmacy license shall require an indication of the pharmacy ownership classification. If the owner is a sole proprietorship (100 percent ownership), the name and address of the owner shall be indicated. If the owner is a partnership or limited partnership, the names and addresses of all partners shall be listed or attached. If the owner is a corporation, the names and addresses of the officers and directors of the corporation shall be listed or attached. Any other pharmacy ownership classification shall be further identified and explained on the application. The application form shall require the name, signature, and license number of the pharmacist in charge. The names and license numbers of all pharmacists engaged in practice in the pharmacy, the names and registration numbers of all pharmacy technicians working in the pharmacy, and the average number of hours worked by each pharmacist and each pharmacy technician shall be listed or attached. Additional information may be required of specific types of pharmacy license applicants. The application shall be signed by the pharmacy owner or the owner's, partnership's, or corporation's authorized representative.

**8.35(4) License expiration and renewal.** General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$150.

*a. Late payment penalty.* Failure to renew the pharmacy license before January 1 following expiration shall require payment of the renewal fee and a penalty fee of \$150. Failure to renew the license before February 1 following expiration shall require payment of the renewal fee and a penalty fee of \$250. Failure to renew the license before March 1 following expiration shall require payment of the renewal fee and a penalty fee of \$350. Failure to renew the license before April 1 following expiration shall require payment of the renewal fee and a penalty fee of \$450 and may require an appearance before the board. In no event shall the combined renewal fee and penalty fee for late renewal of a pharmacy license exceed \$600.

*b. Delinquent license.* If a license is not renewed before its expiration date, the license is delinquent and the licensee may not operate or provide pharmacy services to patients in the state of Iowa until the licensee renews the delinquent license. A pharmacy that continues to operate in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.1(4).

**8.35(5) Inspection of new pharmacy location.** If the new pharmacy location within Iowa was not a licensed pharmacy immediately prior to the proposed opening of the new pharmacy, the pharmacy location shall require an on-site inspection by a pharmacy board inspector prior to the issuance of the pharmacy license. The purpose of the inspection is to determine compliance with requirements pertaining to space, library, equipment, security, temperature control, and drug storage safeguards. Inspection may be scheduled anytime following submission of necessary license and registration applications and prior to opening for business as a pharmacy. Prescription drugs, including controlled substances, may not be delivered to a new pharmacy location prior to satisfactory completion of the opening inspection.

**8.35(6) Pharmacy license changes.** When a pharmacy changes its name, location, ownership, or pharmacist in charge, a new pharmacy license application with a license fee as provided in subrule 8.35(4) shall be submitted to the board office. Upon receipt of the fee and properly completed application, the board will issue a new pharmacy license certificate. The old license certificate shall be returned to the board office within ten days of the change of name, location, ownership, or pharmacist in charge.

*a.* A change of pharmacy location in Iowa shall require an on-site inspection of the new location as provided in subrule 8.35(5) if the new location was not a licensed pharmacy immediately prior to the relocation.

b. A change of ownership of a currently licensed Iowa pharmacy, or a change of pharmacy location to another existing Iowa pharmacy location, shall not require on-site inspection pursuant to subrule 8.35(5). A new pharmacy license is required as provided above. In those cases in which the pharmacy is owned by a corporation, the sale or transfer of all stock of the corporation does not constitute a change of ownership provided the corporation that owns the pharmacy continues to exist following the stock sale or transfer.

c. A change of pharmacist in charge shall require completion and submission of the application and fee for new pharmacy license. If a permanent pharmacist in charge has not been identified by the time of the vacancy, a temporary pharmacist in charge shall be identified. Written notification identifying the temporary pharmacist in charge, signed by the pharmacy owner or corporate officer and the temporary pharmacist in charge, shall be submitted to the board within 10 days following the vacancy. Within 90 days following the vacancy, a permanent pharmacist in charge shall be identified, and an application for pharmacy license, including the license fee as provided in subrule 8.35(4), shall be submitted to the board office.

**8.35(7) Pharmacy closing.** At least two weeks prior to the closing of a pharmacy, a written notice shall be sent to the board and to the Drug Enforcement Administration (DEA) notifying those agencies of the intent to discontinue business or sell the pharmacy including the anticipated date of sale or closing.

a. Prior notification shall include the name, address, DEA registration number, Iowa pharmacy license number, and Iowa controlled substances Act (CSA) registration number of the closing pharmacy and of the pharmacy to which prescription drugs will be transferred. Notification shall also include the name, address, DEA registration number, Iowa pharmacy license number, and CSA registration number of the location at which prescription files, patient profiles, and controlled substance receipt and disbursement records will be maintained.

b. Pharmacy patients with active prescriptions on file with a pharmacy that intends to close permanently shall be notified by that pharmacy, via direct mail or public notice at least two weeks prior to the closure of the pharmacy, that each patient has the right to transfer the patient's active prescriptions to a pharmacy of the patient's choosing. This paragraph shall not apply in the case of an emergency or unforeseeable closure including, but not limited to, emergency board action, foreclosure, fire, or natural disaster.

c. A complete inventory of all prescription drugs being transferred shall be taken as of the close of business. The inventory shall serve as the ending inventory for the closing pharmacy as well as a record of additional or starting inventory for the pharmacy to which the drugs are transferred. A copy of the inventory shall be included in the records of each licensee.

(1) DEA Form 222 is required for transfer of Schedule II controlled substances.

(2) The inventory of controlled substances shall be completed pursuant to the requirements in 657—10.35(124,155A).

(3) The inventory of all noncontrolled prescription drugs may be estimated.

(4) The inventory shall include the name, strength, dosage form, and quantity of all prescription drugs transferred.

(5) Controlled substances requiring destruction or other disposal shall be transferred in the same manner as all other drugs. The new owner is responsible for the disposal of these substances as provided in rule 657—10.18(124).

d. The license certificate and CSA certificate of the closing or selling pharmacy shall be returned to the board office within ten days of closing or sale. The DEA registration certificate and all unused DEA Forms 222 shall be returned to the DEA.

e. A location that no longer houses a licensed pharmacy shall not display any sign, placard, or other notification, visible to the public, which identifies the location as a pharmacy. A sign or other public notification that cannot feasibly be removed shall be covered so as to conceal the identification as a pharmacy.

**8.35(8) Failure to complete licensure.** An application for a pharmacy license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process within six months of receipt by the board of

the required applications. The licensure process shall be complete upon the pharmacy's opening for business at the licensed location following an inspection rated as satisfactory by an agent of the board if such an inspection is required pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded.

These rules are intended to implement Iowa Code sections 124.101, 124.301, 124.306, 124.308, 126.10, 126.11, 126.16, 135C.33, 147.7, 147.55, 147.72, 147.74, 147.76, 155A.2 through 155A.4, 155A.6, 155A.10, 155A.12 through 155A.15, 155A.19, 155A.20, 155A.27 through 155A.29, 155A.32, and 155A.33.

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

**657—10.1(124) Who shall register.** Any person or business located in Iowa that manufactures, distributes, dispenses, prescribes, imports or exports, conducts research or instructional activities, or conducts chemical analysis with controlled substances in the state of Iowa, or that proposes to engage in such activities with controlled substances in the state, shall obtain and maintain a registration issued by the board unless exempt from registration pursuant to rule 10.6(124). A person or business required to be registered shall not engage in any activity for which registration is required until the application for registration is granted and the board has issued a certificate of registration to such person or business.

Manufacturers, distributors, reverse distributors, importers and exporters, individual practitioners (M.D., D.O., D.D.S., D.V.M., D.P.M., O.D., P.A., resident physician, advanced registered nurse practitioner), pharmacies, hospitals and animal shelters, care facilities, researchers and dog trainers, analytical laboratories, and teaching institutions shall register on forms provided by the board office. To be eligible to register, individual practitioners must hold a current, active license in good standing, issued by the appropriate Iowa professional licensing board, to practice their profession in Iowa.

**657—10.2(124) Application forms.** Application forms may be obtained from the Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Forms are also available on the board's Web site, [www.state.ia.us/ibpe](http://www.state.ia.us/ibpe). Registration renewal forms will be mailed to each registrant approximately 60 days before the expiration date of the registration. A registrant who has not received a renewal form 45 days before the expiration date of the registration is responsible for contacting the board to request an application.

**10.2(1) Signature requirements.** Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

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

*b.* If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location.

**10.2(2) Submission of multiple applications.** Any person or business required to obtain more than one registration may submit all applications in one package. Each application shall be complete and shall not refer to any accompanying application or any attachment to an accompanying application for required information.

**657—10.3(124) Registration and renewal.** For each registration or timely renewal of a registration to manufacture, distribute, dispense, prescribe, import or export, conduct research or instructional activities, or conduct chemical analysis with controlled substances listed in Schedules I through V of Iowa Code chapter 124, registrants shall pay a biennial fee of \$100.

**10.3(1) Time and method of payment.** Registration and renewal fees shall be paid at the time the application for registration or renewal is submitted. Payment should be made in the form of a personal, certified, or cashier's check or a money order made payable to the Iowa Board of Pharmacy. Payments made in the form of foreign currency or third-party endorsed checks will not be accepted.

**10.3(2) Late renewal.** Any registered person or business may apply, on forms provided by the board office, for registration renewal not more than 60 days prior to the expiration of the registration. Failure to renew a registration prior to the first day of the month following expiration shall require payment of the renewal fee and a penalty fee of \$100. Payment shall be made as specified in subrule 10.3(1).

**657—10.4(124) Exemptions—registration fee.** The registration fee is waived for federal, state, and local law enforcement agencies and for the following federal and state institutions: hospitals, health care or teaching institutions, and analytical laboratories authorized to possess, manufacture, distribute, and dispense controlled substances in the course of official duties.

**10.4(1) *Law enforcement officials.*** In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall maintain a registration to conduct chemical analysis. Such laboratories shall be exempt from payment of a fee for registration.

**10.4(2) *Registration and duties not exempt.*** Exemption from payment of a registration or registration renewal fee as provided in this rule does not relieve the agency or institution of registration or of any other requirements or duties prescribed by law.

**657—10.5(124) *Separate registration for independent activities; coincident activities.*** The following activities are deemed to be independent of each other and shall require separate registration. Any person or business engaged in more than one of these activities shall be required to separately register for each independent activity, provided, however, that registration in an independent activity shall authorize the registrant to engage in activities identified coincident with that independent activity.

**10.5(1) *Manufacturing controlled substances.*** A person or business registered to manufacture controlled substances in Schedules I through V may distribute any substances for which registration to manufacture was issued. A person or business registered to manufacture controlled substances in Schedules II through V may conduct chemical analysis and preclinical research, including quality control analysis, with any substances listed in those schedules for which the person or business is registered to manufacture.

**10.5(2) *Distributing controlled substances.*** This independent activity includes the delivery, other than by administering or dispensing, of controlled substances listed in Schedules I through V. No coincident activities are authorized.

**10.5(3) *Dispensing or instructing with controlled substances.*** This independent activity includes, but is not limited to, prescribing by individual practitioners, dispensing by pharmacies and hospitals, and conducting instructional activities with controlled substances listed in Schedules II through V. A person or business registered for this independent activity may conduct research and instructional activities with those substances for which the person or business is registered to the extent authorized under state law.

**10.5(4) *Conducting research with controlled substances listed in Schedule I.*** A researcher may manufacture or import the substances for which registration was issued provided that such manufacture or import is permitted under the federal Drug Enforcement Administration (DEA) registration. A researcher may distribute the substances for which registration was issued to persons or businesses registered or authorized to conduct research with that class of substances or registered or authorized to conduct chemical analysis with controlled substances.

**10.5(5) *Conducting research with controlled substances listed in Schedules II through V.*** A researcher may conduct chemical analysis with controlled substances in those schedules for which registration was issued, may manufacture such substances if and to the extent such manufacture is permitted under the federal DEA registration, and may import such substances for research purposes. A researcher may distribute controlled substances in those schedules for which registration was issued to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempt from registration pursuant to Iowa Code subsection 124.302(3), and may conduct instructional activities with controlled substances.

**10.5(6) *Conducting chemical analysis with controlled substances.*** A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code subsection 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

**10.5(7) *Importing or exporting controlled substances.*** A person or business registered to import controlled substances listed in Schedules I through V may distribute any substances for which such registration was issued.

**657—10.6(124) Separate registrations for separate locations; exemption from registration.** A separate registration is required for each principal place of business or professional practice location where controlled substances are manufactured, distributed, imported, exported, or dispensed unless the person or business is exempt from registration pursuant to Iowa Code subsection 124.302(3) or this rule.

**10.6(1) Warehouse.** A warehouse where controlled substances are stored by or on behalf of a registered person or business shall be exempt from registration except as follows:

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

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

**10.6(2) Sales office.** An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised shall be exempt from registration. Such office shall not contain controlled substances, except substances used for display purposes or for lawful distribution as samples, and shall not serve as a distribution point for filling sales orders.

**10.6(3) Prescriber's office.** An office used by a prescriber who is registered at another location and where controlled substances are prescribed but where no supplies of controlled substances are maintained shall be exempt from registration. However, a prescriber who practices at more than one office location where controlled substances are administered or otherwise dispensed as a regular part of the prescriber's practice shall register at each location wherein the prescriber maintains supplies of controlled substances.

**10.6(4) Prescriber in hospital.** A prescriber who is registered at another location and who treats patients and may order the administration of controlled substances in a hospital other than the prescriber's registered practice location shall not be required to obtain a separate registration for the hospital.

**10.6(5) Affiliated interns, residents, or foreign physicians.** An individual practitioner who is an intern, resident, or foreign physician may dispense and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom the registrant is employed provided that:

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

*b.* Such individual practitioner is acting only in the scope of employment in the hospital or institution;

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

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

**657—10.7 to 10.9** Reserved.

**657—10.10(124,147,155A) Inspection.** The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.

**657—10.11(124) Modification or termination of registration.** A registered individual or business may apply to modify a current registration as provided by this rule.

**10.11(1) Change of substances authorized.** Any registrant may apply to modify the substances authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, registration number, and the substances or schedules to be

added to or removed from the registration and shall be signed by the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

**10.11(2) Change of address of registered location.**

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

*b. Pharmacy, hospital, care facility, manufacturer, distributor, importer, or exporter.* An entity registered under these classifications shall apply to change the address of the registered location by submitting a completed application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 10.3(124) shall accompany each completed application.

**10.11(3) Change of registrant's name.**

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

*b. Pharmacy, hospital, care facility, manufacturer, distributor, importer, or exporter.* An entity registered under these classifications shall apply to change the registrant name by submitting a completed application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 10.3(124) shall accompany each completed application.

**10.11(4) Change of ownership of registered business entity.** A change of immediate ownership of a pharmacy, hospital, care facility, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the completion of an application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 10.3(124) shall accompany each completed application.

**10.11(5) Change of responsible individual.** Any registrant, except an individual practitioner, a researcher, a hospital, or a pharmacy, may apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, the name and title of the current responsible individual and of the new responsible individual, the effective date of the change, and the registration number, and shall be signed by the new responsible individual. No fee shall be required for the modification.

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

*b. Pharmacies and hospitals.* The responsible pharmacist may execute a power of attorney for DEA order forms to change responsibility under the registration issued to the pharmacy or hospital. The power of attorney shall include the name, address, DEA registration number, and Iowa uniform controlled substances Act (CSA) registration number of the registrant. The power of attorney shall identify the current and new responsible individuals and shall authorize the new responsible individual to execute applications and official DEA order forms to requisition Schedule II controlled substances. The power of attorney shall be signed by both individuals, shall be witnessed by two adults, and shall be maintained by the registrant and available for inspection or copying by representatives of the board or other state or federal authorities.

**10.11(6) Termination of registration.** A registration issued to an individual shall terminate upon the death of the individual. A registration issued to an individual or business shall terminate when the registered individual or business ceases legal existence, discontinues business, or discontinues professional practice.

**657—10.12(124) Denial, modification, suspension, or revocation of registration.**

**10.12(1) Grounds for suspension or revocation.** The board may suspend or revoke any registration upon a finding that the registrant:

- a. Has furnished false or fraudulent material information in any application filed under this chapter;
- b. Has had the registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended or revoked;
- c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though entry of the judgment or sentence has been withheld and the individual has been placed on probation;
- d. Has committed such acts as would render the registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section; or
- e. Has been subject to discipline by the registrant's respective professional licensing board and the discipline revokes, suspends, or modifies the registrant's authority regarding controlled substances (including, but not limited to, limiting or prohibiting the registrant from prescribing or handling controlled substances). A certified copy of the record of licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.

**10.12(2) Limited suspension or revocation.** If the board finds grounds to suspend or revoke a registration, the board may limit revocation or suspension of the registration to the particular controlled substance with respect to which the grounds for revocation or suspension exist. If the revocation or suspension is limited to a particular controlled substance or substances, the registrant shall be given a new certificate of registration for all substances not affected by revocation or suspension; no fee shall be required for the new certificate of registration. The registrant shall deliver the old certificate of registration to the board.

**10.12(3) Denial of registration or registration renewal.** If upon examination of an application for registration or registration renewal, including any other information the board has or receives regarding the applicant, the board determines that the issuance of the registration would be inconsistent with the public interest, the board shall serve upon the applicant an order to show cause why the registration should not be denied.

**10.12(4) Considerations in denial of registration.** In determining the public interest, the board shall consider all of the following factors:

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

**10.12(5) Order to show cause.** Before denying, modifying, suspending, or revoking a registration, the board shall serve upon the applicant or registrant an order to show cause why the registration should

not be denied, modified, revoked, or suspended. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted. If the order to show cause involves the possible denial of registration renewal, the order shall be served not later than 30 days before the expiration of the registration. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension pursuant to subrule 10.12(9).

**10.12(6) *Hearing requested.*** If an applicant or registrant who has received an order to show cause desires a hearing on the matter, the applicant or registrant shall file a request for a hearing within 30 days after the date of service of the order to show cause. If a hearing is requested, the board shall hold a hearing pursuant to 657—Chapter 35 at the time and place stated in the order and without regard to any criminal prosecution or other proceeding. Unless otherwise ordered by the board, an administrative law judge employed by the department of inspections and appeals shall be assigned to preside over the case and to render a proposed decision for the board's consideration.

**10.12(7) *Waiver of hearing.*** If an applicant or registrant entitled to a hearing on an order to show cause fails to file a request for hearing, or if the applicant or registrant requests a hearing but fails to appear at the hearing, the applicant or registrant shall be deemed to have waived the opportunity for a hearing unless the applicant or registrant shows good cause for such failure.

**10.12(8) *Final board order when hearing waived.*** If an applicant or registrant entitled to a hearing waives or is deemed to have waived the opportunity for a hearing, the executive director of the board may cancel the hearing and issue, on behalf of the board, the board's final order on the order to show cause.

**10.12(9) *Order of immediate suspension.*** The board may suspend any registration simultaneously with the service upon the registrant of an order to show cause why such registration should not be revoked or suspended if it finds there is an imminent danger to the public health or safety that warrants such action. If the board suspends a registration simultaneously with the service of the order to show cause upon the registrant, it shall serve an order of immediate suspension containing a statement of its findings regarding the danger to public health or safety upon the registrant with the order to show cause. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, unless sooner withdrawn by the board or dissolved by the order of the district court or an appellate court.

**10.12(10) *Disposition of controlled substances.*** If the board suspends or revokes a registration, the registrant shall promptly return the certificate of registration to the board. Also, upon service of the order of the board suspending or revoking the registration, the registrant shall deliver all affected controlled substances in the registrant's possession to the board or authorized agent of the board. Upon receiving the affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

**10.12(11) *Notifications.*** The board shall promptly notify the DEA and the Iowa department of public safety of all orders suspending or revoking registration and all forfeitures of controlled substances.

**657—10.13 and 10.14** Reserved.

**657—10.15(124,155A) Security requirements.** All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a person has provided effective controls against diversion, the board shall use

the security requirements set forth in these rules as standards for the physical security controls and operating procedures necessary to prevent diversion.

**10.15(1) *Physical security.*** Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operation. A registrant shall periodically review and adjust security measures based on rescheduling of substances or changes in the quantity of substances in the possession of the registrant.

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

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

**10.15(2) *Factors in evaluating physical security systems.*** In evaluating the overall security system of a registrant or applicant necessary to maintain effective controls against theft or diversion of controlled substances, the board may consider any of the following factors it deems relevant to the need for strict compliance with the requirements of this rule:

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

**10.15(3) *Manufacturing and compounding storage areas.*** Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.

**657—10.16(124) Report of theft or loss.** A registrant shall report in writing, on forms provided by the board, any theft or significant loss of any controlled substance when the loss is attributable to other than inadvertent error. The report shall be submitted to the board office within two weeks of the discovery of the theft or loss. Thefts shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action is taken against them. A copy of the report shall be maintained in the files of the registrant, and the board will provide a copy of the report to the DEA. In addition to this required report, DEA requires the registrant to deliver notice, immediately upon discovery of a theft or significant loss of controlled substances, to the nearest DEA field office via telephone, facsimile, or a brief written message explaining the circumstances.

**657—10.17(124) Accountability of stock supply.** An individual who administers a controlled substance from a non-patient-specific, stock supply in an institutional setting shall personally document on a separate readily retrievable record system each dose administered, wasted, or returned to the

pharmacy. Such documentation shall not be delegated to another individual. Wastage documentation shall include the signature of a witnessing licensed health care practitioner.

Distribution records for non-patient-specific, floor-stocked controlled substances shall bear the following information:

1. Patient's name;
2. Prescriber who ordered drug;
3. Name of drug, dosage form, and strength;
4. Time and date of administration to patient and quantity administered;
5. Signature or unique electronic signature of individual administering controlled substance;
6. Returns to the pharmacy;
7. Waste, which is required to be witnessed and cosigned by another licensed health care practitioner.

**657—10.18(124) Disposal.** Any persons legally authorized to possess controlled substances in the course of their professional practice or the conduct of their business shall dispose of such drugs pursuant to the procedures and requirements of this rule. Disposal records shall be maintained in the files of the registrant.

**10.18(1) Registrant stock supply.** Pharmacy personnel, registrants, and registrant staff shall remove from current inventory and dispose of controlled substances by one of the following procedures.

*a.* The responsible individual shall utilize the services of a DEA-registered and Iowa-licensed disposal firm.

*b.* The board may authorize and instruct the registrant to dispose of the controlled substances in one of the following manners:

- (1) By delivery to an agent of the board or to the board office;
- (2) By destruction of the drugs in the presence of a board officer, agent, inspector, or other authorized individual; or
- (3) By such other means as the board may determine to ensure that drugs do not become available to unauthorized persons.

**10.18(2) Waste.** Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage shall be made and maintained by the registrant for a minimum of two years following the destruction or other disposal. The record shall include the signatures of the individual destroying or otherwise disposing of the waste controlled substance and of the witnessing licensed health care provider or registered pharmacy technician and shall identify the following:

- a.* The controlled substance wasted;
- b.* The date of destruction or other disposition;
- c.* The quantity or estimated quantity of the wasted controlled substance;
- d.* The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance; and
- e.* The reason for the waste.

**10.18(3) Previously dispensed controlled substances.** Controlled substances dispensed to or for a patient and subsequently requiring destruction due to discontinuance of the drug, death of the patient, or other reasons necessitating destruction may be destroyed or otherwise disposed of by a pharmacist in witness of one other responsible adult pursuant to this subrule. All licenses and registrations issued to the pharmacy, the pharmacist, and any individual witnessing the destruction or other disposition shall not be subject to sanctions relating to controlled substances at the time of the destruction or disposition. The individuals involved in the destruction or other disposition shall not have been subject to any criminal, civil, or administrative action relating to violations of controlled substances laws, rules, or regulations within the past five years. The pharmacist in charge shall be responsible for designating pharmacists

authorized to participate in the destruction or other disposition pursuant to this subrule. The authorized pharmacist shall prepare and maintain in the pharmacy a readily retrievable record of the destruction or other disposition, which shall be clearly marked to indicate the destruction or other disposition of noninventory or patient drugs. The record shall include, at a minimum, the following:

- a. Source of the controlled substance (patient identifier or administering practitioner, if applicable, and date of return);
- b. The name, strength, and dosage form of the substance;
- c. The quantity returned and destroyed or otherwise disposed;
- d. The date the substance is destroyed or otherwise disposed;
- e. The signatures or other unique identification of the pharmacist and the witness.

**657—10.19 and 10.20** Reserved.

**657—10.21(124,126,155A) Prescription requirements.** All prescriptions for controlled substances shall be dated as of, and manually signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue.

**10.21(1) Form of prescription.** All prescriptions shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber's signature. When an oral order is not permitted, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. A secretary or agent may prepare a prescription for the signature of the prescriber but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

**10.21(2) Verification by pharmacist.** The pharmacist shall verify the authenticity of the prescription with the individual prescriber in each case when a prescription for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

**10.21(3) Intern, resident, foreign physician.** An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.6(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or printed name of the intern, resident, or foreign physician as well as the prescriber's signature.

**10.21(4) Valid prescriber/patient relationship.** Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

**10.21(5) Schedule II prescriptions.** With appropriate verification, a pharmacist may add information provided by the patient or patient's agent, such as the patient's address, to a Schedule II controlled substance prescription. A pharmacist shall never change the patient's name, the controlled substance prescribed except for generic substitution, or the name or signature of the prescriber. After consultation with the prescribing practitioner and documentation of such consultation, a pharmacist may change or add the following information on a Schedule II controlled substance prescription:

- a. The drug strength;

- b. The dosage form;
- c. The drug quantity;
- d. The directions for use; and
- e. The date the prescription was issued.

**657—10.22(124) Schedule II emergency prescriptions.**

**10.22(1) *Emergency situation defined.*** For the purposes of authorizing an oral or electronically transmitted prescription for a Schedule II controlled substance listed in Iowa Code section 124.206, the term “emergency situation” means those situations in which the prescribing practitioner determines that all of the following apply:

- a. Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.
- b. No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.
- c. It is not reasonably possible for the prescribing practitioner to provide a written prescription to be presented to the person dispensing the substance prior to the dispensing.

**10.22(2) *Requirements of emergency prescription.*** In the case of an emergency situation as defined herein, a pharmacist may dispense a controlled substance listed in Schedule II pursuant to an electronic transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner.

b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The pharmacist shall record the manner by which the authorization was verified and include the pharmacist’s name or unique identification.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the electronic transmission or a written record of the oral transmission authorizing the emergency dispensing. If the emergency prescription is transmitted by the practitioner’s agent, the record shall include the name and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via electronic transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the electronic transmission shall not be obscured or rendered illegible due to such security features.

e. Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of 657—10.21(124,126,155A), the prescription shall have written on its face “Authorization for Emergency Dispensing” and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph “c.”

f. The pharmacist shall notify the board if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

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**657—10.23(124) Schedule II prescriptions—partial filling.** The partial filling of a prescription for a controlled substance listed in Schedule II is permitted as provided in this rule.

**10.23(1) *Insufficient supply on hand.*** If the pharmacist is unable to supply the full quantity called for in a prescription and makes a notation of the quantity supplied on the prescription record, a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling. If the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

**10.23(2) *Long-term care or terminally ill patient.*** A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

*a.* If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.

*b.* The pharmacist shall record on the prescription whether the patient is “terminally ill” or an “LTCF patient.” For each partial filling, the dispensing pharmacist shall record on the back of the prescription, or on another appropriate uniformly maintained and readily retrievable record, the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

*c.* The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

*d.* Information pertaining to current Schedule II prescriptions for patients in a LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.4(124,155A).

**657—10.24(124) Schedule II medication order.** Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.18(124,155A), as applicable.

**657—10.25(124) Schedule II—issuing multiple prescriptions.** An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

**10.25(1) *Refills prohibited.*** The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

**10.25(2) *Legitimate medical purpose.*** Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber’s professional practice.

**10.25(3) *Dates and instructions.*** Each prescription issued pursuant to this rule shall be dated as of and manually signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

**10.25(4) *Authorized fill date unalterable.*** Regardless of the provisions of subrule 10.21(5), when a prescription contains instructions from the prescriber indicating that the prescription shall not be filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

**10.25(5) *Number of prescriptions and authorized quantity.*** An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber

deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

**10.25(6) *Prescriber's discretion.*** Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients only once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.

[ARC 8172B, IAB 9/23/09, effective 10/28/09]

**657—10.26** Reserved.

**657—10.27(124,155A) Facsimile transmission of a controlled substance prescription.**

**10.27(1) *Schedule II prescription.*** A prescription for a Schedule II controlled substance may be transmitted via facsimile to the pharmacy only as provided in rules 657—21.12(124,155A) to 657—21.16(124,155A).

**10.27(2) *Schedule III, IV, or V prescription.*** A prescription for a Schedule III, IV, or V controlled substance may be transmitted via facsimile to the pharmacy only as provided in rule 657—21.9(124,155A).

**657—10.28(124,155A) Schedule III, IV, or V refills.** No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which it was issued nor be refilled more than five times.

**10.28(1) *Record.*** Each filling and refilling of a prescription shall be entered on the prescription or on another uniformly maintained and readily retrievable record.

*a.* The following information shall be retrievable by the prescription number: the name and dosage form of the controlled substance, the date filled or refilled, the quantity dispensed, the unique identification of the dispensing pharmacist for each refill, and the total number of refills authorized for that prescription.

*b.* If the pharmacist merely initials or affixes the pharmacist's unique identifier and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

**10.28(2) *Oral refill authorization.*** The prescribing practitioner may authorize additional refills of Schedule III, IV, or V controlled substances on the original prescription through an oral refill authorization transmitted to the pharmacist provided the following conditions are met:

*a.* The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.

*b.* The pharmacist who obtains the oral authorization records from the prescriber who issued the original prescription records on or with the original prescription the date, the quantity of each refill, the number of additional refills authorized, and the pharmacist's unique identification.

*c.* The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.

*d.* The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

**10.28(3) *Automated data processing record system.*** An automated data processing record system may be used for the storage and retrieval of Schedule III, IV, and V controlled substance prescription fill and refill information subject to the conditions and requirements of rules 657—21.4(124,155A) and 657—21.5(124,155A).

**657—10.29(124,155A) Schedule III, IV, or V partial fills.** The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible provided that each partial fill is recorded in the same manner as a refill. The total quantity dispensed in all partial fills shall not exceed

the total quantity prescribed. No dispensing shall occur later than six months after the date on which the prescription was issued.

**657—10.30(124,155A) Schedule III, IV, and V medication order.** A Schedule III, IV, or V controlled substance may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

**657—10.31(124,155A) Dispensing Schedule V controlled substances without a prescription.** A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug and Cosmetic Act, and excepting products containing ephedrine, pseudoephedrine, or phenylpropanolamine, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

**10.31(1) Who may dispense.** Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

**10.31(2) Frequency and quantity.** Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V controlled substance:

- a. 240 cc (8 ounces) of any controlled substance containing opium.
- b. 120 cc (4 ounces) of any other controlled substance.
- c. 48 dosage units of any controlled substance containing opium.
- d. 24 dosage units of any other controlled substance.

**10.31(3) Age of purchaser.** The purchaser shall be at least 18 years of age.

**10.31(4) Identification.** The pharmacist shall require every purchaser under this rule not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

**10.31(5) Record.** A bound record book (i.e., with pages sewn or glued to the spine) for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the substance to the purchaser.

**10.31(6) Prescription not required under other laws.** No other federal or state law or regulation requires a prescription prior to distributing or dispensing a Schedule V controlled substance.

**657—10.32(124,155A) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine.** A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

**10.32(1) Who may dispense.** Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

**10.32(2) Packaging of nonliquid forms.** A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

**10.32(3) Frequency and quantity.** Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine,

pseudoephedrine, or phenylpropanolamine; dispensing at retail to the same purchaser within a single calendar day shall not exceed 3,600 mg.

**10.32(4) *Age of purchaser.*** The purchaser shall be at least 18 years of age.

**10.32(5) *Identification.*** The pharmacist shall require every purchaser under this rule to present a government-issued photo identification, including proof of age when appropriate. The pharmacist shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

**10.32(6) *Record.*** A legible dispensing record shall be created and maintained for the dispensing of ephedrine, pseudoephedrine, and phenylpropanolamine products pursuant to this rule.

*a. Record contents.* The record shall contain the following:

- (1) The name, address, and signature of the purchaser.
- (2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.
- (3) The date and time of the purchase.
- (4) The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

*b. Record format.* The record shall be maintained using one of the following options:

- (1) A hard-copy record maintained in a bound logbook (i.e., with pages sewn or glued to the spine).
- (2) A record in the pharmacy's electronic prescription dispensing record-keeping system.
- (3) A record in an electronic data collection system that captures each of the data elements required by this subrule. The electronic data collection system shall be capable of producing a hard-copy printout of a record upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

**10.32(7) *Notice required.*** The following notice shall be included in the logbook required pursuant to subrule 10.32(6) or shall be displayed in the dispensing area and be visible to the public:

“WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization, imprisoned not more than five years, or both.”

**657—10.33(124,155A) Schedule II perpetual inventory in pharmacy.** Each pharmacy located in Iowa that dispenses Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to the requirements of this rule. All records relating to the perpetual inventory shall be maintained by the pharmacy and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

**10.33(1) *Record format.*** The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

**10.33(2) *Information included.*** The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each prescription filled and each shipment received. The record shall also include incident reports and reconciliation records pursuant to subrules 10.33(3) and 10.33(4).

**10.33(3) *Changes to a record.*** If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

**10.33(4) Reconciliation.** The pharmacist in charge shall be responsible for reconciling the physical inventory of all Schedule II controlled substances with the perpetual inventory balance on a periodic basis but no less frequently than annually. In case of any discrepancies between the physical inventory and the perpetual inventory, the pharmacist in charge shall determine the need for further investigation, and significant discrepancies shall be reported to the board pursuant to rule 10.16(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and available for review and copying by the board or agents of the board for a period of two years from the date of the record. The reconciliation process may be completed using either of the following procedures or a combination thereof:

*a.* The dispensing pharmacist verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. All discrepancies shall be reported to the pharmacist in charge. If any Schedule II controlled substances in the pharmacy's current inventory have been dispensed and verified in this manner within the year, and there are no discrepancies noted, no additional reconciliation action is required. A drug that has had no activity within the year shall be reconciled pursuant to paragraph "b" of this subrule.

*b.* A physical count of each Schedule II controlled substance stocked by the pharmacy shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory. Any discrepancies between the physical inventory and the perpetual inventory shall be reported to the pharmacist in charge.

**657—10.34(124,155A) Records.** Every inventory or other record required to be kept under this chapter or under Iowa Code chapter 124 shall be kept by the registrant and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record except as otherwise required in these rules. Controlled substances records shall be maintained in a readily retrievable manner that establishes the receipt and distribution of all controlled substances.

**10.34(1) Schedule I and II records.** Inventories and records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the registrant.

**10.34(2) Schedule III, IV, and V records.** Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the required information is readily retrievable from the ordinary business records of the registrant.

**10.34(3) Date of record.** The date on which a controlled substance is actually received, imported, distributed, exported, or otherwise transferred shall be used as the date of receipt or distribution.

**10.34(4) Receipt and disbursement records.** Each record of receipt or disbursement of controlled substances, unless otherwise provided in these rules or pursuant to federal law, shall include the following:

- a.* The name of the substance;
- b.* The strength and dosage form of the substance;
- c.* The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from whom the substances were acquired;
- d.* The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to whom the substances were distributed; and

*e.* The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to whom the substances were distributed for disposal, if appropriate.

**10.34(5) *Dispensing records.*** Each record of dispensing of controlled substances to a patient or research subject shall include the following information:

- a.* The name and address of the person to whom dispensed;
- b.* The date of dispensing;
- c.* The name of the substance;
- d.* The quantity of the substance dispensed; and
- e.* The name or unique identification of the individual who dispensed or administered the substance.

**10.34(6) *Ordering or distributing Schedule I or II controlled substances - DEA Form 222.*** Except as otherwise provided by subrule 10.34(7) and under federal law, a DEA Form 222 is required for each distribution of a Schedule I or II controlled substance. An order form may be executed only on behalf of the registrant named on the order form and only if the registrant's DEA and Iowa registrations for the substances being purchased have not expired or been revoked or suspended by the issuing agency.

*a.* Order forms shall be obtained, executed, and filled pursuant to DEA requirements. Each form shall be complete, legible, and properly prepared, executed, and endorsed and shall contain no alteration, erasure, or change of any kind.

*b.* The purchaser shall submit Copy 1 and Copy 2 of the order form to the supplier.

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

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

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

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

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

**10.34(7) *Ordering or distributing Schedule I or II controlled substances - electronic ordering system.*** A registrant authorized to order or distribute Schedule I or II controlled substances via the DEA Controlled Substances Ordering System (CSOS) shall comply with the requirements of the DEA relating to that system, including the maintenance and security of digital certificates, signatures, and passwords and all record-keeping and reporting requirements.

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

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

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

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

*e.* The supplier shall retain an electronic record of every order, including a record of the number of commercial or bulk containers furnished for each item and the date on which the supplier shipped the containers to the purchaser. The shipping record shall be linked to the electronic record of the

order. Unless otherwise provided under federal law, a supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

*f.* If an order cannot be filled for any reason, the supplier shall notify the purchaser and provide a statement as to the reason the order cannot be filled. When a purchaser receives such a statement from a supplier, the purchaser shall electronically link the statement of nonacceptance to the original electronic order. Neither a purchaser nor a supplier may correct a defective order; the purchaser must issue a new order for the order to be filled.

*g.* When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and shall identify the individual reconciling the order. A purchaser shall, for each order filled, retain the original signed order and all linked records for that order for two years. The purchaser shall also retain all copies of each unfilled or defective order and each linked statement.

*h.* A supplier shall retain each original order filled and all linked records for two years. A supplier shall, for each electronic order filled, forward to the DEA within two business days either a copy of the electronic order or an electronic report of the order in a format specified by the DEA.

*i.* Records of CSOS electronic orders and all linked records shall be maintained by a supplier and a purchaser for two years following the date of shipment or receipt, respectively. Records may be maintained electronically or in hard-copy format. Records that are maintained electronically shall be readily retrievable from all other records, shall be easily readable or easily rendered into a readable format, shall be readily retrievable at the registered location, and shall be made available to the board, to the board's agents, or to the DEA upon request. Records maintained in hard-copy format shall be maintained in the same manner as DEA Form 222.

**657—10.35(124,155A) Physical count and record of inventory.** Responsibility for ensuring that a required inventory is timely completed shall rest with the registrant or, in the case of a registered business, shall rest with the owner of the business. A registrant or owner of a registered business may delegate the actual taking of any inventory. The person or persons responsible for taking the inventory shall sign the completed inventory record.

**10.35(1) Record and procedure.** Each inventory record, except the periodic count and reconciliation required pursuant to subrule 10.33(4), shall comply with the requirements of this subrule and shall be maintained for a minimum of two years from the date of the inventory.

*a.* Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

*b.* Each inventory shall be maintained in a handwritten, typewritten, or electronically printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

*c.* Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. These shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient, substances maintained in emergency medical services programs or care facility emergency supplies, outdated or adulterated substances pending destruction, and substances stored in a warehouse on behalf of the registrant.

*d.* A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

*e.* The inventory shall be taken either prior to opening or following the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

*f.* The inventory record, unless otherwise provided under federal law, shall include the following information:

- (1) The name of the substance;
- (2) The strength and dosage form of the substance; and
- (3) The quantity of the substance.

*g.* For all substances listed in Schedule I or II, and for all solid oral and injectable hydrocodone-containing products, the quantity shall be an exact count or measure of the substance.

*h.* For all substances listed in Schedule III, IV, or V, except for hydrocodone-containing products identified in paragraph “g” herein, the quantity may be an estimated count or measure of the substance unless the container has been opened and originally held more than 100 dosage units. If the opened commercial container originally held more than 100 dosage units, an exact count of the contents shall be made. Liquid oral hydrocodone-containing products packaged in incremented containers shall be measured to the nearest increment; products packaged in nonincremented containers may be estimated to the nearest one-fourth container.

**10.35(2) *Initial inventory.*** A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

**10.35(3) *Annual inventory.*** After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least annually. The annual inventory may be taken on any date that is within one year of the previous inventory date.

**10.35(4) *Change of ownership.*** Both the current owner and the prospective owner shall be responsible for ensuring that an inventory of all controlled substances is timely completed whenever there is a change of ownership of any pharmacy or drug wholesaler licensed pursuant to Iowa Code section 155A.13 or 155A.17, respectively.

**10.35(5) *Change of pharmacist in charge (PIC).*** An inventory of all controlled substances shall be completed whenever there is a change of PIC. The inventory shall be taken following the close of business the last day of the terminating PIC’s employment and prior to opening for business the first day of the new PIC’s employment. A single inventory shall be sufficient if there is no lapse between employment of the terminating PIC and the new PIC.

**10.35(6) *Change of registered location.*** A registrant shall take an inventory of all controlled substances whenever there is a change of registered location. The inventory shall be taken following the close of business the last day at the location being vacated. This inventory shall serve as the ending inventory for the location being vacated as well as a record of beginning inventory for the new location.

**10.35(7) *Discontinuing registered activity.*** A registrant shall take an inventory of controlled substances at the close of business the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to whom the substances are transferred.

**10.35(8) *Newly controlled substances.*** On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances, any registrant who possesses the newly controlled substance shall take an inventory of all stocks of the substance on hand. That initial inventory record shall be maintained with the most recent controlled substances inventory record. Thereafter, the newly controlled substance shall be included in each inventory made by the registrant.

**657—10.36(124) *Samples and other complimentary packages—records.*** Complimentary packages and samples of controlled substances may be distributed to practitioners pursuant to federal and state law only if the person distributing the items leaves with the practitioner a specific written list of the items delivered.

**10.36(1) *Distribution record.*** The record form for the distribution of complimentary packages of controlled substances shall contain the following information:

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

**10.36(2) *Reports to the board.*** Any person who distributes controlled substances pursuant to this rule shall report all such distributions to the board. Reports shall:

- a.* Include the information identified in subrule 10.36(1). Reports may consist of copies of those distribution records or may be computer-generated listings identifying those distributions.

b. Be submitted as soon as practicable after distribution to the practitioner but no less often than once each calendar quarter.

**10.36(3) Practitioner records.** A practitioner who regularly administers or dispenses controlled substances shall keep records of the receipt and disbursement of such drugs, including complimentary packages and samples. Records shall be filed in a readily retrievable manner in accordance with federal requirements and shall be made available for inspection and copying by agents of the board or other authorized individuals for at least two years from the date of the record.

**657—10.37(124,126) Revision of controlled substances schedules.**

**10.37(1) Application for exception.** Any person seeking to have any compound, mixture, or preparation containing any depressant or stimulant substance listed in any of the schedules in Iowa Code chapter 124 excepted from the application of all or any part of that chapter may apply to the board for such exception.

a. An application for an exception under this rule shall provide evidence that an exception has been granted under the federal Controlled Substances Act.

b. The board shall permit any interested person to file written comments on or objections to the proposal for exception and shall designate the time during which such filings may be made. After consideration of the application and any comments on or objections to the proposal for exception, the board shall issue its findings on the application.

**10.37(2) Designation of new controlled substance.** The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than 30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201, subsection 4.

**10.37(3) Objection to designation of a new controlled substance.** The board may object to the designation of any new substance as a controlled substance within 30 days following publication in the Federal Register of a final order so designating the substance under federal law. The board shall file objection to the designation of a substance as controlled, shall afford all interested parties an opportunity to be heard, and shall issue the board's decision on the new designation as provided in Iowa Code section 124.201, subsection 4.

**657—10.38(124) Temporary designation of controlled substances.**

**10.38(1)** Amend Iowa Code section 124.206, subsection 3, by adding the following new paragraph:

*ab.* Tapentadol.

**10.38(2)** Amend Iowa Code section 124.212, subsection 5, as follows:

5. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts: ~~pregabalin~~

*a.* Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].

*b.* Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

[ARC 7906B, IAB 7/1/09, effective 6/22/09]

**657—10.39(124,126) Excluded substances.** The Iowa board of pharmacy hereby excludes from all schedules the current list of "Excluded Nonnarcotic Products" identified in Title 21, CFR Part 1308, Section 22. Copies of the list of excluded products may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

**657—10.40(124,126) Anabolic steroid defined.** Anabolic steroid, as defined in Iowa Code section 126.2, paragraph 2, includes any substance identified as such in Iowa Code section 124.208, paragraph 6, or in Iowa Code section 126.2, paragraph 2.

These rules are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 147.95, 147.99, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

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<sup>0</sup> Two or more ARCs

<sup>1</sup> Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 1991.



CHAPTER 21  
ELECTRONIC DATA IN PHARMACY PRACTICE

**657—21.1(124,155A) Definitions.** For the purpose of this chapter, the following definitions shall apply:

“*Electronic signature*” means a confidential personalized digital key, code, or number used for secure electronic data transmissions which identifies and authenticates the signatory.

“*Electronic transmission*” means the transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment. “Electronic transmission” includes, but is not limited to, transmission by facsimile machine, transmission to a printer as provided in subrule 21.7(3), and transmission by computer link, modem, or other communication device.

“*Prescription drug order*” or “*prescription*” means a lawful order of a practitioner for a drug or device for a specific patient that is communicated to a pharmacy, regardless of whether the communication is oral, electronic, or in printed form.

**657—21.2(124,155A) System security and safeguards.** To maintain the integrity and confidentiality of patient records and prescription drug orders, any system or computer utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders. Once a drug or device has been dispensed, any alterations in either the prescription drug order data or the patient record shall be documented and shall include the identification of all pharmacy personnel who were involved in making the alteration as well as the responsible pharmacist.

**657—21.3(124,155A) Verifying authenticity of an electronically transmitted prescription.** The pharmacist shall ensure the validity of the prescription as to its source of origin. Measures to be considered in authenticating prescription drug orders received via electronic transmission or signed utilizing an electronic signature include:

1. Maintenance of a practitioner number reference or electronic signature file.
2. Verification of the telephone number of the originating facsimile equipment or oral communication device.
3. Telephone verification with the practitioner’s office that the prescription was both issued by the practitioner and transmitted by the practitioner or the practitioner’s authorized agent.
4. Other efforts which, in the professional judgment of the pharmacist, may be necessary to ensure that the transmission was initiated by the prescriber.

**657—21.4(124,155A) Automated data processing system.** An automated data processing system may be used, subject to the requirements contained in this rule, for the storage and retrieval of original and refill information for prescription orders.

**21.4(1) On-line retrieval of prescription information.** Any computerized system shall provide on-line retrieval (via CRT display and hard-copy printout) of original prescription order information and refill history information. This shall include, but is not limited to, the following:

- a. Original prescription number;
- b. Date of issuance of the original prescription order by the practitioner;
- c. Date and quantity of initial fill;
- d. Date and quantity of each refill or partial fill, if applicable;
- e. Full name and address of the patient;
- f. Name, address, and, if a controlled substance, DEA registration number of the prescriber;
- g. Name, strength, dosage form, quantity of the drug or device prescribed, and the total number of refills authorized by the prescribing practitioner; and
- h. For each fill or refill, the identification code, name, or initials of the dispensing pharmacist.

**21.4(2) Printout of prescription fill data.** Any computerized system shall have the capability of producing a printout of any prescription fill data the user pharmacy is responsible for maintaining or

producing under state and federal rules and regulations. This would include a refill-by-refill audit trail for any specified strength and dosage form of any prescription drug by brand or generic name or both. In any computerized system employed by a user pharmacy, the central record-keeping location must be capable of providing the printout to the pharmacy within 48 hours. The printout shall include the following:

- a. Name of the prescribing practitioner;
- b. Name and address of the patient;
- c. Quantity dispensed on each fill;
- d. Date of dispensing for each fill;
- e. Name or identification code of the dispensing pharmacist; and
- f. The number of the original prescription order.

**21.4(3) Auxiliary procedure for system downtime.** In the event that a pharmacy utilizing a computerized system experiences system downtime, the pharmacy shall have an auxiliary procedure that will be used for documentation of fills of prescription orders. This auxiliary procedure shall ensure that refills are authorized by the original prescription order, that the maximum number of refills has not been exceeded, and that all of the appropriate data is retained for on-line data entry when the computer system is again available for use. As soon as reasonably possible upon resuming use of the computerized system, entry of all appropriate data accumulated during the system downtime shall be completed.

**657—21.5(124,155A) Pharmacist verification of controlled substance refills—daily printout or logbook.** The individual pharmacist who makes use of the system shall provide documentation of the fact that the refill information entered into a computer each time the pharmacist refills an original prescription order for a controlled substance is correct. If the system provides a hard-copy printout of each day's controlled substance prescription order refill data, that printout shall be verified, dated, and signed by each individual pharmacist who refilled a controlled substance prescription order. Each individual pharmacist must verify that the data indicated is correct and sign this document in the same manner as the pharmacist would sign a check or legal document (e.g., J. H. Smith or John H. Smith). This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription order refill data shall be generated by and available at each pharmacy using a computerized system within 48 hours of the date on which the refill was dispensed. The printout shall be verified and signed by each pharmacist involved with such dispensing.

In lieu of preparing and maintaining printouts as provided above, the pharmacy may maintain a bound logbook or separate file. The logbook or file shall include a statement signed each day by each individual pharmacist involved in each day's dispensing that attests to the fact that the refill information entered into the computer that day has been reviewed by the pharmacist and is correct as shown. Pharmacist statements shall be signed in the manner previously described. The log book or file shall be maintained at the pharmacy for a period of two years after the date of dispensing the appropriately authorized refill.

**657—21.6** Reserved.

**657—21.7(124,155A) Electronically prepared prescriptions.** A prescriber may initiate and authorize a prescription drug order utilizing a computer or other electronic communication or recording device. The prescription drug order shall contain all information required by Iowa Code section 155A.27. The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 21.3(124,155A).

**21.7(1) Controlled substances.** A prescription for a controlled substance prepared pursuant to this rule may be transmitted to a pharmacy via facsimile transmission as provided by rule 21.9(124,155A) or rules 21.12(124,155A) through 21.16(124,155A). The transmitted prescription shall include the prescriber's original signature or electronic signature.

**21.7(2) *Noncontrolled prescription drugs.*** A prescription for a noncontrolled prescription drug prepared pursuant to this rule may be transmitted to a pharmacy via computer-to-computer transmission as provided in rule 21.8(124,155A) or via facsimile transmission as provided in rule 21.9(124,155A). The transmitted prescription shall include the prescriber's original signature or electronic signature.

**21.7(3) *Printed (hard-copy) prescriptions.*** A prescription prepared pursuant to this rule may be printed by the prescriber or prescriber's agent for delivery to a pharmacy.

*a.* A prescription for a controlled substance shall include the prescriber's original signature.

*b.* If the prescriber authenticates a prescription for a noncontrolled prescription drug utilizing an electronic signature, the printed prescription shall be printed on security paper that is designed to prevent photocopying or other duplication of the printed prescription by prominently disclosing the word "void" or "copy" on the duplication or by including a watermark or background that will not appear on duplication. If a watermark or background is used, the prescription shall include a statement that unless the watermark or background appears, the prescription is not valid.

*c.* When a prescription prepared pursuant to this subrule is transmitted to a pharmacy via facsimile, or when a prescription prepared pursuant to this subrule is scanned into an electronic record system, the watermark or background will not appear or the word "void" or "copy" will appear. The means of transmission via facsimile and the means of scanning into an electronic record system shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare the prescription. It is the responsibility of the pharmacist to verify the validity of the prescription as provided by rule 657—8.19(124,126,155A) or 657—21.3(124,155A). [ARC 7636B, IAB 3/11/09, effective 4/15/09]

**657—21.8(124,155A) *Computer-to-computer transmission of a prescription.*** Prescription drug orders, excluding orders for controlled substances, may be communicated directly from a prescriber's computer to a pharmacy's computer prescription processing system by electronic transmission. The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 21.3(124,155A).

**21.8(1) *Secure transmission and patient's choice.*** Orders shall be sent only to the pharmacy of the patient's choice, and no unauthorized intervening person or other entity shall change the content of the prescription drug order or compromise its confidentiality during the transmission process.

**21.8(2) *Information required.*** The electronically transmitted order shall identify the transmitter's telephone number for verbal confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission as well as any other information required by federal or state laws, rules, or regulations.

**21.8(3) *Who may transmit.*** Orders shall be initiated only by an authorized prescriber and shall include the prescriber's electronic signature. Orders may be transmitted by the prescriber or the prescriber's agent.

**21.8(4) *Original prescription.*** The electronic transmission shall be deemed the original prescription drug order provided it meets the requirements of this rule.

**657—21.9(124,155A) *Facsimile transmission (fax) of a prescription.*** A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The faxed prescription drug order shall serve as the original prescription, shall be maintained for a minimum of two years from the date of last fill or refill, and shall contain all information required by Iowa Code section 155A.27, including the prescriber's signature or electronic signature. The faxed prescription drug order, if transmitted by the practitioner's agent, shall identify the transmitting agent by name and title and shall include the prescriber's signature or electronic signature. The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an

electronic signature as provided by rule 657—8.19(124,126,155A) or 657—21.3(124,155A). This rule shall not apply to a prescription drug order transmitted pursuant to 657—subrule 8.15(1), paragraph “d.”

[ARC 7636B, IAB 3/11/09, effective 4/15/09; ARC 8171B, IAB 9/23/09, effective 10/28/09]

**657—21.10 and 21.11** Reserved.

**657—21.12(124,155A) Prescription drug orders for Schedule II controlled substances.** A pharmacist may dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of a written, signed prescription from the prescribing practitioner provided that the original written, signed prescription is received by the pharmacist prior to the actual dispensing of the controlled substance. If the emergency authorization is transmitted to the pharmacy by the practitioner’s agent, the transmission shall include the name and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The original prescription shall be verified against the transmission at the time the substance is actually dispensed, shall be properly annotated, and shall be retained with the electronic transmission for filing.  
[ARC 7636B, IAB 3/11/09, effective 4/15/09]

**657—21.13(124,155A) Prescription drug orders for Schedule II controlled substances—emergency situations.** A pharmacist may in an emergency situation as defined in 657—subrule 10.22(1) dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of a written, signed prescription from the prescribing practitioner pursuant to the requirements of 657—10.22(124). The facsimile or a print of the electronic transmission shall serve as the temporary written record required by 657—subrule 10.22(2).

**657—21.14(124,155A) Facsimile transmission of a prescription for Schedule II narcotic substances—parenteral.** A prescription for a nonoral dosage unit of a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a practitioner or the practitioner’s agent to the pharmacy via facsimile. If the prescription is transmitted by the practitioner’s agent, the transmission shall include the name and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The facsimile serves as the original written prescription.  
[ARC 7636B, IAB 3/11/09, effective 4/15/09]

**657—21.15(124,155A) Facsimile transmission of Schedule II controlled substances—long-term care facility patients.** A prescription for any Schedule II controlled substance for a resident of a long-term care facility may be transmitted by the practitioner or the practitioner’s agent to the dispensing pharmacy via facsimile. If the prescription is transmitted by the practitioner’s agent, the transmission shall include the name and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription.

**21.15(1) Original prescription.** The facsimile serves as the original written prescription.

**21.15(2) Information required.** The patient’s address on the prescription shall indicate that the address location is a long-term care facility.

[ARC 7636B, IAB 3/11/09, effective 4/15/09]

**657—21.16(124,155A) Facsimile transmission of Schedule II controlled substances—hospice patients.** A prescription for a Schedule II controlled substance for a patient enrolled in a hospice care program licensed pursuant to Iowa Code chapter 135J or a program certified or paid for by Medicare under Title XVIII may be transmitted via facsimile by the practitioner or the practitioner’s agent to the dispensing pharmacy. If the prescription is transmitted by the practitioner’s agent, the transmission shall

include the name and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription.

**21.16(1)** *Original prescription.* The facsimile serves as the original written prescription.

**21.16(2)** *Information required.* The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient.

[ARC 7636B, IAB 3/11/09, effective 4/15/09]

These rules are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 155A.27, and 155A.35.

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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 April 1, 2010, 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, 2008 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 April 1, 2010, 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.

[ARC 7735B, IAB 5/6/09, effective 4/7/09; ARC 8151B, IAB 9/23/09, effective 9/1/09]

**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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## VOLUNTEER SERVICE, IOWA COMMISSION ON[817]

[Created by Executive Order 48 on 2/14/94]  
 [Prior to 3/31/04, see Iowa Commission on National and Community Service[555];  
 renamed Iowa Commission on Volunteer Service by Executive Order 64 on 5/18/98]

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CHAPTER 9  
IOWA SUMMER YOUTH CORPS

**817—9.1(83GA,SF482) Purpose and program description.** The purpose of the Iowa summer youth corps is to provide youth with meaningful community service opportunities along with instruction and reflection activities to enrich the learning experience, teach civic responsibility, and strengthen communities. On a competitive basis, Iowa summer youth corps grants will give support to summer youth corps projects in Iowa. The program is established under the authority of the Iowa commission on volunteer service, pursuant to Iowa Code chapter 15H as amended by 2009 Iowa Acts, Senate File 482. [ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—9.2(83GA,SF482) Applications.** Appropriate forms and applications for grants are available from the commission at [www.volunteeriowa.org](http://www.volunteeriowa.org). [ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—9.3(83GA,SF482) Incentives.** Incentives will be determined by federal funding guidelines or restrictions depending on the source of funds utilized for the Iowa summer youth corps in a given grant year. Types of incentives may include:

1. Education awards that may be used to further educational attainment and that may be earned upon completion of a defined number of hours;
2. Living allowances that are not considered wages but are paid evenly over the course of a service period; or
3. Wages that are based on the hours worked.

Types of incentives or combinations of incentives that may be used for a program design will be described in the application instructions.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—9.4(83GA,SF482) Grant criteria.** To respond to funding priorities, as funds are made available, the executive director of the commission will establish criteria consistent with federal regulations. If federal funds are being offered, applicants will be considered on a competitive basis. At a minimum, the criteria will contain the following:

1. Goals and objectives of the project;
2. Qualifications of the applicant to manage funds;
3. For new and re-competing applicants, letters of local support verifying coordination and communitywide cooperation;
4. Total project budget;
5. For previous grantees, evidence of ability to submit timely and accurate reports;
6. Description and time line of planned activities;
7. Agreement to develop for the project a community partnership group whose membership should include a cross section of the community served;
8. Description of the applicant organization, including staffing pattern; and
9. Documentation of the applicant's ability to provide the required local match.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—9.5(83GA,SF482) Designated funds.** A percentage of the grants will be designated by the commission to address the needs of the city enterprise zones that meet the distress criteria outlined in Iowa Code section 15E.194.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—9.6(83GA,SF482) Application process for new grants.**

**9.6(1)** The commission shall issue a request for proposals containing project criteria and application forms for the appropriate fiscal year.

**9.6(2)** The applicant shall submit the completed application to the commission according to the time line identified in the request for proposals.

**9.6(3)** Applications submitted will be reviewed by a grant review committee, which is composed of members of the commission grant review committee, individuals with expertise in youth programming, and the citizens of Iowa. Using the criteria in rule 817—9.4(83GA,SF482), the committee will review the applications for appropriateness and to determine the merit of the project.

**9.6(4)** Applicants whose projects have been selected for funding shall be notified by the commission.  
[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—9.7(83GA,SF482) Administration of grants.**

**9.7(1) Contracts.** The commission shall prepare contractual agreements for the grants.

*a.* The contract shall be executed by the executive director of the commission and the duly authorized official of the project.

*b.* The contract shall include due dates and the process for the submission of project reports and financial reports.

**9.7(2) Reporting.** All grant recipients shall submit progress and financial reports to the commission as outlined in the contract.

**9.7(3) Availability of funds.** Separate request for proposals will only be issued when there are funds available for this program. To the extent allowable by federal regulations, summer youth corps will always be an acceptable program model for annual AmeriCorps grants and will be listed in the annual AmeriCorps program request for proposals.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—9.8(83GA,SF482) Reversion of funds.** Grant funds not expended by the project closeout date shall revert to the commission.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 482, section 1.

[Filed Emergency ARC 8158B, IAB 9/23/09, effective 9/2/09]

CHAPTER 10  
IOWA GREEN CORPS

**817—10.1(83GA,SF482) Purpose and program description.** The purpose of the Iowa green corps is to provide youth with meaningful community service opportunities in addition to providing capacity-building activities, training, and implementation of major transformative projects in communities, which emphasize energy efficiency, historic preservation, neighborhood development, and stormwater reduction and management. On a competitive basis, Iowa green corps grants will give support to AmeriCorps or summer youth corps projects in Iowa. The program is established under the authority of the Iowa commission on volunteer service, pursuant to Iowa Code chapter 15H as amended by 2009 Iowa Acts, Senate File 482.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—10.2(83GA,SF482) Applications.** Appropriate forms and applications for grants are available from the commission at [www.volunteeriowa.org](http://www.volunteeriowa.org).

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—10.3(83GA,SF482) Incentives.** Incentives will be determined by federal funding guidelines or restrictions depending on the source of funds utilized for the Iowa green corps in a given grant year. Types of incentives may include:

1. Education awards that may be used to further educational attainment and that may be earned upon completion of a defined number of hours;
2. Living allowances that are not considered wages but are paid evenly over the course of a service period; or
3. Wages that are based on the hours worked.

Types of incentives or combinations of incentives that may be used for a program design will be described in the application instructions.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—10.4(83GA,SF482) Grant criteria.** To respond to funding priorities, as funds are made available, the executive director of the commission will establish criteria consistent with federal regulations. If federal funds are being offered, applicants will be considered on a competitive basis. At a minimum, the criteria will contain the following:

1. Goals and objectives of the project;
2. Qualifications of the applicant to manage funds;
3. For new and re-competing applicants, letters of local support verifying coordination and communitywide cooperation;
4. Total project budget;
5. For previous grantees, evidence of ability to submit timely and accurate reports;
6. Description and time line of planned activities;
7. Agreement to develop for the project a community partnership group whose membership should include a cross section of the community served;
8. Description of the applicant organization, including staffing pattern; and
9. Documentation of the applicant's ability to provide the required local match.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—10.5(83GA,SF482) Designated funds.** A percentage of the grants may be designated by the commission to address capacity-building activities that target communities that are already working with existing community improvement programs, including but not limited to the Iowa great places program established under Iowa Code section 303.3C, the green streets and main street Iowa programs administered by the Iowa department of economic development, and disaster remediation activities by communities located within an area declared to be a disaster area by the President of the United States or the governor of the state of Iowa.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—10.6(83GA,SF482) Application process for new grants.**

**10.6(1)** The commission shall issue a request for proposals containing project criteria and application forms for the applicable fiscal year.

**10.6(2)** The applicant shall submit the completed application to the commission according to the time line identified in the request for proposals.

**10.6(3)** Applications submitted will be reviewed by a grant review committee, which is composed of members of the commission grant review committee, individuals with expertise in youth programming, and the citizens of Iowa. Using the criteria in rule 817—10.4(83GA,SF482), the committee will review the applications for appropriateness and to determine the merit of the project.

**10.6(4)** Applicants whose projects have been selected for funding shall be notified by the commission.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—10.7(83GA,SF482) Administration of grants.**

**10.7(1) Contracts.** The commission shall prepare contractual agreements for the grants.

*a.* The contract shall be executed by the executive director of the commission and the duly authorized official of the project.

*b.* The contract shall include due dates and the process for the submission of project reports and financial reports.

**10.7(2) Reporting.** All grant recipients shall submit progress and financial reports to the commission.

**10.7(3) Availability of funds.** Separate request for proposals will only be issued when there are available funds for this program. To the extent allowable by federal regulations, Iowa green corps will always be an acceptable program model for annual AmeriCorps grants and will be listed in the annual AmeriCorps program request for proposals.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

**817—10.8(83GA,SF482) Reversion of funds.** Grant funds not expended by the project closeout date shall revert to the commission.

[ARC 8158B, IAB 9/23/09, effective 9/2/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 482, section 2.

[Filed Emergency ARC 8158B, IAB 9/23/09, effective 9/2/09]

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