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

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

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

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

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

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

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Replace Chapter 4

Utilities Division[199]

Replace Analysis
Remove Reserved Chapter 41
Insert Chapter 41

College Student Aid Commission[283]

Replace Analysis
Replace Chapters 14 and 15
Replace Chapter 24
Remove Reserved Chapter 26 and Chapter 26
Insert Chapters 26 and 27

Environmental Protection Commission[567]

Replace Chapter 61

Natural Resource Commission[571]

Replace Analysis
Replace Chapter 22
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Replace Chapter 18
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Replace Analysis
Replace Chapter 181
Replace Chapter 450
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Replace Chapter 635

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Created within the Department of Commerce by 1986 Iowa Acts, Senate File 2175.
Formerly Beer and Liquor Control Department[150]

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LIQUOR LICENSES—BEER PERMITS—WINE PERMITS

[Ch 4, IAC 7/1/75 rescinded 3/7/79; see Chs 4,5]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—4.1(123) Definitions.

"Act" means the alcoholic beverage control Act.

"Administrator" means the chief administrative officer of the alcoholic beverages division or a designee.

"Beverages" as used in Iowa Code section 123.3(18) does not include alcoholic liquor, wine, or beer as defined in Iowa Code sections 123.3(4), 123.3(5), 123.3(7), 123.3(19), 123.3(28), 123.3(30), 123.3(43) and 123.3(47).

"Division" means the alcoholic beverages division of the department of commerce.

This rule is intended to implement Iowa Code sections 123.3 and 123.4.

[**ARC 2382C**, IAB 2/3/16, effective 3/9/16; **ARC 3928C**, IAB 8/1/18, effective 9/5/18]

185—4.2(123) General requirements. All applicants for liquor control licenses, wine permits, or beer permits shall comply with the following requirements, where applicable, prior to receiving a liquor license, wine permit, or beer permit.

4.2(1) *Cleanliness of premises.* The interior and exterior of all licensed premises shall be kept clean, free of litter or rubbish, painted and in good repair. Licensees and permittees shall at all times keep and maintain their respective premises in compliance with the laws, orders, ordinances and rules of the state, county and city health and fire departments and the Iowa department of inspections and appeals.

4.2(2) *Toilet facilities.* All licensees and permittees who mix, serve, or sell alcoholic liquor, wine, or beer for consumption on the licensed premises shall provide for their patrons adequate, conveniently located separate indoor or outdoor toilet facilities for men and women, which shall conform to county, city, and department of inspections and appeals' rules and regulations. In case of outdoor facilities, they shall be approved by the department of inspections and appeals and the local approving authority where the licensed premises is located.

4.2(3) *Water.* All licensed establishments shall be equipped with hot and cold running water from a source approved by an authorized health department.

4.2(4) *Financial standing and reputation.* A local authority or the administrator may consider an applicant's financial standing and good reputation in addition to the other requirements and conditions for obtaining a liquor control license, wine or beer permit, or certificate of compliance, and the local authority or the administrator shall disapprove or deny an application for a liquor control license, wine or beer permit, or certificate of compliance if the applicant fails to demonstrate that the applicant complies with the lawful requirements and conditions for holding the license, permit or certificate of compliance.

a. In evaluating an applicant's "financial standing," the local authority or the administrator may consider the following: An applicant's "financial standing" may include, but is not limited to, verified source(s) of financial support and adequate operating capital for the applicant's proposed establishment, a record of prompt payment of local or state taxes due, a record of prompt payment to the local authority of fees or charges made by a local authority for municipal utilities or other municipal services incurred in conjunction with the proposed establishment, and a record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123.

b. In evaluating an applicant's "good reputation," the local authority or the administrator may consider such factors as, but not limited to, the following: pattern or practice of sales of alcoholic beverages to 19- and 20-year-old persons for which the licensee or permittee, the licensee's or permittee's agents or employees, have pled or have been found guilty, pattern and practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued, sales to intoxicated persons, licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol, the recency

of convictions under laws relating to operating a motor vehicle while under the influence of drugs or alcohol, licensee or permittee misdemeanor convictions, the recency of the misdemeanor convictions.

This rule is intended to implement Iowa Code sections 123.3(11), 123.21(11) and 123.30.

185—4.3(123) Local ordinances permitted. The foregoing rules shall in no way be construed as to prevent any county, city or town from adopting ordinances or regulations, which are more restrictive, governing licensed establishments within their jurisdiction.

This rule is intended to implement Iowa Code section 123.39.

185—4.4(123) Licensed premises. The following criteria must be met before a "place" (as used in Iowa Code section 123.3(25)) may be licensed as a "place susceptible of precise description satisfactory to the administrator."

4.4(1) The "place" must be owned by or under the control of the prospective licensee.

4.4(2) The "place" must be solely within the jurisdiction of one local approving authority.

4.4(3) The "place" must be described by a sketch of the "premises" as defined in Iowa Code section 123.3(25) and showing the boundaries of the proposed "place"; showing the locations of selling/serving areas within the confines of the "place"; showing all entrances and exits; and indicating the measurements of the "place" and distances between selling/serving areas.

4.4(4) The "place" must satisfy the health, safety, fire and seating requirements of the division, local authorities and the Iowa department of inspections and appeals.

4.4(5) Any other criteria as required by the administrator.

This rule is intended to implement Iowa Code sections 123.3(25) and 123.4.

[**ARC 3928C**, IAB 8/1/18, effective 9/5/18]

185—4.5(123) Mixed drinks or cocktails not for immediate consumption. An on-premises liquor control licensee may mix, store, and allow the consumption of mixed drinks or cocktails which are not for immediate consumption for up to 72 hours, subject to the requirements and restrictions provided in 2012 Iowa Acts, House File 2465, section 22, and this rule.

4.5(1) *Definitions.*

"Immediate consumption." For purposes of Iowa Code section 123.49(2)*"d"* as amended by 2012 Iowa Acts, House File 2465, section 22, and this rule, "immediate consumption" is defined as the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

"Mixed drink or cocktail." A mixed drink or cocktail is a beverage composed in whole or in part of alcoholic liquors, combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings.

4.5(2) *Location.* Mixed drinks or cocktails which are not for immediate consumption shall be mixed, stored, and consumed on the liquor control licensed premises. Mixed drinks or cocktails shall not be removed from the licensed premises.

4.5(3) *Quantity.* A mixed drink or cocktail which is not for immediate consumption shall be mixed and stored in, and dispensed from, a labeled container in a quantity not to exceed three gallons.

4.5(4) *Container.* A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

a. The mixed drink or cocktail shall be mixed and remain stored in the same container.

b. The mixed drink or cocktail shall be removed from the stored container for one of the following dispensing purposes:

(1) To compound and fulfill a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

(2) For transfer into a pourable container. The pourable container shall have affixed a label compliant with subrule 4.5(5) displaying label information identical to that on the container from which the contents were poured. The expiration date and time shall not be extended by the transfer of product to a pourable container.

c. The mixed drink or cocktail may be strained into another container when each of the following conditions is met:

(1) The mixed drink or cocktail is returned without delay to the labeled container from which it was strained.

(2) The container and process are compliant with applicable state and federal food safety statutes and regulations.

d. An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2)*"d"* as amended by 2012 Iowa Acts, House File 2465, section 22, and section 123.49(2)*"e."*

e. The mixed drink or cocktail shall not be mixed, stored, or dispensed from a container bearing an alcoholic beverage name brand.

4.5(5) *Label.* A label shall be placed on a container when the contents of the mixed drink or cocktail are placed into the empty container.

a. Contents are defined in subrule 4.5(6).

b. The label shall be subject to the following requirements and restrictions:

(1) The label shall be affixed to the container in a conspicuous place.

(2) The label shall legibly identify the month, day, and year the contents are placed into the empty container.

(3) The label shall legibly identify the time the contents were placed into the empty container. The time shall be reported to the minute utilizing the 12-hour clock, and include either the ante meridian (AM) or post meridian (PM) part of time.

(4) The label shall legibly identify the month, day, and year the contents expire.

(5) The label shall legibly identify the time the contents expire. The time shall be reported in the same manner as reported in subparagraph 4.5(5)*"b"*(4).

(6) The label shall legibly specify the title of the recipe used for the contents of the container.

(7) The label shall legibly identify the person who prepared the contents of the container.

(8) The label shall legibly identify the size of the batch within the container and be conspicuously marked with the words "CONTAINS ALCOHOL."

(9) The label shall be removed from the container once the entire contents have been consumed, transferred to a pourable container pursuant to subparagraph 4.5(4)*"b"*(2), or destroyed and disposed of in accordance with applicable law.

(10) A label shall not be reused, nor shall a removed label be reapplied to a container.

(11) A new label, subject to the requirements and restrictions of paragraph 4.5(5)*"b,"* shall be placed on the container for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

c. A licensee may access a label template on the website of the division located at www.IowaABD.com.

4.5(6) *Contents.* Contents include alcoholic beverages, nonalcoholic ingredients, or combination thereof, which are not for immediate consumption.

a. A licensee is limited to utilizing alcoholic beverages in the mixed drink or cocktail which are authorized by the license.

b. A licensee shall utilize alcoholic beverages in the mixed drink or cocktail which are obtained as prescribed by Iowa Code chapter 123.

c. The added flavors and other nonbeverage ingredients of the mixed drink or cocktail shall not include hallucinogenic substances, added caffeine or added stimulants including but not limited to guarana, ginseng, and taurine, or a controlled substance as defined in Iowa Code section 124.401.

4.5(7) *Disposal.*

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents' being placed into the empty container is expired and shall be destroyed and disposed of in accordance with applicable law.

b. An expired mixed drink or cocktail which is not for immediate consumption shall not be:

(1) Added to an empty container and relabeled; or

(2) Added to another mixed drink or cocktail which is not for immediate consumption.

4.5(8) *Records.* A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall contain:

(1) The month, day, and year the contents are placed into the empty container.

(2) The time the contents are placed into the empty container. The time shall be reported in the same manner as reported in subparagraph 4.5(5)*"b"*(4).

(3) Each alcoholic beverage, including the brand and the amount, placed in the container. The amount of each alcoholic beverage shall be reported utilizing the metric system.

(4) Each nonalcoholic ingredient placed in the container.

(5) The recipe title and directions for preparing the contents of the container.

(6) The size of the batch.

(7) The identity of the person who prepared the contents of the container.

(8) The month, day, and year the contents of the container are destroyed and disposed of or entirely consumed.

(9) The time the contents of the container are destroyed and disposed of or entirely consumed. The time shall be reported in the same manner as reported in subparagraph 4.5(5)*"b"*(4).

(10) The method of destruction and disposal or shall specify that the entire contents were consumed.

(11) The identity of the person who destroyed and disposed of the contents, if the contents were not consumed.

b. A licensee may access record-keeping forms on the website of the division located at www.IowaABD.com, by sending a request by fax to (515)281-7375, or by sending a request by mail to Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021.

c. Records shall be maintained on the licensed premises for a period of three years and shall be open to inspection pursuant to Iowa Code section 123.30(1).

4.5(9) *Dispensing machines.* A dispensing machine which contains a mixed drink or cocktail with alcoholic beverages is subject to the requirements and restrictions of this rule.

4.5(10) *Food safety compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable state and federal food safety statutes and regulations.

4.5(11) *Federal alcohol compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable federal statutes and regulations. Prohibitions include but are not limited to processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

4.5(12) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions of Iowa Code section 123.39.

This rule is intended to implement Iowa Code subsection 123.49(2) as amended by 2012 Iowa Acts, House File 2465, section 22.

[**ARC 0204C**, IAB 7/11/12, effective 7/1/12; **ARC 0406C**, IAB 10/17/12, effective 11/21/12]

185—4.6(123) Filling and selling of beer in a container other than the original container. Class "B," class "C," and special class "C" liquor control licensees, class "B" and class "C" beer permittees, and the licensee's or permittee's employees may fill, refill, and sell beer in a container other than the original container, otherwise known as a growler, subject to the requirements and restrictions provided in Iowa Code section 123.131 as amended by 2020 Iowa Acts, House File 2540, section 14; Iowa Code section 123.132; and this rule.

4.6(1) *Definitions.*

"Beer," for the purposes of this rule, means "beer" as defined in Iowa Code section 123.3(7) and "high alcoholic content beer" as defined in Iowa Code section 123.3(22).

"Growler," for the purposes of this rule, means any fillable and sealable glass, ceramic, plastic, aluminum, or stainless steel container designed to hold beer or high alcoholic content beer.

"Original container," for the purposes of this rule, means a vessel containing beer that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture. For special class "A" beer permit holders, an "original container" includes a tank used for storing and serving beer.

4.6(2) *Filling and refilling requirements.*

a. A growler shall have the capacity to hold no more than 72 ounces.

b. A growler shall be filled or refilled only by the licensee or permittee or the licensee's or permittee's employees who are 18 years of age or older.

c. A growler shall be filled or refilled only on demand by a consumer at the time of the sale.

d. A growler shall be filled or refilled only with beer from the original container procured from a class "A" beer permittee unless the beer being used to fill or refill a growler on the premises of a special class "A" beer permit holder was manufactured by that special class "A" beer permit holder on the permitted premises.

e. A retailer may exchange a growler to be filled or refilled.

f. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

4.6(3) *Sealing requirements.* A filled or refilled growler shall be securely sealed at the time of the sale by the licensee or permittee or the licensee's or permittee's employees in the following manner:

a. A growler shall bear a cap, lid, stopper, or plug.

b. A plastic heat shrink wrap band, strip, or sleeve shall extend around the cap or lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler. A lid permanently affixed with a can seamer shall not require a plastic heat shrink wrap band, strip, or sleeve.

c. The heat shrink wrap seal shall be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.

d. A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

4.6(4) *Restrictions.*

a. A growler shall not be filled in advance of a sale.

b. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.

c. A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.

d. A licensee or permittee or a licensee's or permittee's employees shall not allow a consumer to fill or refill a growler.

e. The filling, refilling and selling of a growler shall be limited to the hours in which alcoholic beverages may be legally sold.

f. A filled or refilled growler shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

g. An original container shall only be opened on the premises of a class "C" beer permittee for the limited purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule 185—16.7(123).

h. A class "C" beer permittee shall only fill a growler at the time of an in-person sale.

4.6(5) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the licensee or permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.123, 123.131, and 123.132.

[**ARC 2382C**, IAB 2/3/16, effective 3/9/16; **ARC 2777C**, IAB 10/12/16, effective 11/16/16; **ARC 3928C**, IAB 8/1/18, effective 9/5/18; **ARC 5191C**, IAB 9/23/20, effective 10/28/20]

185—4.7(123) Improper conduct.

4.7(1) Illegality on premises. No licensee, permittee, their agent or employee, shall engage in any illegal occupation or illegal act on the licensed premise.

4.7(2) Cooperation with law enforcement officers. No licensee, permittee, their agent or employee, shall refuse, fail or neglect to cooperate with any law enforcement officer in the performance of such officer's duties to enforce the provisions of the Act.

4.7(3) Illegal activities. No licensee, permittee, their agent or employee, shall knowingly allow in or upon the licensed premises any conduct as defined in Iowa Code sections 725.1, 725.2, 725.3, 728.2, 728.3 and 728.5.

4.7(4) Frequenting premises. No licensee, permittee, their agent or employee, shall knowingly permit the licensed premises to be frequented by, or become the meeting place, hangout or rendezvous for known pimps, panhandlers or prostitutes, or those who are known to engage in the use, sale or distribution of narcotics, or in any other illegal occupation or business.

4.7(5) Prohibited interest in business of licensee. Rescinded IAB 5/15/91, effective 6/19/91.

4.7(6) No licensee, permittee, its agents or employees, shall allow any filled, partially filled, or empty liquor glasses or liquor bottles, including miniature liquor bottles during the holiday season, to be taken off the licensed premises. However, unopened and opened containers and glasses of beer may be allowed to be taken off the licensed premises. A class "E" liquor control licensee, its agents or employees, shall not permit other liquor control licensees or consumers to remove partially filled, empty, open or unsealed containers of alcoholic liquor from the class "E" licensed premises.

4.7(7) Identifying markers. A licensee shall not keep on the licensed premises nor use for resale alcoholic liquor which does not bear identifying markers as prescribed by the administrator of this division. Identifying markers shall demonstrate that the alcoholic liquor was lawfully purchased from this division.

4.7(8) A licensee or permittee, or an agent or employee of a licensee or permittee, who sells, gives or otherwise supplies alcoholic liquor, wine or beer to a person 19 or 20 years old does not subject the license or permit to suspension or revocation. The division or the local authority shall not impose any administrative sanction, including license suspension or revocation, upon a licensee or permittee who is convicted of a violation of Iowa Code section 123.47A, nor shall administrative proceedings pursuant to Iowa Code chapter 17A and Iowa Code section 123.39 be commenced against a licensee or permittee for a violation of Iowa Code section 123.47A.

4.7(9) The holder of a class "E" liquor control license shall sell alcoholic liquor in original, sealed and unopened containers only for off-premises consumption.

This rule is intended to implement Iowa Code subsection 123.49(2).

185—4.8(123) Violation by agent, servant or employee. Any violation of the Act or the rules of the division by any employee, agent or servant of a licensee or permittee shall be deemed to be the act of the licensee or permittee and shall subject the license or permit of said licensee or permittee to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49(2).

185—4.9(123) Gambling evidence. The intentional possession or willful keeping of any gambling device, machine or apparatus as defined in Iowa Code section 99A.1 upon the premises of any establishment licensed by the division shall be prima facie evidence of a violation of Iowa Code section 123.49(2)*"a"* and subject the license of said licensee or permittee to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49.

185—4.10(123) Filling and selling of mixed drinks or cocktails in a container other than the original container. Class "C" and class "C" native distilled spirits liquor control licensees and the licensee's employees may fill and sell mixed drinks or cocktails in a container other than the original container subject to the requirements and restrictions provided in 2020 Iowa Acts, House File 2540, sections 10, 11, 12, and 13, and this rule.

4.10(1) *Definitions.*

"Alcoholic liquor," for the purposes of this rule, means "alcoholic liquor" as defined in Iowa Code section 123.3(5).

"Mixed drink or cocktail," for the purposes of this rule, means "mixed drink or cocktail" as defined in Iowa Code section 123.3(32).

"Native distilled spirits," for the purposes of this rule, means "native distilled spirits" as defined in Iowa Code section 123.3(34).

"Original container," for the purposes of this rule, means a vessel containing alcoholic liquor or native distilled spirits that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

"Sealed container," for the purposes of this rule, means a vessel containing a mixed drink or cocktail that is designed to prevent consumption without removal of the tamper-evident lid, cap, or seal. "Sealed container" does not include a container with a lid with sipping holes or openings for straws, a cup made of plastic that is intended for one-time use, or a cup made of paper or polystyrene foam.

"Tamper-evident," for the purposes of this rule, means a lid, cap, or seal that visibly demonstrates when a container has been opened.

4.10(2) *Filling requirements.*

a. A sealed container shall be filled and sold only by the licensee or the licensee's employees who are 18 years of age or older.

b. A sealed container shall be filled only upon receipt of an order by a consumer of legal age.

c. A sealed container shall be filled only with mixed drinks or cocktails composed in whole or in part with alcoholic liquor or native distilled spirits from an original container purchased from a class "E" liquor licensee.

d. The filling of a sealed container shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

4.10(3) *Sealing requirements.* A sealed container shall bear one of the following tamper-evident sealing methods:

a. A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the container is opened.

b. A screw top cap or lid that breaks apart when the container is opened.

c. A vacuum or heat-sealed pouch containing the mixed drink or cocktail.

4.10(4) *Labeling requirements.* A sealed container shall bear a label affixed to the container in a conspicuous place legibly indicating the following information:

a. The business name of the licensee that sold the mixed drink or cocktail.

b. The words "CONTAINS ALCOHOL."

4.10(5) *Sealed container not deemed an open container.* A sealed container shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed container is unopened, the seal has not been tampered with, and the contents of the sealed container have not been partially removed.

4.10(6) *Restrictions.*

a. A sealed container shall not be filled in advance of a sale.

b. A sealed container shall not meet the definition of "canned cocktail" as defined in Iowa Code section 123.3(11).

c. A licensee or a licensee's employees shall not allow a consumer to fill a sealed container.

d. The filling and selling of a sealed container shall be limited to the hours in which alcoholic beverages may be legally sold.

e. A sealed container shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

4.10(7) *Record keeping requirements.*

a. A licensee shall maintain records, in printed or electronic format, of all sales of sealed containers. The records shall state the following:

(1) The business name of the licensee that sold the mixed drink or cocktail.

(2) The date and time of the sale.

(3) A description of the product sold.

b. A licensee shall keep the required records for a three-year period from the date the record was created.

c. Records shall be open to inspection pursuant to Iowa Code section 123.30(1), and may be subject to administrative subpoena issued by the administrator.

4.10(8) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.30, 123.43A, and 123.49.

[**ARC 5221C**, IAB 10/7/20, effective 10/1/20]

185—4.11(123) Filling and selling of wine and native wine in a container other than the original container. Class "C" liquor control licensees; class "B," class "B" native, and class "C" native wine permittees; and the licensee's or permittee's employees may fill, refill, and sell wine or native wine in a container other than the original container, otherwise known as a growler, subject to the requirements and restrictions provided in Iowa Code sections 123.178, 123.178A, and 123.178B as amended by 2020 Iowa Acts, House File 2540, sections 4, 5, 6, 7, 8, and 9, and in this rule.

4.11(1) *Definitions.*

"Growler," for the purposes of this rule, means any fillable and sealable glass, ceramic, plastic, aluminum, or stainless steel container designed to hold wine or native wine.

"Native wine," for the purposes of this rule, means wine manufactured in Iowa by fermentation of fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients by a class "A" wine permittee.

"Original container," for the purposes of this rule, means a vessel containing wine or native wine that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

"Wine," for the purposes of this rule, means "wine" as defined in Iowa Code section 123.3(54).

4.11(2) *Filling and refilling requirements.*

a. A growler shall have the capacity to hold no more than 72 ounces.

b. A growler shall be filled or refilled only by the licensee or permittee or the licensee's or permittee's employees who are 18 years of age or older.

c. A growler shall be filled or refilled only on demand by a consumer at the time of the sale.

d. A growler shall be filled or refilled only with wine or native wine from the original container procured from a class "A" wine permittee.

e. Class "B" native and class "C" native wine permittees shall fill a growler with only native wine.

f. A retailer may exchange a growler to be filled or refilled.

g. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

4.11(3) *Sealing requirements.* A filled or refilled growler shall be securely sealed at the time of the sale by the licensee or permittee or the licensee's or permittee's employees in the following manner:

a. A growler shall bear a cap, lid, stopper, or plug.

b. A plastic heat shrink wrap band, strip, or sleeve shall extend around the cap or lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler. A lid permanently affixed with a can seamer shall not require a plastic heat shrink wrap band, strip, or sleeve.

c. The heat shrink wrap seal shall be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.

d. A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

4.11(4) *Restrictions.*

a. A growler shall not be filled in advance of a sale.

b. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.

c. A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.

d. A licensee or permittee or a licensee's or permittee's employees shall not allow a consumer to fill or refill a growler.

e. The filling, refilling, and selling of a growler shall be limited to the hours in which alcoholic beverages may be legally sold.

f. A filled or refilled growler shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

g. An original container shall only be opened on the premises of a class "B" or class "B" native wine permittee for the limited purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule 185—16.7(123).

4.11(5) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the licensee or permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.172, 123.178, 123.178A, and 123.178B.
[**ARC 5191C**, IAB 9/23/20, effective 10/28/20]

185—4.12(123) Display of license, permit, or signs. All licenses, permits or signs issued by the division shall be prominently displayed in full view on the licensed premises.

This rule is intended to implement Iowa Code sections 123.4 and 123.30.

185—4.13(123) Outdoor service. Any licensee or permittee having an outdoor, contiguous, discernible area on the same property on which their licensed establishment is located may serve the type of alcoholic liquor or beer permitted by the license or permit in the outdoor area. After a licensee or permittee satisfies the requirements of this rule, they may serve and sell beer or liquor in both their indoor licensed establishment and in their outdoor area at the same time because an outdoor area is merely an extension of their licensed premise and is not a transfer of their license. A licensee or permittee, prior to serving in the outdoor area, must file with this division:

1. A new diagram showing the discernible outdoor area.
2. A letter from licensee or permittee telling what dates the outdoor area will be used.
3. A letter from local authority approving the outdoor area.
4. A letter from the insurance and bonding companies acknowledging that the outdoor area is covered by the dramshop insurance policy and the bond.

This rule is intended to implement Iowa Code sections 123.3(20), 123.4 and 123.38.

185—4.14(123) Revocation or suspension by local authority. When the local authority revokes or suspends a beer permit, wine permit, or liquor control license, they shall notify the division in written form stating the reasons for the revocation or suspension and in the case of a suspension, the length of time of the suspension.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

185—4.15(123) Suspension of liquor control license, wine permit, or beer permit. At the time of the suspension of any license, wine permit, or beer permit by the division, there shall be placed, in a conspicuous place in the front door or window of the licensed establishment, a placard furnished by the division showing that the license or permit of that establishment has been suspended by the division and such placard shall also show the number of days and reason for the suspension. No licensee or permittee shall remove, alter, obscure or destroy said placard without the express written approval of the division.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

185—4.16(123) Cancellation of beer permits—refunds. A beer permittee, or the executor or administrator, may voluntarily surrender such permit to the division or to the local authority. When so surrendered to the division, the division will notify the local authority; state whether there is a complaint on file in the division office; and inquire if there are any complaints filed locally charging such permittee with violation of the laws that would make the permittee ineligible for a refund. When the permit is surrendered to the local authority, the local authority shall notify the division and inquire if there is a complaint on file with the division that would make the permittee ineligible for a refund.

The local authority by itself, in the case of retail beer permits, shall make the refund on a quarterly use basis starting from the effective date of the permit. The local authority will complete, and send to the division, a cancellation certificate. The certificate is to be furnished by the division. The permit is to be attached to the cancellation certificate, if at all possible. The division must have all cancellations reported to them.

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

185—4.17(123) Prohibited storage of alcoholic beverages and wine. No licensee shall permit alcoholic beverages and wine, purchased under authority of a retail license or retail permit, to be kept or stored upon any premises other than those licensed. However, under special circumstances, the administrator may authorize the storage of alcoholic beverages and wine on premises other than those covered by the license or permit. The administrator may allow class "D" liquor control licensees to store alcoholic liquor and wine in a bonded warehouse to be used for consumption in Iowa, under the authority of a class "D" liquor control license.

This rule is intended to implement Iowa Code sections 123.4 and 123.21(11).

185—4.18(123) Transfer of license or permit to another location. A licensee or permittee cannot transfer to anyone else the right to use the liquor license, wine permit, or beer permit of the licensee or permittee; the right of transfer is merely an opportunity for a licensee or permittee to use the licensee's or permittee's liquor license, wine permit, or beer permit at a different location. A liquor license, wine permit, or a beer permit may only be transferred within the boundaries of the local authority which approved the license or permit.

4.18(1) *Permanent transfers.* A person may obtain an application for a permanent transfer from the local authority or the division. The application must be approved by the local authority and sent to the division prior to the transfer. An endorsement from the insurance company holding the dramshop policy listing the new address must be sent to the division prior to the transfer. When the above requirements are met, the division shall issue an amended license or permit showing the new permanent address.

4.18(2) *Temporary transfers.* If the transfer of a license or permit is for the purpose of accommodating a special event or circumstance temporary in nature, the minimum time of transfer is hereby set at 24 hours and transfer time shall not exceed seven days. A letter from the local authority granting the temporary transfer must be sent to the division. The insurance company holding the dramshop policy must be notified of any change of address.

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

185—4.19(123) Execution and levy on alcoholic liquor, wine, and beer. Judgments or orders requiring the payment of money or the delivery of the possession of property may be enforced against liquor control licensees and beer and wine permittees by execution pursuant to the provisions of Iowa Code chapter 626, entitled "Executions."

4.19(1) A secured party as defined in Iowa Code section 554.9105(1)*"m"* may take possession of and dispose of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer in which the secured party has a security interest in such collateral pursuant to the provisions of Iowa Code chapter 554. The secured party may operate under the liquor control license or permit of its debtor as defined in Iowa Code section 554.9105(1)*"d"* for the purpose of disposing of the alcoholic liquor, wine, and beer. However, if the debtor is a class "E" liquor control licensee, the secured party may not purchase alcoholic liquor from the division to continue to operate its debtor's business. A secured party operating under the liquor control license or permit of its debtor shall dispose of the alcoholic liquor, wine, and beer by sale only to persons authorized under Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the debtor. When a secured party takes possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer, the secured party shall notify the division in writing of such action. A secured party shall further inform the division of the manner in which it intends to dispose of the alcoholic liquor, wine, and beer and shall state the reasonable length of time in which it intends to operate under the liquor control license or permit of its debtor. The secured party shall notify the division in writing

when the disposition of its collateral has been completed, and the secured party shall cease operating under the liquor control license or permit of its debtor.

4.19(2) A sheriff or other officer acting pursuant to Iowa Code chapter 626 may take possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer and may dispose of such inventory according to the provisions of Iowa Code chapter 626; however, the sheriff or other officer must sell the alcoholic liquor, wine and beer only to those persons authorized by Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the liquor control licensee whose inventory is subject to the execution and levy. The sheriff or other officer shall notify the division in writing at the time the sheriff or officer takes possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer and shall further notify the division of the time and place of the sale of such property.

This rule is intended to implement Iowa Code sections 123.4, 123.21(3), and 123.38.

185—4.20(123) Liquor store checks accepted. The Iowa state liquor stores and the division may accept checks from holders of a retail liquor control license, including a class "E" licensee, under the following conditions:

1. The check must be either the personal check of the licensee or the business check of the licensee. The business check must be the named establishment on the license and cannot be a check on another business owned or operated by the licensee.

2. The check must be signed by the licensee. (For all holders of liquor control licenses this is interpreted as those persons whose authorized signatures are on file with the bank for the licensee's account). However, this does not preclude an agent of the licensee from presenting a check signed by the licensee in the normal transaction of buying liquor.

3. Traveler's checks and bank drafts, signed by the licensee, will be accepted.

4. Personal checks or traveler's checks may be accepted as payment for purchases in state liquor stores. Second party checks shall not be accepted as payment for purchases in state liquor stores. Vendors shall follow the policy established by the administrator of the division for accepting personal checks and traveler's checks for the purchase of alcoholic beverages.

4.20(1) If a licensee presents this division with a check which is subsequently dishonored by the licensee's bank, the administrator of this division shall cause a written notice of nonpayment and penalty to be served upon the licensee. If the licensee fails to satisfy the obligation within ten days after service of the notice, the administrator or designee shall hold a hearing as in other contested cases pursuant to Iowa Code chapter 17A to determine whether or not the licensee failed to satisfy the obligation within ten days after service of the notice of nonpayment and penalty. If the administrator determines that the licensee has failed to satisfy the obligation, after notice and an opportunity to be heard, the administrator shall suspend the licensee's liquor control license for a period of not less than 3 and not more than 30 days.

4.20(2) A retail liquor establishment which tenders the division one insufficient funds check for the purchase of alcoholic liquor will lose its check-writing privilege for 90 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period. A retail liquor establishment which tenders the division more than one insufficient funds check for the purchase of alcoholic liquor will lose its check-writing privilege for 180 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period.

During the period that a licensee may not tender checks to the state liquor stores or this division in payment for alcoholic liquor, state liquor stores and this division may accept from the licensee: cash, money order payable to the division for the amount of the purchase, bank cashier's check signed by a bank official and made payable to the division for the amount of the purchase, or the licensee's personal or business check made payable to the division for the amount of the purchase which has been certified by the bank on which the check is drawn.

4.20(3) The division may collect from the licensee a $10 fee for each dishonored check tendered to the division by a licensee for the purchase of alcoholic beverages.

4.20(4) The division may accept from the general public for alcoholic beverages traveler's checks issued in a foreign country if payment is in U.S. dollars.

4.20(5) The division may require, at the discretion of the administrator, that a licensee submit a letter of credit in a reasonable amount to be determined by the administrator for future purchases of alcoholic liquor from the division, when a licensee tenders to the division a check which is subsequently dishonored by the bank on which the check is drawn if the licensee fails to satisfy the obligation within ten days after service of notice of nonpayment and penalty.

This rule is intended to implement Iowa Code sections 123.4 and 123.24.

185—4.21(123) Where retailers must purchase wine. Retail licensees and retail permittees must purchase their wine from either a wine wholesaler or a wine and beer wholesaler. Retail licensees and retail permittees cannot buy wine from other retailers.

This rule is intended to implement Iowa Code subsections 123.30(3) and 123.178(3).

185—4.22(123) Liquor on licensed premises. Holders of liquor control licenses must purchase their liquor supplies from state liquor stores.

4.22(1) *Exception to the above requirement.* "Bona fide conventions or meetings" may bring their own legal liquor onto licensed premises under the following conditions:

a. "Bona fide conventions or meetings" shall be construed to mean an identifiable body of persons gathered together in furtherance of a specific common purpose or cause, whether political, fraternal, or business, including but not limited to structured club meetings and conventions, professional association functions, employer-employee gatherings and political dinners. Neither the mere purchase nor consumption of liquor nor the purchase of an admission ticket shall be deemed to create a specific common purpose or cause.

b. Liquor may be brought onto the licensed premises at a bona fide convention or meeting by either the sponsoring entity or the individuals comprising that entity.

c. Consumption or dispensation of liquor brought onto the licensed premises by a bona fide convention or meeting must be confined to the meeting place or convention rooms within the licensed premises.

d. The liquor must be served to the delegates or guests without cost.

e. At the completion of the convention or meeting, all liquor brought onto the licensed premises by the members of the convention or meeting must be removed from the licensed premises by those members.

f. All other laws and rules governing the license shall apply to dispensing and consumption of liquor at bona fide conventions or meetings, including hours for consumption and Sunday sales.

4.22(2) Reserved.

This rule is intended to implement Iowa Code sections 123.30, 123.46, and 123.95.

185—4.23(123) Liquor on unlicensed places. Liquor may be kept and consumed but not sold on unlicensed places under the following conditions:

4.23(1) Liquor may be kept and consumed in a private home at any time.

4.23(2) Liquor may be kept and consumed, by the guests or residents, in the residential or sleeping quarters of a hotel or motel at any time. This is considered as an extension of the private home.

4.23(3) Liquor may be consumed at a private social gathering in a private place at any time.

4.23(4) A private place is a location which meets all of the following criteria:

a. One to which the general public does not have access at the time the liquor is kept, dispensed or consumed; one at which the attendees are limited to the bona fide social hosts and invited guests.

b. One which is not of a commercial nature at the time the liquor is consumed or dispensed at the location.

c. One where goods or services are neither sold nor purchased at the time the liquor is consumed or dispensed at the location.

d. One where the use of the location was obtained without charges or rent or any other thing of value was exchanged for its use.

e. One which is not a licensed premises.

f. One where no admission fees or other kinds of entrance fees, fare, ticket, donation or charges are made or are required of the invited guests to enter the location.

This rule is intended to implement Iowa Code section 123.95.

185—4.24(123) Alcoholic liquor and wine on beer permit premises. Rescinded **ARC 3928C**, IAB 8/1/18, effective 9/5/18.

185—4.25(123) Age requirements. Persons 21 years of age or older may hold a liquor license, wine permit, or beer permit; however, persons who are between the ages of 18 and 21 and hold a liquor license, wine permit, or beer permit before September 1, 1986, are not affected by or subject to this rule, and may hold such license or permit even though the licensee or permittee has not attained the age of 21. Persons 18 years of age and older may be bartenders, waiters, waitresses, and may handle alcoholic beverages, wine, and beer during the course of the person's employment for a licensee or permittee in establishments in which alcoholic beverages, wine, and beer are consumed. Persons 16 years of age and older may sell beer and wine in off-premises beer and wine establishments. Persons must be 18 years of age or older to work in a state liquor store.

This rule is intended to implement Iowa Code sections 123.30, 123.47A and 123.49.

185—4.26(123) Timely filed status.

4.26(1) In addition to the requirements which may be imposed by a local authority upon the holder of an alcoholic beverages license or permit to obtain timely filed status of a renewal application, the division may grant timely filed status if the applicant complies with the following conditions:

a. The applicant files a completed application with the local authority or the division as required by applicable law.

b. The applicant files a current dram shop liability certificate with the local authority or the division if proof of dram shop liability is required as a condition precedent to the issuance of the license or permit.

c. The applicant pays the appropriate license or permit fee in full to the local authority or the division as required by applicable law.

d. The applicant files a bond with the local authority or the division if a bond is required as a condition precedent to the issuance of the license or permit under applicable law.

4.26(2) Timely filed status allows the holder of the license or permit to continue to operate under a license or permit after its expiration and until the local authority and the division have finally determined whether the license or permit should be issued. If the application for the license or permit is denied, timely filed status continues until the last day for seeking judicial review of the division's action.

4.26(3) An applicant for a new alcoholic beverages license or permit may not sell alcoholic liquor, wine or beer in the proposed establishment until a license or permit has been granted by the division.

This rule is intended to implement Iowa Code sections 123.32, 123.35 and 17A.18.

185—4.27(123) Effect of suspension. Subject to the right to convey a suspended establishment under Iowa Code section 123.39, no beer, wine, or liquor can be sold or consumed in an establishment during a suspension period. An establishment may be open during a suspension period to conduct lawful business other than the sale of liquor, wine, and beer as long as no liquor, wine, or beer is sold or consumed during the suspension period.

This rule is intended to implement Iowa Code section 123.39.

185—4.28(123) Use of establishment during hours alcoholic liquor, wine, and beer cannot be consumed. No one, including licensee, permittee, and employees can consume beer, wine, or alcoholic beverages in their licensed establishment during hours which beer, wine, and alcoholic beverages cannot be sold. An establishment covered by a liquor license, wine permit, or beer permit can be used

as a restaurant or any other lawful purpose during hours which beer, wine, or alcoholic liquor cannot be sold as long as beer, wine, or alcoholic beverages are not consumed during these hours.

This rule is intended to implement Iowa Code section 123.49.

185—4.29 Rescinded, effective 7/1/85.

185—4.30(123) Persons producing fuel alcohol. Persons producing fuel alcohol for their own use or to be sold commercially do not have to obtain a license or permit from the division.

This rule is intended to implement Iowa Code sections 123.4 and 123.41.

185—4.31(123) Storage of beer. No retail liquor licensee or retail beer permittee shall store beer except on premises licensed for retail sale and then only to the extent that the beer is intended for sale to consumers from the individually licensed premises where stored. The adoption of this rule shall not preclude a retail liquor licensee or a retail beer permittee from picking up beer from class "A" and "F" beer permittees and directly transporting the beer to the retail establishment where the beer is intended to be sold at retail.

This rule is intended to implement Iowa Code section 123.21.

185—4.32(123) Delivery of alcoholic liquor. Individuals who do not work for this division may operate a delivery service in which they will charge licensees a fee for picking up their alcoholic liquor orders at this division's liquor stores and delivering it to their establishments.

This rule is intended to implement Iowa Code sections 123.4 and 123.21(10).

185—4.33(123) Delivery of beer and wine. Licensees and permittees who hold a license or permit which allows them to sell bottled wine and bottled beer may deliver beer and wine to residences if the customers telephoned and requested that the beer and wine be delivered.

This rule is intended to implement Iowa Code subsection 123.21(10).

185—4.34(123) Determination of population. Decennial Censuses and Special Censuses done by the U.S. Census Bureau are recognized as being the official population of a town for the purpose of deciding the price of licenses and permits in that town, but estimates done by the U.S. Census Bureau cannot be viewed as being the official population when deciding the price of licenses and permits.

This rule is intended to implement Iowa Code subsection 123.21(11).

185—4.35(123) Minors in licensed establishments. Because Iowa law does not prohibit minors from being in licensed establishments, a minor can be in a licensed establishment if local authority does not have a local ordinance prohibiting minors from being in licensed establishments in its jurisdiction.

This rule is intended to implement Iowa Code subsection 123.21(5).

185—4.36(123) Sale of alcoholic liquor and wine stock when licensee or permittee sells business. When a licensee or permittee goes out of business, the licensee or permittee may sell the licensee's or permittee's stock of alcoholic liquor and wine to the person who is going to operate a licensed establishment in the same location.

This rule is intended to implement Iowa Code subsection 123.21(5).

185—4.37(123) Business as usual on election days. Licensees and permittees may sell alcoholic liquor, wine, or beer during regular hours on days local and national elections are held because present Iowa law does not restrict the sale of liquor, wine, and beer on election days.

This rule is intended to implement Iowa Code subsection 123.21(3).

185—4.38(123) Sunday sale of wine. A holder of a class "B" wine permit or combination retail wine license, excluding any liquor control licensee or beer permittee which does not qualify for Sunday sales under Iowa Code sections 123.36(6) and 123.134(5), respectively, may sell wine for consumption off

the premises between the hours of 10 a.m. and 12 midnight on Sundays. No fee shall be imposed for that privilege.

This rule is intended to implement Iowa Code subsection 123.49(2).

185—4.39(123) Intoxication notice. Rescinded IAB 8/18/93, effective 7/29/93.

185—4.40(123) Warehousing of beer and wine. A person holding a class "A" wine permit or a class "A" or "F" beer permit shall warehouse their wine or beer inventory within the state of Iowa. Persons issued a class "A" wine permit or class "A" or "F" beer permit prior to June 10, 1987, shall comply upon renewal or November 1, 1987, whichever date occurs first. A warehouse of a person holding a class "A" wine permit or a class "A" or "F" beer permit shall be considered a licensed premises.

This rule is intended to implement Iowa Code section 123.127.

185—4.41(123) Vending machines to dispense alcoholic beverages prohibited. A liquor control licensee or beer or wine permittee shall not install or permit the installation of vending machines on the licensed premises for the purpose of selling, dispensing or serving alcoholic beverages. A vending machine is defined as a slug, coin, currency or credit card operated mechanical device used for dispensing merchandise, including single cans of beer or other alcoholic beverages, and includes a mechanical device operated by remote control and used for dispensing single cans of beer or other alcoholic beverages. A vending machine is not a unit installed in individual hotel or motel rooms used for the storage of alcoholic beverages and intended for the personal use of hotel or motel guests within the privacy of the guests' rooms.

This rule is intended to implement Iowa Code sections 123.47, 123.47A, 123.49(1), 123.49(2)*"b,"* 123.49(2)*"h,"* and 123.49(2)*"k."*

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under the "umbrella" of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

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CHAPTER 41
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199—41.1(476) Definitions.

"Affiliate" means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.

"AFUDC" means allowance for funds used during construction.

"Alternate energy production facility" means any or all of the following:

1. A solar, wind turbine, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or woodburning facility.
2. Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.
3. Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

A facility which is a qualifying facility under 18 CFR Part 292, Subpart B, is not precluded from being an alternate energy production facility under this chapter.

"Baseload generation" refers to generating units designed for normal operation to serve all or part of the minimum load of the system on an around-the-clock basis. These units are operated to maximize system mechanical and thermal efficiency and minimize system operating costs.

"Combined-cycle combustion turbine" means an electric generating technology in which the efficiency of electric generation is increased by using otherwise lost waste heat exiting from one or more combustion turbines. The exiting heat is routed to a boiler or to a heat recovery steam generator for utilization by a steam turbine in the production of electricity.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

"Emission allowance" means an authorization, allocated by the federal Environmental Protection Agency under the Acid Rain Program, to emit up to one ton of sulfur dioxide during or after a specified calendar year.

"Facility" means a facility for which advance ratemaking principles may be sought pursuant to Iowa Code section 476.53(3)*"a."* The term includes energy storage systems located at the site of an alternate energy production facility.

"kWh" means kilowatt-hour.

"Opportunity sales" means sales of electricity from a particular facility at market price after all contracted and firm transactions have been met.

"Repowering" means either the complete dismantling and replacement of generation equipment at an existing project site or the installation of new parts and equipment to an existing alternate energy production facility in order to increase energy production, reduce load, increase service capacity, improve project reliability, or extend the useful life of the facility.

"Utility" means either a rate-regulated electric public utility selling to retail customers in Iowa or a rate-regulated public utility acquiring a water, sanitary sewage, or storm water utility.

[**ARC 5206C**, IAB 10/7/20, effective 11/11/20]

199—41.2(476) Applicability and purpose.

41.2(1) Rules 199—41.3(476) and 199—41.4(476) apply to any rate-regulated public electric utility proposing to build or lease in Iowa, either in whole or in part, a new baseload generating facility with a nameplate generating capacity equal to or greater than 300 megawatts, a new combined-cycle combustion turbine of any size, a new or repowered alternate energy production facility of any size, or any combination of the above, and desiring predetermination of ratemaking principles to be used in establishing the retail cost recovery of such a facility. These rules set the initial filing requirements in a ratemaking principles proceeding depending on the specific circumstances of a filing.

41.2(2) Rule 199—41.5(476) applies to any rate-regulated public utility acquiring a water, sanitary sewage, or storm water system with a fair market value of $500,000 or more from a non-rate-regulated

entity described in Iowa Code section 476.1(4). Rule 199—41.5(476) sets the initial filing requirements in a ratemaking principles proceeding related to the acquisition.

41.2(3) The board may require additional information from an applicant on a case-by-case basis.
[**ARC 5206C**, IAB 10/7/20, effective 11/11/20]

199—41.3(476) Application for predetermined ratemaking principles; contents. Each person or group of persons proposing to construct, repower, or lease a facility and desiring predetermination of ratemaking principles for costing that facility shall file an application with the board. An application may be for one facility or a combination of facilities necessary to meet the current and future resource needs of the utility. An application for ratemaking principles must demonstrate that the utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. At a minimum, an application shall substantially comply with the following informational requirements to the extent such information is reasonably available. Any omission of required information on the basis that it is not reasonably available shall be adequately justified by the applicant. The board will consider such omissions on a case-by-case basis and may require the applicant to provide additional information.

41.3(1) *General information.* An application shall include the following general information:

a. The purpose of the proposed facility.

b. A complete description of the current and proposed rights of ownership in the proposed facility and current or planned purchased power contracts with respect to the proposed facility.

c. For a baseload electric power generating facility with a nameplate generating capacity equal to or greater than 300 megawatts, a combined-cycle electric power generating facility, or repowering of a facility, a general site description including a legal description of the site; a map showing the coordinates of the site and its location with respect to state, county, and other political subdivisions; and prominent features such as cities, lakes, rivers, and parks within the site impact area. For an alternative energy production facility, to the extent feasible, a general site description including a description of the site location or locations; map(s) showing the coordinates of the site(s) and location(s) with respect to state, county, and other political subdivisions; and prominent features such as cities, lakes, rivers and parks within the site impact area(s).

d. A general description of the proposed facility, including a description of the expected principal characteristics of the facility such as the capacity of the proposed facility in megawatts expressed by the contract maximum generator megawatt rating, the expected net facility addition to the system in megawatts by net to the busbar rating, and the portion of the design capacity, in megawatts, of the proposed facility which is proposed to be available for use by each participant; the expected number and type of generating units; the primary fuel source for each such unit; the total hours of operation anticipated seasonally and annually and output during these hours; the expected capacity factors; a description of the expected general arrangement of major structures and equipment to provide the board with an understanding of the general layout of the facility; and a projected schedule for the facility's construction and utilization, including the projected date when a significant site alteration is proposed to begin and the projected in-service date of the facility. For this purpose, a group of several similar generating units operated together at the same location such that segregated records of energy output are not available shall be considered a single unit.

e. A general description of the raw materials, including fuel, used by the proposed facility in producing electricity and of the wastes created in the production process. In addition to describing the wastes created in the production process, the applicant shall determine annual expected emissions from the facility and provide a plan for acquiring allowances sufficient to offset these emissions. The applicant shall describe all transportation facilities currently operating that will be available to serve the proposed facility, and any additional transportation facilities needed to deliver raw materials and to remove wastes.

f. An identification, general description, and chronology of all material financial and other contractual commitments undertaken or planned to be undertaken with respect to the proposed facility.

g. A general map and description of the primary transportation corridors and the approximate routing of the rights-of-way in the vicinity of the settled areas, parks, recreational areas, and scenic areas.

h. A general analysis of the existing transmission system's capability to reliably support the proposed additional generation interconnection to the system. In the alternative, the applicant may provide testimony that (1) it will follow the interconnection requirements of the local and regional transmission authorities; (2) it is committed to meeting the pertinent transmission requirements with respect to the proposed facility; and (3) the applicant assures the board that the interconnection of the proposed facility will not degrade the adequacy, reliability, or operating flexibility of the transmission system from a regional or local perspective.

i. Identification of the general contractor for the proposed facility and the method by which the general contractor was selected. If a general contractor has not yet been selected, the utility shall identify the process by which the general contractor will be selected and the anticipated timeline for selecting a general contractor.

j. Identification of the plant operator for the proposed facility and the method by which the plant operator was selected. If a plant operator has not yet been selected, the utility shall identify the process by which a plant operator will be selected and the anticipated timeline for selecting a plant operator.

41.3(2) *Economic evaluation of proposed facility.* An application shall include an overall economic evaluation of the proposed facility using conventional capital evaluation techniques and the proposed ratemaking principles. Material assumptions used in the analysis shall be disclosed. At a minimum, the evaluation shall include:

a. Net present value calculations. An application shall include projected annual and total net present value calculations of projected revenue requirements and capital costs over the expected life of the proposed facility. If a traditional revenue requirement analysis does not account for revenue-sharing arrangements, riders, or other mechanisms that impact Iowa retail customer bills, the utility shall also provide projected annual and total net present value calculations that show the impact on amounts that will actually be paid by Iowa retail customers accounting for such mechanisms. To the extent the utility has projected revenue deficiencies within the period of analysis, the utility shall also provide the estimated effect the proposed facility will have on these calculations. In making these calculations, the utility shall detail the following cost assumptions:

(1) Installed cost. The utility shall provide an itemized statement of the estimated total costs to construct the proposed facility. Such estimated costs shall include, but not be limited to, the estimated cost of all electric power generating units; all electric supply lines within the proposed facility site boundary; all electric supply lines beyond the proposed facility site boundary with a voltage of 69 kilovolts or higher used for transmitting power from the proposed facility to the point of junction with the distribution system or with the interconnected primary transmission system; all appurtenant or miscellaneous structures used and useful in connection with the proposed facility or any part thereof; all rights-of-way, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance or operation of said facility; engineering and development; sales taxes; and AFUDC (if applicable). The estimated costs of all electric power generating units shall include all estimated costs of transmission and gas interconnection (if applicable). Estimated facility costs shall be expressed in absolute terms and in dollars per kilowatt. The absolute and per-kilowatt estimated construction costs shall be adjusted by the expected rate of inflation from the time the estimated construction costs are calculated to the time the proposed facility is scheduled for operation.

(2) Fixed expenses. For each year of the proposed facility's expected life from the time of application to the end of the proposed facility's expected life, the utility shall file projected expense factors for fixed operation and maintenance costs; property, income, and other taxes; and straight-line and tax depreciation rights.

(3) Variable expenses. For each year of the proposed facility's expected life from the scheduled time of operation to the end of the proposed facility's expected life, the utility shall file expected variable operation and maintenance costs including the cost of fuel and emission allowances. These expected

costs shall be reported in absolute terms and on a kWh basis assuming expected annual capacity factors for the proposed facility.

b. Cost of capital. The utility shall provide its projected costs of capital for the proposed facility for each year of the proposed facility's expected life from the time of application to the end of the proposed facility's expected life. Material assumptions used in the projections shall be provided, including but not limited to capital structure, cost of preferred stock, cost of debt, and cost of equity.

c. Cash flows. The utility shall provide the estimated maximum, minimum and expected cash inflows and outflows associated with the proposed facility in each year from the date of the application throughout the proposed facility's expected life.

41.3(3) *Risk mitigation factors.* At a minimum, the following information regarding contractual risk mitigation factors shall be included in an application:

a. Construction risk mitigation factors. The utility shall provide a general description of the contractual standards that the general contractor, if not the utility, must comply with to mitigate construction risks, including but not limited to cost overruns, labor shortages, failure to meet deadlines, and the need for replacement power if operational deadlines are not met. If the facility will be leased by the utility, the utility shall identify the above factors for both the lessor and the general contractor constructing the facility. The general description shall include all remedies, financial and otherwise, available to the utility for noncompliance with the construction standards and schedules.

b. Operational risk mitigation factors. The utility shall provide a general description of the contractual standards that the general contractor or the plant operator, if not the utility, must comply with to mitigate operational risks of the facility, including but not limited to low-availability factor and higher-than-expected operation and maintenance costs. The general description shall include a list of all contractual inspections the general contractor must meet before the utility leases or takes ownership of the facility and all remedies, financial and otherwise, available to the utility for noncompliance with the operating standards. If the utility leases the facility from an affiliate, the lease shall contain specific performance standards that the affiliate must meet to avoid financial consequences.

41.3(4) *Noncost factors.* The utility shall include in its application a comparison of the proposed facility with other feasible sources of supply related to the following noncost factors:

a. Economic impact to the state and community where the facility is proposed to be located, including job creation, taxes, and use of state resources.

b. Environmental impact to the state and community where the facility is proposed to be located.

c. Electric supply reliability and security in the state.

d. Fuel diversity and use of nontraditional supply sources such as alternate energy and conservation.

e. Efficiency and control technologies.

41.3(5) *Filing requirements for proposed ratemaking principles.* Each ratemaking principle proposed shall be supported as described in this subrule. Proposed ratemaking principles not envisioned by these rules shall be supported by sufficient evidence to justify the use of such principles in costing the facility for regulated retail rate recovery.

a. *Cost of equity.* Proposals for establishing the cost of equity shall be supported with analyses which demonstrate the reasonableness of the proposed equity rate for the proposed facility. If sufficient information is available, the analyses shall include a comparison with similar facilities built in the region in recent years.

b. *Depreciable life.* Proposals for establishing the depreciable life of the facility shall be supported by board precedent for the depreciable lives of similar facilities, the manufacturer's opinion of depreciable life, the applicant's general depreciation study or analysis, or an engineering study of the depreciable life of the type of facility proposed.

c. *Jurisdictional allocations.* Proposals for allocating the cost or output of the proposed facility among jurisdictions shall be supported by jurisdictional allocation studies or recent board-ordered or -approved allocations for the applicant.

41.3(6) *Additional application requirements for leasing arrangements.* The following additional information shall be filed when a utility is proposing an arrangement in which the utility leases a facility from an affiliate or an independent third party:

a. Identification of the method used in selecting the affiliate or independent third party to build the facility (competitive solicitation, sole source, etc.).

b. A copy of the lease agreement.

c. A detailed description of the lease agreement, including but not limited to the following:

(1) Commitment of capacity from the proposed facility to the utility under the lease agreement.

(2) Description of the final disposition of the leased facility at the end of the lease arrangement, including any options available to the utility and the terms of those options.

(3) Identification of the party responsible for operating, dispatching, and maintaining the facility.

(4) Identification of the party responsible for the cost of capital improvements, renewals and replacements, environmental compliance, taxes, and all other future costs associated with the facility.

(5) Identification of the party responsible for contracting capacity from the proposed facility.

(6) Identification of the party benefitting from revenues received through contracted capacity and opportunity sales.

d. If the lessor is an affiliate, a detailed description of the affiliate, including the affiliate's corporate structure and the utility's ownership stake in the affiliate, if any.

e. If the lessor is an affiliate, identification of utility assets transferred to the affiliate for use by the proposed facility and the cost at which those assets were transferred.

f. If the lessor is an affiliate, identification of any financial benefits and cost savings, including any tax advantages, accruing to the utility from leasing an affiliate-owned facility versus building a facility itself.

[**ARC 5206C**, IAB 10/7/20, effective 11/11/20]

199—41.4(476) Coincident filing. The utility shall have the option of filing its application for ratemaking principles, as required by this chapter, coincident with the utility's application for a certificate of public convenience, use, and necessity under 199—Chapter 24. Identical information required by both chapters need only be included once in a joint principles and certification application.

[**ARC 5206C**, IAB 10/7/20, effective 11/11/20]

199—41.5(476) Acquisition of a water, sanitary sewage, or storm water utility. A rate-regulated public utility proposing to acquire, in whole or in part, a water, sanitary sewage, or storm water system with a fair market value of $500,000 or more from a non-rate-regulated entity described in Iowa Code section 476.1(4) shall file an application for approval of the acquisition with the board. If the acquisition is approved, ratemaking principles that will apply when the costs of the acquisition are included in regulated rates shall be determined as part of the board's review of the application. At a minimum, an application made under this rule shall substantially comply with the following informational requirements, to the extent such information is reasonably available. Any omission of required information on the basis that it is not reasonably available shall be adequately justified by the applicant. The board will consider such omissions on a case-by-case basis and may require the applicant to provide additional information.

41.5(1) *General information.* An application shall include the following general information:

a. A general description of the system to be acquired, including the total number of customers, a description of the general arrangement of major structures and equipment, maps of the system, and a general description of the scope of the system.

b. The identification and general description of all material capital investments and operating expenses associated with the proposed acquisition anticipated within five years of the date of the acquisition.

c. A proposed procedural schedule that, at a minimum, provides proposed dates for direct testimony, rebuttal testimony, and a hearing for cross-examination of all testimony. The proposed schedule should generally comply with the board's procedural rules in 199—Chapter 7.

41.5(2) *Acquisition information.* An application shall include the following information related to the acquisition:

a. The final reports of both appraisals prepared pursuant to Iowa Code section 388.2A(2)*"a"*(2).

b. Final fair market value of the system as identified in Iowa Code section 388.2A(2)*"b."*

c. The final price for the system as negotiated pursuant to Iowa Code section 388.2A(2)*"c."*

d. An inventory of the acquired system's real and personal property as identified in Iowa Code section 388.2A(2)*"d."*

e. A financial information sheet prepared pursuant to Iowa Code section 388.2A(2)*"e."*

f. An affirmation that the acquiring utility and the acquired system have complied with the applicable components of Iowa Code section 388.2A.

g. The proposed acquisition contract.

41.5(3) *Impact of acquisition.* An application shall include the following information related to the acquired system and its potential impact on the acquiring utility:

a. If the acquired system is not in compliance with applicable local, state, or federal standards, estimates of the approximate cost and time required to put the system in compliance with such standards.

b. A description of anticipated capital investments and retirements for the acquired system, including estimated dollar amounts, for each of the first five years after the acquisition.

c. Any anticipated staffing changes due to the proposed acquisition.

d. A description of the proposed accounting to be utilized in any transfer of assets necessary to accomplish the acquisition.

e. A description of the anticipated effects of the acquisition, including a cost-benefit analysis which describes the projected benefits and costs of the acquisition, quantified in terms of present value and identifying the sources of such benefits and costs.

f. An analysis of the projected financial impact of the acquisition on the ratepayers of each of the affected utilities for each of the first five years after the acquisition.

g. Historical and projected fixed expenses for the acquired system, including expense factors for fixed operation and maintenance costs.

h. Historical and projected variable expenses for the acquired system, including expected variable operation and maintenance costs.

i. The estimated maximum, minimum, and expected cash inflows and outflows for the acquired system.

j. A description of the financing components of the acquisition and an analysis of the impacts on the acquiring utility's ability to attract capital on reasonable terms and to maintain a reasonable capital structure.

41.5(4) *Ratemaking principles.* Each ratemaking principle proposed shall be supported as described in this subrule. Proposed ratemaking principles not envisioned by these rules shall be supported by sufficient information to justify the use of such principles.

a. *Cost of equity.* The utility shall file financial models demonstrating the proposed equity rate or range of equity rates necessary to attract equity capital for the proposed acquisition. The financial analysis shall include a risk assessment of the proposed acquisition, including a comparison with similar acquisitions.

b. *Ratepayer allocations.* Proposals for allocating the cost of the acquired system and anticipated improvements to customers of the acquired system and the utility's existing customers shall include information showing that the proposed allocation will result in rates that are just and reasonable for both groups of customers.

c. *Initial depreciable value.* Proposals for establishing the value of the acquired system to be used as the initial gross asset balance for depreciation shall be supported by the lesser of the sale price or the fair market value of the system as determined consistent with Iowa Code section 388.2A(2)*"b."* The utility shall also provide the accumulated depreciation balances for the assets.

d. *Depreciable life.* Proposals for establishing rates which will be used to depreciate the acquired system shall be supported by a depreciation study or by depreciation rates applied in the utility's last general rate case.

41.5(5) *At-risk systems.* An application shall state whether the system to be acquired is an at-risk system, as defined by Iowa Code section 455B.199D as enacted by 2020 Iowa Acts, House File 2452. If the board determines that an application to acquire an at-risk system does not contain sufficient information consistent with this rule to render a timely decision, the board may reject the application without prejudice.
[**ARC 5206C**, IAB 10/7/20, effective 11/11/20]

199—41.6(476) Waiver. A utility may seek a waiver of any requirement of this chapter. The request for a waiver shall include the utility's reasons for believing the requirement is not applicable or necessary. A request for a waiver shall also comply with rule 199—1.3(17A,474,476).
[**ARC 5206C**, IAB 10/7/20, effective 11/11/20]

These rules are intended to implement Iowa Code sections 476.53 and 476.84.

[Filed ARC 5206C (Notice ARC 4865C, IAB 1/15/20), IAB 10/7/20, effective 11/11/20]

COLLEGE STUDENT AID COMMISSION[283]

[Prior to 8/10/88, see College Aid Commission[245]]

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HEALTH CARE PROFESSIONAL RECRUITMENT PROGRAM

[Prior to 8/10/88, see College Aid Commission, 245—Ch 7]

PREAMBLE

The health care professional recruitment program is established to be administered by the college student aid commission for Des Moines University. The program shall consist of a loan repayment program for health care professionals who are graduates of Des Moines University. The college student aid commission shall regularly adjust the health care professional service requirement under each aspect of the program to provide, to the extent possible, an equal financial benefit.

283—14.1(261) Definitions.

"Eligible rural community" means a medically underserved rural Iowa community which agrees to match state funds on at least a dollar-for-dollar basis for the loan repayment of a health care professional who practices in the community.

"Health care professional" means an individual who holds a practitioner's license issued by an agency or board under the Iowa department of public health and is employed as a physician, physician assistant, podiatrist, or physical therapist.

[**ARC 0108C**, IAB 5/2/12, effective 6/6/12]

283—14.2(261) Health care professional loan repayment program.

14.2(1) *Recruitment.* The university shall recruit and place health care professionals in eligible rural communities that agree to provide matching funds for the health care professional loan repayment program.

14.2(2) *Health care professional service requirement.* The health care professional service requirement for the health care professional loan repayment program is four years. The health care professional must annually verify, in a format acceptable to the commission, that the health care professional practiced in an eligible rural community for 12 consecutive months for each year of required service. An award will be prorated based on the months of service provided in a state fiscal year if less than 12 months.

14.2(3) *Award.* The health care professional may receive up to $50,000 in state-funded repayment benefits when a community agrees to fund matching benefits of an equal or greater amount.

14.2(4) *Eligible loans.* Eligible loans include subsidized and unsubsidized Stafford loans, Grad PLUS loans and consolidated loans. Only the outstanding portion of a Federal Consolidation Loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, an eligible Direct Unsubsidized Loan, or an eligible Grad PLUS Loan qualifies for loan repayment. A health care professional who receives loan repayment under this program and who refinances an eligible loan by obtaining a private educational loan may continue to receive loan repayment awards.

14.2(5) *Disbursement.* The commission shall disburse the loan payment to the health care professional's loan holder in return for completion of the service requirements in an eligible rural community.

14.2(6) *Restrictions.* A health care professional who is in default on a Stafford loan, SLS loan, Grad PLUS loan, or a Perkins/National Direct/National Defense student loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for repayment benefits. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapter 5, Iowa Administrative Code.

14.2(7) *Repayment.*

a. If loan repayment funds are applied prior to the health care professional's completion of the service requirement and the health care professional fails to complete the service requirement, repayment shall begin 30 days following termination of practice in an eligible rural community.

b. The commission shall prorate the award balance based on the months of service provided.

c. The health care professional shall repay the prorated balance of the loan repayment benefits and accrued interest at 12 percent per annum. Interest shall accrue on the unpaid principal balance of each loan from the effective date of the loan repayment agreement until the loan is paid in full.

d. The prorated balance owed by the health care professional must be paid in full within three years from the date the service ends.

[**ARC 0108C**, IAB 5/2/12, effective 6/6/12; **ARC 5222C**, IAB 10/7/20, effective 11/11/20]

283—14.3(261) Osteopathic forgivable loan.

14.3(1) *Physician service requirement.* The physician service requirement for the osteopathic forgivable loan program is one year for borrowers who received up to two annual loans and two years for borrowers who received three or more annual loans.

14.3(2) *Promissory note.* Loans disbursed are subject to the terms and conditions specified in the promissory note. The college student aid commission shall honor master promissory notes signed while a borrower is attending the university and shall enforce the loans according to the terms and conditions provided in the master promissory note.

[**ARC 0108C**, IAB 5/2/12, effective 6/6/12]

These rules are intended to implement 2011 Iowa Code Supplement section 261.19.

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CHAPTER 15
FUTURE READY IOWA SKILLED WORKFORCE LAST-DOLLAR SCHOLARSHIP PROGRAM

283—15.1(261) Basis for aid. The future ready Iowa skilled workforce last-dollar scholarship program provides scholarship assistance to Iowa residents enrolled in eligible programs aligned with high-demand jobs.
[**ARC 4607C**, IAB 8/14/19, effective 9/18/19]

283—15.2(261) Definitions. As used in this chapter:

"Adult learner" means an eligible student who attains the age of 20 as of July 1 prior to the year of enrollment and who has not received an award under subparagraph 15.3(1)*"j"*(1) or 15.3(1)*"j"*(2).

"Approved program" means a career and technical education program that has a classification of instructional program code approved by the Iowa department of education and that meets similar criteria as established for career and technical education programs approved under 281—Chapter 21.

"Approved state-recognized work-based learning program" means a structured educational and training program that includes authentic worksite training and is approved by the Iowa department of education.

"Continuous enrollment" means an eligible student is enrolled in the fall and spring semesters, or the equivalent, of a single year. Enrollment in the summer semester is not required.

"Credential" means a Title IV-eligible program of study leading to a postsecondary certificate, diploma, or degree, conferring no more than an associate degree, which, upon completion, leads directly to employment, and is awarded by an eligible institution and earned in a program of study that leads to a designated high-demand job.

"Eligible program" means an approved program certified through the selection process described in rule 283—15.5(261).

"Full-time" means enrollment in at least 12 hours per semester or the equivalent.

"Part-time" means enrollment in at least 6 but less than 12 hours per semester or the equivalent.

"Semester" means the fall, spring, or summer term of enrollment at an eligible institution, if the eligible institution is on a semester system, or the equivalent, if the institution is on a system other than a semester system.
[**ARC 4607C**, IAB 8/14/19, effective 9/18/19; **ARC 5223C**, IAB 10/7/20, effective 11/11/20]

283—15.3(261) Eligible students.

15.3(1) An applicant of the future ready Iowa skilled workforce last-dollar scholarship program must:

a. Be an Iowa resident as defined in 283—Chapter 10.

b. Annually complete the Free Application for Federal Student Aid and any other application required by the college student aid commission by the priority application date specified by the college student aid commission.

c. Attend an orientation session, in person or virtually, for the eligible institution.

d. Register for courses with the assistance of an advisor, create a graduation plan as required under the eligible program, and participate in available academic advising sessions.

e. Enroll in an eligible program at an eligible institution.

f. Consider participating in the volunteer mentor program, as defined by the commission on volunteer service.

g. Participate in available career advising sessions as required under the eligible program, including creation of a career plan when possible.

h. Meet satisfactory academic progress standards as defined by the eligible institution in accordance with the provisions of the federal Higher Education Act of 1965, as amended.

i. Receive no more than the equivalent of five full-time awards or eight part-time awards.

j. Meet one of the following three conditions:

(1) Prior to becoming an adult learner, enroll on a full-time basis following graduation from an Iowa high school, completion of private instruction under Iowa Code chapter 299A, or receipt of a high

school equivalency diploma under Iowa Code chapter 259A, and maintain continuous enrollment on a full-time basis in subsequent semesters, with the exception of the summer semester, to receive additional awards. An eligible student must enroll on at least a part-time basis during the summer semester to receive an award. An eligible student may enroll in fewer than 12 semester hours, or the equivalent, in the semester that the credential will be completed if full-time enrollment is not required to complete the program of study.

(2) Prior to becoming an adult learner, and following graduation from an Iowa high school, completion of private instruction under Iowa Code chapter 299A, or receipt of a high school equivalency diploma under Iowa Code chapter 259A, enter into full-time or part-time employment in a state-recognized work-based learning program approved by the Iowa department of education and enroll on a full-time or part-time basis and maintain continuous enrollment on a full-time or part-time basis in subsequent terms to receive additional awards. An eligible student may enroll in fewer than six semester hours, or the equivalent, in the semester that the credential will be completed if half-time enrollment is not required to complete the program of study.

(3) Following receipt of a high school diploma or high school equivalency diploma, and after becoming an adult learner, enroll on a full-time or part-time basis in an eligible program at an eligible institution, and maintain continuous enrollment on a full-time or part-time basis in subsequent semesters to receive additional awards. An eligible student may enroll in fewer than six semester hours, or the equivalent, in the semester that the credential will be completed if half-time enrollment is not required to complete the program of study.

If the student discontinues enrollment at the eligible institution due to military deployment, a temporary medical incapacity, in relation to the declaration of a national or state emergency, or other exceptional circumstances approved by the commission, the student must apply for a waiver. If the waiver is approved, the student is not required to maintain continuous enrollment during the period covered by the waiver.

15.3(2) Reserved.

[**ARC 4607C**, IAB 8/14/19, effective 9/18/19; **ARC 5223C**, IAB 10/7/20, effective 11/11/20]

283—15.4(261) Award amounts.

15.4(1) Awards for eligible students attending Iowa community colleges shall not exceed the remaining tuition and mandatory institutionwide fees after applying federal and state nonrepayable aid. However, awards for eligible students enrolled on a full-time basis shall be at least $250 per semester or the equivalent amount if the eligible institution operates on a system other than the semester system. Awards for eligible students enrolled on a part-time basis shall be the same amount prorated based on the number of semester hours, or the equivalent, in which the part-time student enrolls.

15.4(2) Awards for eligible students attending an accredited private institution or eligible institution, as defined in Iowa Code section 261.9, shall not exceed the average tuition and mandatory institutionwide fees at Iowa community colleges after applying federal and state nonrepayable aid. However, awards for eligible students enrolled on a full-time basis shall be at least $250 per semester or the equivalent amount if the eligible institution operates on a system other than the semester system. Awards for eligible students enrolled on a part-time basis shall be the same amount prorated based on the number of semester hours, or the equivalent, in which the part-time student enrolls. The average resident tuition and mandatory institutionwide fees will be determined by the Iowa department of education.

15.4(3) A student must be enrolled as a regular student in an eligible program that qualifies for Title IV funds. Tuition and institutionwide mandatory fees associated only with coursework required for the student's Title IV-eligible program of study can be used to determine the award amount.

[**ARC 4607C**, IAB 8/14/19, effective 9/18/19]

283—15.5(261) Selection of eligible programs.

15.5(1) An eligible program must lead to a credential aligned with a high-demand job pursuant to Iowa Code section 84A.1B(14).

15.5(2) Before an approved program is considered an eligible program, the department of workforce development and the college student aid commission, in consultation with the Iowa department of

education, must jointly certify that the program of study and credential are aligned with a high-demand job.
[**ARC 4607C**, IAB 8/14/19, effective 9/18/19; **ARC 5223C**, IAB 10/7/20, effective 11/11/20]

283—15.6(261) Criteria for maintaining eligible program status. The following criteria shall be used in the certification process.

15.6(1) By providing student data in a form and manner prescribed by the college student aid commission, the eligible institution shall demonstrate the eligible program, upon completion, leads to employment and not primarily to transfer to baccalaureate degree programs. The college student aid commission, the department of workforce development, and the Iowa department of education shall jointly determine employment outcomes, including wage thresholds.

If an eligible institution fails to demonstrate that an eligible program meets the certified outcomes for three successive years, new eligible students entering the eligible program are prohibited from receiving awards under this rule until such time that the college student aid commission determines that certified outcomes are being met.

15.6(2) A list of all programs eligible for the future ready Iowa skilled workforce last-dollar scholarship program, as well as the required courses and the suggested course sequence, must be available in one prominent location on the eligible institution's website.
[**ARC 4607C**, IAB 8/14/19, effective 9/18/19]

283—15.7(261) Awarding of funds.

15.7(1) Eligible students who enroll in eligible programs at eligible institutions may receive awards during a semester.

15.7(2) In the first year that funding is appropriated, and in the event that funds available are insufficient to award all eligible students, awards are first prioritized to eligible students who were not enrolled during the previous academic year. Applications will be ranked in date-received order, and students who complete the application by the earliest date will receive awards insofar as funds permit.

15.7(3) In the event that funds available are insufficient to award all eligible students, awards are first prioritized to eligible students who received an award during the prior year, according to the date the student completes the application. Applications will be ranked in date-received order, and students who complete the application by the earliest date will receive awards insofar as funds permit.

15.7(4) In the event that funds available are sufficient to award all eligible students meeting the conditions specified in subrule 15.7(2) or 15.7(3) but are insufficient to award all eligible students, awards are provided to additional eligible students according to the date the student completes the application. Applications will be ranked in date-received order, and students who complete the application by the earliest date will receive awards insofar as funds permit.

15.7(5) If the state workforce development board or a community college district removes a high-demand job from a list created under 2018 Iowa Acts, House File 2458, section 7, as amended by 2019 Iowa Acts, House File 758, section 12, an eligible student who received an award in a program of study aligned with that high-demand job shall continue to receive the award as long as the student continues to meet all other eligibility criteria.
[**ARC 4607C**, IAB 8/14/19, effective 9/18/19]

283—15.8(261) Institution eligibility requirements.

15.8(1) *Application process.* An institution requesting to participate in the future ready Iowa skilled workforce last-dollar scholarship program must apply to the college student aid commission using the college student aid commission's designated application. An applicant institution must provide the college student aid commission with documentation establishing eligibility as described in subrule 15.8(2). Applicant institutions seeking to participate in the future ready Iowa skilled workforce last-dollar scholarship program must submit applications by October 1 of the year prior to the beginning of the academic year for which they are applying for participation, with the exception of the first state fiscal year in which appropriations are authorized for expenditure.

15.8(2) *Eligible institution.* An Iowa community college as defined in Iowa Code section 260C.2 or an accredited private institution or eligible institution as defined in Iowa Code section 261.9 must:

a. Require eligible students to:

(1) Attend an orientation session, in person or virtually, for the eligible institution.

(2) Register for courses with the assistance of an advisor, create a graduation plan as required under the eligible program, and participate in available academic advising sessions.

(3) Participate in available career advising sessions as required under the eligible program, including creation of a career plan when possible.

b. Notify eligible students of the volunteer mentor program, encourage them to participate, and facilitate, in collaboration with the commission on volunteer service, the assignment of a volunteer mentor to each eligible student, based on the student's interests.

c. Facilitate connections through campus career centers and services to internships and similar local, state, and federal programs.

d. Market the eligible institution's eligible programs and optional incentives on the eligible institution's website and to other relevant agencies and organizations as recommended by the college student aid commission, commission on volunteer service, or department of workforce development.

e. Submit information annually to the college student aid commission including, but not limited to, information regarding recipients, scholarship disbursements, recipients' eligible programs, recipient completion rates by eligible program, and recipient employment outcomes. Information shall be submitted in the format prescribed by the college student aid commission. The college student aid commission may collaborate with other state agencies to obtain data from existing sources to reduce eligible institution reporting requirements.

15.8(3) *Compliance reviews.* The college student aid commission shall periodically investigate and review compliance of institutions participating in the future ready Iowa skilled workforce last-dollar scholarship program.

[**ARC 4607C**, IAB 8/14/19, effective 9/18/19]

283—15.9(261) Award notification. A scholarship recipient will be notified of the award by the institution to which application is made. The institution is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The eligible institution shall report changes in student eligibility to the college student aid commission.

[**ARC 4607C**, IAB 8/14/19, effective 9/18/19]

283—15.10(261) Award transfers and adjustments. Recipients are responsible for promptly notifying the appropriate eligible institution of any change in enrollment. The eligible institution will make necessary changes and notify the college student aid commission.

[**ARC 4607C**, IAB 8/14/19, effective 9/18/19]

283—15.11(261) Restrictions. A student who is in default on a Stafford Loan, an SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the future ready Iowa skilled workforce last-dollar scholarship program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by the college student aid commission's ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapters 4 and 5.

[**ARC 4607C**, IAB 8/14/19, effective 9/18/19]

These rules are intended to implement 2018 Iowa Acts, House File 2458, section 12.

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[Filed ARC 5223C (Notice ARC 5125C, IAB 8/12/20), IAB 10/7/20, effective 11/11/20]

CHAPTER 24
RURAL IOWA PRIMARY CARE LOAN REPAYMENT PROGRAM

283—24.1(261) Rural Iowa primary care loan repayment program. The rural Iowa primary care loan repayment program is a state-supported and administered loan repayment program for students who agree to practice as physicians in service commitment areas for five consecutive years and meet the requirements of these rules.
[**ARC 1320C**, IAB 2/19/14, effective 3/26/14; **ARC 1685C**, IAB 10/29/14, effective 12/3/14]

283—24.2(261) Definitions. As used in this chapter:

"Eligible loan" means the physician's total subsidized, unsubsidized, and consolidated Federal Stafford Loan amount under the Federal Family Education Loan Program, Federal Direct Loan Program, federal Graduate PLUS Loan, or federal Perkins Loan, including principal and interest. Only the outstanding portion of a federal consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan qualifies for loan repayment. A physician who receives loan repayment under this program and who refinances an eligible loan by obtaining a private educational loan may continue to receive loan repayment awards.

"Eligible university" means either the State University of Iowa Carver College of Medicine or Des Moines University College of Osteopathic Medicine.

"Maximum award" means the maximum amount of loan repayments that the physician can receive after completing all obligations under the rural Iowa primary care loan repayment program, not to exceed a total of $200,000. The maximum award can be applied only to eligible loans; thus, payments cannot exceed the outstanding eligible loan balance at the time of payment.

"Physician" means an individual who holds a practitioner's license issued by an agency or board under the Iowa department of public health and is employed in the practice of medicine and surgery or osteopathic medicine and surgery, specializing in family medicine, pediatrics, psychiatry, internal medicine, or general surgery.

"Residency program" means an accredited medical residency program located in the state of Iowa in which the residency is physically performed in the state of Iowa.

"Service commitment area" means a medically underserved Iowa city with a population of less than 26,000 that is located more than 20 miles from a city with a population of 50,000 or more. Each physician participating in the program must contract with the service commitment area to ensure the service commitment area provides a nonrefundable $20,000 contribution for deposit in the rural Iowa primary care trust fund. Payment of the nonrefundable contribution to the trust fund can be made by, but is not limited to, the following organizations: community agencies, hospitals, medical groups, municipalities, community foundations, local government entities, or other community entities. Locations and distances between cities will be consistently measured and verified by calculating the shortest travel distance on paved roads.
[**ARC 1320C**, IAB 2/19/14, effective 3/26/14; **ARC 1685C**, IAB 10/29/14, effective 12/3/14; **ARC 5137C**, IAB 8/12/20, effective 9/16/20; **ARC 5222C**, IAB 10/7/20, effective 11/11/20]

283—24.3(261) Eligibility requirements.

24.3(1) An eligible university will recommend up to ten applicants to the commission for loan repayment benefits. Priority will be given to students who are Iowa residents upon enrolling in the eligible university. "Iowa resident" means an individual who meets the residency requirements established in 283—Chapter 10. The percentage of the agreements to be entered into by students attending each eligible university shall be evenly divided.

a. The commission will annually determine and communicate the number of recommendations that can be funded at each eligible university.

b. If fewer than the recommendations in 24.3(1)*"a"* are fulfilled by students at one eligible university, the commission may obtain additional recommendations from the other eligible university to award the remaining agreements.

24.3(2) An applicant must enter into an agreement with the commission during the applicant's final year of study leading to a doctor of medicine or osteopathy degree.

24.3(3) An applicant must be enrolled on a full-time basis and graduate with a doctor of medicine or osteopathy degree from an eligible university. The commission may waive the full-time enrollment requirement for a temporary time frame only in the instance of a leave of absence approved by an eligible university. The applicant must request a waiver from the commission in writing.

24.3(4) An applicant must apply for, enter, and complete a residency program in Iowa.

24.3(5) Within nine months of graduating from the residency program, an applicant must receive a permanent license to practice medicine and surgery or osteopathic medicine and surgery in the state of Iowa and engage in full-time practice, as defined by the service commitment area, of medicine and surgery or osteopathic medicine and surgery specializing in family medicine, pediatrics, psychiatry, internal medicine, or general surgery for a period of five consecutive years in a service commitment area.

24.3(6) An applicant must annually complete and return to the commission an affidavit of acceptance into and completion of residency programs and acceptance of and completion of employment obligations in a service commitment area.

24.3(7) Prior to or upon engagement in full-time employment in a service commitment area, the physician must contract with a service commitment area to provide a nonrefundable $20,000 contribution for deposit in the rural Iowa primary care trust fund. Payment must be received by the commission from a service commitment area prior to payment of any loan repayment awards.

24.3(8) Failure by the applicant to meet all eligibility requirements under this rule and in the agreement will result in forfeiture of all remaining unpaid payments.

[**ARC 1320C**, IAB 2/19/14, effective 3/26/14; **ARC 1685C**, IAB 10/29/14, effective 12/3/14; **ARC 2205C**, IAB 10/28/15, effective 12/2/15]

283—24.4(261) Awarding of funds.

24.4(1) Prior to accepting an offer of employment, the physician must notify the commission of the service commitment area in which the physician will be employed, and the commission will verify the eligibility of the service commitment area.

24.4(2) The maximum award will be paid to the physician's eligible loan holder in five equal installments, upon successful completion of each of five 12-month employment obligations. Failure to complete all, or any portion, of the five-consecutive-year employment obligation will result in the forfeiture of all remaining unpaid payments. A physician who fails to meet the requirements of these rules may also be subject to repayment of moneys advanced by the service commitment area as provided in any contract between the physician and the service commitment area.

24.4(3) No loan repayment amounts will be paid until the service commitment area provides the nonrefundable $20,000 contribution for deposit into the rural Iowa primary care trust fund.

[**ARC 1320C**, IAB 2/19/14, effective 3/26/14; **ARC 1685C**, IAB 10/29/14, effective 12/3/14]

283—24.5(261) Waivers.

24.5(1) *Service commitment area.* The commission may waive the requirement that the physician practice in the same service commitment area for five years. The physician must request a waiver from the commission in writing.

24.5(2) *Full-time employment.* The commission may waive the requirement that the physician be employed full-time if the physician demonstrates exceptional circumstances. The physician must request a waiver from the commission in writing. If a waiver request is granted by the commission, the agreement will be amended to provide an allowance for part-time employment. The five-year employment obligation will be proportionally extended to ensure the physician is employed in a service commitment area for the equivalent of five full-time years.

24.5(3) *Postponement of physician employment.* The physician obligation to engage in practice in accordance with 24.3(5) may be postponed for no more than two years from the time full-time practice was to commence. The physician must request a waiver from the commission in writing for one of the following purposes:

a. Active duty service in the armed forces, the armed forces military reserve, or the national guard.

b. Service in Volunteers in Service to America or the federal Peace Corps.

c. A service commitment to the United States Public Health Service Commissioned Corps.

d. A period of religious missionary work conducted by an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

The physician obligation to engage in practice in accordance with 24.3(5) may be postponed for a period exceeding two years for any period of temporary medical incapacity, including leave approved under the Family and Medical Leave Act, during which the physician is unable to engage in full-time practice. The physician must request a waiver from the commission in writing.

24.5(4) *Satisfaction of physician employment.* All obligations under the rural Iowa primary care loan repayment program are considered to be satisfied when any of the following conditions are met:

a. All terms of the agreement are met.

b. The person who entered into the agreement dies.

c. The person who entered into the agreement, due to permanent disability, is unable to meet the requirements of these rules.

d. The person who entered into the agreement has no remaining eligible loan balance to repay.

[**ARC 1320C**, IAB 2/19/14, effective 3/26/14; **ARC 1685C**, IAB 10/29/14, effective 12/3/14]

283—24.6(261) Loan repayment cancellation.

24.6(1) Within 30 days following withdrawal from an eligible university, or termination of employment from a residency program or as a physician in a service commitment area, the applicant must notify the commission.

24.6(2) The applicant is responsible for notifying the commission immediately of a change in contact information including, but not limited to, name, telephone number, e-mail address, and place of employment.

[**ARC 1320C**, IAB 2/19/14, effective 3/26/14]

283—24.7(261) Restrictions. A physician who is in default on a Federal Stafford Loan, Grad PLUS Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan repayment. Eligibility may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5.

[**ARC 1320C**, IAB 2/19/14, effective 3/26/14]

These rules are intended to implement Iowa Code section 261.113 as amended by 2014 Iowa Acts, Senate File 2347.

[Filed ARC 1320C (Notice ARC 1121C, IAB 10/16/13), IAB 2/19/14, effective 3/26/14]
[Filed ARC 1685C (Notice ARC 1586C, IAB 8/20/14), IAB 10/29/14, effective 12/3/14]
[Filed ARC 2205C (Notice ARC 2037C, IAB 6/24/15), IAB 10/28/15, effective 12/2/15]
[Filed ARC 5137C (Notice ARC 5031C, IAB 5/6/20), IAB 8/12/20, effective 9/16/20]
[Filed ARC 5222C (Notice ARC 5124C, IAB 8/12/20), IAB 10/7/20, effective 11/11/20]

CHAPTER 26
HEALTH CARE LOAN REPAYMENT PROGRAM

283—26.1(261) Health care loan repayment program. The health care loan repayment program is a state-supported and state-administered program established to repay the qualified student loans of nurse educators teaching at eligible Iowa colleges and universities, as well as applicants who agree to practice as registered nurses, advanced registered nurse practitioners, or physician assistants in service commitment areas for five consecutive years, and who meet the requirements of these rules.
[**ARC 4186C**, IAB 12/19/18, effective 1/23/19]

283—26.2(261) Definitions. As used in this chapter:

"Advanced registered nurse practitioner" means an individual who graduated from an accredited graduate or postgraduate advanced practice educational program, is licensed by the board of nursing as a registered nurse, is licensed by the board of nursing as an advanced registered nurse practitioner, and is employed as an advanced registered nurse practitioner in an eligible service commitment area.

"Nurse educator" means a registered nurse who holds a master's or doctorate degree and is employed by an Iowa community college, an accredited private institution defined in Iowa Code section 261.9, or an institution of higher learning governed by the state board of regents as a faculty member who teaches nursing as provided in 655—Chapter 2 at a nursing program approved by the board of nursing pursuant to Iowa Code section 152.5.

"Physician assistant" means an individual who graduated with a master's degree, holds a practitioner's license to practice as a physician assistant pursuant to Iowa Code chapter 148C, and is employed as a physician assistant in an eligible service commitment area.

"Qualified student loan" means a loan that was made, insured, or guaranteed under Title IV of the federal Higher Education Act of 1965, as amended, or under Title VII or VIII of the federal Public Health Service Act, as amended, directly to the borrower for attendance at an approved postsecondary institution. Only the outstanding portion of a federal consolidation loan that was used to repay a qualified student loan qualifies for loan repayment. A recipient who refinances a qualified student loan by obtaining a private educational loan may continue to receive loan repayment awards.

"Registered nurse" means a nurse who is licensed by the board of nursing as a registered nurse and is employed as a registered nurse in an eligible service commitment area.

"Service commitment area" means a city in Iowa with a population of less than 26,000 that is located more than 20 miles from a city with a population of 50,000 or more. Locations and distances between cities will be consistently measured and verified by calculating the shortest travel distance on paved roads.
[**ARC 4186C**, IAB 12/19/18, effective 1/23/19; **ARC 5137C**, IAB 8/12/20, effective 9/16/20; **ARC 5222C**, IAB 10/7/20, effective 11/11/20]

283—26.3(261) Eligibility requirements.

26.3(1) An eligible applicant must be an advanced registered nurse practitioner, nurse educator, physician assistant, or registered nurse.

26.3(2) An eligible applicant must annually complete and file an application for the program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications.

26.3(3) An eligible applicant must annually complete and return to the commission an affidavit of practice verifying full-time employment, as defined by the employer, in a service commitment area during the entire year as an advanced registered nurse practitioner, physician assistant, or registered nurse, or full-time employment, as defined by the employer, as a nurse educator.
[**ARC 4186C**, IAB 12/19/18, effective 1/23/19]

283—26.4(261) Awarding of funds.

26.4(1) *Selection criteria.* All completed applications received on or before the published deadline will be considered for funding. To the extent possible, an equal number of new advanced registered

nurse practitioners, nurse educators, physician assistants, and registered nurses will be offered awards based on the availability of appropriated funds. In the event that funding is insufficient to award all eligible applicants within an occupation category, criteria for selection of eligible applicants within each occupation category will be prioritized as follows:

a. Renewal status. Recipients of awards through the registered nurse and nurse educator loan forgiveness program during the 2018 state fiscal year will be eligible for funding under the health care loan repayment program if the eligible applicants meet the eligibility criteria of the health care loan repayment program. Under this provision, no recipient will receive more than five consecutive awards between the registered nurse and nurse educator loan forgiveness program and the health care loan repayment program;

b. Iowa residency status;

c. Members of the Iowa national guard, if requested by the adjutant general.

(1) Members of the Iowa national guard are exempt from the service commitment area requirement, and

(2) Members of the Iowa national guard must have satisfactorily completed required guard training and must maintain satisfactory performance of guard duty;

d. Date of application.

26.4(2) *Annual award.* The maximum annual award shall be the lesser of:

a. $6,000, or

b. Twenty percent of the eligible applicant's total outstanding qualified student loan.

26.4(3) *Extent of repayment.* Eligible applicants may receive loan repayment for no more than five consecutive years. Eligible applicants who fail to receive loan repayment awards in consecutive years will not be considered for subsequent years of loan repayment.

26.4(4) *Disbursement of loan repayment funds.*

a. Loan repayment awards will be disbursed upon completion of the year for which the award was approved and upon certification from the employer that the advanced registered nurse practitioner, nurse educator, physician assistant, or registered nurse was employed full-time, as defined by the employer, during the entire year and completed the year in good standing.

b. Loan repayment awards will be distributed to the eligible applicant's student loan holder and applied directly to qualified student loans.

[**ARC 4186C**, IAB 12/19/18, effective 1/23/19]

283—26.5(261) Loan repayment cancellation.

26.5(1) An eligible applicant who has been designated for a loan repayment award shall notify the commission within 30 days following termination or cessation of full-time practice in a service commitment area as an advanced registered nurse practitioner, physician assistant, or registered nurse, or termination or cessation of full-time employment as a nurse educator.

26.5(2) A recipient of an award is responsible for notifying the commission immediately of a change in name, place of employment, or home address.

[**ARC 4186C**, IAB 12/19/18, effective 1/23/19]

283—26.6(261) Restrictions. An advanced registered nurse practitioner, nurse educator, physician assistant, or registered nurse who is in default on a qualified student loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan repayment benefits. Eligibility may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5.

[**ARC 4186C**, IAB 12/19/18, effective 1/23/19]

These rules are intended to implement Iowa Code section 261.116.

[Filed ARC 4186C (Notice ARC 3939C, IAB 8/15/18), IAB 12/19/18, effective 1/23/19]

[Filed ARC 5137C (Notice ARC 5031C, IAB 5/6/20), IAB 8/12/20, effective 9/16/20]

[Filed ARC 5222C (Notice ARC 5124C, IAB 8/12/20), IAB 10/7/20, effective 11/11/20]

CHAPTER 27
RURAL VETERINARIAN LOAN REPAYMENT PROGRAM

283—27.1(261) Rural veterinarian loan repayment program. The rural veterinarian loan repayment program is a state-supported and state-administered loan repayment program established to repay the eligible loans of veterinarians who agree to practice in service commitment areas or in veterinary shortage areas for four consecutive years and meet the requirements of these rules.
[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

283—27.2(261) Definitions. As used in this chapter:

"Eligible loan" means the veterinarian's total subsidized, unsubsidized, and consolidated Federal Stafford Loan amount under the Federal Family Education Loan Program, Federal Direct Loan Program, or federal Graduate PLUS Loan, including principal and interest. Only the outstanding portion of a federal consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan qualifies for loan repayment.

"Eligible university" means a college or university that offers a veterinary medicine degree program; is eligible to participate in federal student aid programs authorized under Title IV of the federal Higher Education Act of 1965, as amended; and is accredited by the American Veterinary Medical Association Council on Education.

"Food supply veterinary medicine" means corporate and private practices devoted to food animal medicine, mixed animal medicine, food safety, epidemiology, public health, animal health, and other public and private practices that contribute to the production of a safe and wholesome food supply.

"Maximum award" means the maximum amount of loan repayments that the veterinarian can receive after completing all obligations under the rural veterinarian loan repayment program, not to exceed a total of $60,000. The maximum award can be applied only to eligible loans; thus, payments cannot exceed the outstanding eligible loan balance at the time of payment.

"Service commitment area" means an Iowa city with a population of less than 26,000 that is located more than 20 miles from a city with a population of 50,000 or more. If a veterinarian is not working in a veterinary shortage area but is working in a service commitment area, the veterinarian must contract with the service commitment area to ensure the service commitment area provides a nonrefundable contribution equivalent to 12.5 percent of the veterinarian's eligible loan balance for deposit in the rural veterinarian trust fund. The veterinarian's eligible loan balance will be calculated after the program agreement is signed. Payment of the nonrefundable contribution to the trust fund can be made by, but is not limited to, the following organizations: community agencies, medical groups, municipalities, community foundations, local government entities, or other community entities. Locations and distances between cities will be consistently measured and verified by calculating the shortest travel distance on paved roads.

"Veterinarian" means an individual who holds a practitioner's license pursuant to Iowa Code chapter 169 and is engaged in the practice of veterinary medicine in a service commitment area or a veterinary shortage area in Iowa.

"Veterinary shortage area" means a designated veterinary service shortage in Iowa recommended for designation in accordance with the federal National Veterinary Medical Service Act and published by the United States Department of Agriculture. Data from the most recent year for which data is available will be used to award funds to new eligible applicants. In addition to the veterinary shortage areas published by the United States Department of Agriculture, the state veterinarian may designate additional veterinary shortage areas in Iowa. All veterinary shortage areas designated in a given year will be published by the commission prior to soliciting applications from eligible applicants.
[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

283—27.3(261) Eligible applicant. An individual who is enrolled in the final year of a veterinary degree program at an eligible university or who has received a veterinary medicine degree from an eligible

university within the past five years may sign a program agreement. The individual must commit to meeting the eligibility requirements described in rule 283—27.4(261).
[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

283—27.4(261) Eligibility requirements.

27.4(1) In order to be considered an eligible veterinarian under the program, the eligible applicant must:

a. Complete an application and sign a program agreement by the date(s) specified by the commission.

b. Complete a doctor of veterinary medicine degree, or the equivalent, at an eligible university.

c. Within one year of completing a doctor of veterinary medicine degree, or the equivalent, or signing a program agreement, whichever is most recent, an eligible applicant must have a permanent license to practice veterinary medicine under Iowa Code chapter 169 and engage in full-time practice as a veterinarian in a service commitment area or veterinary shortage area in Iowa.

Prior to engaging in the practice of veterinary medicine in a service commitment area or veterinary shortage area, the veterinarian must notify the commission of the service commitment area or veterinary shortage area in which the veterinarian will be engaged in veterinary practice, and the commission will verify the eligibility of the service commitment area or veterinary shortage area.

27.4(2) Eligible applicants not working in a veterinary shortage area. Prior to or upon engagement in full-time practice in a service commitment area, the veterinarian must contract with a service commitment area to provide a nonrefundable contribution for deposit in the rural veterinarian trust fund. The nonrefundable contribution must be received by the commission from a service commitment area prior to payment of any loan repayment awards.

27.4(3) Failure by the applicant to meet all eligibility requirements under this rule and in the program agreement will result in forfeiture of all remaining unpaid payments.
[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

283—27.5(261) Priority for program agreements.

27.5(1) In the event that all on-time eligible applicants cannot be funded with the available appropriation, program agreements will be prioritized as follows:

a. Eligible applicants who will practice as private practice food supply veterinarians in a veterinary shortage area and have graduated from an Iowa high school or completed private instruction under Iowa Code chapter 299A; followed by eligible applicants who will practice as private practice food supply veterinarians in a veterinary shortage area and have not graduated from an Iowa high school or completed private instruction under Iowa Code chapter 299A.

b. Eligible applicants who will practice as private practice food supply veterinarians in a service commitment area and have graduated from an Iowa high school or completed private instruction under Iowa Code chapter 299A; followed by eligible applicants who will practice as private practice food supply veterinarians in a service commitment area and have not graduated from an Iowa high school or completed private instruction under Iowa Code chapter 299A.

c. Eligible applicants who will practice as a veterinarian in a service commitment area and have graduated from an Iowa high school or completed private instruction under Iowa Code chapter 299A; followed by eligible applicants who will practice as veterinarians in a service commitment area and have not graduated from an Iowa high school or completed private instruction under Iowa Code chapter 299A.

27.5(2) In the event that all on-time eligible applicants within a priority group described in subrule 27.5(1) cannot be funded, eligible applicants within that priority group will be prioritized according to the date the application was received by the commission.
[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

283—27.6(261) Awarding of funds.

27.6(1) The maximum award will be paid to the veterinarian's eligible loan holder in four equal installments, upon successful completion of each of four 12-month practice obligations. Failure to complete all, or any portion, of the four-consecutive-year practice obligation will result in the forfeiture

of all remaining unpaid payments. A veterinarian who fails to meet the requirements of these rules may also be subject to repayment of moneys advanced by the service commitment area or veterinary shortage area as provided in any contract between the veterinarian and the service commitment area or veterinary shortage area.

27.6(2) An eligible applicant must annually complete and return to the commission an affidavit of completion of practice in a service commitment area or veterinary shortage area.
[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

283—27.7(261) Waivers.

27.7(1) *Service commitment area or veterinary shortage area.* The commission may waive the requirement that the veterinarian practice in the same service commitment area or veterinary shortage area for four years as long as the veterinarian continues to practice in a service commitment area or veterinary shortage area. The veterinarian must request a waiver from the commission in writing.

27.7(2) *Postponement of veterinarian practice.* The veterinarian obligation to engage in practice in accordance with rule 283—27.4(261) may be postponed for no more than two years from the time full-time practice was to commence. The veterinarian must request a waiver from the commission in writing for one of the following purposes:

a. Active duty service in the armed forces, the armed forces military reserve, or the national guard.

b. Service in Volunteers in Service to America or the federal Peace Corps.

c. A rural service commitment to the United States Public Health Service Commissioned Corps.

d. A period of religious missionary work conducted by an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

The veterinarian obligation to engage in practice in accordance with rule 283—27.4(261) may be postponed for a period exceeding two years for any period of temporary medical incapacity, including leave approved under the Family and Medical Leave Act, during which the veterinarian is unable to engage in full-time practice. The veterinarian must request a waiver from the commission in writing.

27.7(3) *Satisfaction of the veterinarian practice obligation.* All obligations under the rural veterinarian loan repayment program are considered to be satisfied when any of the following conditions are met:

a. All terms of the agreement are met.

b. The person who entered into the agreement dies.

c. The person who entered into the agreement, due to permanent disability, is unable to meet the requirements of these rules.

d. The person who entered into the agreement has no remaining eligible loan balance to repay.
[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

283—27.8(261) Loan repayment cancellation.

27.8(1) Within 30 days following termination of practice as a veterinarian in a service commitment area or a veterinary shortage area, the applicant must notify the commission.

27.8(2) The applicant is responsible for notifying the commission immediately of a change in contact information including, but not limited to, name, telephone number, email address, and location of practice.
[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

283—27.9(261) Restrictions.

27.9(1) A veterinarian who is in default on a Federal Stafford Loan, Grad PLUS Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan repayment. Eligibility may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5.

27.9(2) A veterinarian who participated in and received loan repayment awards through the veterinary medicine loan repayment program administered by the United States Department of

Agriculture is ineligible to enter into a program agreement or receive loan repayment benefits under this program.

[**ARC 5224C**, IAB 10/7/20, effective 11/11/20]

These rules are intended to implement Iowa Code section 261.120 as enacted by 2020 Iowa Acts, Senate File 2398.

[Filed ARC 5224C (Notice ARC 5123C, IAB 8/12/20), IAB 10/7/20, effective 11/11/20]

CHAPTER 61
WATER QUALITY STANDARDS

[Prior to 7/1/83, DEQ Ch 16]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

WATER QUALITY STANDARDS

567—61.1 Rescinded, effective August 31, 1977.

567—61.2(455B) General considerations.

61.2(1) *Policy statement.* It shall be the policy of the commission to protect and enhance the quality of all the waters of the state. In the furtherance of this policy it will attempt to prevent and abate the pollution of all waters to the fullest extent possible consistent with statutory and technological limitations. This policy shall apply to all point and nonpoint sources of pollution.

These water quality standards establish selected criteria for certain present and future designated uses of the surface waters of the state. The standards establish the areas where these uses are to be protected and provide minimum criteria for waterways having nondesignated uses as well. Many surface waters are designated for more than one use. In these cases the more stringent criteria shall govern for each parameter.

Certain of the criteria are in narrative form without numeric limitations. In applying such narrative standards, decisions will be based on the U.S. Environmental Protection Agency's methodology described in "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses," (1985) and on the rationale contained in "Quality Criteria for Water," published by the U.S. Environmental Protection Agency (1977), as updated by supplemental Section 304 (of the Act) Ambient Water Quality Criteria documents. To provide human health criteria for parameters not having numerical values listed in 61.3(3) Table 1, the required criteria will be based on the rationale contained in these EPA criteria documents. The human health criterion considered will be the value associated with the consumption of fish flesh and a risk factor of 10^{-5} for carcinogenic parameters. For noncarcinogenic parameters, the recommended EPA criterion will be selected. For Class C water, the EPA criteria for fish and water consumption will be selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above.

All methods of sample collection, preservation, and analysis used in applying any of the rules in these standards shall be in accord with those prescribed in 567—Chapter 63.

61.2(2) *Antidegradation policy.* It is the policy of the state of Iowa that:

a. Tier 1 protection. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.

b. Tier 2 protection. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the department shall ensure water quality adequate to protect existing uses fully. Further, the department shall ensure the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control before allowing any lowering of water quality.

c. Tier 2½ protection—outstanding Iowa waters. Where high quality waters constitute an outstanding state resource, such as waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

d. Tier 3 protection—outstanding national resource waters. Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. Any proposed activity that would result in a permanent new or expanded source of pollutants in an outstanding national resource water is prohibited.

e. Rescinded IAB 8/31/16, effective 8/12/16.

f. All unapproved facility plans for new or expanded construction permits, except for construction permits issued for nondischarging facilities, shall undergo an antidegradation review if degradation is likely in the receiving water or downstream waters following February 17, 2010.

g. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, and 52 as well as Corps regional permits 7, 27, 33, and 34 as revised through July 16, 2014, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

(4) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

(5) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

(6) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

(7) For projects that impact an outstanding national resource water, outstanding Iowa water, fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(8) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) Heavy equipment shall not be used or operated within the stream channel. If in-stream work is unavoidable, it shall be performed in such a manner as to minimize the duration of the disturbance, turbidity increases, substrate disturbance, bank disturbance, and disturbance to riparian vegetation. This condition does not further restrict otherwise authorized drainage ditch maintenance activities (Iowa Section 401 Water Quality Certification condition).

Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permits or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require a preconstruction notice under nationwide permit conditions.

61.2(3) *Minimum treatment required.* All wastes discharged to the waters of the state must be of such quality that the discharge will not cause the narrative or numeric criteria limitations to be exceeded. Where the receiving waters provide sufficient assimilative capacity that the water quality standards are

not the limiting factor, all point source wastes shall receive treatment in compliance with minimum effluent standards as adopted in rules by the department.

There are numerous parameters of water quality associated with nonpoint source runoff which are of significance to the designated water uses specified in the general and specific designations in 567—61.3(455B), but which are not delineated. It shall be the intent of these standards that the limits on such nonpoint source related parameters when adopted shall be those that can be achieved by best management practices as defined in the course of the continuing planning process from time to time. Existing water quality and nonpoint source runoff control technology will be evaluated in the course of the Iowa continuing planning process, and best management practices and limitations on specific water quality parameters will be reviewed and revised from time to time to ensure that the designated water uses and water quality enhancement goals are met.

61.2(4) *Regulatory mixing zones.* Mixing zones are recognized as being necessary for the initial assimilation of point source discharges which have received the required degree of treatment or control. Mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by subrule 61.2(3). The objective of establishing mixing zones is to provide a means of control over the placement and emission of point source discharges so as to minimize environmental impacts. Waters within a mixing zone shall meet the general water quality criteria of subrule 61.3(2). Waters at and beyond mixing zone boundaries shall meet all applicable standards and the chronic and human health criteria of subrule 61.3(3), Tables 1 and 3, for that particular water body or segment. A zone of initial dilution may be established within the mixing zone beyond which the applicable standards and the acute criteria of subrule 61.3(3) will be met. For waters designated under subrule 61.3(5), any parameter not included in Tables 1, 2 and 3 of subrule 61.3(3), the chronic and human health criteria, and the acute criterion calculated following subrule 61.2(1), will be met at the mixing zone and zone of initial dilution boundaries, respectively.

a. Due to extreme variations in wastewater and receiving water characteristics, spatial dimensions of mixing zones shall be defined on a site-specific basis. These rules are not intended to define each individual mixing zone, but will set maximum limits which will satisfy most biological, chemical, physical and radiological considerations in defining a particular mixing zone. Additional details are noted in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020, for considering unusual site-specific features such as side channels and sand bars which may influence a mixing zone. Applications for operation permits under 567—subrule 64.3(1) may be required to provide specific information related to the mixing zone characteristics below their outfall so that mixing zone boundaries can be determined.

b. For parameters included in Table 1 only (which does not include ammonia nitrogen), the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

(1) The stream flow in the mixing zone may not exceed the most restrictive of the following:

1. Twenty-five percent of the design low stream flows noted in subrule 61.2(5) for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

2. Ten percent of the design low stream flows noted in subrule 61.2(5) for the Mississippi and Missouri Rivers.

3. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.

(2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:

1. The distance to the juncture of two perennial streams.

2. The distance to a public water supply intake.

3. The distance to the upstream limits of an established recreational area, such as public beaches, and state, county and local parks.

4. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.

5. The distance to another mixing zone.

6. Not to exceed a distance of 2000 feet.

7. The location where the mixing zone contained the percentages of stream flow noted in 61.2(4)*"b"*(1).

(3) The width of the mixing zone is calculated as the portion of the stream containing the allowed mixing zone stream flow. The mixing zone width will be measured perpendicular to the basic direction of stream flow at the downstream boundary of the mixing zone. This measurement will only consider the distance of continuous water surface.

(4) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

c. The stream flow used in determining wasteload allocations to ensure compliance with the maximum contaminant level (MCL), chronic and human health criteria of Table 1 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the following percentages of the design low stream flow as measured at the point of discharge:

(1) Twenty-five percent for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

(2) Ten percent for the Mississippi and Missouri Rivers.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 1 may not exceed 10 percent of the calculated flow associated with the mixing zone.

d. For toxic parameters noted in Table 1, the following exceptions apply to the mixing zone requirements:

(1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.

(2) No zone of initial dilution will be allowed in waters designated as cold water.

(3) The use of a diffuser device to promote rapid mixing of an effluent in a receiving stream will be considered on a case-by-case basis with its usage as a means for dischargers to comply with an acute numerical criterion.

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi or Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020.

e. For ammonia criteria noted in Table 3, the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

(1) The stream flow in the mixing zone may not exceed the most restrictive of the following:

1. One hundred percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is less than or equal to 2:1.

2. Fifty percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is greater than 2:1, but less than or equal to 5:1.

3. Twenty-five percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is greater than 5:1.

4. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.

(2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:

1. The distance to the juncture of two perennial streams.

2. The distance to a public water supply intake.

3. The distance to the upstream limits of an established recreational area, such as public beaches, and state, county, and local parks.

4. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.

5. The distance to another mixing zone.

6. Not to exceed a distance of 2000 feet.

7. The location where the mixing zone contained the percentages of stream flow noted in 61.2(4)*"e"*(1).

(3) The width of the mixing zone is calculated as the portion of the stream containing the allowed mixing zone stream flow. The mixing zone width will be measured perpendicular to the basic direction of stream flow at the downstream boundary of the mixing zone. This measurement will only consider the distance of continuous water surface.

(4) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

f. For ammonia criteria noted in Table 3, the stream flow used in determining wasteload allocations to ensure compliance with the chronic criteria of Table 3 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the percentages of the design low stream flow noted in 61.2(4)*"e"*(1) as measured at the point of discharge.

The pH and temperature values at the boundary of the mixing zone used to select the chronic ammonia criteria of Table 3 will be from one of the following sources. The source of the pH and temperature data will follow the sequence listed below, if applicable data exists from the source.

(1) Specific pH and temperature data provided by the applicant gathered at their mixing zone boundary. Procedures for obtaining this data are noted in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020.

(2) Regional background pH and temperature data provided by the applicant gathered along the receiving stream and representative of the background conditions at the outfall. Procedures for obtaining this data are noted in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020.

(3) The statewide median background values as determined by the department.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 3 may not exceed 5 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of less than or equal to 2:1, and not exceed 10 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of greater than 2:1. The pH and temperature values at the boundary of the zone of initial dilution used to select the acute ammonia criteria of Table 3 will be from one of the following sources and follow the sequence listed below, if applicable data exists from the source.

1. Specific effluent pH and temperature data if the dilution ratio is less than or equal to 2:1.

2. If the dilution ratio is greater than 2:1, the logarithmic average pH of the effluent and the regional or statewide pH provided in 61.2(4)*"f"* will be used. In addition, the flow proportioned average temperature of the effluent and the regional or statewide temperature provided in 61.2(4)*"f"* will be used. The procedures for calculating these data are noted in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020.

g. For ammonia criteria noted in Table 3, the following exceptions apply to the mixing zone requirements.

(1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.

(2) No zone of initial dilution will be allowed in waters designated as cold water.

(3) The use of a diffuser device to promote rapid mixing of an effluent in a receiving stream will be considered on a case-by-case basis with its usage as a means for dischargers to comply with an acute numerical criterion.

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi and Missouri Rivers may provide to the department, for consideration, instream data which

technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020.

h. Temperature changes within mixing zones established for heat dissipation will not exceed the temperature criteria in 61.3(3)*"b"*(5).

i. The appropriateness of establishing a mixing zone where a substance discharged is bioaccumulative, persistent, carcinogenic, mutagenic, or teratogenic will be carefully evaluated. In such cases, effects such as potential groundwater contamination, sediment deposition, fish attraction, bioaccumulation in aquatic life, bioconcentration in the food chain, and known or predicted safe exposure levels shall be considered.

61.2(5) *Implementation strategy.* Numerical criteria specified in these water quality standards shall be met when the flow of the receiving stream equals or exceeds the design low flows noted below.

Type of Numerical Criteria	Design Low Flow Regime
Aquatic Life Protection (TOXICS)	
Acute	$1Q_{10}$
Chronic	$7Q_{10}$
Aquatic Life Protection (AMMONIA - N)	
Acute	$1Q_{10}$
Chronic	$30Q_{10}$
Human Health Protection & MCL	
Noncarcinogenic	$30Q_5$
Carcinogenic	Harmonic mean

a. The allowable 3°C temperature increase criterion for warm water interior streams, 61.3(3)*"b"*(5)"1," is based in part on the need to protect fish from cold shock due to rapid cessation of heat source and resultant return of the receiving stream temperature to natural background temperature. On low flow streams, in winter, during certain conditions of relatively cold background stream temperature and relatively warm ambient air and groundwater temperature, certain wastewater treatment plants with relatively constant flow and constant temperature discharges will cause temperature increases in the receiving stream greater than allowed in 61.3(3)*"b"*(5)"1."

b. During the period November 1 to March 31, for the purpose of applying the 3°C temperature increase criterion, the minimum protected receiving stream flow rate below such discharges may be increased to not more than three times the rate of flow of the discharge, where there is reasonable assurance that the discharge is of such constant temperature and flow rate and continuous duration as to not constitute a threat of heat cessation and not cause the receiving stream temperature to vary more than 3°C per day.

c. Site-specific water quality criteria may be allowed in lieu of the specific numerical criteria listed in Tables 1 and 3 of this chapter if adequate documentation is provided to show that the proposed criteria will protect all existing or potential uses of the surface water. Site-specific water quality criteria may be appropriate where:

(1) The types of organisms differ significantly from those used in setting the statewide criteria; or

(2) The chemical characteristics of the surface water such as pH, temperature, and hardness differ significantly from the characteristics used in setting the statewide criteria.

Development of site-specific criteria shall include an evaluation of the chemical and biological characteristics of the water resource and an evaluation of the impact of the discharge. All evaluations for site-specific criteria modification must be coordinated through the department, and be conducted using scientifically accepted procedures approved by the department. Any site-specific criterion developed under the provisions of this subrule is subject to the review and approval of the U.S. Environmental Protection Agency. All criteria approved under the provisions of this subrule will be

published periodically by the department. Guidelines for establishing site-specific water quality criteria can be found in "Water Quality Standards Handbook," published by the U.S. Environmental Protection Agency, December 1983.

d. A wastewater treatment facility may submit to the department technically valid instream data which provides additional information to be used in the calculations of their wasteload allocations and effluent limitations. This information would be in association with the low flow characteristics, width, length and time of travel associated with the mixing zone or decay rates of various effluent parameters. The wasteload allocation will be calculated considering the applicable data and consistent with the provisions and restrictions in the rules.

e. The department may perform use assessment and related use attainability analyses on water bodies where uses may not be known or adequately documented. The preparation of use attainability analysis documents will consider available U.S. Environmental Protection Agency guidance or other applicable guidance. Credible data and documentation will be used to assist in the preparation of use assessments and use attainability analysis reports.

[**ARC 8214B**, IAB 10/7/09, effective 11/11/09; **ARC 8466B**, IAB 1/13/10, effective 2/17/10; **ARC 9330B**, IAB 1/12/11, effective 2/16/11 (See Delay note at the end of chapter); **ARC 0121C**, IAB 5/16/12, effective 6/20/12; **ARC 1495C**, IAB 6/11/14, effective 7/16/14; **ARC 2695C**, IAB 8/31/16, effective 8/12/16; **ARC 3583C**, IAB 1/17/18, effective 2/21/18; **ARC 5226C**, IAB 10/7/20, effective 11/11/20]

567—61.3(455B) Surface water quality criteria.

61.3(1) *Surface water classification.* All waters of the state are classified for protection of beneficial uses. These classified waters include general use segments and designated use segments.

a. General use segments. These are intermittent watercourses and those watercourses which typically flow only for short periods of time following precipitation and whose channels are normally above the water table. These waters do not support a viable aquatic community during low flow and do not maintain pooled conditions during periods of no flow.

The general use segments are to be protected for livestock and wildlife watering, aquatic life, noncontact recreation, crop irrigation, and industrial, agricultural, domestic and other incidental water withdrawal uses.

b. Designated use segments. These are water bodies which maintain flow throughout the year or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community.

All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa not specifically listed in the surface water classification of 61.3(5) are designated as Class B(WW-1) waters.

All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa are designated as Class A1 waters.

Designated uses of segments may change based on a use attainability analysis consistent with 61.2(5)*"e."* Designated use changes will be specifically listed in the surface water classification of 61.3(5).

Designated use waters are to be protected for all uses of general use segments in addition to the specific uses assigned. Designated use segments include:

(1) Primary contact recreational use (Class "A1"). Waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

(2) Secondary contact recreational use (Class "A2"). Waters in which recreational or other uses may result in contact with the water that is either incidental or accidental. During the recreational use, the probability of ingesting appreciable quantities of water is minimal. Class A2 uses include fishing, commercial and recreational boating, any limited contact incidental to shoreline activities and activities in which users do not swim or float in the water body while on a boating activity.

(3) Children's recreational use (Class "A3"). Waters in which recreational uses by children are common. Class A3 waters are water bodies having definite banks and bed with visible evidence of the flow or occurrence of water. This type of use would primarily occur in urban or residential areas.

(4) Cold water aquatic life—Type 1 (Class "B(CW1)"). Waters in which the temperature and flow are suitable for the maintenance of a variety of cold water species, including reproducing and nonreproducing populations of trout (*Salmonidae* family) and associated aquatic communities.

(5) Cold water aquatic life—Type 2 (Class "B(CW2)"). Waters that include small, channeled streams, headwaters, and spring runs that possess natural cold water attributes of temperature and flow. These waters usually do not support consistent populations of trout (*Salmonidae* family), but may support associated vertebrate and invertebrate organisms.

(6) Warm water—Type 1 (Class "B(WW-1)"). Waters in which temperature, flow and other habitat characteristics are suitable to maintain warm water game fish populations along with a resident aquatic community that includes a variety of native nongame fish and invertebrate species. These waters generally include border rivers, large interior rivers, and the lower segments of medium-size tributary streams.

(7) Warm water—Type 2 (Class "B(WW-2)"). Waters in which flow or other physical characteristics are capable of supporting a resident aquatic community that includes a variety of native nongame fish and invertebrate species. The flow and other physical characteristics limit the maintenance of warm water game fish populations. These waters generally consist of small perennially flowing streams.

(8) Warm water—Type 3 (Class "B(WW-3)"). Waters in which flow persists during periods when antecedent soil moisture and groundwater discharge levels are adequate; however, aquatic habitat typically consists of nonflowing pools during dry periods of the year. These waters generally include small streams of marginally perennial aquatic habitat status. Such waters support a limited variety of native fish and invertebrate species that are adapted to survive in relatively harsh aquatic conditions.

(9) Lakes and wetlands (Class "B(LW)"). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.

(10) Human health (Class "HH"). Waters in which fish are routinely harvested for human consumption or waters both designated as a drinking water supply and in which fish are routinely harvested for human consumption.

(11) Drinking water supply (Class "C"). Waters which are used as a raw water source of potable water supply.

61.3(2) *General water quality criteria.* The following criteria are applicable to all surface waters including general use and designated use waters, at all places and at all times for the uses described in 61.3(1)*"a."*

a. Such waters shall be free from substances attributable to point source wastewater discharges that will settle to form sludge deposits.

b. Such waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance.

c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

d. Such waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life.

e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

f. The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

g. Cations and anions guideline values to protect livestock watering may be found in the "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020.

h. The *Escherichia coli (E. coli)* content of water which enters a sinkhole or losing stream segment, regardless of the water body's designated use, shall not exceed a Geometric Mean value of

126 organisms/100 ml or a sample maximum value of 235 organisms/100 ml. No new wastewater discharges will be allowed on watercourses which directly or indirectly enter sinkholes or losing stream segments.

61.3(3) *Specific water quality criteria.*

a. Class "A" waters. Waters which are designated as Class "A1," "A2," or "A3" in subrule 61.3(5) are to be protected for primary contact, secondary contact, and children's recreational uses. The general criteria of subrule 61.3(2) and the following specific criteria apply to all Class "A" waters.

(1) The *Escherichia coli (E. coli)* content shall not exceed the levels noted in the Bacteria Criteria Table when the Class "A1," "A2," or "A3" uses can reasonably be expected to occur.

Bacteria Criteria Table (organisms/100 ml of water)

Use or Category	Geometric Mean	Sample Maximum
Class A1		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A2 (Only)		
3/15 – 11/15	630	2880
11/16 – 3/14	Does not apply	Does not apply
[Class A2 and B(CW)] or OIW or ONRW		
Year-Round	630	2880
Class A3		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A1 - Primary Contact Recreational Use Class A2 - Secondary Contact Recreational Use Class A3 - Children's Recreational Use		

When a water body is designated for more than one of the recreational uses, the most stringent criteria for the appropriate season shall apply.

(2) The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

b. Class "B" waters. All waters which are designated as Class B(CW1), B(CW2), B(WW-1), B(WW-2), B(WW-3) or B(LW) are to be protected for wildlife, fish, aquatic, and semiaquatic life. The following criteria shall apply to all Class "B" waters designated in subrule 61.3(5).

(1) Dissolved oxygen. Dissolved oxygen shall not be less than the values shown in Table 2 of this subrule.

(2) pH. The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

(3) General chemical constituents. The specific numerical criteria shown in Tables 1, 2, and 3 of this subrule apply to all waters designated in subrule 61.3(5). The sole determinant of compliance with these criteria will be established by the department on a case-by-case basis. Effluent monitoring or instream monitoring, or both, will be the required approach to determine compliance.

1. The acute criteria represent the level of protection necessary to prevent acute toxicity to aquatic life. Instream concentrations above the acute criteria will be allowed only within the boundaries of the zone of initial dilution.

2. The chronic criteria represent the level of protection necessary to prevent chronic toxicity to aquatic life. Excursions above the chronic criteria will be allowed only inside of mixing zones or only for short-term periods outside of mixing zones; however, these excursions cannot exceed the acute criteria shown in Tables 1 and 3. The chronic criteria will be met as short-term average conditions at all times

the flow equals or exceeds either the design flows noted in subrule 61.2(5) or any site-specific low flow established under the provisions of subrule 61.2(5).

3. Rescinded IAB 2/15/06, effective 3/22/06.

(4) Rescinded IAB 2/15/06, effective 3/22/06.

(5) Temperature.

1. No heat shall be added to interior streams or the Big Sioux River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 32°C.

2. No heat shall be added to streams designated as cold water fisheries that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 20°C.

3. No heat shall be added to lakes and reservoirs that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the temperature of the lake or reservoirs above 32°C.

4. No heat shall be added to the Missouri River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added that would raise the stream temperature above 32°C.

5. No heat shall be added to the Mississippi River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In addition, the water temperature at representative locations in the Mississippi River shall not exceed the maximum limits in the table below during more than 1 percent of the hours in the 12-month period ending with any month. Moreover, at no time shall the water temperature at such locations exceed the maximum limits in the table below by more than 2°C.

Zone II—Iowa-Minnesota state line to the northern Illinois border (Mile Point 1534.6).

Zone III—Northern Illinois border (Mile Point 1534.6) to Iowa-Missouri state line.

Month	Zone II	Zone III
January	4°C	7°C
February	4°C	7°C
March	12°C	14°C
April	18°C	20°C
May	24°C	26°C
June	29°C	29°C
July	29°C	30°C
August	29°C	30°C
September	28°C	29°C
October	23°C	24°C
November	14°C	18°C
December	9°C	11°C

(6) Early life stage for each use designation. The following seasons will be used in applying the early life stage present chronic criteria noted in Table 3b, "Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present."

1. For all Class B(CW1) waters, the early life stage will be year-round.

2. For all Class B(CW2) waters, the early life stage will begin on April 1 and last through September 30.

3. For all Class B(WW-1) waters, the early life stage will begin in March and last through September, except as follows:

- For the following, the early life stage will begin in February and last through September:

—The entire length of the Mississippi and Missouri Rivers,

—The lower reach of the Des Moines River south of the Ottumwa dam, and

—The lower reach of the Iowa River below the Cedar River.

- For the following, the early life stage will begin in April and last through September:

—All Class B(WW-1) waters in the Southern Iowa River Basin,

—All of the Class B(WW-1) reach of the Skunk River, the North Skunk River and the South Skunk River south of Indian Creek (Jasper County), and the Class B(WW-1) tributaries to these reaches, and the entire Class B(WW-1) reach of the English River.

4. For all Class B(WW-2) and Class B(WW-3) waters, the early life stage will begin in April and last through September.

5. For all Class B(LW) lake and wetland waters, the early life stage will begin in March and last through September except for the Class B(LW) waters in the southern two tiers of Iowa counties which will have the early life stage of April through September.

c. Class "C" waters. Waters which are designated as Class "C" are to be protected as a raw water source of potable water supply. The following criteria shall apply to all Class "C" waters designated in subrule 61.3(5).

(1) Radioactive substances.

1. The combined radium-226 and radium-228 shall not exceed 5 picocuries per liter at the point of withdrawal.

2. Gross alpha particle activity (including radium-226 but excluding radon and uranium) shall not exceed 15 picocuries per liter at the point of withdrawal.

3. The average annual concentration at the point of withdrawal of beta particle and photon radioactivity from man-made radionuclides other than tritium and strontium-90 shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

4. The average annual concentration of tritium shall not exceed 20,000 picocuries per liter at the point of withdrawal; the average annual concentration of strontium-90 shall not exceed 8 picocuries per liter at the point of withdrawal.

(2) All substances toxic or detrimental to humans or detrimental to treatment process shall be limited to nontoxic or nondetrimental concentrations in the surface water.

(3) The pH shall not be less than 6.5 nor greater than 9.0.

d. Class "HH" waters. Waters which are designated as Class HH shall contain no substances in concentrations which will make fish or shellfish inedible due to undesirable tastes or cause a hazard to humans after consumption.

(1) The human health criteria represent the level of protection necessary, in the case of noncarcinogens, to prevent adverse health effects in humans and, in the case of carcinogens, to prevent a level of incremental cancer risk not exceeding 1 in 100,000. Instream concentrations in excess of the human health criteria will be allowed only within the boundaries of the mixing zone.

(2) Reserved.

TABLE 1. Criteria for Chemical Constituents

(all values as micrograms per liter as total recoverable unless noted otherwise)

Human health criteria for carcinogenic parameters noted below were based on the prevention of an incremental cancer risk of 1 in 100,000. For parameters not having a noted human health criterion, the U.S. Environmental Protection Agency has not developed final national human health guideline values. For noncarcinogenic parameters, the recommended EPA criterion was selected. For Class C waters, the EPA criteria for fish and water consumption were selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above. For Class C waters for which no EPA human health criteria were available, the EPA MCL value was selected.

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Alachlor	MCL	—	—	—	—	—	—	2	—
Aldrin	Acute	—	—	3	3	3	—	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00050[e]
	Human Health + — F & W	—	—	—	—	—	—	—	.00049[f]
Aluminum	Chronic[r]	890[o]	—	890[o]	890[o]	890[o]	890[o]	—	—
	Acute[r]	2,500[o]	—	2,500[o]	2,500[o]	2,500[o]	2,500[o]	—	—
Antimony	Human Health — Fish	—	—	—	—	—	—	—	640[e]
	Human Health + — F & W	—	—	—	—	—	—	—	5.6[f]
Arsenic (III)	Chronic[p]	150	—	150	150	150	150	—	—
	Acute[p]	340	—	340	340	340	340	—	—
	Human Health — Fish	—	—	—	—	—	—	—	50[e][g]
	Human Health — F & W	—	—	—	—	—	—	—	.18[f][g]
Asbestos	Human Health — F & W	—	—	—	—	—	—	—	7[a][f]
Atrazine	MCL	—	—	—	—	—	—	3	—
Barium	Human Health + — F & W	—	—	—	—	—	—	—	1000[f]
Benzene	Human Health — F & W	—	—	—	—	—	—	—	22[f]
	Human Health — Fish	—	—	—	—	—	—	—	510[e]
Benzo(a)Pyrene	Human Health — F & W	—	—	—	—	—	—	—	.038[f]
	Human Health — Fish	—	—	—	—	—	—	—	.18[e]
Beryllium	MCL	—	—	—	—	—	—	4	—
Bromoform	Human Health — F & W	—	—	—	—	—	—	—	43[f]
	Human Health — Fish	—	—	—	—	—	—	—	1400[e]
Cadmium	Chronic[p]	1.2[h]	—	1.2[h]	1.2[h]	1.2[h]	1.2[h]	—	—
	Acute[p]	3.4[h]	—	5.35[h]	12.5[h]	12.5[h]	5.35[h]	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	168[e]
	MCL	—	—	—	—	—	—	5	—
Carbofuran	MCL	—	—	—	—	—	—	40	—
Carbon Tetrachloride	Human Health — F & W	—	—	—	—	—	—	—	2.3[f]
	Human Health — Fish	—	—	—	—	—	—	—	16[e]
Chlordane	Chronic	.004	—	.0043	.0043	.0043	.004	—	—
	Acute	2.5	—	2.4	2.4	2.4	2.5	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0081[e]
	Human Health — F & W	—	—	—	—	—	—	—	.008[f]

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Chloride	Chronic	389[m]*	389[m]*	389[m]*	389[m]*	389[m]*	389[m]*	—	—
	Acute	629[m]*	629[m]*	629[m]*	629[m]*	629[m]*	629[m]*	—	—
	MCL	—	—	—	—	—	—	250*	—
Chlorobenzene	Human Health + — Fish	—	—	—	—	—	—	—	1.6*[e]
	Human Health + — F & W	—	—	—	—	—	—	—	130[f]
	MCL	—	—	—	—	—	—	100	—
Chlorodibromomethane	Human Health — F & W	—	—	—	—	—	—	—	4.0[f]
	Human Health — Fish	—	—	—	—	—	—	—	130[e]
Chloroform	Human Health — F & W	—	—	—	—	—	—	—	57[f]
	Human Health — Fish	—	—	—	—	—	—	—	4700[e]
Chloropyrifos	Chronic	.041	—	.041	.041	.041	.041	—	—
	Acute	.083	—	.083	.083	.083	.083	—	—
Chromium (VI)	Chronic[p]	11	—	11	11	11	11	—	—
	Acute[p]	16	—	16	16	16	16	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	3365[e]
	MCL	—	—	—	—	—	—	100	—
Copper	Chronic[n]	20	—	16.9[i]	16.9[i]	16.9[i]	10	—	—
	Acute[n]	30	—	26.9[i]	26.9[i]	26.9[i]	20	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	1000[e]
	Human Health + — F & W	—	—	—	—	—	—	—	1300[f]
Cyanide	Chronic	5	—	5.2	5.2	5.2	10	—	—
	Acute	20	—	22	22	22	45	—	—
	Human Health + — F & W	—	—	—	—	—	—	—	140[f]
	Human Health — Fish	—	—	—	—	—	—	—	140[e]
Dalapon	MCL	—	—	—	—	—	—	200	—
Dibromochloropropane	MCL	—	—	—	—	—	—	.2	—
4,4-DDT ++	Chronic	.001	—	.001	.001	.001	.001	—	—
	Acute	.9	—	1.1	1.1	1.1	.55	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0022[e]
	Human Health — F & W	—	—	—	—	—	—	—	.0022[f]
o-Dichlorobenzene	MCL	—	—	—	—	—	—	600	—

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
para-Dichlorobenzene	Human Health + — F & W	—	—	—	—	—	—	—	63[f]
	Human Health + — Fish	—	—	—	—	—	—	—	190[e]
3,3-Dichlorobenzidine	Human Health — Fish	—	—	—	—	—	—	—	.28[e]
	Human Health — F & W	—	—	—	—	—	—	—	.21[f]
Dichlorobromomethane	Human Health — F & W	—	—	—	—	—	—	—	5.5[f]
	Human Health — Fish	—	—	—	—	—	—	—	170[e]
1,2-Dichloroethane	Human Health — F & W	—	—	—	—	—	—	—	3.8[f]
	Human Health — Fish	—	—	—	—	—	—	—	370[e]
1,1-Dichloroethylene	Human Health — F & W	—	—	—	—	—	—	—	330[f]
	Human Health — Fish	—	—	—	—	—	—	—	7.1*[e]
cis-1,2-Dichloroethylene	MCL	—	—	—	—	—	—	70	—
1,2-trans-Dichlorethylene	Human Health + — F & W	—	—	—	—	—	—	—	10*[f]
	Human Health — Fish	—	—	—	—	—	—	—	140[e]
Dichloromethane	MCL	—	—	—	—	—	—	5	—
1,2-Dichloropropane	Human Health — F & W	—	—	—	—	—	—	—	5.0[f]
	Human Health — Fish	—	—	—	—	—	—	—	150[e]
Dieldrin	Chronic	.056	—	.056	.056	.056	.056	—	—
	Acute	.24	—	.24	.24	.24	.24	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00054[e]
	Human Health — F & W	—	—	—	—	—	—	—	.00052[f]
Dinoseb	MCL	—	—	—	—	—	—	7	—
2,3,7,8-TCDD (Dioxin)	Human Health — F & W	—	—	—	—	—	—	—	5.0^{-8}[f]
	Human Health — Fish	—	—	—	—	—	—	—	5.1^{-8}[e]
Diquat	MCL	—	—	—	—	—	—	20	—
2,4-D	Human Health + — F & W	—	—	—	—	—	—	—	100[f]
Endosulfan[b]	Chronic	.056	—	.056	.056	.056	.15	—	—
	Acute	.11	—	.22	.22	.22	.3	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	89[e]
	Human Health + — F & W	—	—	—	—	—	—	—	62[f]
Endothall	MCL	—	—	—	—	—	—	100	—
Endrin	Chronic	.05	—	.036	.036	.036	.036	—	—
	Acute	.12	—	.086	.086	.086	.086	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	.06[e]
	Human Health + — F & W	—	—	—	—	—	—	—	.059[f]

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Ethylbenzene	Human Health + — F & W	—	—	—	—	—	—	—	530[f]
	Human Health — Fish	—	—	—	—	—	—	—	2100[e]
Ethylene dibromide	MCL	—	—	—	—	—	—	.05	—
Di(2-ethylhexyl)adipate	MCL	—	—	—	—	—	—	400	—
bis(2-ethylhexyl)phthalate	Human Health — F & W	—	—	—	—	—	—	—	12[f]
	Human Health — Fish	—	—	—	—	—	—	—	22[e]
Fluoride	MCL	—	—	—	—	—	—	4000	—
Glyphosate	MCL	—	—	—	—	—	—	700	—
Heptachlor	Chronic	.0038	—	.0038	.0038	.0038	.0038	—	—
	Acute	.38	—	.52	.52	.52	.38	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00079[e]
	Human Health — F & W	—	—	—	—	—	—	—	.00079[f]
Heptachlor epoxide	Chronic	.0038	—	.0038	.0038	.0038	.0038	—	—
	Acute	.52	—	.52	.52	.52	.52	—	—
	Human Health — F & W	—	—	—	—	—	—	—	.00039[f]
	Human Health — Fish	—	—	—	—	—	—	—	.00039[e]
Hexachlorobenzene	Human Health — F & W	—	—	—	—	—	—	—	.0028[f]
	Human Health — Fish	—	—	—	—	—	—	—	.0029[e]
Hexachlorocyclopentadiene	Human Health — F & W	—	—	—	—	—	—	—	40[f]
	Human Health — Fish	—	—	—	—	—	—	—	1100[e]
Lead	Chronic[p]	5.3[j]	—	5.3[j]	5.3[j]	5.3[j]	5.3[j]	—	—
	Acute[p]	136[j]	—	136[j]	136[j]	136[j]	136[j]	—	—
	MCL	—	—	—	—	—	—	50	—
gamma-BHC (Lindane)	Chronic	N/A	—	N/A	N/A	N/A	N/A	—	—
	Acute	.95	—	.95	.95	.95	.95	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	1.8[e]
	Human Health + — F & W	—	—	—	—	—	—	—	.98[f]
Mercury (II)	Chronic[p]	0.77	—	0.77	0.77	0.77	0.77	—	—
	Acute[p]	1.4	—	1.4	1.4	1.4	1.4	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	.15[e]
	Human Health + — F & W	—	—	—	—	—	—	—	.05[f]
Methoxychlor	Human Health + — F & W	—	—	—	—	—	—	—	100[f]
Nickel	Chronic[p]	93[k]	—	93[k]	93[k]	93[k]	93[k]	—	—
	Acute[p]	840[k]	—	840[k]	840[k]	840[k]	840[k]	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	4600[e]
	Human Health + — F & W	—	—	—	—	—	—	—	610[f]

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Nitrate as N	MCL	—	—	—	—	—	—	10*	—
Nitrate + Nitrite as N	MCL	—	—	—	—	—	—	10*	—
Nitrite as N	MCL	—	—	—	—	—	—	1*	—
Oxamyl (Vydate)	MCL	—	—	—	—	—	—	200	—
Parathion	Chronic	.013	—	.013	.013	.013	.013	—	—
	Acute	.065	—	.065	.065	.065	.065	—	—
Pentachlorophenol (PCP)	Chronic	(d)	—	(d)	(d)	(d)	(d)	—	—
	Acute	(d)	—	(d)	(d)	(d)	(d)	—	—
	Human Health — Fish	—	—	—	—	—	—	—	30[e]
	Human Health — F & W	—	—	—	—	—	—	—	2.7[f]
Phenols	Chronic	50	—	50	50	50	50	—	—
	Acute	1000	—	2500	2500	2500	1000	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	1700*[e]
	Human Health + — F & W	—	—	—	—	—	—	—	21*[f]
Picloram	MCL	—	—	—	—	—	—	500	—
Polychlorinated	Chronic	.014	—	.014	.014	.014	.014	—	—
Biphenyls (PCBs)	Acute	2	—	2	2	2	2	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00064[e]
	Human Health — F & W	—	—	—	—	—	—	—	.00064[f]
Polynuclear Aromatic	Chronic	.03	—	.03	3	3	.03	—	—
Hydrocarbons (PAHs)**	Acute	30	—	30	30	30	30	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.18[e]
	Human Health — F & W	—	—	—	—	—	—	—	.038[f]
Selenium	Chronic	10	—	5	5	5	70	—	—
	Acute	15	—	19.3	19.3	19.3	100	—	—
	Human Health + — F & W	—	—	—	—	—	—	—	170[f]
	Human Health + — Fish	—	—	—	—	—	—	—	4200[e]
Silver	Chronic[p]	N/A	—	N/A	N/A	N/A	N/A	—	—
	Acute[p]	11	—	11	11	11	11	—	—
	MCL	—	—	—	—	—	—	50	—
2,4,5-TP (Silvex)	MCL	—	—	—	—	—	—	10	—
Simazine	MCL	—	—	—	—	—	—	4	—
Styrene	MCL	—	—	—	—	—	—	100	—

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Tetracholorethylene	Human Health — F & W	—	—	—	—	—	—	—	6.9[f]
	Human Health — Fish	—	—	—	—	—	—	—	33[e]
Thallium	Human Health + — F & W	—	—	—	—	—	—	—	.24[f]
	Human Health + — Fish	—	—	—	—	—	—	—	.47[e]
Toluene	Chronic	50	—	50	150	150	50	—	—
	Acute	2500	—	2500	7500	7500	2500	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	15*[e]
	Human Health + — F & W	—	—	—	—	—	—	—	1300[f]
Total Residual Chlorine (TRC)	Chronic	10	—	11	11	11	10	—	—
	Acute	35	—	19	19	19	20	—	—
Toxaphene	Chronic	.037	—	.002	.002	.002	.037	—	—
	Acute	.73	—	.73	.73	.73	.73	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0028[e]
	Human Health — F & W	—	—	—	—	—	—	—	.0028[f]
1,2,4-Trichlorobenzene	MCL	—	—	—	—	—	—	70	—
1,1,1-Trichlorethane	MCL	—	—	—	—	—	—	200	—
	Human Health + — Fish	—	—	—	—	—	—	—	173*[e]
1,1,2-Trichloroethane	Human Health — F & W	—	—	—	—	—	—	—	6[f]
Trichloroethylene (TCE)	Chronic	80	—	80	80	80	80	—	—
	Acute	4000	—	4000	4000	4000	4000	—	—
	Human Health — Fish	—	—	—	—	—	—	—	300[e]
	Human Health — F & W	—	—	—	—	—	—	—	25[f]
Trihalomethanes (total)[c]	MCL	—	—	—	—	—	—	80	—
Vinyl Chloride	Human Health — F & W	—	—	—	—	—	—	—	.25[f]
	Human Health — Fish	—	—	—	—	—	—	—	24[e]
Xylenes (Total)	MCL	—	—	—	—	—	—	10*	—
Zinc	Chronic[p]	210[l]	—	210[l]	210[l]	210[l]	210[l]	—	—
	Acute[p]	210[l]	—	210[l]	210[l]	210[l]	210[l]	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	26*[e]
	Human Health + — F & W	—	—	—	—	—	—	—	7.4*[f]

* units expressed as milligrams/liter

** to include the sum of known and suspected carcinogenic PAHs (includes benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene)

† expressed as nanograms/liter

+ represents the noncarcinogenic human health parameters

++ The concentrations of 4,4-DDT or its metabolites; 4,4-DDE and 4,4-DDD, individually shall not exceed the human health criteria.

(a) units expressed as million fibers/liter (longer than 10 micrometers)

(b) includes alpha-endosulfan, beta-endosulfan, and endosulfan sulfate in combination or as individually measured

(c) The sum of the four trihalomethanes (bromoform [tribromomethane], chlorodibromomethane, chloroform [trichloromethane], and dichlorobromomethane) may not exceed the MCL.

(d) Class B numerical criteria for pentachlorophenol are a function of pH using the equation: Criterion (µg/l) = $e^{[1.005(pH) - x]}$, where e = 2.71828 and x varies according to the following table:

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Acute	3.869	—	4.869	4.869	4.869	4.869
Chronic	4.134	—	5.134	5.134	5.134	5.134

(e) This Class HH criterion would be applicable to any Class B(LW), B(CW1), B(WW-1), B(WW-2), or B(WW-3) water body that is also designated Class HH.

(f) This Class HH criterion would be applicable to any Class C water body that is also designated Class HH.

(g) inorganic form only

(h) The acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for cadmium are a function of hardness (as $CaCO_3$ (mg/l)) using the following equations:

	B(CW1)	B(WW-1)&B(LW)	B(WW-2)&B(WW-3)
Acute	(1.136672 - [(ln hardness) × (0.041838)])* $e^{(0.9789 \times \ln(\text{hardness}) - 3.866)}$	(1.136672 - [(ln hardness) × (0.041838)])* $e^{(0.9789 \times \ln(\text{hardness}) - 3.4210)}$	(1.136672 - [(ln hardness) × (0.041838)])* $e^{(0.9789 \times \ln(\text{hardness}) - 2.5750)}$
Chronic	(1.101672 - [(ln hardness) × (0.041838)])* $e^{0.7977 \times \ln(\text{hardness}) - 3.909)}$	(1.101672 - [(ln hardness) × (0.041838)])* $e^{0.7977 \times \ln(\text{hardness}) - 3.909)}$	(1.101672 - [(ln hardness) × (0.041838)])* $e^{0.7977 \times \ln(\text{hardness}) - 3.909)}$

(i) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for copper are a function of hardness ($CaCO_3$ (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.9422Ln(Hardness) - 1.700]}$	$e^{[0.9422Ln(Hardness) - 1.700]}$	$e^{[0.9422Ln(Hardness) - 1.700]}$
Chronic	$e^{[0.8545Ln(Hardness) - 1.702]}$	$e^{[0.8545Ln(Hardness) - 1.702]}$	$e^{[0.8545Ln(Hardness) - 1.702]}$

(j) The acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for lead are a function of hardness ($CaCO_3$ (mg/l)) using the following equations:

Acute	(1.46203-[(ln hardness)(0.145712)]) × $e^{[1.2731Ln(Hardness) - 1.46]}$	$e^{[1.2731Ln(Hardness) - 1.46]}$	$e^{[1.2731Ln(Hardness) - 1.46]}$
Chronic	(1.46203-[(ln hardness)(0.145712)]) × $e^{[1.2731Ln(Hardness) - 4.705]}$	$e^{[1.2731Ln(Hardness) - 4.705]}$	$e^{[1.2731Ln(Hardness) - 4.705]}$

(k) The acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for nickel are a function of hardness ($CaCO_3$ (mg/l)) using the following equations:

Acute	$0.998 \times e^{[0.846Ln(Hardness) + 2.255]}$
Chronic	$0.997 \times e^{[0.846Ln(Hardness) + 0.0584]}$

(l) The acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for zinc are a function of hardness ($CaCO_3$ (mg/l)) using the following equations:

Acute	$0.978 \times e^{[0.8473Ln(Hardness) + 0.884]}$
Chronic	$0.986 \times e^{[0.8473Ln(Hardness) + 0.884]}$

(m) Acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as $CaCO_3$ (mg/l)) and a sulfate concentration of 63 mg/l. Numerical criteria (µg/l) for chloride are a function of hardness ($CaCO_3$ (mg/l)) and sulfate (mg/l) using the equation for each use according to the following table:

	B(CW1), B(CW2), B(WW-1), B(WW-2). B(WW-3), B(LW)
Acute	$287.8(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$
Chronic	$177.87(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$

(n) The copper criteria in Table 1 can be adjusted by a Water-Effect Ratio (WER). The WER factor is equal to 1.0 unless an approved WER study has been conducted by a permittee for a specific point source. The WER study shall be conducted in accordance with the "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals (EPA-823-B-94-001), February 22, 1994," or upon approval by the department, the "Streamlined Water-Effect Ratio Procedure for Discharges of Copper (EPA-822-R-01-005), March 2001," which are hereby adopted by reference.

The copper Biotic Ligand Model (BLM) may be used as an alternative to the copper criteria in Table 1. The copper BLM is found in the document "Aquatic Life Ambient Freshwater Quality Criteria - Copper 2007 Revision (EPA-822-R-07-001), February 2007," which is hereby adopted by reference.

(o) The acute and chronic criteria listed in Table 1 are calculated using Aluminum Criteria Calculator V2.0 (Excel) as described in "Final Aquatic Life Ambient Water Quality Criteria for Aluminum 2018 (EPA-822-R-18-001), December 2018." The criteria were calculated using the lowest tenth percentile of individual model outputs using spatially and temporally representative model inputs from across the state. Site-specific criteria shall also be developed using this approach and the most recent version of the calculator.

(p) The criteria are expressed as dissolved concentration.

(q) The silver criteria listed in Table 1 are based on a hardness of 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for silver are a function of hardness ($CaCO_3$ (mg/l)) using the following equation:
Acute $0.85\times e^{[1.72\text{Ln}(\text{Hardness})-6.59]}$

(r) The criteria are expressed as the bioavailable portion of aluminum.

TABLE 2. Criteria for Dissolved Oxygen

(all values expressed in milligrams per liter)

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Minimum value for at least 16 hours of every 24-hour period	7.0	7.0	5.0	5.0	5.0	5.0*
Minimum value at any time during every 24-hour period	5.0	5.0	5.0	4.0	4.0	5.0*

**applies only to the upper layer of stratification in lakes*

TABLE 3a. Acute Criterion for Ammonia in Iowa Streams

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW-1), B(WW-2), B(WW-3) & B(LW)	Class B(CW1) & B(CW2)
6.5	48.8	32.6
6.6	46.8	31.3
6.7	44.6	29.8
6.8	42.0	28.0
6.9	39.1	26.1
7.0	36.1	24.1
7.1	32.8	21.9
7.2	29.5	19.7
7.3	26.2	17.5
7.4	23.0	15.3

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW-1), B(WW-2), B(WW-3) & B(LW)	Class B(CW1) & B(CW2)
7.5	19.9	13.3
7.6	17.0	11.4
7.7	14.4	9.64
7.8	12.1	8.11
7.9	10.1	6.77
8.0	8.40	5.62
8.1	6.95	4.64
8.2	5.72	3.83
8.3	4.71	3.15
8.4	3.88	2.59
8.5	3.20	2.14
8.6	2.65	1.77
8.7	2.20	1.47
8.8	1.84	1.23
8.9	1.56	1.04
9.0	1.32	0.885

TABLE 3b. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.8	2.8	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
8.5	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

TABLE 3c. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Absent

Chronic Criterion - Early Life Stages Absent, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0-7	8	9	10	11	12	13	14	15*	16*
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	6.06
6.6	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	5.97
6.7	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	5.86
6.8	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.74	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06	0.99
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.641	0.601
8.9	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471	0.442

*At 15°C and above, the criterion for fish early life stage (ELS) absent is the same as the criterion for fish ELS present.

TABLE 4. Aquatic Life Criteria for Sulfate for Class B Waters

(all values expressed in milligrams per liter)

	Chloride		
Hardness mg/l as $CaCO_3$	Cl^- < 5 mg/l	5 < = Cl^- < 25	25 < = $C1^-$ < = 500
H < 100 mg/l	500	500	500
100 < = H < = 500	500	[–57.478 + 5.79 (hardness) + 54.163 (chloride)] × 0.65	[1276.7 + 5.508 (hardness) –1.457 (chloride)] × 0.65
H > 500	500	2,000	2,000

61.3(4) *Class "C" waters.* Rescinded IAB 4/18/90, effective 5/23/90.

61.3(5) *Surface water classification.* The department hereby incorporates by reference "Surface Water Classification," effective July 24, 2019. This document may be obtained on the department's website at www.iowadnr.gov.

61.3(6) *Cold water use designation assessment protocol.* The department hereby incorporates by reference "Cold Water Use Designation Assessment Protocol," effective December 15, 2004. This document may be obtained on the department's website at www.iowadnr.gov.

61.3(7) *Warm water stream use assessment and attainability analysis protocol.* The department hereby incorporates by reference "Warm Water Stream Use Assessment and Attainability Analysis Protocol," effective March 22, 2006. This document may be obtained on the department's website at www.iowadnr.gov.

61.3(8) *Recreational use assessment and attainability analysis protocol.* The department hereby incorporates by reference "Recreational Use Assessment and Attainability Analysis Protocol," effective March 19, 2008. This document may be obtained on the department's website.

61.3(9) *Iowa wasteload allocation (WLA) procedure.* The department hereby incorporates by reference "Iowa Wasteload Allocation (WLA) Procedure," as revised on November 11, 2020. This document may be obtained on the department's website at www.iowadnr.gov.

61.3(10) *Implementation procedure for biotic ligand model-based copper criteria.* The department hereby incorporates by reference "Implementation Procedure for Biotic Ligand Model-Based Copper Criteria," February 22, 2017. This document may be obtained on the department's website.

This rule is intended to implement Iowa Code chapter 455B, division I, and division III, part 1.

[**ARC 8039B**, IAB 8/12/09, effective 9/16/09; **ARC 8214B**, IAB 10/7/09, effective 11/11/09; **ARC 8226B**, IAB 10/7/09, effective 11/11/09; **ARC 8466B**, IAB 1/13/10, effective 2/17/10; **ARC 9223B**, IAB 11/17/10, effective 12/22/10; **ARC 1988C**, IAB 5/13/15, effective 6/17/15; **ARC 2911C**, IAB 1/18/17, effective 2/22/17; **ARC 3583C**, IAB 1/17/18, effective 2/21/18; **ARC 4514C**, IAB 6/19/19, effective 7/24/19; **ARC 5226C**, IAB 10/7/20, effective 11/11/20]

567—61.4 to **61.9** Reserved.

VOLUNTEER MONITORING DATA REQUIREMENTS

567—61.10(455B) Purpose. The department uses water quality monitoring data for a number of purposes, including determining compliance with effluent limits for operation permits issued under 567—Chapter 64. The department also uses water quality monitoring data to determine the relative health of a water body by comparing monitoring data to the appropriate water quality standards established in 567—Chapter 61, a process known as water body assessments. Water body assessments are performed to prepare the biennial water quality report required under Section 305(b) of the Act and the list of impaired waters under Section 303(d) of the Act.

Iowa Code sections 455B.193 to 455B.195 require that credible data, as defined in Iowa Code section 455B.171, be used for the purpose of preparing Section 303(d) lists and other water quality program functions. Data provided by a volunteer are not considered credible data unless provided by a qualified volunteer. The purpose of this chapter is to establish minimum requirements for data produced by volunteers to meet the credible data and qualified volunteer requirements.

567—61.11(455B) Monitoring plan required. Volunteer water quality monitoring data submitted to the department must have been produced in accordance with a department-approved volunteer water quality monitoring plan before the data may be used for any of the purposes listed in Iowa Code section 455B.194. Approval of a plan will establish qualified volunteer status for the personnel identified in the plan for those monitoring activities covered under the plan.

61.11(1) *Submittal of the plan.* Prior to initiation of volunteer water quality monitoring activities intended to produce credible data, a water quality monitoring plan must be submitted to the department for review and approval. The plan must be submitted to the Volunteer Monitoring Coordinator, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, a minimum of 90 days before planned initiation of volunteer monitoring activities. A letter transmitting the plan must specifically request formal review and approval of the plan and identify a contact person. Volunteer monitors are encouraged to communicate with the department and to attend volunteer monitoring training sessions prior to formal submittal of a plan.

61.11(2) *Content of the plan.* A volunteer monitoring plan must contain, at a minimum, the following to be considered an acceptable volunteer monitoring plan:

a. A statement of the intent of the monitoring effort.

b. The name(s) of the person or persons that will be involved in data collection or analysis, the specific responsibilities of each person or group of people, and the general qualifications of the volunteers to carry out those responsibilities. For groups, such as educational institutions, it will be acceptable to identify the persons involved by general description (e.g., tenth grade biology class) with the exception of persons in responsible charge.

c. The name(s) of the person or persons that will oversee the monitoring plan, ensure that quality assurance and control objectives are being met, and certify the data. The person or persons in responsible charge must have training commensurate with the level of expertise to ensure that credible data is being generated.

d. The duration of the volunteer monitoring effort. In general, the department will not approve plans of greater than three years' duration unless a longer duration is justified.

e. Location and frequency of sample collection.

f. Methods of data collection and analysis.

g. Record keeping and data reporting procedures.

61.11(3) *Department review of the plan.* The department will review monitoring plans and normally approve or disapprove the plan within 90 days of receipt. The department will work with the contact person identified in the plan to make any necessary changes prior to taking formal action. The department will use guidelines contained in the publications EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5, 2001) and Volunteer Monitor's Guide to Quality Assurance Project Plans (1966, EPA 841-B-96-003) or equivalent updates to determine if the plans provide adequate quality assurance and quality control measures. Approval or disapproval of the plan will be in the form of a letter and approval may include conditions or limitations.

61.11(4) *Changes in monitoring plans.* The department must approve any changes to an approved monitoring plan. Data collected under a modified plan will not be considered credible data until such time as the department has approved the modifications. Modifications to an approved plan should be submitted at the earliest possible time to avoid interruptions in data collection and to ensure continuity of data.

61.11(5) *Appeal of disapproval.* If a monitoring plan submitted for approval is disapproved, the decision may be appealed by filing an appeal with the director within 30 days of disapproval. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7.

567—61.12(455B) Use of volunteer monitoring data. Data produced under an approved water quality monitoring plan will be considered credible data for the purposes listed in Iowa Code section 455B.194 if the following conditions are met.

61.12(1) *Data submittal.* A qualified volunteer monitor or qualified volunteer monitoring group must specifically request that data produced under an approved volunteer monitoring plan be considered

credible data. A letter identifying the specific data must be submitted along with a certification from the volunteer or the person in responsible charge for volunteer groups that the data, to the best of the volunteer's or responsible person's knowledge, was produced in accordance with the approved volunteer monitoring plan. The department shall provide a standard format on the IOWATER website for submittal of qualified volunteer data and related information. The department encourages volunteers to enter monitoring data on the IOWATER volunteer monitoring database maintained by the department, but doing so does not constitute submittal to or acceptance of the data by the department for uses requiring credible data. Volunteer data shall be labeled as such in any departmental reports, websites, or databases.

61.12(2) *Department review of submitted data.* The department must review and approve the submitted data. The person submitting the data will be informed of the department's decision either to accept or reject the data. The department will attempt to resolve any apparent inconsistencies or questionable values in the submitted data prior to making a final decision.

567—61.13(455B) Department audits of volunteer monitoring activities. The department shall conduct field audits of a statistically valid and representative sample of volunteer data collection and analysis procedures to ensure compliance with an approved plan and may conduct confirmatory monitoring tests. Volunteers shall be informed of any audit results and be provided with an opportunity to address any concerns to the extent possible. The department reserves the right to rescind approval of an approved plan if it finds substantial problems that cannot be addressed in a timely manner to ensure the quality of the data being produced.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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[1] Two ARCs

[2] February 16, 2011, effective date of 61.2(2)*"g"*(8) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 11, 2011.

NATURAL RESOURCE COMMISSION[571]

[Prior to 12/31/86, see Conservation Commission [290], renamed Natural Resource Commission[571] under the "umbrella" of Department of Natural Resources by 1986 Iowa Acts, chapter 1245]

TITLE I
GENERAL

CHAPTER 1
OPERATION OF NATURAL RESOURCE COMMISSION
1.1(17A,455A) Scope
1.2(17A,455A) Time of meetings
1.3(17A,455A) Place of meetings
1.4(17A,455A) Notification of meetings
1.5(17A,455A) Attendance and participation by the public
1.6(17A,455A) Quorum and voting requirements
1.7(17A,455A) Conduct of meeting
1.8(17A,455A) Minutes, transcripts, and recordings of meetings
1.9(17A,455A) Officers and duties
1.10(17A,455A) Election and succession of officers
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CHAPTER 22
WILDLIFE HABITAT ON PRIVATE LANDS PROMOTION PROGRAM AND HABITAT AND PUBLIC ACCESS PROGRAM

[Prior to 12/31/86, Conservation Commission[290] Ch 22]

Part 1
WILDLIFE HABITAT ON PRIVATE LANDS PROMOTION PROGRAM

571—22.1(456A,483A) Purpose. The purpose of these rules is to designate procedures by which revenues from the state fish and game protection fund will be used to assist landowners in establishing wildlife habitat on private lands. These rules authorize department staff to work with conservation organizations, educational groups, and private landowners to improve wildlife habitat on private land.

571—22.2(456A,483A) Authority. Iowa Code section 456A.19 authorizes that the state fish and game protection fund shall be expended solely in carrying on the activities embraced in the fish and wildlife division. Iowa Code section 483A.25 directs the department to spend 60 percent of the revenue derived from an increase in the hunting license fee to fund a pheasant and quail restoration program. The natural resource commission, hereinafter referred to as the commission, acting through its director, will enter into agreements with landowners and conservation groups to fulfill the requirements of the law.

571—22.3(456A,483A) Project scope. This program will provide cost-sharing assistance to landowners to establish farmstead and feedlot shelterbelts, temporary winter habitat plots, and habitat practices designed to implement the pheasant and quail restoration program throughout the state. The purpose of these practices is to assist Iowa's landowners with developing and enhancing wildlife habitat on private lands in cooperation with other state, federal, and county agencies as well as conservation organizations.

571—22.4(456A,483A) Availability of funds. The amount of moneys available at any time will be determined by revenues received by the department and by matching contributions from conservation groups.

22.4(1) *Allotments for this program.* Funds available for assisting landowners shall be in the department's budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

22.4(2) *Matching funds.* To maximize the amount of wildlife habitat actually established, the department may accept contributions from any governmental or private conservation group to help establish shelterbelts or winter habitat demonstration areas or habitat practices designed to implement the pheasant and quail restoration program. Department funds may also be used to match other funding sources or incentive programs.

571—22.5(483A) Winter habitat areas. This rule delineates eligibility and procedures for establishing temporary winter cover and food plots.

22.5(1) *Eligibility.* The program is available statewide.

To be eligible for cost assistance, individual landowners must enter into a written agreement with the department specifying the obligations of both parties.

22.5(2) *Applications for assistance.* Applications will be accepted only from those eligible as noted above.

a. Applications must be submitted on forms furnished by the department.

b. Applications and contracts must be received by April 15 to provide adequate time for site inspection and plot design. The application period may be extended indefinitely, or until all available funds have been committed. Landowners will be contacted within 30 days as to their acceptance or rejection.

22.5(3) *Project review and selection.*

a. Projects will be reviewed by the department wildlife biologist, who will then recommend that the commission enter into agreements with the successful applicants.

b. Rescinded IAB 1/24/90, effective 2/28/90.

c. Winter habitat areas will be selected on the basis of site suitability, the availability of other winter cover, and the availability of nesting cover to determine those projects with the greatest chance of benefiting wildlife populations.

d. Rescinded IAB 1/24/90, effective 2/28/90.

22.5(4) *Contract agreements.* The director is authorized to enter into agreements with landowners to carry out the purposes of this program.

a. Agreement forms will be provided by the department. They shall explicitly state the terms of the agreement including, but not limited to, plot size, configuration, crop types, ground preparation, and weed control and cultivation practices. Terms of the agreement and copies of the contract will be available from the department for examination.

b. Cost-sharing assistance will not be provided unless an agreement has been signed by both parties.

c. Contracts may be amended by mutual agreement of both parties.

22.5(5) *Specifications.* Winter habitat plots must conform to the following guidelines to be eligible for cost assistance:

a. Individual winter habitat plots must be at least three acres if they are located next to suitable winter cover; five acres if other winter cover is lacking or inadequate. Larger plots may be specified by the department wildlife biologist.

b. Individual winter habitat plots will be designed by the department wildlife biologist to fit individual habitat situations.

c. One, or a combination of the following practices, will be allowed:

(1) Standing corn left throughout the winter.

(2) Standing corn in combination with grain sorghum left throughout the winter.

(3) Forage sorghum and grain sorghum left throughout the winter.

(4) Forage sorghum in combination with standing corn left throughout the winter.

d. Landowners must follow site preparation, seeding and cultivation practices similar to that used in normal agricultural production.

e. Winter habitat plots must produce a crop similar to that in fields under normal crop production practices.

f. No grazing, mechanical disturbance, or harvesting will be permitted until after March 15 of the final contract year unless specified in the design.

22.5(6) *Cost-share rates.* The department will provide cost-sharing assistance for winter habitat plots at the following rates, except when a lesser amount is negotiated with a landowner.

The department will enter into Cooperative Wildlife Habitat Agreements with landowners, which stipulate the rates that will be paid for various habitat practices. These "flat rates" will be developed using information collected from the ISU Extension Service custom rate guidelines, flat rates used by USDA for similar practices, and input from local conservation professionals.

a. to *d.* Rescinded IAB 1/8/03, effective 2/12/03.

22.5(7) *Reimbursements.* Cost assistance payments will be made after March 15 after inspection by the department wildlife biologist.

Reimbursement shall not be paid unless all terms of the contracts have been met.

571—22.6(456A,483A) Shelterbelts. This rule delineates eligibility and procedures for establishing shelterbelts for winter wildlife habitat.

22.6(1) *Eligibility.* The program is available statewide.

a. To be eligible for cost assistance, landowners must enter into a written agreement with the department specifying the obligations of both parties.

b. Rescinded IAB 1/24/90, effective 2/28/90.

c. Assistance for replacement of trees or shrubs suffering normal mortality in a shelterbelt previously cost-shared by the department will be available in any county currently or previously eligible subject to conditions in subrule 22.6(6), paragraph *"c."*

22.6(2) *Application for assistance.* Applications will be accepted only from those eligible as noted above.

a. Applications must be submitted on forms furnished by the department.

b. Applications must be submitted by February 15. The application period may be extended until all available funds have been committed.

22.6(3) *Project review and selection.* Project applications will be reviewed separately for each county to determine the projects which will be eligible for cost assistance.

a. Projects will be reviewed by the department wildlife biologist and the soil conservation service district conservationist for each county, who will then recommend that the commission enter into agreements with the successful applicants.

b. Projects will be selected on the basis of site suitability, location within the county, and the availability of nearby wildlife habitat to determine those projects with the greatest chance of benefiting wildlife populations.

c. Rescinded IAB 1/24/90, effective 2/28/90.

d. Priority for rating will be given in the following order:

(1) Establishment of new shelterbelts or enlargement of existing shelterbelts in which department funds are used to supplement other funding sources.

(2) Establishment of new shelterbelts or enlargement of existing shelterbelts using only department funding.

(3) Renovations of cost-shared shelterbelts which meet the criteria of subrule 22.6(5), paragraph *"b."*

(4) Enlargements of previously cost-shared shelterbelts above minimum specifications, subject to limitations in subrule 22.6(5), paragraph *"c,"* subparagraphs (1) to (4).

22.6(4) *Contract agreements.* The director is authorized to enter into agreements with landowners in order to carry out the purposes of this program.

a. Agreement forms will be provided by the department. They shall explicitly state the terms of the agreement, including but not limited to, requirements for shelterbelt size, configuration, species composition of trees, ground preparation, weed control and management in subsequent years. Terms of the agreement and copies of the contract will be available from the department for examination.

b. Cost-sharing assistance will not be provided unless an agreement has been signed by both parties prior to the inception of the project.

c. Contract periods will not be approved for any term less than ten years in duration.

d. Contracts may be amended by mutual agreement of both parties.

22.6(5) *Specifications and guidelines.* Shelterbelts must conform to the following specifications to be eligible for cost-share assistance.

a. New shelterbelts must meet at least the following minimum guidelines:

(1) Eight rows of planting stock with at least 100 feet per row in an L-shaped shelterbelt, 150 feet per row in a unidirectional block.

(2) Two rows of shrubs or trees windward, followed by a minimum 50-foot snowcatch leeward of the first two rows. The snowcatch may be used to plant nesting cover, food plots, Christmas tree plantations or may be cropped.

(3) Two rows of shrubs leeward of the snowcatch, followed by four rows of dense conifers.

(4) Additional rows of dense shrubs may be planted interior to conifers for screening. See subrule 22.6(5), paragraph *"c,"* subparagraphs (1) to (4) for restrictions on additional rows.

(5) Species of conifers, shrubs, and deciduous trees which may be grown in shelterbelts will be designated by the department, as well as size of stock and conditions of culture.

(6) Shelterbelts must be at least 50 feet from an occupied residence.

b. Renovations or improvements of existing shelterbelts not previously cost-shared must meet at least minimum specifications for new shelterbelts outlined in paragraph *"a"* of this subrule.

c. Maximum specifications for which cost-sharing will be allowed are as follows:

(1) Fourteen rows of planting stock with a maximum of 400 feet per unidirectional row.

(2) For each additional row over eight, one row must be planted with an approved conifer.

(3) Snowcatch requirement is dropped for shelterbelts of at least ten rows and meeting all other requirements in subrule 22.6(5), paragraph *"a,"* subparagraphs (1) to (6) and paragraph *"c,"* subparagraph (2).

(4) In a 14-row shelterbelt, one row of deciduous trees may be black walnut for eventual harvest.

d. Planning and design for newly established shelterbelts, renovations, and enlargements, and replacement of trees in a previously cost-shared shelterbelt, and deviations from the listed specifications, must be approved by the department's wildlife biologist and may require consultation with the department's district forester and U.S. Department of Agriculture Soil Conservation Service (SCS) district conservationist.

e. Planting sites should be prepared with seedbed conditions the same as for corn. Sod planting or other exceptions may be allowed only by the department wildlife biologist, and may require consultation with the district forester and SCS district conservationist.

f. The following maintenance requirements are in effect for the contract period:

(1) All competing vegetation must be controlled within three feet of each tree and shrub for the first three years of the contract. Control may be by chemicals, mulching, or mechanical means.

(2) Plantings must be protected from livestock, poultry, and rodents by repellents, fencing, trapping, or other effective means.

(3) Cooperators must use whatever means possible to protect plantings from herbicide drift from adjacent fields.

22.6(6) *Cost-sharing rates.* The department will provide cost-sharing assistance during the first year of the contract to establish new shelterbelts or renovate existing shelterbelts to bring them to minimum standards for size, composition, and configuration.

a. New establishments and enlargements. During the initial establishment year for new shelterbelts and enlargements of existing shelterbelts, the department will pay 75 percent of the cost of establishment, not to exceed $1600 per eight-row planting.

(1) Additional rows over the minimum will be cost-shared at the same rate with a ceiling limit of $200 per additional row.

(2) Total rows cost-shared will not exceed 14.

b. Upon mutual agreement of the cooperator and the department, tree planting by the department or its designee may be substituted for all or part of the cost-sharing assistance. Standardized rates for labor and machinery operation will be used to calculate the value of the tree planting operation when determining cost-share payments.

c. Renovations and restorations. Upon recommendation by department wildlife biologists, cost-sharing of tree replacement is permissible where age, disease, drought, insect, or mammal damage has reduced the effectiveness of existing shelterbelts.

(1) Cost-sharing for these reasons will be at 50 percent of planting stock costs not to exceed $1000. All minimum specifications must be met.

(2) If renovation is needed due to cooperator neglect, no cost-sharing will be allowed.

d. Limitations to total cost-share assistance do not preclude use of cost-sharing funds from other governmental entities or private conservation groups to defray cost to the landowner. Where more than one cost-sharing entity is involved, the total cost-share to the landowner cannot exceed 100 percent of the cost of establishment, enlargement, or renovation.

e. If funds are limited, cooperators are limited to one department cost-shared shelterbelt within a three-year period, except for renovations as listed in subrule 22.6(6), paragraph *"c."*

f. Three years following establishment of an eight-row shelterbelt, cost-sharing to enlarge the shelterbelt will be available subject to the following limitations:

(1) Established rows must exhibit reasonable growth rates and good care by the cooperator.

(2) Added rows will be considered a new planting under guidelines existing at that time.

(3) Such enlargements are subject to priorities established in subrule 22.6(3), paragraph *"d,"* subparagraphs (1) to (4).

22.6(7) *Reimbursements.* Cooperators shall submit billings for reimbursements on forms provided by the department.

a. Billings shall be submitted prior to September 1 each year.

b. Billings shall include documentation of costs incurred for planting stock.

c. Reimbursements will not be made unless the landowner has fulfilled obligations as specified in the contract.

d. Billings will be approved or disapproved by the wildlife biologist after inspection of the project.

571—22.7(456A,483A) Pheasant and quail restoration practices. This rule delineates eligibility and procedures for establishing pheasant and quail restoration practices.

22.7(1) *Eligibility.* The program is available statewide. To be eligible for cost assistance, landowners must enter into a written agreement with the department specifying the obligations of both parties.

22.7(2) *Applications for assistance.* Applications will be accepted only from those who are eligible as noted above.

a. Applications must be submitted on forms furnished by the department.

b. Applications and contracts must be received by June 1 to provide adequate time for site inspection and practice design. The application period may be extended indefinitely, or until all available funds have been committed. Landowners will be notified within 30 days of their acceptance or rejection.

22.7(3) *Project review and selection.*

a. Projects will be reviewed by the department wildlife biologist, who will then recommend that the commission enter into agreements with the successful applicants.

b. Projects will be selected on the basis of habitat potential, site suitability, priority locations, and other habitat factors, to determine those projects with the greatest chance of benefiting wildlife populations.

22.7(4) *Contract agreements.* The director is authorized to enter into agreements with landowners to carry out the purposes of this program.

a. Agreement forms will be provided by the department, and they shall explicitly state the terms of the agreement including restoration practices.

b. Cost-sharing assistance will not be provided unless an agreement has been signed by both parties.

c. Contracts may be amended by mutual agreement of both parties.

22.7(5) *Restoration practices.* Pheasant and quail restoration practices will be guided by the Natural Resources Conservation Service (NRCS) field office technical guide (FOTG).

a. Approved practices include: brush management (314), conservation cover (327), critical area planting (342), early successional development/management (647), forage harvest management (511), pasture and hay planting (312), prescribed burning (338), prescribed grazing (528A), tree/shrub establishment (612), upland wildlife habitat management (645), wetland enhancement (659), wetland restoration (657), wetland wildlife habitat management (644).

b. Deviation from these practices or new practices must be approved by a department wildlife biologist.

571—22.8(456A,483A) Cost reimbursement. Whenever a landowner has been found to be in violation of a contract specified in this rule, the department may cancel the contract and the landowner shall reimburse the state for the full amount of any cost-share payments received. The requirement and procedure for recovering the cost-share payments shall be explained in the contract.

571—22.9(456A,483A) Wildlife habitat enhancement on public and private lands. The department's primary goal for the wildlife bureau's seed harvest program is to provide an adequate supply of native plant materials to meet the diverse seeding requirements of state and federal land that is owned or managed by the department.

22.9(1) *Private land.* The department may enter into agreements to meet the challenge of providing native plant materials to conservation groups, educational groups, and private landowners for use in promoting and establishing wildlife habitat and conservation plantings in Iowa. These materials

include, but are not limited to, seed and seedlings of prairie plants, grains, and agricultural crop seeds. All native prairie plant materials provided to Iowa landowners will be purchased through these agreements. Landowners who receive this seed will be required to enter into a cooperative habitat development agreement with the department. This agreement shall limit the landowner to utilizing the seed for development of wildlife habitat only and explicitly prohibit the landowner from harvesting or producing seed for any purpose other than providing wildlife habitat.

22.9(2) *Public land.* The department's seed harvest program will harvest, process, and distribute native plant materials for the purpose of improving wildlife habitat on department-managed land in Iowa. Native plant materials include prairie grasses and forbs and mast crops from trees. In addition, native plant materials may be provided to educational groups (schools) or conservation groups who want to carry out educational, environmental or demonstration plantings that will promote prairies and wildlife habitat. These materials will be limited to $300 or less in value and must be used for providing wildlife habitat or demonstrating the use of native plant materials. These materials provided to groups will include a marketing disclaimer which prohibits the materials from being used for seed source by the receiving group. The department may enter into agreements with conservation partners or governmental agencies to utilize prairie seed and seedlings as a matching source of in-kind value to secure additional funding or land acquisition, providing all seed materials remain on lands owned, managed or to be acquired by the department.

The rules in Part 1 are intended to implement Iowa Code sections 483A.3 and 456A.16.

Part 2
HABITAT AND PUBLIC ACCESS PROGRAM

571—22.10(456A,483A) Purpose and authority. These rules set forth the procedures to open private lands to public hunting, while providing grant funds to create, manage, and enhance wildlife habitat. Pursuant to Iowa Code section 456A.19, all funds deposited into the state fish and game protection fund shall be expended solely in carrying on the activities of the fish and wildlife division. The department assesses a wildlife habitat fee in conjunction with each resident and nonresident hunting license sold in Iowa, and this fee is deposited into the state fish and game protection fund. At least one dollar from every wildlife habitat fee is required to be spent in a manner that increases landowner participation in federally funded conservation programs that encourage opportunities for recreational hunting on private land.
[**ARC 9496B**, IAB 5/4/11, effective 6/8/11]

571—22.11(456A,483A) Definitions. For the purpose of this part:

"Commission" means the natural resource commission.

"Department" means the department of natural resources.

"Program" means the habitat and public access program.
[**ARC 9496B**, IAB 5/4/11, effective 6/8/11]

571—22.12(456A,483A) Eligibility. In order to be eligible for this program, an applicant shall:

1. Have land in Iowa that already contains wildlife habitat or be willing to allow development of wildlife habitat;
2. Enter into an agreement with the department; and
3. Allow public access for hunting without charge on at least 40 acres.

[**ARC 9496B**, IAB 5/4/11, effective 6/8/11]

571—22.13(456A,483A) Application procedures. Applications will be accepted only from those eligible pursuant to rule 571—22.12(456A,483A).

22.13(1) *Applications.* Applications must be submitted on forms furnished by the department. Applications and agreements must be received by June 1 to provide adequate time for signage on the property and to ensure that the public is aware the area is open to public hunting. However, at the department's discretion and dependent upon the availability of funds, the application period may be extended. Landowners will be notified in writing within 30 days of submission of an application whether they have been accepted into the program.

22.13(2) *Availability of funds.* Funds available for this program are provided through a Voluntary Public Access and Habitat Incentive Program Grant awarded to the department by the U.S. Department of Agriculture as well as from wildlife habitat fees.

a. Funds available for assisting landowners shall be in the department's budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

b. To maximize the amount of wildlife habitat actually established, the department may accept contributions from any governmental agency or private conservation group to support habitat practices designed to implement the habitat and public access program. Department funds may also be used to match other funding sources or incentive programs.

22.13(3) *Project review and selection.*

a. Projects will be reviewed by the site's regional department wildlife biologist, who, based on the ranking criteria listed in paragraph 22.13(3)*"b,"* will recommend that the commission enter into an agreement with successful applicants.

b. Projects will be selected based on the ranked scoring criteria in the application, which prioritize sites with the greatest chance of benefitting wildlife populations and providing adequate recreational hunting opportunities. The criteria include, but are not necessarily limited to: the site's habitat potential; site suitability; priority locations; and other relevant habitat and hunting access factors.

[**ARC 9496B**, IAB 5/4/11, effective 6/8/11]

571—22.14(456A,483A) Agreements. The commission shall enter into "Iowa Management and Access Program Agreements," available on the department's website as well as through the department's central office, with approved landowners to carry out the purposes of this program.

22.14(1) Agreement forms shall be provided by the department. The agreement shall explicitly state the terms of the agreement including, but not limited to: the location and size of the habitat improvement; the location and size of the area open for public access hunting; the habitat improvement practices to be completed, including the standards by which the practices shall be accomplished; the schedule for completion and length of time the site shall be open for public recreational hunting; and the reimbursement rate for breaches or early terminations of the agreement as outlined in rule 571—22.15(456A,483A).

22.14(2) Grant funds. Habitat development money is only available if an agreement has been signed by both parties. This is not a cost-share program; the department is solely responsible for all habitat development cost.

22.14(3) Agreements may be amended by mutual agreement of both parties.

22.14(4) Enrolled lands are subject to game management area hunting rules as contained in 571—Chapter 51. Access and boundary signs shall be placed and maintained on enrolled lands by the department, including "No Hunting in Standing Crops" signs at the landowner's discretion.

22.14(5) Nothing in this program or in the agreement alters or waives the liability protection afforded to private landowners opening their lands up to public recreation under Iowa Code chapter 461C. Access given pursuant to a signed agreement shall not constitute a "charge" as defined in Iowa Code section 461C.2. As stipulated in Iowa Code section 461C.4, landowners who participate in this program do not, by opening up their lands to public recreation, do any of the following:

a. Extend any assurance that the premises are safe for any purpose;

b. Confer upon such person the legal status of an invitee or licensee to whom the duty of care is owed;

c. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

[**ARC 9496B**, IAB 5/4/11, effective 6/8/11; **ARC 5227C**, IAB 10/7/20, effective 9/17/20]

571—22.15(456A,483A) Cost reimbursement. Whenever a landowner has been found to be in violation of an agreement as specified in Part II of this chapter, or terminates the agreement early, the landowner shall reimburse the state a prorated amount of the value of wildlife habitat improvement work completed on the property divided by the entire agreement period multiplied the unfulfilled years of the agreement, e.g., (Total Dollars ÷ Total Years) × Unfulfilled Years = prorated amount owed.

Additionally, the landowner may be assessed early termination penalties that the department may be required to pay a contractor performing the wildlife habitat improvement work on the property.
[**ARC 9496B**, IAB 5/4/11, effective 6/8/11]

The rules in Part 2 are intended to implement Iowa Code sections 456A.19 and 483A.3B(3)*"c"*(1).

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[Filed Emergency After Notice ARC 5227C (Notice ARC 5112C, IAB 7/29/20), IAB 10/7/20, effective 9/17/20]

[1] Effective date of rule 22.7 delayed 70 days by the Administrative Rules Review Committee at its August 21, 1986, meeting.

CHAPTER 40
BOATING SPEED AND DISTANCE ZONING
[Prior to 12/31/86, Conservation Commission[290] Ch 30]

571—40.1(462A) Restricted areas. All vessels, except authorized emergency vessels, shall be operated in compliance with, and all persons engaged in water recreation activities, shall obey restrictions with posted areas marked with a uniform waterway buoy or official signs adopted by the natural resource commission.

571—40.2(462A) Uniform buoy system. All buoys placed shall be those of the uniform waterway marking system adopted by the natural resource commission and shall be constructed, placed, and maintained in accordance with Iowa Code chapter 462A and Iowa Administrative Code 571—Chapters 40 and 41.

571—40.3(462A) Commission approval. The placement of buoys or official signs that restrict speed and distance or involve special zoning restrictions shall be approved by the natural resource commission.

571—40.4(462A) Right for aggrieved party to appeal. Any finding or establishment of areas involving special speed and distance or zoning restrictions by the natural resource commission may be appealed by aggrieved party upon written notice. A hearing thereon shall be held by the natural resource commission within 30 days thereafter.

571—40.5(462A) Rathbun Lake, Appanoose County—zoned areas.

40.5(1) Areas may be specifically designated for swimming and wading.

40.5(2) Areas may be designated restricted speed areas.

40.5(3) Areas may be designated as "no anchoring" areas.

40.5(4) Areas may be designated as "no boating" areas.

[**ARC 5176C**, IAB 9/9/20, effective 10/14/20]

571—40.6(462A) Red Rock Lake, Marion County—zoned areas.

40.6(1) Areas may be specifically designated for swimming and wading.

40.6(2) Areas may be designated restricted speed areas.

40.6(3) Areas may be designated as "no anchoring" areas.

571—40.7(462A) Coralville Lake, Johnson County—zoned areas.

40.7(1) Areas may be specifically designated for swimming and wading.

40.7(2) Areas may be designated restricted speed areas.

571—40.8(462A) Saylorville Lake, Polk County—zoned areas.

40.8(1) Areas may be specifically designated for swimming and wading.

40.8(2) Areas may be designated restricted speed areas.

571—40.9(462A) Lake Odessa in Louisa County.

40.9(1) Areas may be designated restricted speed areas.

40.9(2) All motorboats, except authorized emergency vessels, shall be operated at a speed not greater than 5 miles per hour year around, on that portion of Lake Odessa known as the Sand Run Chute, lying south of the main lake to a point 100 yards south of the Sand Run Chute boat ramp.

40.9(3) All motorboats, except authorized emergency vessels, shall be operated at a speed not greater than 5 miles per hour year around, on those portions of Lake Odessa known as the lateral ditch, between the main lake and Bebee Pond, and on the channel between Yankee Chute and Beaver Pond.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.10(462A) Mississippi River lock and dam safety zone. A safety zone is hereby established in Iowa waters above and below all navigation lock and dam structures on the Mississippi River between the

Iowa-Minnesota border and the Iowa-Missouri border. The established zone shall be 600 feet upstream and 150 feet downstream from the roller gate or tainter gate section of the structure.

40.10(1) The safety zone does not include the area directly above and below the navigation lock structure.

40.10(2) The safety zone does not include the area directly above and below the solid fill portion of the dam and structure.

40.10(3) The safety zone shall be recognized by the state of Iowa only when plainly marked as follows:

a. Upstream signs worded—Restricted area keep 600 feet from dam.

b. Downstream signs worded—Restricted area keep 150 feet from dam.

c. Flashing red lights will be used to make the outer limits of the restricted areas.

40.10(4) No boat or vessel of any type, except authorized vessels, shall enter the established safety zones recognized by the state of Iowa as described in this rule.

571—40.11(462A) Joyce Slough Area. The Joyce Slough Area, a portion of the Mississippi River within the city of Clinton, Iowa, is hereby zoned to be a harbor area and vessels traveling therein shall not travel at speeds in excess of five miles per hour.

571—40.12(462A) Swan Slough, Camanche, Iowa. A restricted speed zone of not greater than 5 miles per hour is hereby established in all or part of the main channel of Swan Slough (Mississippi River mile 510.2 to 511.3), Camanche, Iowa, as designated by buoys.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.13(462A) Massey Slough. The operation of vessels in Massey Slough of the Mississippi River at Massey Station, Dubuque County, Iowa, extending from a northerly to southerly direction from the upper end to the lower end of the slough, encompassing the water in Section 14, Township 88N, Range 3E of the 5th P.M., tract number NFIA-26M, is restricted as follows:

40.13(1) All boats underway must maintain a speed of less than five miles per hour in said waters.

40.13(2) Reserved.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.14(462A) Black Hawk County waters. Operation of vessels in Black Hawk County on the Cedar River and any connected backwaters shall be governed by this departmental rule as well as all applicable state laws and regulations.

40.14(1) No vessel, except authorized emergency vessels, shall be operated in marked areas at a speed greater than the limit designated by buoys, signs, or other approved uniform waterway marking devices marking the area.

40.14(2) All vessels, except authorized emergency vessels, shall be operated at a speed not greater than 5 miles per hour when within 600 feet of the Franklin Street bridge. This 600-foot zone shall be designated by buoys, signs, or other approved uniform waterway marking devices.

40.14(3) No vessel shall tow skiers, surfboard riders, or other towable devices within the zone established by 40.14(2).
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.15(462A) Mitchell County waters. Operation of vessels in Mitchell County is restricted to speeds not greater than 5 miles per hour where a speed zone is designated by buoys on the following impounded waters:

Cedar River from Mitchell Dam, thence upriver to the County "S" bridge.

Cedar River from the St. Ansgar Mill Dam, thence upriver to the Newberg Bridge crossing Highway 105.

Cedar River from the Otranto Dam upriver to the Great Western Railway Bridge crossing the Cedar River.

The Stacyville Pool, on the Little Cedar River at Stacyville, Iowa.

40.15(1) Water recreation activities as restricted within posted areas which are marked with approved buoys shall be obeyed.

40.15(2) Reserved.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.16(462A) Maquoketa River. Operation of vessels of the impoundment of the Maquoketa River in Delaware County, Iowa, extending westerly and northerly from the line between Sections 29 and 30 in Delhi Township in said county, to the line between Sections 10 and 15 in Milo Township in said county which impoundment is sometimes known and referred to as Hartwick Lake or Lake Delhi.

40.16(1) Water recreation activity restrictions shall be obeyed, including restrictions within posted areas which are marked with approved buoys.

40.16(2) No motorboat shall be operated at speeds greater than ten miles per hour at any time between the hours from one hour after sunset to one hour before sunrise.

571—40.17(462A) Zoning of off-channel waters of the Wapsipinicon River in Pinicon Ridge Park in Linn County. No motorboat shall be operated at a speed greater than 5 miles per hour within the zoned area designated by regulatory buoys or signs on the off-channel waters of the Wapsipinicon River above the dam at Central City, Linn County, Iowa.

The zoned area will be the off-channel waters created in and adjacent to the developed recreation areas of the Pinicon Ridge Park on the west and south bank of the Wapsipinicon River above the dam at Central City, Linn County.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.18(462A) Speed restrictions on Lake Manawa. No motorboat shall be operated at a speed greater than five miles per hour within the zoned areas 300 feet from shore around Lake Manawa in Pottawattamie County.

571—40.19(462A) Zoning of Little Wall Lake. No motorboat shall be operated at a speed greater than 5 miles per hour within the zoned area designated by regulatory buoys on Little Wall Lake in Hamilton County.

The zoned area will not exceed approximately 20 acres in the northeast portion of the lake identified by a line from a point on the high-water mark approximately 296.6 feet west of the southeast corner of the southwest quarter of Section 10, Township 86 North, Range 24 West; thence northwest to the high-water mark which is 775 feet south and 319 feet west of the northeast corner of the northwest quarter of the southwest quarter of Section 10, Township 86 North, Range 24 West.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.20(462A) Lake Icaria, Adams County—watercraft use. Motorboats of outboard or inboard-outdrive type shall be permitted on Lake Icaria. The following rules shall govern vessel operation on Lake Icaria in Adams County.

40.20(1) All vessels shall be operated at a speed not greater than 5 miles per hour when within 50 feet of another vessel which is not underway or is operating at a no-wake speed.

40.20(2) Zoned areas.

a. No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading which are plainly marked by the use of buoys or signs in accordance with 571—Chapter 41.

b. No motorboats, except authorized emergency vessels, shall be operated in marked bay areas at a speed greater than the limit designated by buoys or signs marking said bay. Said buoys or signs shall be in accordance with 571—Chapter 41.

c. No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by uniform marker buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area. Such zoned areas shall be not less than 50

feet nor more than 400 feet from shore. Said buoys or signs shall be in accordance with 571—Chapter 41.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.21(462A) Zoning of the Des Moines River. Vessel operation on the Des Moines River from its confluence with the Mississippi River in Lee County to the northerly meander lines of both the East and West Branches, shall be governed by this departmental rule as well as all applicable state laws and regulations.

40.21(1) No vessel, except authorized emergency vessels, shall be operated in marked areas at a speed greater than the limit designated by buoys marking said areas.

40.21(2) No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading which are plainly marked by the use of buoys.

571—40.22(462A) Upper Gar Lake, Dickinson County. Operation of vessels on Upper Gar Lake is restricted to a speed not greater than 5 miles per hour between the Henshaw Bridge at the north end of Upper Gar and south end of East Lake and the Old Sawmill Bridge at the south end of Upper Gar and the north end of Minnewashta.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.23(462A) Zoning of the Mississippi River, Guttenberg river mile 616, Clayton County.

40.23(1) All vessels operated between the ice dike and Bussey Lake access shall be operated at a speed not greater than 5 miles per hour.

40.23(2) The city will designate the 5-mile-per-hour speed zone with buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.24(462A) Mt. Ayr City Lake (Loch Ayr). A motorboat shall not be operated within 100 feet of shore at a speed greater than 5 miles per hour.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.25(462A) Iowa River in Iowa City, Johnson County. No person shall operate any vessel towing persons on water skis, surfboards, or similar devices on the Iowa River in the area bounded by the Coralville Mill Dam and the Burlington Street Dam, except during regattas, races, marine parades, tournaments, or exhibitions authorized by the natural resource commission to be held in such area.

571—40.26(462A) Zoning of the Mississippi River, Dubuque, Dubuque County.

40.26(1) All vessels shall be limited to no more than five miles per hour in Lake Peosta Cut south and east of the Hawthorn Street municipal boat launching ramp.

40.26(2) A restricted speed zone of no more than 5 miles per hour is established in the vicinity of Chaplain Schmitt Memorial Island in proximity to the Schmitt Island municipal launching ramp and in waters adjacent to the southerly shoreline in the area of the Dubuque Yacht Basin.

40.26(3) A restricted speed zone of five miles per hour for the northern portion of Shawondassee Slough. Marker buoys shall be placed at a point approximately 750 feet upstream from the existing speed zone.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.27(462A) Zoning Harpers Slough, Harpers Ferry, Allamakee County.

40.27(1) All vessels operated in Harpers Slough between a point 200 feet above the state ramp and 200 feet out from the west shore and extending 550 feet downstream from a point known as Sandy Point Road Dead-End shall operate at a speed not greater than 5 miles per hour.

40.27(2) The city of Harpers Ferry will designate the 5-mile-per-hour speed zone with buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10; **ARC 0111C**, IAB 5/2/12, effective 4/13/12]

571—40.28(462A) Black Hawk Lake, Sac County—zoned areas.

40.28(1) No motorboat shall be operated at a speed greater than 5 miles per hour within the zoned area marked by the regulatory buoys. The zoned area shall be the area commonly known as Town Bay on the northwest corner of Black Hawk Lake in Sac County.

40.28(2) Areas may be specifically designated for swimming by the use of regulatory buoys.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.29(462A) Speed and other restrictions on Brown's Lake, Woodbury County. All vessels shall be operated at a speed not greater than 5 miles per hour within the two zoned areas designated by regulatory buoys or other approved uniform waterway markers.

40.29(1) *Zone 1.* Zone 1 shall extend 570 yards from the boat ramp east to the regulatory buoys and 150 yards west from the boat ramp.

40.29(2) *Zone 2.* Zone 2 shall begin at the regulatory buoys located at the 24-inch steel pipe and shall extend west.

40.29(3) *Swimming.* Areas may be specifically designated for swimming by the use of regulatory buoys.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.30(462A) Speed and other restrictions on Snyder Bend Lake, Woodbury County. All vessels shall be operated at a speed not greater than 5 miles per hour within the zoned area 400 yards from the boat ramp south to the regulatory sign and buoys.

Areas may be specifically designated for swimming by the use of regulatory buoys.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.31(462A) Speed restrictions on East Okoboji and West Okoboji Lakes in Dickinson County. No motorboat shall be operated at a speed greater than 5 miles per hour within the three zoned areas designated by regulatory buoys on East Okoboji and West Okoboji Lakes in Dickinson County.

40.31(1) Zone 1. Zone 1 shall be a line from the east side of Givens Point to the south end of Arnolds Park City Beach on West Okoboji. Also, a line 150 yards east from the north end of the railroad trestle bridge at Clair Wilson State Park south to the shoreline of East Okoboji.

40.31(2) Zone 2. Zone 2 shall be the area which is 300 feet north of the area commonly known as the Narrows on East Okoboji and 200 feet south of the area commonly known as the Narrows on East Okoboji.

40.31(3) Zone 3. Zone 3 shall be the area 50 feet east of the bridge between East Okoboji and Upper Gar on the East Okoboji side running in a northwesterly direction toward the end of the island from Gingles Point then west toward the shoreline.

40.31(4) Areas may be specifically designated for swimming by the use of regulatory buoys.

40.31(5) The following areas are zoned 5 miles per hour on West Okoboji.

a. Zone 1. Zone 1 shall be the area commonly known as Okoboji Harbor at the northwest corner of West Okoboji.

b. Zone 2. Zone 2 shall be the area commonly known as the canals in the city of Wahpeton including Turtle Lake.

c. Zone 3. Zone 3 shall be the area commonly known as Lazy Lagoon located in the Triboji Area on West Okoboji.

d. Zone 4. Zone 4 shall be the area commonly known as Little Millers Bay. The zone shall start at Pinkies Point and extend southeasterly (160 degrees) approximately 370 yards until bisecting the southern shoreline of Little Millers Bay.

e. Zone 5. Zone 5 shall be the area commonly known as Little Emmerson Bay. The zone shall start at Breezy Point and extend southwesterly (235 degrees) approximately 330 yards until bisecting the west shoreline of Little Emmerson Bay.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.32(462A) Spirit Lake, Dickinson County—zoned areas.

40.32(1) Areas may be specifically designated for swimming by the use of regulatory buoys.

40.32(2) The following areas are zoned 5 miles per hour on Spirit Lake, Dickinson County:

a. Zone 1 shall be the area commonly known as Templar Park Lagoon located midlake on the west shore of Spirit Lake.

b. Reserved.

571—40.33(462A) Speed restrictions on the Mississippi River, Jackson County, at Spruce Creek County Park. No motorboat shall operate at a speed to exceed 5 miles per hour within the area designated by buoys or other approved uniform waterway markers, beginning at the entrance of Spruce Creek harbor and extending southeast 550 feet and extending east 150 feet from shore. The Jackson County conservation board will designate the speed zone with uniform waterway markers (buoys) approved by the natural resource commission.

571—40.34(462A) Speed restrictions on the Mississippi River, Jackson County, at the city of Sabula. No motorboat shall operate at a speed to exceed five miles per hour within the four zoned areas designated by buoys or other approved uniform waterway markers.

40.34(1) *Zone 1.* Zone 1 shall extend 200 feet from shore and begin at a point 250 feet upstream of the north Sabula city boat ramp and ending at a point downstream where Bank Street intersects the river bank.

40.34(2) *Zone 2.* Zone 2 shall extend 200 feet from shore and extend 100 feet upstream and 100 feet downstream from the entrance to the Island City Harbor.

40.34(3) *Zone 3.* Zone 3 shall extend 200 feet into South Sabula Lake from the county boat ramp and 100 feet to the west of the ramp and 600 feet to the east of the ramp.

40.34(4) *Zone 4.* Zone 4 shall extend 200 feet in all directions beginning at the center of the "cut" into Lower Sabula Lake.

The city of Sabula shall designate the speed zones with uniform waterway markers (buoys) approved by the natural resource commission.

571—40.35(462A) Speed restrictions on the Greene Impoundment of the Shell Rock River. No motorboat shall be operated at a speed exceeding five miles per hour in the two zoned areas of the Greene Impoundment designated by buoys or other approved uniform waterway markers. The first zoned area extends from the dam in the city of Greene, upstream approximately one-quarter mile to the north boundary of the city park in which the lower boat ramp is located. The second zoned area extends from the county bridge over the Shell Rock River on the north side of section 28 of Union Township in Floyd County, downstream approximately one-quarter mile to the south boundary of Gates Bridge County Park. The city of Greene and Floyd County shall designate their respective speed zones with uniform waterway markers (buoys) approved by the natural resource commission.

571—40.36(462A) Zoning of the Iowa River, Iowa Falls, Hardin County.

40.36(1) All vessels operated in a designated zone between the River Street Bridge and the dock at Dougan's Landing shall be operated at a speed not greater than 5 miles per hour.

40.36(2) The city of Iowa Falls shall designate and maintain the 5-mile-per-hour speed zone with marker buoys approved by the natural resource commission.

40.36(3) All vessels operated in a designated zone beginning at the west property boundary and ending at the east property boundary of the Scenic City Empress Boat Club property located at 1113 Union Street shall be operated at a no-wake speed. The zone shall not extend more than 75 feet into the Iowa River channel.

40.36(4) The Scenic City Empress Boat Club shall designate and maintain the no-wake zone with marker buoys approved by the natural resource commission.

[**ARC 8877B**, IAB 6/30/10, effective 8/4/10; **ARC 3931C**, IAB 8/1/18, effective 9/5/18]

571—40.37(462A) Zoning of Crystal Lake. No motorboat shall be operated at a speed greater than 5 miles per hour within the 25-acre zoned area designated by regulatory buoys on Crystal Lake in Hancock County.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.38(462A) Five Island Lake, Palo Alto County.

40.38(1) Areas may be specifically designated for swimming by the use of regulatory buoys.

40.38(2) Reserved.

571—40.39(462A) Lost Island Lake, Palo Alto and Clay Counties.

40.39(1) Areas may be specifically designated for swimming by the use of regulatory buoys.

40.39(2) Reserved.

571—40.40(462A) Ingham Lake, Emmet County.

40.40(1) Areas may be specifically designated for swimming by the use of regulatory buoys.

40.40(2) Reserved.

571—40.41(462A) Storm Lake, Buena Vista County.

40.41(1) Areas may be specifically designated for swimming by the use of regulatory buoys.

40.41(2) Reserved.

571—40.42(462A) Raccoon River Regional Park Lake, Polk County.

40.42(1) All vessels shall be operated at a speed not greater than 5 miles per hour.

40.42(2) A 40-acre body of water located in the southeast corner, and separate from the main lake, shall be designated for nonmotorized and electric motors only. The city of West Des Moines will designate the area with regulatory buoys and signs.

40.42(3) Areas may be specifically designated for swimming by the use of regulatory buoys.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.43(462A) Zoning of the Mississippi River, Bellevue, Jackson County.

40.43(1) All vessels shall be operated at a speed not greater than 5 miles per hour within the area designated by buoys or other approved uniform waterway markers beginning at the mouth of Mill Creek and extending upstream 900 feet, and extending 200 feet perpendicular from shore. The area shall be designated by a minimum of four approved buoys to be uniformly placed along the 900-foot length of the zone parallel to the shore.

40.43(2) The city of Bellevue will designate the 5-mile-per-hour speed zone with buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.44(462A) Three Mile Lake, Union County—watercraft use. Motorboats of outboard or inboard-outdrive type shall be permitted on Three Mile Lake. The following rules shall govern vessel operation on Three Mile Lake in Union County.

40.44(1) All vessels shall be operated at a speed not greater than 5 miles per hour when within 50 feet of another vessel which is not underway or is operating at a speed not greater than 5 miles per hour.

40.44(2) Zoned areas.

a. No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading which are plainly marked by use of regulatory buoys in accordance with Iowa Administrative Code 571—Chapter 41. The Union County conservation board shall designate and maintain a swimming area(s) by the use of regulatory buoys approved by the natural resource commission.

b. No motorboats, except authorized emergency vessels, shall be operated in marked bay areas at a speed greater than the limit designated by buoys or signs marking said bay. No motorboats, except authorized emergency vessels, shall be operated other than at a speed not greater than 5 miles per hour

above a line of buoys placed across the lake at the point where County Road H33 intersects the lake. All buoys or signs shall be in accordance with 571—Chapter 41.

c. No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by regulatory buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area. Such zoned areas shall be not less than 50 feet nor more than 400 feet from shore. Said buoys or signs shall be in accordance with 571—Chapter 41.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.45(462A) Zoning of the Cedar River.

40.45(1) *Nashua, Chickasaw County.* All vessels operated in a designated zone extending east 150 feet from the intersection of Wabash Street and Charles City Road and north 380 feet shall be operated at a speed not greater than 5 miles per hour. The city of Nashua shall designate and maintain the 5-mile-per-hour speed zone with marker buoys approved by the natural resource commission.

40.45(2) *Nashua, Chickasaw County.* All vessels operated in a designated zone extending north 131 feet from the intersection of Wabash Street and the north entrance to Cedar View Circle and east 80 feet and west 80 feet from this point along the shoreline and extending 110 feet north into the lake shall be operated at a speed not greater than 5 miles per hour. The city of Nashua shall designate and maintain the 5-mile-per-hour speed zone with marker buoys approved by the natural resource commission.

40.45(3) *Charles City, Floyd County.* All vessels operated in a designated zone extending 300 feet upstream from the upper dam shall be operated at a speed not greater than five miles per hour. The city of Charles City shall designate and maintain the five miles per hour speed zone with marker buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.46(462A) Zoning of Carter Lake, Pottawattamie County.

40.46(1) All vessels operated in a designated zone known as Shoal Pointe Canal shall be operated at a speed not greater than 5 miles per hour.

40.46(2) The city of Carter Lake shall designate and maintain the 5-mile-per-hour speed zone with marker buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.47(462A) Zoning of the Mississippi River, McGregor, Clayton County.

40.47(1) All vessels, except commercial barge traffic, shall be operated at a speed not greater than 5 miles per hour within the area of river mile markers 634 and 633.4 and designated by buoys or other approved uniform waterway markers.

40.47(2) The city of McGregor will designate the 5-mile-per-hour speed zone with buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.48(462A) Zoning of the Mississippi River, Marquette, Clayton County.

40.48(1) All vessels, except commercial barge traffic, shall be operated at a speed not greater than 5 miles per hour within the area of river mile markers 634.5 and 634.9 and designated by buoys or other approved uniform waterway markers.

40.48(2) The city of Marquette will designate and maintain the 5-mile-per-hour speed zone with buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.49(462A) Zoning of Green Island, Jackson County. All motorboats except authorized emergency vessels shall be operated at a speed no greater than 5 miles per hour year around on boat channels adjacent to the interior channel 4 levee at the Green Island State Wildlife area. Both channels begin at the Green Island county road parking lot and proceed north 7920 feet along each side of the channel 4 levee to an intersection with the Snag Slough complex.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.50(462A) Mooring of vessels on riparian property of the state of Iowa. Where the state of Iowa owns riparian property adjacent to sovereign land or water, mooring of vessels is prohibited between sunset and sunrise on those riparian or sovereign lands or waters where posted by either official buoys or official signs of the department of natural resources.

571—40.51(462A) Little River Lake, Decatur County. Motorboats of outboard or inboard-outdrive type shall be permitted on Little River Lake. Vessels operating within a designated area beginning at the dam and extending north approximately to the mouth of "Bait Shop Bay" shall be operated at a speed no greater than 5 miles per hour. The Decatur County conservation board shall designate the speed zone with marker buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.52(462A) Zoning of the Mississippi River, Johnson Slough, Clayton County. All vessels shall be operated at a speed not greater than 5 miles per hour within the area of river mile markers 627 and 629.8, in a backwater known as Johnson Slough and designated by marker buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.53(462A) Zoning of the Mississippi River, Mud Lake, Dubuque County. All vessels shall be operated at a speed not greater than 5 miles per hour within the area of river mile markers 587.6 to 589.3, in a backwater known as Mud Lake and designated by marker buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.54(462A) Nighttime speed limit, Dickinson County. No vessels, except authorized emergency vessels, shall be operated at speeds greater than 25 miles per hour at any time between one-half hour after sunset and sunrise on all lakes located in Dickinson County.

571—40.55(462A) Zoning of Clear Lake, Cerro Gordo County.

40.55(1) Areas may be specifically designated for swimming with the use of regulatory buoys.

40.55(2) Areas within close proximity of dredging operations may be designated as areas where the speed of vessels is restricted to not greater than 5 miles per hour.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.56(462A) Zoning of Mississippi River, Des Moines County, city of Burlington. All vessels shall be operated at a speed no greater than five miles per hour within the area designated by marker buoys or other approved uniform waterway markers beginning at the north city boat ramp and public dock and extending downstream to the south city boat ramp and public dock. The zoned area shall extend no farther than 150 feet from the shore and approximately 150 feet west of the west edge of the barge channel. The city of Burlington shall designate the five-mile-per-hour speed zone with buoys approved by the natural resource commission.
[**ARC 7532B**, IAB 1/28/09, effective 3/6/09]

571—40.57(462A) Zoning of Catfish Creek, Mines of Spain State Recreation Area, Dubuque County. All vessels shall be operated at a speed not greater than 5 miles per hour within the area beginning at the mouth of Catfish Creek and extending upstream to the confluence of Catfish Creek and Granger Creek and designated by uniform marker buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.58(462A) Zoning of Lake Cornelia, Wright County. All vessels shall be operated at a speed not greater than 5 miles per hour in the boat harbor and at the boat harbor entrance within the zoned area extending 300 feet from two points on shore and 100 feet in width, equidistant from either side of the harbor entrance. The Wright County conservation board shall designate the boat harbor entrance and the public swimming area with uniform marker buoys approved by the natural resource commission.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.59(462A) Zoning of lakes in Dickinson County. All vessels shall be operated at a speed not greater than 5 miles per hour within 300 feet of shore on all lakes in Dickinson County.
[**ARC 8877B**, IAB 6/30/10, effective 8/4/10]

571—40.60(462A) Zoning of the Mississippi River, Clayton, Clayton County.

40.60(1) All vessels, except commercial barge traffic, shall be operated at a speed no greater than 5 miles per hour within an area extending 150 feet from shore and beginning at a point 1,012 feet north of Mississippi River Day Marker 624.7R and extending south to a point 1,012 feet south of the same marker (624.7R).

40.60(2) The city of Clayton shall designate and maintain the 5-mile-per-hour speed zone with buoys approved by the natural resource commission.
[**ARC 1644C**, IAB 10/1/14, effective 11/5/14]

571—40.61(321G,321I,462A) Beaver Creek safety zone. A safety zone is hereby established on Beaver Creek within the property boundaries of the Camp Dodge military reservation in Polk County.

40.61(1) Watercraft and vehicles shall be prohibited from entering the safety zone in order to prevent access to areas within Camp Dodge where a hazard to the public may exist. This prohibition shall not apply to watercraft or vehicles explicitly authorized to enter the safety zone by the Iowa national guard. The safety zone boundaries shall be indicated by signage including the wording "Warning, Restricted Area, No Entrance." The Iowa national guard shall be responsible for the acquisition, placement, and maintenance of any signage.

40.61(2) The safety zone shall be recognized by the state of Iowa only where signage is posted as required. Any section of Beaver Creek that is not designated as a safety zone shall remain open to any otherwise lawful public access.

40.61(3) Signs establishing the safety zone boundaries may be moved within the present or future boundaries of Camp Dodge at the sole discretion of Iowa national guard personnel. The Iowa national guard shall notify the department of natural resources when the location of the safety zone boundary is changed.

This rule is intended to implement Iowa Code sections 321G.2, 321I.2, 462A.3, and 462A.26.
[**ARC 5053C**, IAB 6/17/20, effective 7/22/20]

571—40.62(462A) Zoning of the Mississippi River, Lansing, Allamakee County.

40.62(1) All vessels, except commercial barge traffic, shall be operated at a speed not greater than 5 miles per hour within an area extending 300 feet from shore and beginning at a point 800 feet north of river mile marker 662.2 and proceeding to Lansing City Marina Dike.

40.62(2) The Friends of Pool 9 shall designate and maintain the 5-mile-per-hour speed zone with buoys approved by the natural resource commission.

This rule is intended to implement Iowa Code sections 462A.26 and 462A.32.
[**ARC 5198C**, IAB 10/7/20, effective 11/11/20]

These rules are intended to implement the provisions of Iowa Code sections 462A.17, 462A.26, and 462A.31.

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[Prior to 12/12/12, see [641] Ch 96, 98.1, Chs 103, 104]

641—95.1(144) Definitions. For the purpose of 641—Chapters 95 to 100, the following definitions shall apply:

"Administrative costs" means costs for the registration, collection, preservation, modification and certification of records, including but not limited to costs related to copying, regular mailing, searching, staffing, and maintenance of systems.

"Advanced registered nurse practitioner" or *"ARNP"* means an individual licensed pursuant to Iowa Code chapter 152.

"Age of majority" means the chronological moment when a child legally assumes majority control over the child's own person and actions and decisions, thereby terminating the legal control and legal responsibilities of the child's parents over and for the child. The period of minority extends to the age of 18 years, but every minor attains majority by marriage.

"Amendment" means a change made by the state registrar upon request from an entitled person as described in 641—95.8(144) to an obvious error, omission, or transposition of letters in a word of common knowledge one year or more after the event.

"Birth center" means a facility or institution, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur following a normal, uncomplicated, low-risk pregnancy.

"Birthing institution" means a private or public hospital licensed pursuant to Iowa Code chapter 135B that has a licensed obstetric unit or is licensed to provide obstetric services.

"Burial-transit permit" means a permit which is required to assume custody of a dead body or fetus pursuant to Iowa Code section 144.32.

"Certificate" means the written or electronic legal document containing the facts of an event; also used interchangeably with the term "record."

"Certificate of birth resulting in stillbirth," pursuant to Iowa Code section 144.31A, means a noncertified copy issued based upon a properly filed fetal death certificate to record the birth of a stillborn fetus.

"Certified copy" means an official copy of a registered vital record that is authenticated by the state registrar or county registrar. A certified copy contains a statement certifying the facts are true and accurate as recorded, is printed on security paper, and has authentication seals and signatures. A certified copy excludes all entries indicated as confidential or for statistical information.

"Commemorative certificate," pursuant to Iowa Code section 144.45A, means a commemorative abstract of an Iowa birth or marriage record that has been properly filed.

"Competent and disinterested person" means an individual of legal age who is acquainted with both applicants who plan to marry.

"Confidential information" means data or information that is on a vital record, is not considered public information, and is restricted as to its release pursuant to Iowa Code chapter 144 or other provision of federal or state law.

"Correction" means a change made by the state registrar upon observation, upon query, or upon request from an entitled person as described in 641—95.8(144) to an obvious error, omission, or transposition of letters in a word of common knowledge within one year and prior to the first anniversary of the event.

"County registrar" means the county recorder with the authority to record vital records and issue certified copies. The county registrar operates under the state vital records laws and rules and the guidance of the state registrar pursuant to Iowa Code sections 144.5 and 144.9. Pursuant to Iowa Code section 331.601(4), if the office of the county recorder has been abolished, "county registrar" means the office to which the duties are assigned by the county board of supervisors.

"County resident copy" means a properly filed, clearly marked working copy of a decedent's death certificate which is sent to and recorded by the county registrar of the county of the decedent's residence in the event the death occurred outside the county of the decedent's residence.

"Court of competent jurisdiction" means the appropriate court for the type of action. When used to refer to inspection of an original certificate of birth based upon an adoption, "court of competent jurisdiction" means the court in which the adoption was ordered.

"Cremated remains" means all the remains of the cremated human body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions, and may include the residue of any foreign matter including casket material, bridgework, or eyeglasses that were cremated with the human remains.

"Cremation" means the technical process, using heat and flame, that reduces human remains to bone fragments, with the reduction taking place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

"Custody" means guardianship or control of vital records, including both physical possession, referred to as physical custody, and legal responsibility, referred to as legal custody, unless one or the other is specified. The state registrar shall not transfer legal custody of vital records to another agency for purposes of granting public access until all the records have been purged of all confidential information.

"Day" means calendar day.

"Dead human body" means a lifeless human body or parts or bones of a body, if, from the state of the body, parts, or bones, it may reasonably be concluded that death recently occurred.

"Death" means the condition as defined in Iowa Code section 702.8.

"Declaration of paternity registry" means a registry for a putative father to declare paternity pursuant to Iowa Code section 144.12A. The declaration does not constitute an affidavit of paternity filed pursuant to Iowa Code section 252A.3A.

"Delayed birth record" means the registration of a live birth event occurring in Iowa one or more years after the date of birth which is clearly marked as delayed and shall show on its face the date of the delayed registration.

"Delayed death record" means the registration of a death event occurring in Iowa one or more years after the date of death which is clearly marked as delayed and shall show on its face the date of the delayed registration.

"Delayed marriage record" means the registration of a marriage event occurring in Iowa one or more years after the event which is clearly marked as delayed and shall show on its face the date of the delayed registration.

"Department" means the Iowa department of public health.

"Disinterment permit" means a permit which allows the removal of a dead human body or fetus from its original place of burial, entombment or interment for the purpose of autopsy or reburial.

"Electronic access" means authority given by the state registrar to a county registrar to access electronic vital records through the electronic statewide vital records system for purposes of retrieving information. The state registrar shall provide guidelines for electronic access and the retrieval of information from the electronic statewide vital records system.

"Electronic statewide vital records system" means the combined vital records system for registration of birth records, registration of death records, issuance of certified copies of vital records by the state registrar and county registrar, and fee accounting.

"Emancipated minor" means a person younger than 18 years of age who has obtained the age of majority by court order.

"Fetal death" means a death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy which is not an induced termination of pregnancy. The death is indicated by the fact that, after such expulsion or extraction, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles. In determining a fetal death, heartbeats

shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.

"Filing" means the presentation of a certificate, report, or other record of a live birth, death, fetal death, adoption, marriage, dissolution, or annulment for registration pursuant to Iowa Code chapter 144.

"Final disposition" means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.

"Foundling" means a living infant of unknown parentage whose place of birth is where the infant is found and whose date of birth shall be determined by approximation.

"Funeral director" means a person licensed in Iowa to practice mortuary science pursuant to Iowa Code chapter 156.

"Gestational surrogate arrangement" or *"surrogate mother arrangement,"* as defined in Iowa Code section 710.11, means an arrangement whereby a female agrees to be artificially inseminated with the sperm of a donor, to bear a child, and to relinquish all rights regarding that child to the donor or donor couple.

"Health care provider" means an individual licensed under Iowa Code chapter 148, 148C, 148D, or 152 or any individual who provides medical services under the authorization of the licensee.

"Induced termination of pregnancy" means the use of any means to terminate the pregnancy of a woman known to be pregnant with the intent other than to produce a live birth or to remove a dead fetus as defined in Iowa Code section 144.29A(8).

"Institution" means a facility as defined in Iowa Code section 144.1(10), including "hospital" as defined in Iowa Code section 135B.1(3) but not including "birth center" as defined in Iowa Code section 135.61(2).

"Institutional health facility" means a hospital as defined in Iowa Code section 135B.1, including a facility providing medical or health services that is open 24 hours per day, seven days per week and that is a hospital emergency room or a health care facility as defined in Iowa Code section 135C.1.

"Jurisdiction" means the state or county to which legal authority for the system of vital statistics has been granted by statute.

"Last name" means surname.

"Lineal consanguinity" means the existence of a line of descent in which one person is descended in a direct lineal relationship to another: as between the registrant and the registrant's parent, grandparent, great-grandparent, and so upward, in the direct ascending line; or between the registrant and the registrant's child, grandchild, great-grandchild and so downward in the direct descending line; or any siblings of the registrant.

"Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. In determining a live birth, heartbeats shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.

"Marriage license valid date" means the day on which the marriage license becomes valid and on or after which the parties are authorized to marry. When the marriage license valid date is computed, the date of application shall be excluded. The marriage license shall become valid after the expiration of three calendar days after the date of application, unless earlier validated by a court of competent jurisdiction.

"Medical certification" means a statement which attests that the medical information reported on the certificate of death or fetal death is accurate to the best of the medical certifier's knowledge.

"Medical certifier" means an Iowa-licensed physician, physician assistant, advanced registered nurse practitioner, or medical examiner who attests that the death event has taken place and who determines the cause and manner of death.

"Medical examiner" means the medical legal officer who makes the determination of the cause of death in nonroutine deaths such as non-natural, sudden, or unattended deaths or other deaths which affect the public interest.

"Modification" means any change made to a record that has been accepted and registered, such as a correction, an amendment, a change after adoption or paternity determination, or any other change.

"Mutual consent voluntary adoption registry" means a registry which authorizes adult adopted children, adult siblings, and the biological parents of adult adoptees to register to obtain identifying birth information.

"Natural cause of death" means a death due to a disease or the aging process and not due to external causes.

"Newborn safe haven registration" means the registration of the birth of a living infant of unknown parentage who has been abandoned or left at some unknown time after birth in a location other than the place of delivery.

"Non-birthing institution" means a private or public hospital licensed pursuant to Iowa Code chapter 135B that does not have a licensed obstetric unit or is not licensed to provide obstetric services but may provide obstetric services on an emergency basis.

"Non-institution birth" means a live birth that occurs outside of an institution and not en route to an institution.

"Non-natural cause of death," pursuant to Iowa Code section 144.28(1)*"a,"* means the death is a direct or indirect result of physical, chemical, thermal, or electrical trauma, or drug or alcohol intoxication or other poisoning.

"Notification of record search" means the document issued to the applicant when the record requested cannot be located through a search of registered records. The document contains a certification statement, is printed on security paper, and has authentication seals and signatures.

"Officiant" means (1) a judge of the Iowa supreme court, court of appeals, or district court, including a district associate judge, an associate juvenile judge, or a judicial magistrate, and including a senior judge as defined in Iowa Code section 602.9202(3), or (2) a person ordained or designated as a leader of the person's religious faith.

"Physician" means an individual licensed pursuant to Iowa Code chapter 148.

"Physician assistant" means an individual licensed pursuant to Iowa Code chapter 148C.

"Presumptive death" means a death event presumed to have occurred in Iowa where no human body is found and a court of competent jurisdiction has determined the death has occurred.

"Putative father" means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of the conception or birth of the child or at any time during the period between the conception and birth of the child.

"Record of death" means the compilation of those entries of a death, whether electronic or paper, which are contained in indexed systems which record the death event occurring in Iowa. "Record of death" shall include the certificate of death.

"Record of fetal death" means the compilation of those entries of a fetal death, whether electronic or paper, which are contained in indexed systems which record a fetal death event occurring in Iowa. "Record of fetal death" shall include the certificate of fetal death.

"Record of foreign born adoption" means the compilation of those entries of a live birth event for a child born in a foreign country and adopted by an Iowa resident. "Record of foreign born adoption" shall include the certificate of foreign birth and shall not constitute U.S. citizenship.

"Record of live birth" means the compilation of those entries of a live birth event, whether electronic or paper, which are contained in indexed systems which record a live birth event occurring in Iowa. "Record of live birth" shall include the certificate of live birth.

"Record of marriage" means the compilation of those entries of a marriage event, whether electronic or paper, which are contained in indexed systems which record a marriage event occurring in Iowa. "Record of marriage" shall include the certificate of marriage.

"Registrant" means the person named on the certificate as the person who was born, died, or was married.

"Registration" means the process by which vital statistics records are completed, filed, and incorporated by the state registrar in the official records.

"Report of dissolution or annulment" means the statistical report of dissolution or annulment, whether electronic or paper, excluding all entries indicated as confidential or for statistical information only.

"Report of termination of pregnancy" means the aggregated compilation of the information received by the department on terminations of pregnancies for each information item listed, with the exception of the report tracking number, the health care provider code, and any set of information for which the number is so small that the confidentiality of any person to whom the information relates may be compromised.

"Research" means the systematic investigation designed primarily to develop or contribute to scientific, medical, public health or psychosocial disciplines and generalized knowledge and not for private gain.

"Sealed" means the removal from inspection of any copy of an original certificate in the custody of the county registrar and the state registrar.

"Security paper" means standardized paper for issuing certified copies of vital record events that meets, at a minimum, national requirements for security features embedded within the paper to deter tampering, counterfeiting, photocopying, or imaging in order to help prevent fraudulent use of the certified copy and prevent identity theft.

"Single parent birth" means any record of live birth for which there is a reference or statement on the certificate or entry which directly indicates "no" regarding "born in wedlock" or "married"; or any record of live birth for which there is reference or statement on the certificate or entry that either parent is "unknown" or "anonymous"; or any certificate or entry which reflects the omission or absence of the name of the father of the child.

"Spontaneous termination of pregnancy" means the occurrence of an unintended termination of pregnancy at any time during the period from conception to 20 weeks' gestation and is not a spontaneous termination of pregnancy at any time during the period from 20 weeks or greater which is reported to the department as a fetal death under Iowa Code section 144.29.

"Standard birth registration" means a vital record of a live birth event that occurred in Iowa which was submitted and accepted for registration within one year of the event.

"State registrar" means the director of the department or the director's designee.

"Stillbirth" means an unintended fetal death occurring after a gestation period of 20 completed weeks or more or an unintended fetal death of a fetus with a weight of 350 or more grams.

"System of vital statistics" or *"system"* means the registration, collection, preservation, amendment, and certification of vital statistics records, and activities and records related thereto including the data processing, analysis, and publication of statistical data derived from such records.

"Uncertified copy" means an unofficial copy of a registered vital record which is not printed on security paper and which does not contain any authentication by the issuing jurisdiction. Uncertified copies shall contain an overstamp such as: "Not for Legal Purposes," "Administrative Use Only," "Deceased," "For Genealogical Purposes Only," "Working Copy," or any other overstamp as authorized by the state registrar.

"Vital records" means certificates or reports of birth, death, fetal death, marriage, dissolution, annulment, and related data.

"Vital statistics" means data derived from reports, certificates, and records of live birth, death, fetal death, induced termination of pregnancy, marriage, dissolution of marriage or annulment, and data related thereto.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2275C**, IAB 12/9/15, effective 1/13/16; **ARC 5199C**, IAB 10/7/20, effective 11/11/20]

641—95.2(144) Vital records and statistics. There is established a division in the department which shall install, maintain, and operate the system of vital statistics throughout the state. No official system for the registration of births, deaths, fetal deaths, adoptions, marriages, dissolutions, and annulments shall be maintained in the state or any of its political subdivisions other than the one provided for in

Iowa Code chapter 144, including, but not limited to, a system maintained by any agency or private entity.

95.2(1) No person shall prepare or issue any certificate which purports to be an original certified copy or a copy of a certificate of birth, death, fetal death, adoption, marriage, dissolution, or annulment except as provided for in Iowa Code chapter 144 and authorized by the state registrar.

95.2(2) The state registrar and the county registrar shall not maintain or issue copies of any vital record of an event occurring outside the state registrar's or county registrar's jurisdiction except as provided for in Iowa Code chapter 144 and authorized by the state registrar.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2933C**, IAB 2/1/17, effective 3/8/17; see Delay note at end of chapter]

641—95.3(144) Forms—property of department. All forms, certificates and reports pertaining to the registration of vital events are the property of the department and shall be surrendered to the state registrar upon demand. Official designated forms used for the express purpose of creating a vital record event shall not be accessible to the general public unless authorized by rule.

95.3(1) The forms supplied or approved for reporting vital events shall be used for official purposes as provided for by law, rules and instructions of the state registrar.

95.3(2) No forms, except those furnished or approved by the state registrar, shall be used in the reporting of vital events or the making of copies of vital records.

95.3(3) Security paper used to report vital events shall be maintained in a secure location accessible only to the state and county registrars and their employees for administrative purposes.

95.3(4) Security paper shall be used to issue certified copies of Iowa vital records and shall be maintained in a secure location accessible only to the state and county registrars and their employees for administrative purposes.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 4398C**, IAB 4/10/19, effective 5/15/19]

641—95.4(144) Information by others.

95.4(1) Any person having knowledge of the facts shall furnish information that the person possesses regarding any birth, death, fetal death, adoption, marriage, dissolution, or annulment, upon demand of the state registrar.

95.4(2) Every person in charge of an institution, or the person's designee, shall maintain a record of personal particulars and data concerning each person admitted or confined to the institution pursuant to Iowa Code section 144.47. This record shall include information required by the standard certificate of birth, death, and fetal death forms issued under the direction of the state registrar. The record shall be made at the time of admission based on the information provided by such person, but when information cannot be obtained from the person, it shall be obtained from the most knowledgeable relative or person acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

95.4(3) Records maintained under this rule shall be retained for a period of not less than ten years and shall be made available for inspection by the state registrar upon demand.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—95.5(144) Handling of vital records.

95.5(1) State equipment and state vital records shall not be handled or accessed except by the state registrar, the state registrar's employees, or other authorized personnel for administrative purposes.

95.5(2) The county registrar shall provide assistance to the public in accessing vital records designated as public records in the custody of the county registrar.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—95.6(144) Fees.

95.6(1) *Fees for services provided by state registrar or county registrar.* The following fees shall be charged and remitted for the various services provided by the state registrar or the county registrar.

a. The state registrar or county registrar, as applicable, shall charge a fee of $20 for a certified copy of a vital record. If, following a search, no record is found and no certified copy is printed, the $20 fee may be retained. On and after July 1, 2019, this fee will revert to $15.

b. The state registrar shall charge a fee of $20 to prepare an adoption certificate, to amend a certificate, to amend a certificate of live birth to reflect a legal change of name, to prepare a delayed certificate, to process other administrative or legal actions, or for preparation of copies of supporting documents on file in the state registrar's office. On and after July 1, 2019, this fee will revert to $15. No fee shall be charged for establishment of paternity.

c. The state registrar shall charge a fee of $25 to file a completed application for the mutual consent voluntary adoption registry.

d. The state registrar shall charge a fee of $5 to update applicant information maintained in the mutual consent voluntary adoption registry and the declaration of paternity registry.

e. The state registrar shall charge a fee of $20 to amend an abstract or other legal documentation in support of the preparation of a new certificate. On and after July 1, 2019, this fee will revert to $15.

f. The state registrar shall charge a fee of $35 to issue a commemorative copy of a certificate of birth or a certificate of marriage pursuant to Iowa Code section 144.45A. Fees collected shall be deposited in the emergency medical services fund established in Iowa Code section 135.25.

g. The state registrar shall charge a fee of $20 for the purpose of issuing an uncertified copy of a certificate of birth resulting in stillbirth pursuant to Iowa Code section 144.31A. On and after July 1, 2019, this fee will revert to $15.

95.6(2) *Overpayments.* Any overpayment of $5 or less received by the state registrar for the copying of vital records or for the preparation or amending of a certificate shall not be refunded and shall be retained by the department.

95.6(3) *Certified copy of modified vital record.* When an individual is in possession of a previously issued certified copy of a vital record and the original record is subsequently modified, the individual may request and receive a certified copy of the modified record without charge if the certified copy prior to modification is relinquished to the registrar's office that issued the certified copy, unless otherwise directed by the state registrar.

95.6(4) *Search of county registrar's records—fee for uncertified copy.* A person who is requesting an uncertified copy of a record in the custody of the county registrar shall conduct the search of the county files to locate the record. If a copy is requested, the county registrar may charge a fee of no more than $5 for an uncertified copy of the county record. The fee shall be retained by the county.

95.6(5) *Distribution of fees.*

a. All fees collected by the county registrar and the state registrar shall be distributed as follows:

(1) For fees collected by a county registrar, with the exception of the fee in subrule 95.6(4), the county registrar shall retain $4 of each $20 fee collected by that office. On and after July 1, 2019, this $20 fee will revert to $15. Fees collected shall be divided as follows:

1. For a birth certificate or a marriage certificate, the state registrar shall receive $13, and $3 shall be deposited in the general fund of the state, except for the fee collected pursuant to paragraph 95.6(1)*"f."* On and after July 1, 2019, the amount received by the state registrar will revert to $8.

2. For a death certificate, the state registrar shall receive $11, the office of the state medical examiner shall receive $3, and $2 shall be deposited in the general fund of the state. On and after July 1, 2019, the amount received by the state registrar will revert to $6.

(2) For fees collected by the state registrar, the state registrar shall retain all fees, with the exception of the fees in paragraph 95.6(1)*"a,"* of which the state registrar shall retain $14 of each $20 fee collected for the issuance of certified copies. On and after July 1, 2019, the fee collected will revert to $15 and the amount retained by the state registrar will revert to $9. The $6 balance of certified copy fees collected by the state registrar shall be divided as follows:

1. For a birth certificate or a marriage certificate, $6 shall be deposited in the general fund of the state.

2. For a death certificate, the office of the state medical examiner shall receive $3, and $3 shall be deposited in the general fund of the state.

b. All fees retained by the state registrar shall be added to the vital records fund established by the department pursuant to Iowa Code section 144.46A.

c. All fees received by the office of the state medical examiner shall be added to the operating budget established for the operation of that office.

95.6(6) *Fee for search to verify vital statistics record.* A fee shall be charged by the state registrar for each search conducted for the purpose of providing verification of vital statistics data to an agency authorized to receive such data under subrule 95.12(2).

a. The amount of the fee shall be determined in an agreement with the department and shall be dependent on the nature and scope of the project and the resources required to obtain the data requested.

b. The state registrar shall retain the full amount of all fees collected under this subrule in the vital records fund established pursuant to Iowa Code section 144.46A.

95.6(7) *Fee for researcher access to vital statistics data.* A fee shall be charged to each researcher who is provided access to vital statistics data in accordance with Iowa Code section 144.44 and the required agreement executed with the department. The amount of the fee shall be based on the nature and scope of the research project and resources required to obtain the data requested.

a. The state registrar shall allocate the fees for copies of birth, marriage, and death certificates provided to researchers pursuant to the distribution of fees set forth in subrule 95.6(5).

b. The state registrar shall retain in the vital records fund established pursuant to Iowa Code section 144.46A the full amount of fees collected from researchers for searching files or records to create a data file.

95.6(8) *Service member who died while on active duty—waiver of fee.* The certified copy fee for a birth certificate or a death certificate of a service member, as defined in Iowa Code section 29A.90, who died while on active duty shall be waived for a period of one year from the date of death. Application for the certified copy shall be made by an entitled family member as described in 641—95.8(144) of the deceased service member or the entitled family member's legal representative. Documentation shall be submitted at the time of application to substantiate the date of death and active duty status.

95.6(9) *Retention of applications and reports.* An application for a certified copy of a vital record in Iowa shall be retained by the county registrar for a minimum of six months from date of issuance of the certified copy. All financial reports for vital records fees shall be retained by the county registrar for a minimum of three calendar years.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 1074C**, IAB 10/2/13, effective 1/1/14; see Delay note at end of chapter; **ARC 1402C**, IAB 4/2/14, effective 5/7/14; **ARC 2275C**, IAB 12/9/15, effective 1/13/16; **ARC 4398C**, IAB 4/10/19, effective 5/15/19]

641—95.7(144) General public access of vital records in the custody of the county registrar. A vital record may be in the custody of the county registrar if the event occurred in that county and the record is not excluded by statute or definition for purposes of confidentiality.

95.7(1) There shall be public access and the right to inspect all vital records in the custody of the county registrar after the vital records are purged of confidential information pursuant to rule 641—95.11(144). The county registrar shall allow the general public access to the electronic statewide vital records system to search as a public user as a right under Iowa Code chapter 22 for events which occurred in that county.

95.7(2) Information inspected and copied shall not be used to establish an official system for the registration of vital statistics except as authorized by Iowa Code chapter 144.

95.7(3) County registrars may issue uncertified copies of vital records held in the registrars' physical custody or accessible through the electronic statewide vital records system, except those records excluded by statute. Uncertified copies issued by the county registrar shall be issued on plain white paper and clearly stamped "not for legal purposes." Security paper provided by the state registrar shall not be used to produce uncertified copies.

95.7(4) For records available in the electronic statewide vital records system, the state registrar shall send to the county registrars a list of all records that have been modified. County registrars shall, as directed by the state registrar, remove all forms of any vital record in their physical custody from the county vital records system if the vital record appears on the list of modified records.

95.7(5) For records not available in the electronic statewide vital records system, the state registrar shall send a copy of any modified vital record to the county of event and, if the record is a death record, to the county of residence.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2275C**, IAB 12/9/15, effective 1/13/16; **ARC 2933C**, IAB 2/1/17, effective 3/8/17; see Delay note at end of chapter]

641—95.8(144) Direct tangible interest in and entitlement to a vital record. Certified copies of vital records may be issued by the state registrar or county registrar upon written application, payment of the required fee pursuant to paragraph 95.6(1)*"a,"* and demonstration of a verifiable, direct tangible interest and entitlement.

95.8(1) The following persons shall be considered to have a direct tangible interest and entitlement and are authorized to obtain a certified copy of a vital record:

a. The registrant, if the registrant is of legal age, has reached the age of majority, or is an emancipated minor.

b. A member of the registrant's immediate legal family, including:

(1) Current spouse or surviving spouse;

(2) Children;

(3) Mother or father if listed on the registrant's birth certificate;

(4) Sibling, if sibling has reached the age of majority;

(5) Maternal grandparents, or paternal grandparents if the father is listed on the birth certificate; or

(6) Step-parent or step-child if:

1. Legal parent and step-parent are currently married at the time of application; or

2. Step-parent is the surviving spouse of the legal parent and not remarried.

c. The documented legal representative of the registrant or the registrant's immediate legal family, including:

(1) An attorney;

(2) A court-appointed guardian;

(3) A foster parent;

(4) A funeral director, for up to one year following the decedent's date of death; or

(5) A legal executor.

d. Other persons who demonstrate a direct tangible interest and entitlement when it is shown that the certified copy is needed to determine or protect a personal or property interest and the interest is for the benefit of the registrant.

95.8(2) The following persons shall not be deemed to have direct tangible interest and entitlement or be authorized to secure vital records:

a. Biological parents of adopted persons in the absence of a court order from the court of competent jurisdiction;

b. Biological family members of adopted persons;

c. Adopted persons requesting biological family records; or

d. Commercial firms or agencies requesting lists of vital record events, or lists of names, or lists of addresses, or that are not legal representatives requesting records on behalf of entitled individuals.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 4398C**, IAB 4/10/19, effective 5/15/19]

641—95.9(144) Search and issuance of a certified copy of a vital record. The search and issuance of a certified copy of a vital record shall be requested from the state registrar or county registrar.

95.9(1) Only entitled applicants as described in rule 641—95.8(144) may submit requests for certified copies of vital records.

95.9(2) A person requesting a search and issuance of a certified copy of a vital record shall provide in writing the following:

a. The name of the person or persons whose vital record is to be searched;

b. The purpose of such request;

c. The relationship to the registrant of the person making the request; and

d. The notarized signature and the address of the person making the request.

95.9(3) In addition to a completed written application, the applicant shall provide:

a. A current, legible government-issued photo identification of the applicant making the request or other identification documents acceptable to the state registrar; and

b. Payment of the required fee before the search is conducted.

95.9(4) The state registrar and county registrar shall have the authority to require additional supporting documents to prove direct tangible interest and entitlement pursuant to rule 641—95.8(144).

95.9(5) If, after the search is conducted, no record is on file and the state registrar or county registrar issues a "notification of record search" on certified paper, the fee for the search may be retained pursuant to paragraph 95.6(1)*"a."*

95.9(6) If a certified copy of a vital record is issued and sent to the applicant using a mail service and the applicant does not receive the certified copy, the state registrar or the county registrar may replace the certified copy without an additional fee using an Affidavit of Non-Receipt. The applicant must contact the issuing registrar within 90 days of the date of request. A minimum of 30 days must have elapsed from the time the certified copy was mailed. The applicant shall read the instructions, complete the Affidavit of Non-Receipt and have the applicant's signature notarized. The original Affidavit of Non-Receipt and a photocopy of the applicant's driver's license must be reviewed by the issuing registrar before the certified copy can be replaced for no additional fee. The state registrar or county registrar may refuse any Affidavit of Non-Receipt when the state registrar or county registrar determines proof of receipt, fraud or misrepresentation. The state registrar shall give to the registrant a notice in writing of the state registrar's reason and intention to refuse the Affidavit of Non-Receipt.

95.9(7) If printed from the electronic statewide vital records system by a county registrar, the certified copy of a vital record shall be stamped by the issuing county registrar to reflect the county in which the certified copy was issued.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2275C**, IAB 12/9/15, effective 1/13/16]

641—95.10(144) Search and issuance for genealogy or family history. The search and issuance of a vital record for genealogy may be requested from the state registrar or county registrar upon written application and payment of the required fee pursuant to paragraph 95.6(1)*"a."*

95.10(1) The state registrar or county registrar may issue certified copies of a vital record for genealogy or family history to an applicant who can satisfactorily demonstrate a line of direct lineal consanguinity and to aunts, uncles, and cousins not past twice removed.

95.10(2) All certified copies issued for genealogy or family history shall be clearly marked "for genealogical purposes only."

95.10(3) No certified copy shall be issued for genealogy or family history if the registrant is known to be living.

95.10(4) If, after the search is conducted, no record is on file, the state registrar or county registrar shall issue a "notification of record search" on certified paper, and the fee for the search shall be retained pursuant to paragraph 95.6(1)*"a."*

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2933C**, IAB 2/1/17, effective 3/8/17; see Delay note at end of chapter]

641—95.11(144) Registrars' responsibility for maintenance of confidentiality.

95.11(1) The state registrar and county registrar shall maintain the confidentiality of the following material, records, and information:

a. Entries indicated as confidential or statistical in nature on the face of the record or otherwise confidential by law;

b. Any record which is ordered sealed by the state registrar or pursuant to a court order.

95.11(2) The county registrar shall take all necessary steps to ensure that confidential information reflected on vital records has been redacted from general public access. If confidential information is included with accessible information, only accessible information shall be made available to the general public for examination.

95.11(3) The county registrar shall employ at a minimum all of the following methods to ensure confidentiality:

a. Permanently cover or remove, by appropriate means, confidential information;

b. Promptly process the notice to seal a record as directed by the state registrar; and

c. Seal and not reproduce confidential information when copies of vital records are made.

95.11(4) The county registrar may charge reasonable administrative costs to reflect the expenses for efforts required to allow general public access, examination and the assurance of confidentiality of this material and information pursuant to the authority of Iowa Code chapter 22.

a. The administrative cost is to be paid by persons who request the services provided by the county registrar, including supervising, copying or providing a suitable place for such work.

b. The county registrar shall retain all administrative costs collected to allow general public access, examination, and the assurance of confidentiality of the vital record and information pursuant to the authority of Iowa Code chapter 22.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2275C**, IAB 12/9/15, effective 1/13/16]

641—95.12(144) Disclosure of data.

95.12(1) The state registrar may disclose data from the system of vital statistics to federal, state, county or municipal agencies of government that request such data in the conduct of their official duties, subject to conditions the state registrar may impose to ensure that the use of the data is limited to official purposes.

a. The aforementioned agencies shall not provide the certified copy or a copy of the vital record, or release information contained therein, to the person named on the certificate, a member of the person's legal family, or the person's legal representative.

b. Certified copies issued to the aforementioned agencies shall be appropriately stamped, for example, "administrative purposes only" or "for veteran affairs purposes only."

95.12(2) Confidential verifications of the facts contained in vital records may be furnished by the state registrar to any federal, state, county or municipal government agency or other entity in the conduct of the agency's or entity's official duties, subject to conditions the state registrar may impose to ensure that the verification is limited to official purposes. Confidential verification of the facts contained in vital records may be furnished by a county registrar to another county office, within the county jurisdiction, in the conduct of the county's official duties, subject to conditions the state and county registrar may impose to ensure that the verification is limited to official purposes.

a. Such confidential verifications shall be on forms prescribed and furnished by the state registrar or on forms furnished by the requesting agency or entity and acceptable to the state registrar, or the state registrar may authorize the verification in other ways.

b. The aforementioned agencies and entities shall not provide the original or a copy of the verified certificate, or release information contained therein, to the person named on the certificate, a member of the person's legal family, or the person's legal representative.

95.12(3) The state registrar may permit the use of data from vital statistics for research purposes subject to conditions the state registrar may impose to ensure the use of the data is limited to such research purposes. No data shall be furnished from vital statistics for research purposes until the state registrar has prepared in writing the conditions under which the data may be used and has received an agreement signed by a responsible agent of the research organization agreeing to meet and conform to such conditions.

95.12(4) The state registrar may transmit to the county registrar data needed to produce certified copies of vital records pursuant to rule 641—95.8(144).

95.12(5) The state registrar may transmit to the statewide immunization registry information from birth certificates for the sole purpose of identifying those children in need of immunizations. The state registrar may impose conditions to ensure that the use of the information is limited to official purposes.

95.12(6) The state medical examiner or the county medical examiner may request an uncertified copy of a death certificate before the death certificate is accepted and filed at the county registrar's office.

a. The copy shall be clearly stamped "administrative purposes only."

b. The death certificate shall be for the sole use of the state medical examiner or county medical examiner and shall not be used as a legal document, be distributed, be copied or be maintained other than to be made a part of the investigatory file.

c. If the state medical examiner or any county medical examiner determines the death does not warrant further investigation, the state medical examiner or county medical examiner shall destroy the uncertified copy of the death certificate.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2275C**, IAB 12/9/15, effective 1/13/16]

641—95.13(144) Preparation of certified copies. Certified copies of vital records may be prepared and issued by the state registrar or the county registrar pursuant to rules 641—95.3(144) and 641—95.9(144).

95.13(1) Certified copies of vital records may be made by mechanical, electronic, or other reproductive processes, except for confidential information. Certified copies shall be issued using security paper that is prescribed by the state registrar.

95.13(2) When a certified copy is issued, each certification shall contain a statement certifying that the facts are the true facts recorded in the issuing office, the date issued, the name of the issuing office, the registrar's signature or an authorized copy thereof, and the seal of the issuing office.

95.13(3) No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, fetal death, or marriage.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—95.14(144) Cancellation of fraudulent records.

95.14(1) When the state registrar determines that a certificate was registered through fraud or misrepresentation, the state registrar shall give to the registrant a notice in writing of the state registrar's intention to cancel said certificate.

95.14(2) The notice of cancellation shall give the registrant an opportunity to appear and show cause why the certificate shall not be canceled.

a. The notice may be served on the registrant, or, in the case of a minor or incompetent person, on the parent or guardian, by the forwarding of the notice by certified mail to the last-known address on file in the office of the state registrar.

b. The certificate shall not be available for certification unless the registrant, parent or guardian within 30 days after the date of mailing the notice shows cause satisfactory to the state registrar why the certificate shall not be canceled.

95.14(3) Upon presentation to the state registrar of a court order stating a marriage certificate was registered through fraud or misrepresentation, the state registrar shall remove said record from the vital statistics system. The state registrar shall order the county registrar to remove any record related to the marriage.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—95.15(144) Unlawful acts.

95.15(1) *Serious misdemeanors.* Any person who reports information required under Iowa Code chapter 144 and who commits any of the following acts is guilty of a serious misdemeanor:

a. Willfully and knowingly makes any false statement in a report, record, or certificate required to be filed or in an application for an amendment or willfully and knowingly supplies false information intending that such information be used in the preparation or amendment of any such report, record, or certificate.

b. Without lawful authority and with the intent to deceive, makes, alters, amends, or mutilates any report, record, or certificate required to be filed or a certified copy of such report, record, or certificate.

c. Willfully and knowingly uses or attempts to use or furnish to another for use for any purpose of deception any certificate, record, or report or certified copy thereof.

d. Willfully and knowingly alters, amends, or mutilates any copy, certified copy, record or report.

e. Willfully, with the intent to deceive, uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued based upon a record which is false in whole or in part or which relates to the birth of another person.

f. Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person to whose birth the record relates.

g. Disinterring a body in violation of Iowa Code section 144.34.

h. Knowingly violates a provision of Iowa Code section 144.29A.

95.15(2) *Simple misdemeanors.* Any person committing any of the following acts is guilty of a simple misdemeanor:

a. Knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in Iowa Code sections 144.32, 144.33, and 144.34.

b. Refuses to provide information required by Iowa Code chapter 144.

c. Willfully violates any of the provisions of Iowa Code chapter 144 or refuses to perform any of the duties imposed upon the person.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—95.16(144) Enforcement assistance.

95.16(1) The department shall report cases of alleged violations to the proper county attorney, with a statement of the facts and circumstances, for such action as is appropriate.

95.16(2) Upon request of the department, the attorney general shall assist in the enforcement of the provisions of Iowa Code chapter 144.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

These rules are intended to implement Iowa Code chapter 144.

[Filed ARC 0483C (Notice ARC 0376C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13][1]

[Filed ARC 1074C (Notice ARC 0926C, IAB 8/7/13), IAB 10/2/13, effective 1/1/14][2]

[Filed ARC 1402C (Notice ARC 1294C, IAB 1/22/14), IAB 4/2/14, effective 5/7/14]

[Filed ARC 2275C (Notice ARC 2155C, IAB 9/30/15), IAB 12/9/15, effective 1/13/16]

[Filed ARC 2933C (Notice ARC 2821C, IAB 11/23/16), IAB 2/1/17, effective 3/8/17][3]

[Filed ARC 4398C (Notice ARC 4127C, IAB 11/21/18), IAB 4/10/19, effective 5/15/19]

[Filed ARC 5199C (Notice ARC 5087C, IAB 7/15/20), IAB 10/7/20, effective 11/11/20]

[1] January 16, 2013, effective date of the rescission of Chapter 95 and the adoption of new Chapter 95 [ARC 0483C] delayed until adjournment of the 2013 General Assembly by the Administrative Rules Review Committee at its meeting held January 8, 2013; delay lifted at the meeting held March 8, 2013.

[2] January 1, 2014, effective date of 95.6(2) [ARC 1074C, Item 2] delayed 70 days by the Administrative Rules Review Committee at its meeting held October 8, 2013.

[3] March 8, 2017, effective date of 95.2, 95.7 and 95.10 [ARC 2933C] delayed 70 days by the Administrative Rules Review Committee at its meeting held February 10, 2017.

CHAPTER 97
DEATH REGISTRATION AND DISPOSITION OF DEAD HUMAN BODIES

[Prior to 12/12/12, see [641] 98.2, Chs 99, 101]

641—97.1(144) Definitions. For the purpose of this chapter, the definitions in 641—Chapter 95 shall apply.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.2(144) Forms—property of department. All forms, certificates and reports pertaining to the registration of death events are the property of the department and shall be surrendered to the state registrar upon demand.

97.2(1) The forms supplied or approved for reporting death events shall be used for official purposes as provided for by law, rules and instructions of the state registrar.

97.2(2) No forms, except those furnished or approved by the state registrar, shall be used in the reporting of death events or the making of copies of vital records.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.3(144) Standard registration of death—up to one year. Iowa death records submitted for registration within one year from the date of death shall be prepared on the standard Certificate of Death form.

97.3(1) The county in which the death occurs or in which the dead human body is found is the county of death.

97.3(2) If the death occurs in a moving conveyance, the county in which the dead human body is first removed from the conveyance is the county of death.

97.3(3) Each person with a duty related to death certificates shall participate in the electronic death record system. A person with a duty related to a death certificate includes but is not limited to a physician as defined in Iowa Code section 135.1, a physician assistant, an advanced registered nurse practitioner, a funeral director and a county recorder.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 5199C**, IAB 10/7/20, effective 11/11/20]

641—97.4(144) Standard registration of fetal death—up to one year. Iowa fetal death records submitted for registration within one year from the date of fetal death shall be prepared on the standard Certificate of Fetal Death form. A fetal death certificate shall not be filed after one year from the date of the event. A fetal death record shall not be entered into the electronic death record system.

97.4(1) When a fetal death occurs in an institution, the person in charge of the institution or the person's designee, the physician in attendance at or after delivery, or a medical examiner may assist in preparation of the Certificate of Fetal Death form as directed by the state registrar.

97.4(2) In cases in which a fetus has reached the gestation period of 20 completed weeks or more or a weight of 350 grams or more, a Certificate of Fetal Death form shall be:

a. Registered and maintained solely at the state registrar's office; and

b. Filed within three days after delivery and prior to final disposition of the fetus.

97.4(3) The county in which the dead human fetus is found is the county of death. The certificate shall be filed within three days after the fetus is found.

97.4(4) If the fetal death occurs in a moving conveyance, the county in which the fetus is first removed from the conveyance is the county of death.

97.4(5) A blank Certificate of Fetal Death form shall be used only by the state registrar or authorized agents.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 5199C**, IAB 10/7/20, effective 11/11/20]

641—97.5(144) Preparation of the certificate of death or fetal death.

97.5(1) The funeral director or person other than the funeral director who first assumes custody of a dead human body or fetus for the purposes of disposition shall:

a. Obtain the personal data from the next of kin or the best-qualified person or source available;

b. Obtain the medical certification of cause of death from the medical certifier; and

c. Within three days after the death and prior to final disposition of the dead human body, file the completed certificate of death using the electronic statewide vital records system or, within three days after delivery and prior to disposition of the fetus, file the completed certificate of fetal death with the state registrar.

97.5(2) The funeral director or person other than the funeral director who first assumes custody of the dead human body for the purposes of disposition shall prepare the certificate of death using the electronic statewide vital records system.

97.5(3) The funeral director or person other than the funeral director who first assumes custody of the dead fetus for the purposes of disposition shall prepare the certificate of fetal death on the official form and paper issued by the state registrar.

97.5(4) Unless otherwise directed by the state registrar, a certificate of fetal death shall be accepted for filing and registration only when:

a. All names are documented in the spaces provided;

b. All items are completed as required;

c. No alterations or erasures are apparent;

d. All signatures are original and genuine and are in dark blue or black ink;

e. The certificate presented for registration is on the approved form and official paper prescribed by the state registrar;

f. Data are consistent with the facts of death; and

g. The form is prepared in conformity with these rules or instructions issued by the state registrar.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2276C**, IAB 12/9/15, effective 1/13/16; **ARC 5199C**, IAB 10/7/20, effective 11/11/20]

641—97.6(144) Medical certification of death. The funeral director shall submit the completed fact of death portion of the certificate of death to the physician, physician assistant, advanced registered nurse practitioner, or medical examiner for the completion of the medical portion.

97.6(1) For a natural cause of death, the physician, physician assistant or advanced registered nurse practitioner in charge of the patient's care for the illness or condition which resulted in death shall complete and sign the medical certification within 72 hours after receipt of the death certificate from the funeral director or individual who initially assumed custody of the body.

97.6(2) If there is a non-natural cause of death, the state medical examiner or county medical examiner shall be notified and shall conduct an inquiry.

97.6(3) If the decedent was an infant or child and the cause of death is not known, a medical examiner's inquiry shall be conducted and an autopsy performed as necessary to exclude a non-natural cause of death.

97.6(4) If upon inquiry into a death, the state medical examiner or county medical examiner determines that a preexisting natural disease or condition was the likely cause of death and that the death does not affect the public interest as described in Iowa Code section 331.802(3), the state medical examiner or county medical examiner may elect to defer to the physician, physician assistant or advanced registered nurse practitioner in charge of the patient's preexisting condition the certification of the cause of death.

97.6(5) When an inquiry is required by the state medical examiner or county medical examiner, the state medical examiner or county medical examiner shall investigate the cause and manner of death and shall complete and sign the medical certification within 72 hours after determination of the cause and manner of death.

97.6(6) The medical certifier completing the medical certification of cause of death shall attest to the accuracy of the medical certification either by signature or by an electronic process approved by the state registrar.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.7(144) Medical certification of fetal death.

97.7(1) The medical certification for a fetal death shall be completed by the physician in attendance at or after delivery of the fetus within 72 hours after delivery, except when an inquiry is required by a medical examiner.

97.7(2) When an inquiry by a medical examiner is required, or when a fetal death occurs without medical attendance upon the mother at or after delivery, the medical examiner shall investigate the cause of fetal death and shall complete the medical certification of the fetal death within 72 hours after taking charge of the case.

97.7(3) The physician or medical examiner completing the medical certification of fetal death shall attest to the accuracy either by signature or by an electronic process approved by the state registrar.
[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.8(144) Medical certifier.

97.8(1) Only an Iowa-licensed physician, physician assistant, advanced registered nurse practitioner, or medical examiner shall certify to the cause and manner of death.

97.8(2) If the medical certifier is unavailable, an alternate medical certifier may complete the cause and manner of death when:

a. The alternate medical certifier has access to the medical history of the case;

b. The alternate medical certifier views the deceased at the time of death or after death has occurred; and

c. The death is from natural causes.

97.8(3) In all other cases in which a medical certifier is unavailable, the medical examiner shall prepare the medical certification of cause of death.

97.8(4) The medical certifier who signs the medical certification on a certificate of death shall be entitled to view the death record through the electronic statewide vital records system for up to one year from the date of death.
[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 2276C**, IAB 12/9/15, effective 1/13/16]

641—97.9(144) Report of autopsy findings.

97.9(1) In cases in which an autopsy is to be performed, it shall not be necessary to defer the entry of the cause of death pending a full report of microscopic or toxicological studies.

97.9(2) In any case in which the gross findings of an autopsy are inadequate to determine the cause of death, the medical certifier shall mark the cause of death as "pending investigation" on the certificate and sign the certificate. Immediately after the medical data necessary for determining the cause of death have been made known, the medical certifier shall provide to the state registrar a signed statement that identifies the decedent and the cause of death. The signed statement shall be on the medical certifier's official letterhead.

97.9(3) In any case in which the autopsy findings significantly change the medical diagnosis of cause of death, the medical certifier shall make a report of the cause of death and submit it to the state registrar as soon as the findings are available. Such report shall be a signed statement that identifies the decedent and the revised cause of death and shall be on the medical certifier's official letterhead. Such report shall amend the original certificate, and the report shall be maintained in a sealed file.
[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.10(144) Extension of time. If the medical certifier is unable to complete the medical certification of cause of death or if the funeral director is unable to obtain the personal information about the deceased within the statutory time period, the funeral director shall file the certificate of death or fetal death with all available information.

97.10(1) Such certificate of death or fetal death shall be considered appropriate authority to issue a burial-transit permit.

97.10(2) As soon as possible, the person responsible for completing the information missing from the original certificate shall report the missing information to the state registrar.
[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.11(144) Removal of a dead human body or fetus.

97.11(1) A person assuming custody of a dead human body shall:

a. Contact the attending physician, physician assistant, or advanced registered nurse practitioner and receive assurance that the death was from natural causes and that the physician, physician assistant, or advanced registered nurse practitioner will assume responsibility for certifying to the cause of death; or

b. Contact the medical examiner and receive authorization to remove the dead human body if the case is within the jurisdiction of the medical examiner.

97.11(2) A person assuming custody of a dead human fetus shall:

a. Contact the attending physician and receive assurance that the death was from natural causes and that the physician will assume responsibility for certifying to the cause of fetal death; or

b. Contact the medical examiner and receive authorization to remove the dead human fetus if the case is within the jurisdiction of the medical examiner.

97.11(3) A person other than a funeral director, medical examiner, or emergency medical service provider who assumes custody of a dead human body or fetus shall first register the certificate of death or fetal death and then secure a burial-transit permit pursuant to rule 641—97.12(144) prior to removal of the dead human body or fetus from the place of death.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.12(144) Burial-transit permit. If a person other than a funeral director, medical examiner, or emergency medical service assumes custody of a dead human body or fetus, the person shall secure a burial-transit permit pursuant to Iowa Code section 144.32. Pursuant to rule 645—100.4(144), an unlicensed employee of the funeral establishment shall be considered an agent of the funeral director.

97.12(1) The burial-transit permit shall be issued upon a form prescribed by the state registrar and shall state:

a. The name of the decedent;

b. The date and place of death;

c. If the death was from a communicable disease;

d. The name and location of the cemetery, crematory, or other location where final disposition of the remains is to be made;

e. The method of disposition;

f. That a certificate of death or fetal death has been filed; and

g. That permission is granted to inter, remove or otherwise dispose of the dead human body or fetus.

97.12(2) To be valid, the burial-transit permit must be issued by the county medical examiner, a funeral director, or the state registrar. The burial-transit permit shall be obtained prior to the removal of the dead human body or fetus from the place of death and shall accompany the body or fetus to the place of final disposition. The person responsible for obtaining the burial-transit permit shall provide the permit to the person in charge of the place of final disposition.

97.12(3) The person in charge of the place of final disposition shall ensure that all of the requirements of this chapter relative to the burial-transit permit have been complied with before the final disposition of the remains. Such person shall retain the burial-transit permit for a period of one year from the date of the final disposition.

97.12(4) The burial-transit permit shall not be issued prior to the presentation of the completed certificate of death or certificate of fetal death.

97.12(5) A burial-transit permit shall not be issued to a person other than a licensed funeral director if the death or fetal death was caused by a suspected or known communicable disease as defined by Iowa Code section 139A.2.

97.12(6) In cases in which a fetus has reached the gestation period of 20 completed weeks or more, or a weight of 350 grams or more, a burial-transit permit shall be obtained prior to the final disposition of the fetus.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.13(144) Transportation and disposition of a dead human body or fetus.

97.13(1) A dead human body or fetus shall be transported only after enclosure in a container for transfer that will control odor and prevent leakage of body fluids, unless the body or fetus has been embalmed or is being transported by a licensed funeral director, emergency medical service provider or medical examiner. The transport of a dead human body or fetus shall be in a manner that is respectful of the dead, the feelings of relatives, and the sensibilities of the community.

97.13(2) When a dead human body or fetus is transported from the state for final disposition, the burial-transit permit shall accompany the body or fetus. When a dead human body or fetus is brought into the state for final disposition, a burial-transit permit under the law of the state in which the death occurred shall accompany the body or fetus.

97.13(3) If the final disposition of a dead human body or fetus is cremation at a licensed cremation establishment, scattering of cremated remains shall be subject to the local ordinances of the political subdivision and any and all regulations of the cemetery, if applicable, in which the scattering site is located. However, such local ordinances and cemetery regulations shall not allow the scattering of cremated remains upon public property or upon private property without the property owner's consent. In the absence of an applicable local ordinance or cemetery regulation, the scattering of cremated remains shall not be allowed upon any public property or upon private property without the property owner's consent. Cremation shall be considered final disposition by the department, and no further burial-transit permit shall be required.

97.13(4) If the final disposition of a dead human body or fetus is burial, interment, or entombment, local ordinances of the political subdivision in which the final disposition site is located and any and all regulations of the cemetery, if applicable, shall apply. In the absence of an applicable local ordinance, the depth of the grave at its shallowest point shall be at least three feet from the top of the burial container.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.14(144) Disinterment permits.

97.14(1) A disinterment permit may be issued as follows:

a. Disinterment of a dead human body or fetus, without a court order, shall be allowed for the purpose of autopsy or reburial only, and then only if supervised by a funeral director.

b. Disinterment of cremated remains, without a court order, shall be allowed, but only if supervised by a funeral director.

c. The state registrar, without a court order, shall not issue a permit without the consent of the person authorized to control the decedent's remains under Iowa Code section 144C.5.

d. Disinterment of a dead body or fetus for the purpose of reburial may be allowed by court order only upon a showing of substantial benefit to the public, and then only if supervised by a funeral director.

e. Disinterment of a dead body or fetus for the purpose of autopsy by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the person authorized to control the decedent's remains under Iowa Code section 144C.5, and then only if supervised by a funeral director.

f. Disinterment of a dead body or fetus for the purpose of cremation may be allowed by court order if supervised by a funeral director. Subsequent to the disinterment, cremation of the body shall only be allowed upon a determination by the state or county medical examiner that the death was due to natural causes.

97.14(2) A permit for disinterment shall be issued by the state registrar according to rules adopted pursuant to Iowa Code chapter 17A or when ordered by the district court of the county in which such body is buried. A person authorized to control final disposition of a decedent's remains under Iowa Code section 144C.5 is an interested person and shall be entitled to notice prior to the obtaining of a court order.

97.14(3) Disinterment permits shall be required for any relocation aboveground or belowground of remains from the original site of interment. Disinterment permits shall be valid for 30 days after the date the permit is signed by the state registrar. Disinterment permits are issued on a form as prescribed by the state registrar with copies to be distributed as follows:

a. One copy filed with the sexton or person in charge of the cemetery in which disinterment is to be made;

b. One copy to be used during transportation of the remains;

c. One copy filed with the sexton or person in charge of the cemetery of reburial; and

d. One copy to be returned to the state registrar by the funeral director within ten days after the date of disinterment.

97.14(4) When removed from the vault for final burial, a dead human body or fetus, properly embalmed and placed in a receiving vault, shall not be considered a disinterment.

97.14(5) The following persons who are competent adults may acquire a disinterment permit without a court order pursuant to Iowa Code section 144.34 as amended by 2020 Iowa Acts, Senate File 2135, and section 144C.5 in the following descending order:

a. A designee, or alternate designee, acting pursuant to the decedent's declaration.

b. The surviving spouse of the decedent, if not legally separated from the decedent, whose whereabouts are reasonably ascertainable.

c. A surviving child of the decedent or, if there is more than one surviving child, a majority of the surviving children whose whereabouts are reasonably ascertainable.

d. The surviving parent or parents of the decedent whose whereabouts are reasonably ascertainable.

e. A surviving grandchild of the decedent or, if there is more than one surviving grandchild, a majority of the surviving grandchildren whose whereabouts are reasonably ascertainable.

f. A surviving sibling of the decedent or, if there is more than one surviving sibling, a majority of the surviving siblings whose whereabouts are reasonably ascertainable.

g. A surviving grandparent of the decedent or, if there is more than one surviving grandparent, a majority of the surviving grandparents whose whereabouts are reasonably ascertainable.

h. A person in the next degree of kinship to the decedent in the order named by law to inherit the estate of the decedent under the rules of inheritance for intestate succession or, if there is more than one such surviving person, a majority of such surviving persons whose whereabouts are reasonably ascertainable.

i. A person who represents that the person knows the identity of the decedent and who signs an affidavit warranting the identity of the decedent and assuming the right to control final disposition of the decedent's remains and the responsibility to pay any expense attendant to such final disposition. A person who warrants the identity of the decedent pursuant to this paragraph is liable for all damages that result, directly or indirectly, from that warrant.

j. The county medical examiner, if responsible for the decedent's remains.

97.14(6) A funeral director may await a court order before proceeding with disinterment of a decedent's remains if the funeral director is aware of a dispute among:

a. Persons who are members of the same class of persons described in subrule 97.14(5); or

b. Persons who are authorized under subrule 97.14(5) and the executor named in the decedent's will or personal representative appointed by the court.

97.14(7) Due consideration under this rule shall be given to the public health, the preferences of a person authorized to control final disposition of a decedent's remains under Iowa Code section 144C.5, and any court order.

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter; **ARC 5199C**, IAB 10/7/20, effective 11/11/20]

641—97.15(144) Delayed death registration—one year or more after event. Iowa deaths registered one year or more after the date of death shall be prepared on a Delayed Certificate of Death form developed by the state registrar. The state registrar shall require documentary evidence to prove the facts of the death pursuant to Iowa Code section 144.16. The delayed certificate of death shall be registered and maintained solely at the state registrar's office.

97.15(1) *Application.* Registration of a delayed certificate of death may be requested by the surviving next of kin of the deceased, or the surviving next of kin's legal representative, in the following descending order:

a. Executor of the decedent's estate;

b. Spouse, if not legally separated from the decedent;

c. Child or legal guardian of the child if the child is under the age of majority;

d. Parent;

e. Grandchild or legal guardian of the grandchild if the grandchild is under the age of majority;

f. Sibling;

g. Grandparent; or

h. Funeral director responsible for the disposition of the decedent.

97.15(2) *Facts to be established.*

a. The applicant shall submit a notification of record search certified by the state registrar, which shall indicate that no prior certificate of death is on file for the person whose delayed death record is to be filed. The notification of record search shall be returned to the applicant and shall not be exchanged for a certified copy of the delayed certificate of death.

b. The applicant shall substantiate the following with documentary evidence:

(1) The full legal name and gender of the deceased at the time of the death;

(2) The date and place of birth;

(3) The date and time of death;

(4) The place of death, including the type of place and location where the death occurred;

(5) The method and location of the final disposition;

(6) The full name and address of the person responsible for the final disposition;

(7) Cause and manner of death; and

(8) The full name, address, and relationship to the decedent of the person applying to register the delayed certificate of death.

97.15(3) *Documentary evidence.*

a. The application to register the delayed certificate of death shall be supported by a minimum of the following:

(1) An affidavit of the person filing the certificate attesting to the accuracy of the information on the certificate; and

(2) Three dated documents from independent sources that consistently support the information required pursuant to subrule 97.15(2). The documents shall be in the form of the original record, a certified copy thereof, or a notarized statement from the custodian of the record or document on the custodian's letterhead. Personal affidavits are not acceptable.

b. The state registrar may require additional documentary evidence to prove the facts of the death event.

97.15(4) *Abstraction and certification by the state registrar.* The state registrar shall abstract on the Delayed Certificate of Death form a description of each document submitted to support the facts of death. This description shall include:

a. The title or description of the document;

b. The name and address of the custodian who attested to the facts on the original documents in the custodian's custody;

c. The date of the original filing of the document being abstracted; and

d. The information regarding the death for delayed registration.

97.15(5) *Acceptance of documentary evidence for registration.* All documents submitted in support of the delayed registration shall be returned to the applicant after review, abstraction, and registration. The state registrar shall by signature certify that:

a. No prior certificate of death is on file for the decedent;

b. The evidence has been reviewed and substantiates the facts of death; and

c. The abstract of the evidence appearing on the delayed certificate of death accurately reflects the nature and content of the documents.

97.15(6) *Denial of registration.* In the absence of adequate substantiating evidence or if the state registrar finds reason to question the validity or adequacy of the evidence required to establish a delayed certificate of death, the state registrar shall not register the delayed record.

a. The written notice of rejection from the state registrar shall include:

(1) The Delayed Certificate of Death form stamped "rejected"; and

(2) The Delayed Evidence Refusal form.

b. Applications for delayed certificates which have not been completed within one year from the date of application may be dismissed at the discretion of the state registrar. Upon dismissal, the state registrar shall advise the applicant, and all documents submitted in support of such registration shall be returned to the applicant.

97.15(7) *Duties of county registrar.* The county registrar may assist the applicant in the completion and notarization of the delayed form, excluding the portion restricted for state use only. The county registrar may forward the partially completed delayed form, documents and fees to the state registrar for final review and possible acceptance.

97.15(8) *Fees.* Administrative and certified copy fees shall be charged as provided in rule 641—95.6(144).

[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.16(144) Registration of presumptive death.

97.16(1) A petition shall be filed with the district court in the county where the presumptive death occurred and shall be supported with the completed Affidavit of Personal Knowledge of a Missing Person form. The form shall be completed by the surviving next of kin of the deceased, or the surviving next of kin's legal representative, in the following descending order:

a. Spouse, if not legally separated from the decedent;

b. Child or the child's legal guardian if the child is under the age of majority;

c. Parent;

d. Grandchild or the grandchild's legal guardian if the grandchild is under the age of majority;

e. Sibling;

f. Grandparent;

g. Aunt or uncle;

h. Niece or nephew; or

i. A person in the next degree of kinship to the decedent in the order named by law to inherit the estate of the decedent pursuant to Iowa Code sections 633.210 to 633.226.

97.16(2) In addition to the Affidavit of Personal Knowledge of a Missing Person form or in the absence of the next of kin, the petition may be supported by the following:

a. Affidavit by Employer for an Employee Who Was Working at Time of Disappearance form;

b. Affidavit by Government Official for a Government Employee Missing While Involved in Rescue Efforts form; or

c. Affidavit by Reliable Informant of Missing Person form.

97.16(3) The state registrar shall provide the affidavit forms and the certificate of presumptive death. The affidavits and the certificate of presumptive death shall be registered and maintained solely at the state registrar's office.

97.16(4) Upon presentation of a certified copy of a court order, the state registrar shall file a certificate of presumptive death pursuant to Iowa Code sections 633.517 to 633.520. The order from the district court shall only establish the presumptive death record.

97.16(5) In cases under the jurisdiction of the medical examiner, the certified copy of the court order and the completed supporting affidavits listed in subrules 97.16(1) and 97.16(2) shall be delivered to the medical examiner. The medical examiner shall complete the certificate of presumptive death and certify to the cause of death.

97.16(6) The certificate of presumptive death shall be registered and maintained solely at the state registrar's office.

97.16(7) The certificate of presumptive death shall be recorded based on the date of the court order and shall not be registered as a delayed certificate.

97.16(8) If the missing person is located and found to be alive, the certificate of presumptive death shall be voided and removed from the vital records system of registration. Any issued certified copies shall be surrendered to the state registrar.
[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.17(144) Release or final disposition of a dead human body or fetus by an institution.

97.17(1) When a dead human body or fetus is released by an institution, the person in charge of the institution shall maintain a record showing:

a. Name of the deceased;
b. Date, time, and place of death;
c. Name, title, and license number of person who pronounced death;
d. Name and address of the medical certifier;
e. Name and address of the person to whom the dead human body or fetus is released; and
f. Date of removal of the dead human body or fetus from the institution.

97.17(2) When a dead human body or fetus is released or final disposition is completed by an institution, the person in charge of the institution shall keep a record showing the date, place, and manner of release or final disposition.

97.17(3) At the direction of the state registrar, the institution shall provide the information listed in subrule 97.17(1) to the funeral director or person acting as such who assumes custody of the dead human body for purposes of final disposition.

97.17(4) Records maintained under this rule shall be retained for a period of not less than ten years and shall be made available for inspection by the state registrar upon demand.
[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

641—97.18(144) Additional record by funeral director.

97.18(1) In addition to filing any certificate or other form required by Iowa Code chapter 144, a funeral director or other person who removes from the place of death or transports or completes final disposition of a dead human body or fetus shall maintain a record which shall identify the following:

a. Name of the deceased;
b. Date, time, and place of death;
c. Name and address of the person to whom the dead human body or fetus is released;
d. Name of institution or other place of death releasing the dead human body or fetus;
e. Date of removal from the place of death; and
f. Place and method of final disposition of the dead human body or fetus.

97.18(2) Records maintained under this rule shall be retained for a period of not less than ten years at the funeral establishment responsible for disposition and shall be made available for inspection by the state registrar upon demand.
[**ARC 0483C**, IAB 12/12/12, effective 1/16/13; see Delay note at end of chapter]

These rules are intended to implement Iowa Code sections 135.11(7), 144.12, 144.16 to 144.18, 144.26 to 144.29, 144.30 to 144.35, 144.47, 144.49 to 144.51, 144C.5, 331.802(3) and 633.517 to 633.520.

[Filed ARC 0483C (Notice ARC 0376C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13][1]
[Filed ARC 2276C (Notice ARC 2156C, IAB 9/30/15), IAB 12/9/15, effective 1/13/16]
[Filed ARC 5199C (Notice ARC 5087C, IAB 7/15/20), IAB 10/7/20, effective 11/11/20]

[1] January 16, 2013, effective date of Chapter 97 [ARC 0483C] delayed until the adjournment of the 2013 General Assembly by the Administrative Rules Review Committee at its meeting held January 8, 2013; delay lifted at the meeting held March 8, 2013.

CHAPTER 154
MEDICAL CANNABIDIOL PROGRAM

641—154.1(124E) Definitions. For the purposes of these rules, the following definitions shall apply:

"Acceptance criteria" means the specified limits placed on characteristics of an item or method that are used to determine data quality.

"Accreditation" means the procedure by which an authoritative body gives formal recognition that an organization is competent to carry out specific tasks and verifies that the appropriate quality management system is in place.

"Accredited nonpublic school" means any nonpublic school accredited by the Iowa state board of education, excluding home schools.

"Action level" means the threshold value that provides the criterion for determining whether a sample passes or fails a test performed pursuant to these rules.

"Aliquot" means a portion of a sample that is used in an analysis.

"Analyte" means a chemical, compound, element, bacteria, yeast, fungus, or toxin to be identified or measured.

"Analytical batch" means a group of samples that are prepared together for the same analysis and analyzed sequentially using the same instrument calibration curve and common analytical quality control checks.

"Analytical method" means a technique used qualitatively or quantitatively to determine the composition of a sample or a microbial contamination of a sample.

"Audit" means a financial review by an independent certified public accountant that includes select scope engagement or other methods of review that analyze operational or compliance issues.

"Background investigation" means a thorough review of an entity, an owner, investors, and employees conducted by the department of public safety, including but not limited to state and national criminal history records, credit records, and internal revenue service records.

"Batch" means a specifically identified quantity of dried flower and other cannabis plant matter that is uniform in strain or cultivar, harvested at the same time, and cultivated using the same pesticides and other crop inputs.

"Batch number" means a unique numeric or alphanumeric identifier assigned to a batch of cannabis plants by a manufacturer when the batch is harvested. The batch number shall contain the manufacturer's number and a sequence to allow for inventory and traceability.

"Biosecurity" means a set of preventative measures designed to reduce the risk of transmission of:

1. Infectious diseases in crops;
2. Quarantined pests;
3. Invasive alien species;
4. Living modified organisms.

"Bordering state" means the same as defined in Iowa Code section 331.910.

"Cannabinoid" means a chemical compound that is unique to and derived from cannabis.

"Cannabis" means seeds, plants, cuttings, or plant waste material from *Cannabis sativa* L. or *Cannabis indica* used in the manufacture of medical cannabidiol.

"CAS number" means a unique numerical identifier assigned to every chemical substance described in the open literature by Chemical Abstracts Service.

"CBD" means cannabidiol, Chemical Abstracts Service number 13956-29-1.

"CBDA" means cannabidiolic acid, Chemical Abstracts Service number 1244-58-2.

"CBG" means cannabigerol, Chemical Abstracts Service number 25654-31-3.

"CBN" means cannabinol, Chemical Abstracts Service number 521-35-7.

"Certificate of analysis" means the report prepared for the requester about the analytical testing performed and the results obtained by a laboratory.

"Certification" means a procedure by which a third party gives written assurance (certificate of conformity) that a product, process or service conforms to specified requirements.

"Certified" means that a laboratory demonstrates to the satisfaction of the department its ability to consistently produce valid data within the acceptance limits as specified in the department's requirements for certification and meets the minimum requirements of this chapter and all applicable regulatory requirements.

"Certified reference material" means a reference material prepared by a certifying body.

"Crop input" means any substance applied to or used in the cultivation and growth of a cannabis plant. "Crop input" includes, but is not limited to, pesticides, fungicides, fertilizers, and other soil or medium amendments.

"Data-quality assessment" means a scientific and statistical process that establishes whether the collected data are of the right type, quality, and quantity to support the intended use of the data.

"Date of expiration" means one year from the date of issuance of the medical cannabidiol registration card by the department of transportation.

"Date of issuance" means the date of issuance of the medical cannabidiol registration card by the department.

"Debilitating medical condition" means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
- Severe or chronic pain.
- Nausea or severe vomiting.
- Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn's disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
- Severe or chronic pain.
- Nausea or severe vomiting.
- Cachexia or severe wasting.
8. Parkinson's disease.
9. Chronic pain.
10. Severe, intractable autism with self-injurious or aggressive behaviors.
11. Post-traumatic stress disorder.
12. Any medical condition that is recommended by the medical cannabidiol board and adopted by the board of medicine by rule pursuant to Iowa Code section 124E.5 and that is listed in 653—subrule 13.15(1).

"Department" means the Iowa department of public health.

"Director" means the director of the Iowa department of public health.

"Dispensary" means an individual or entity licensed by the department to dispense medical cannabidiol to patients and primary caregivers pursuant to Iowa Code chapter 124E and these rules. "Dispensary" includes the employees and agents of the dispensary.

"Dispensary facility" means any secured building, space, grounds, and physical structure of a dispensary licensed by the department to dispense medical cannabidiol and where the dispensing of medical cannabidiol is authorized.

"Dispense" or *"dispensing"* means to supply medical cannabidiol to patients pursuant to Iowa Code chapter 124E and these rules.

"Disqualifying felony offense" means a violation under federal or state law of a felony under federal or state law, which has as an element the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. §802(6).

"Edible medical cannabidiol products" means food items containing medical cannabidiol. "Edible medical cannabidiol products" does not include pills, tinctures, oils, or other forms of medical cannabidiol that may be consumed orally or through the nasal cavity that do not contain food or food

additives; provided that food or food additives used as carriers, excipients, or processing aids shall not be considered food or food additives.

"Field duplicate sample" means a sample that is taken in the identical manner and from the same batch, process lot, or lot being sampled as the primary sample. A field duplicate sample is analyzed separately from the primary sample and is used for quality control only.

"Form and quantity" means the types and amounts of medical cannabidiol allowed to be dispensed to a patient or primary caregiver as approved by the department subject to recommendation by the medical cannabidiol board and approval by the board of medicine.

"Frequency" means the number of items occurring in a given category. Frequency may be determined by analytical method or laboratory-specific requirements for the purpose of accuracy, precision of the analysis, or statistical calculation.

"Health care practitioner" means an individual licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery, a physician assistant licensed under Iowa Code chapter 148C, an advanced registered nurse practitioner licensed under Iowa Code chapter 152, or an advanced practice registered nurse under Iowa Code chapter 152E, who is a patient's primary care provider or a podiatrist licensed pursuant to Iowa Code chapter 149.

"Increment" or *"sample increment"* means a smaller sample that, together with other increments, makes up the primary sample.

"Inspection" means an on-site evaluation by the department, the department of public safety, or a department-approved independent consultant of facilities, records, personnel, equipment, methodology, and quality assurance practices for compliance with these rules.

"International Electrotechnical Commission" or *"IEC"* means an independent, nongovernmental membership organization that prepares and publishes international standards for all electrical, electronic, and related technologies.

"International Organization for Standardization" or *"ISO"* means an independent, nongovernmental membership organization and the largest developer of voluntary international standards.

"Investor" means a person making a cash investment of at least 5 percent interest in an applicant or licensed manufacturer or dispensary with the expectation of receiving financial returns.

"Laboratory" means the state hygienic laboratory at the University of Iowa or any other independent medical cannabidiol testing facility accredited to Standard ISO/IEC 17025 by an International Organization for Standardization-approved accrediting body, with a controlled substance registration certificate from the Drug Enforcement Administration of the U.S. Department of Justice and a certificate of registration from the Iowa board of pharmacy, and approved by the department to examine, analyze, or test samples of medical cannabidiol or any substance used in the manufacture of medical cannabidiol. For the purposes of these rules, an independent laboratory is a laboratory operated by an entity that has no equity ownership in a medical cannabidiol manufacturer.

"Limit of detection" or *"LOD"* means the lowest quantity of a substance or analyte that can be distinguished from the absence of that substance within a stated confidence limit.

"Limit of quantitation" or *"LOQ"* means the minimum concentration of an analyte in a specific matrix that can be reliably quantified while also meeting predefined goals for bias and imprecision.

"Lot" means a specific quantity of medical cannabidiol that is uniform and intended to meet specifications for identity, strength, purity, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling record.

"Lot number" means a unique numeric or alphanumeric identifier assigned to a lot by a manufacturer when medical cannabidiol is produced. The lot number shall contain the manufacturer's number and a sequence to allow for inventory, traceability, and identification of the plant batches used in the production of a lot of medical cannabidiol.

"Manufacture" or *"manufacturing"* means the process of converting harvested cannabis plant material into medical cannabidiol.

"Manufacturer" means an individual or entity licensed by the department to produce medical cannabidiol and distribute it to dispensaries pursuant to Iowa Code chapter 124E and these rules. "Manufacturer" includes the employees and agents of the manufacturer.

"Manufacturing facility" means any secured building, space, grounds, and physical structure of a manufacturer for the cultivation, harvesting, packaging, processing, storage, and distribution of cannabis or medical cannabidiol and where access is restricted to designated employees of a manufacturer and escorted visitors.

"Market withdrawal" means the voluntary removal of medical cannabidiol from dispensaries and patients by a manufacturer for minor issues that do not pose a serious health threat.

"Mass spectrometry" means an analytical technique that ionizes chemical species and sorts the ions based on their mass-to-charge ratio.

"Matrix" means the component or substrate that contains the analyte of interest.

"Matrix spike duplicate" means a duplicate sample prepared by adding a known quantity of a target analyte to a field sample matrix or other matrix that is as closely representative of the matrix under analysis as possible.

"Matrix spike sample" means a sample prepared by adding a known quantity of the target analyte to a field sample matrix or to a matrix that is as closely representative of the matrix under analysis as possible.

"Medical assistance program" means IA Health Link, Medicaid Fee-for-Service, or HAWK-I, as administered by the Iowa Medicaid enterprise of the Iowa department of human services.

"Medical cannabidiol" means any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that is delivered in a form recommended by the medical cannabidiol board, approved by the board of medicine, and designated in this chapter. This definition shall not apply to any cannabis-derived investigational product or cannabis-derived product approved as a prescription drug medication by the United States food and drug administration.

"Medical cannabidiol tracking number" means the sales identification number assigned by a dispensary to a transaction at the time of the sale of a medical cannabidiol product.

"Medical cannabidiol waste" means medical cannabidiol that is unused, unwanted, damaged, defective, expired, or contaminated and that is returned to a dispensary or manufacturer for disposal.

"Medical cannabis goods" means medical cannabidiol process lots, medical cannabidiol products, and cannabis plant material, including dried tissue.

"Method blank" means an analyte-free matrix to which all reagents are added in the same volumes or proportions as are used in sample preparation.

"Moisture content" means the percentage of water in a dry sample by weight.

"National criminal history background check" means fingerprint processing through the department of public safety and the Federal Bureau of Investigation (FBI) and review of records on file with national organizations, courts, and law enforcement agencies to the extent allowed by law.

"Non-target organism" means an organism that the test method or analytical procedure is not testing for. Non-target organisms are used in evaluating the specificity of a test method.

"Owner" means a person with a 5 percent or greater ownership interest in an applicant or licensed manufacturer or dispensary.

"Patient" means a person who is a permanent resident of the state of Iowa who suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to Iowa Code chapter 124E and these rules.

"Patient registration number" means the unique identification number issued to a patient by the department of transportation upon approval of a patient's application by the department as described in these rules.

"Percent recovery" means the percentage of a measured concentration relative to the added (spiked) concentration in a reference material, matrix spike sample, or matrix spike duplicate.

"Permanent resident" means a natural person who physically resides in Iowa as the person's principal and primary residence and who establishes evidence of such residency by providing the department with one of the following:

1. A valid Iowa driver's license,
2. A valid Iowa nonoperator's identification card,
3. A valid Iowa voter registration card,
4. A current Iowa vehicle registration certificate,
5. A utility bill,
6. A statement from a financial institution,
7. A residential lease agreement,
8. A check or pay stub from an employer,
9. A child's school or child care enrollment documents,
10. Valid documentation establishing a filing for homestead or military tax exemption on property located in Iowa, or
11. Other valid documentation as deemed acceptable by the department to establish residency.

"Pharmaceutical grade" means medical cannabidiol that meets standards for content, contamination, and consistency set by the department as determined by testing conducted at a laboratory pursuant to Iowa Code chapter 124E and these rules.

"Plant material" means any plant of *Cannabis sativa* L. or *Cannabis indica*, or any part thereof, including flowers, leaves, trichomes, and tissue.

"Plant material waste" means plant material that is not used in the production of medical cannabidiol in a form allowable under these rules.

"Primary caregiver" means a person who is a resident of this state or a bordering state, including but not limited to a parent or legal guardian, at least 18 years of age, who has been designated by a patient's health care practitioner as a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol pursuant to the provisions of Iowa Code chapter 124E and these rules.

"Primary care provider" means any health care practitioner involved in the diagnosis and treatment of a patient's debilitating medical condition.

"Primary sample" means a portion of a batch, process lot, or lot that is used for testing for identity, strength, purity, and composition.

"Process lot" means any amount of cannabinoid concentrate or extract that is uniform, produced from one or more batches, and used for testing for identity, strength, purity, and composition prior to being packaged.

"Product expiration date" means the date after which a medical cannabidiol product may not be sold by a manufacturer or a dispensary.

"Production" or *"produce"* means:

1. Cultivating or harvesting plant material;
2. Processing or manufacturing; or
3. Packaging of medical cannabidiol.

"Proficiency test" means an evaluation of a laboratory's performance against preestablished criteria by means of interlaboratory comparisons of test measurements.

"Proficiency test sample" means a sample prepared by a party independent of the testing laboratory, with a concentration and identity of an analyte that is known to the independent party but is unknown to the testing laboratory and testing laboratory personnel.

"Public or private school" means any property operated by a school district, charter school, or accredited nonpublic school for purposes related to elementary, middle, or secondary schools or secondary vocation centers.

"Qualitative analysis" means identification of an analyte in a substance or mixture.

"Quality assurance" means a set of operating principles to produce data of known accuracy and precision. "Quality assurance" encompasses employee training, equipment preventative maintenance procedures, calibration procedures, and quality control testing, among other things.

"Quality control" means a set of measures implemented within an analytical procedure to ensure that the measurement system is operating in a state of statistical control in which errors have been reduced to acceptable levels.

"Quality control samples" means samples produced and used for the purpose of assuring quality control. Quality control samples include but are not limited to blank samples, spike samples, duplicate samples, and reference material samples.

"Quantitative analysis" means measurement of the quantities of chemical components present in a substance or mixture. Quantitative analysis typically uses a certified reference material, if available, to create a calibration curve.

"Reagent" means a compound or mixture added to a system to cause a chemical reaction or to test if a reaction occurs. A reagent may be used to tell whether or not a specific chemical substance is present by causing a reaction to occur with the chemical substance.

"Recall" means the return of medical cannabidiol from patients and dispensaries to a manufacturer because of the potential for serious health consequences from the use of the medical cannabidiol.

"Reference material" means a material containing a known concentration of an analyte of interest that is in solution or in a homogeneous matrix. Reference material is used to document the bias of the analytical process.

"Reference method" means a method by which the performance of an alternate method is measured or evaluated.

"Relative percent difference" or *"RPD"* means a comparative statistic used to calculate precision or random error. RPD is calculated using the following equation: RPD = absolute value (primary sample measurement - duplicate sample measurement) / ([primary sample measurement + duplicate sample measurement] / 2) × 100.

"Relative standard deviation" or *"RSD"* means the standard deviation expressed as a percentage of the mean recovery. "RSD" is the coefficient of variation multiplied by 100. If any results are less than the limit of quantitation, then the absolute value of the limit of quantitation is used in the following equation: RSD = (s / x) × 100, where s = standard deviation and x = mean recovery.

"Requester" means a person who submits a request to a licensed testing laboratory for state-mandated testing of medical cannabis goods. The requester may be a licensed manufacturer or the department.

"Residual solvents and processing chemicals" means volatile organic chemicals that are used or produced in the manufacture or production of medical cannabidiol.

"Restricted access area" means a building, room, or other contiguous area on the premises where plant material is grown, cultivated, harvested, stored, packaged, or processed for sale under control of the manufacturer, and where no person under the age of 18 is permitted.

"Sample" means a representative part of or a single item from a larger whole or group.

"Sanitize" means to sterilize, disinfect, or make hygienic.

"Semiquantitative analysis" means less than quantitative precision and does not involve a full calibration. Analyte identification is based on a single-point reference or high-probability library match. The determination of amount uses the ratio of the unknown chemical analyte to that of a known analyte added to the sample before analysis. Uncertainty for semiquantitative results is higher than for quantitative results.

"Significant figures" means the number of digits used to express a measurement.

"Stability" or *"stable"* means that after storage of an unopened package of medical cannabidiol at a licensed manufacturing facility or dispensary facility, the contents shall not vary in concentrations of THC and CBD by more than an amount determined by the department and listed in the laboratory testing requirements and acceptance criteria document described in subrule 154.69(1).

"Standard operating procedure" means a written document that provides detailed instructions for the performance of all aspects of an analysis, operation, or action.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Synthetic cannabinoid" means a designed compound with structural features that allow binding to the known cannabinoid receptors present in human cells and that produce biological effects similar to those of natural cannabinoids.

"Tamper-evident" means that one or more one-time-use seals are affixed to the opening of a package, allowing a person to recognize whether or not the package has been opened.

"Target organism" means an organism that is being tested for in an analytical procedure or test method.

"Testing laboratory record" means information relating to the testing laboratory and the analyses it performs that is prepared, owned, used, or retained by the laboratory and includes electronic files and video footage.

"THC" or *"delta-9 THC"* means tetrahydrocannabinol, Chemical Abstracts Service number 1972-08-3.

"THCA" means tetrahydrocannabinolic acid, Chemical Abstracts Service number 23978-85-0.

"Total tetrahydrocannabinol" means 87.7 percent of the amount of tetrahydrocannabinolic acid plus the amount of tetrahydrocannabinol.

"Validation" means the confirmation by examination and objective evidence that the particular requirements for a specific intended use are fulfilled.

"Written certification" means a document signed by a health care practitioner, with whom the patient has established a patient-provider relationship, which states that the patient has a debilitating medical condition and identifies that condition and provides any other relevant information.

[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17; **ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 3836C**, IAB 6/6/18, effective 7/11/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter; **ARC 4928C**, IAB 2/12/20, effective 6/1/20; see correction note at end of chapter; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

REGISTRATION CARDS

641—154.2(124E) Health care practitioner certification—duties and prohibitions.

154.2(1) Prior to a patient's submission of an application for a medical cannabidiol registration card pursuant to this rule, a health care practitioner shall do all of the following:

a. Determine, in the health care practitioner's medical judgment, whether the patient whom the health care practitioner has examined and treated suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol as defined by this chapter, and if so determined, provide the patient with a written certification of that diagnosis by completing the health care practitioner section of the application form provided for this purpose on the department's website (www.idph.iowa.gov).

(1) If the health care practitioner provides written certification that a patient's qualifying debilitating medical condition is a terminal illness with a life expectancy of less than one year, the health care practitioner shall determine an appropriate total tetrahydrocannabinol cap. The health care practitioner shall indicate the total tetrahydrocannabinol cap on the written certification.

(2) If the health care practitioner determines that 4.5 grams of total tetrahydrocannabinol in a 90-day period is insufficient to treat a patient's qualifying debilitating medical condition and the patient has participated in the medical cannabidiol program, the health care practitioner may recommend a higher total tetrahydrocannabinol cap. The health care practitioner shall indicate the higher total tetrahydrocannabinol cap on the written certification.

b. Provide explanatory information to the patient as provided on the department's website (www.idph.iowa.gov) about the therapeutic use of medical cannabidiol and the possible risks, benefits, and side effects of the proposed treatment.

154.2(2) Subsequently, the health care practitioner shall do the following:

a. Determine, on an annual basis, if the patient continues to suffer from a debilitating medical condition and, if so, issue the patient a new certification of that diagnosis.

b. Otherwise comply with all requirements in this chapter and requests from the department for more information.

154.2(3) A health care practitioner may provide, but has no duty to provide, a written certification pursuant to this rule.

154.2(4) Health care practitioner prohibitions.

a. A health care practitioner shall not accept, solicit, or offer any form of remuneration from or to any individual, including but not limited to a patient, a primary caregiver, or an employee, investor, or

owner of a medical cannabidiol manufacturer or dispensary, to certify a patient's condition, other than accepting a fee for a patient consultation to determine if the patient should be issued a certification of a qualifying debilitating medical condition.

b. A health care practitioner shall not accept, solicit, or offer any form of remuneration from or to any individual, including but not limited to a patient, a primary caregiver, or an employee, investor, or owner of a medical cannabidiol manufacturer or dispensary, to certify an individual as a primary caregiver for a patient with respect to the use of medical cannabidiol, other than accepting a fee for a consultation to determine if the individual is a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol.

c. A health care practitioner shall not advertise certifying a qualifying debilitating medical condition as one of the health care practitioner's services.

d. A health care practitioner shall not certify a qualifying debilitating medical condition for a patient who is the health care practitioner or a family or household member of the health care practitioner.

e. A health care practitioner shall not be designated to act as a primary caregiver for a patient for whom the health care practitioner has certified a qualifying debilitating medical condition.

f. A health care practitioner shall not receive or provide medical cannabidiol product samples.

[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.3(124E) Medical cannabidiol registration card—application and issuance to patient.

154.3(1) Subject to subrule 154.3(7), the department may issue a medical cannabidiol registration card to a patient who:

a. Is at least 18 years of age.

b. Is a permanent resident of Iowa.

c. Submits a written certification to the department, provided to the patient pursuant to rule 641—154.2(124E) and signed by the patient's health care practitioner certifying that the patient is suffering from a debilitating medical condition.

d. Submits an application to the department, on a form created by the department and available at the department's website (www.idph.iowa.gov), that contains all of the following:

(1) The patient's full legal name, Iowa residence address, mailing address (if different from the patient's residence address), telephone number, date of birth, and sex designation. The patient shall not provide as a mailing address an address for which a forwarding order is in place.

(2) A copy of the patient's valid photo identification. Acceptable photo identification includes:

1. A valid Iowa driver's license,

2. A valid Iowa nonoperator's identification card, or

3. An alternative form of valid photo identification. A patient who possesses or is eligible for an Iowa driver's license or an Iowa nonoperator's identification card shall present such document as valid photo identification. A patient who is ineligible to obtain an Iowa driver's license or an Iowa nonoperator's identification card may apply for an exemption and request submission of an alternative form of valid photo identification. A patient who applies for an exemption is subject to verification of the patient's identity through a process established by the department to ensure the genuineness, regularity, and legality of the alternative form of valid photo identification.

(3) Full name, address, and telephone number of the patient's health care practitioner.

(4) Full legal name, residence address, date of birth, and telephone number of each primary caregiver of the patient, if any.

(5) An attestation as to the truthfulness and accuracy of the information provided by the patient on the application.

e. Submits the required fee, as described in subrule 154.12(1).

154.3(2) Upon the completion, verification, and approval of the patient's application and the receipt of the required fee, the department shall issue a medical cannabidiol registration card to the patient.

154.3(3) A medical cannabidiol registration card issued to a patient by the department shall contain all of the following:

a. The patient's full legal name, Iowa residence address, date of birth, and sex designation, as shown on the patient's Iowa driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1)*"d"*(2)"3." If the patient's name, Iowa residence address, date of birth, or sex designation has changed since the issuance of the patient's Iowa driver's license, nonoperator's identification card, or alternative form of valid photo identification, the patient shall first update the patient's Iowa driver's license or nonoperator's identification card to reflect the current information, according to the procedures set forth in 761—subrule 605.11(2), 761—subrule 605.25(4), or rule 761—630.3(321), or shall update the alternative form of valid photo identification in accordance with the process of the issuing agency.

b. The date of issuance and the date of expiration, which shall be one year from the date of issuance.

c. A distinguishing registration number that is not the patient's social security number.

d. A statement that the medical cannabidiol registration card is not valid for identification purposes.

154.3(4) Every patient 18 years of age or older must obtain a valid medical cannabidiol registration card to use medical cannabidiol in Iowa.

154.3(5) An authorization to use medical cannabidiol or marijuana for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of Iowa Code chapter 124E or these rules for the issuance of a medical cannabidiol registration card.

154.3(6) A valid medical cannabidiol registration card, or its equivalent, issued under the laws of another state that allow an out-of-state patient to possess or use medical cannabidiol in the jurisdiction of issuance shall have the same force and effect as a valid medical cannabidiol registration card issued pursuant to Iowa Code chapter 124E, except that an out-of-state patient in Iowa shall not obtain medical cannabidiol from a medical cannabidiol dispensary in Iowa.

154.3(7) The department shall not issue a medical cannabidiol registration card for a patient who is enrolled in a federally approved clinical trial for the treatment of a debilitating medical condition with medical cannabidiol.

[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.4(124E) Medical cannabidiol registration card—application and issuance to primary caregiver.

154.4(1) For a patient in a primary caregiver's care, the department may issue a medical cannabidiol registration to a primary caregiver who:

a. Is at least 18 years of age.

b. Submits a written certification to the department, provided to the patient pursuant to rule 641—154.2(124E) and signed by the patient's health care practitioner certifying that the patient is suffering from a debilitating medical condition.

c. Submits an application as a primary caregiver for each patient for whom the person is the primary caregiver. The primary caregiver application must be on a form created by the department and available at the department's website (www.idph.iowa.gov) that contains all of the following:

(1) The primary caregiver's full legal name, residence address, mailing address (if different from the primary caregiver's residence address), telephone number, date of birth, and sex designation. The primary caregiver shall not provide as a mailing address an address for which a forwarding order is in place.

(2) The patient's full legal name, date of birth, and parent or legal guardian's name if the patient is under the age of 18.

(3) A copy of the primary caregiver's valid photo identification. Acceptable photo identification includes:

1. A valid Iowa driver's license,
2. A valid Iowa nonoperator's identification card,

3. If the primary caregiver is not a resident of the state of Iowa, a valid state-issued driver's license or nonoperator's identification card issued by a state other than Iowa, or

4. An alternative form of valid photo identification. A primary caregiver who possesses or is eligible for a driver's license or a nonoperator's identification card shall present such document as valid photo identification. A primary caregiver who is ineligible to obtain a driver's license or a nonoperator's identification card may apply for an exemption and request submission of an alternative form of valid photo identification. A primary caregiver who applies for an exemption is subject to verification of the primary caregiver's identity through a process established by the department to ensure the genuineness, regularity, and legality of the alternative form of valid photo identification.

(4) Full name, address, and telephone number of the patient's health care practitioner.

(5) An attestation as to the truthfulness and accuracy of the information provided by the primary caregiver on the application.

d. Submits the required fee, as described in subrule 154.12(2).

154.4(2) Upon the completion, verification, and approval of the primary caregiver's application, the department shall issue a medical cannabidiol registration card to the primary caregiver.

154.4(3) A medical cannabidiol registration card issued to a primary caregiver shall contain all of the following:

a. The primary caregiver's full legal name, current residence address, date of birth, and sex designation, as shown on the primary caregiver's state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.4(1)*"c"*(3)"4." If the primary caregiver's name, current residence address, date of birth, or sex designation has changed since issuance of the primary caregiver's Iowa-issued driver's license, nonoperator's identification card, or other form of valid photo identification, the primary caregiver shall first update the primary caregiver's Iowa-issued driver's license or nonoperator's identification card according to the procedures set forth in 761—subrule 605.11(2), 761—subrule 605.25(4), or rule 761—630.3(321) or update the alternative form of valid photo identification in accordance with the process of the issuing agency.

b. The date of issuance and the date of expiration, which shall be one year from the date of issuance.

c. A distinguishing registration number that is not the primary caregiver's social security number.

d. The medical cannabidiol registration number for each patient in the primary caregiver's care. This number shall not be the primary caregiver's or patient's social security number. If the patient in the primary caregiver's care is under the age of 18, the full name of the patient's parent or legal guardian shall be printed on the primary caregiver's registration card in lieu of the patient's medical cannabidiol registration number.

e. A statement that the medical cannabidiol registration card is not valid for identification purposes.

f. A statement distinguishing the medical cannabidiol registration cardholder as a primary caregiver.

154.4(4) A patient who is 18 years of age or older must have an approved application and a distinguishing medical cannabidiol registration number that is not the patient's social security number prior to the issuance of a medical cannabidiol registration card to the patient's primary caregiver.

154.4(5) An authorization to use, or to act as a primary caregiver for a patient authorized to use, cannabidiol or marijuana for medicinal purposes issued by another state, territory, or jurisdiction does not satisfy the requirements of Iowa Code chapter 124E or these rules for the issuance of a medical cannabidiol registration card.

[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.5(124E) Tamperproofing. Rescinded **ARC 5200C**, IAB 10/7/20, effective 11/11/20.

641—154.6(124E) Denial and cancellation. The department may deny an application for a medical cannabidiol registration card, or may cancel a medical cannabidiol registration card, for any of the following reasons:

1. Information contained in the application is illegible, incomplete, falsified, misleading, deceptive, or untrue.

2. The department is unable to verify the identity of the applicant from the photo identification or other documentation presented pursuant to paragraph 154.3(1)*"d"*(2)"3" or 154.4(1)*"c"*(3)"4."

3. The applicant violates or fails to satisfy any of the provisions of Iowa Code chapter 124E or these rules.

4. A patient, the patient's legal guardian, or other person with durable power of attorney requests in writing that the department cancel the patient's medical cannabidiol registration card. The department shall notify a primary caregiver in writing when the registration card of the primary caregiver's patient has been canceled.

5. A primary caregiver requests in writing that the department cancel the primary caregiver's medical cannabidiol registration card. The department shall notify a patient in writing when the registration card of the patient's primary caregiver has been canceled.

6. The department becomes aware of the death of a patient or primary caregiver.

[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.7(124E) Appeal. If the department denies an application for or cancels a medical cannabidiol registration card, the department shall inform the applicant or cardholder of the denial or cancellation and state the reasons for the denial or cancellation in writing. An applicant or cardholder may appeal the denial or cancellation of a medical cannabidiol registration card by submitting a request for appeal to the department by certified mail, return receipt requested, within 20 days of receipt of the notice of denial or cancellation. The department's address is Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. Upon receipt of a request for appeal, the department shall forward the request within five working days to the department of inspections and appeals. A contested case hearing shall be conducted in accordance with 641—Chapter 173.

[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17]

641—154.8(124E) Duplicate card.

154.8(1) *Lost, stolen, or destroyed card.* To replace a medical cannabidiol registration card that is lost, stolen, or destroyed, a cardholder shall present to the department the cardholder's valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1)*"d"*(2)"3" or 154.4(1)*"c"*(3)"4."

154.8(2) *Change in card information and voluntary replacement.*

a. To replace a medical cannabidiol registration card that is damaged, the cardholder shall surrender to the department the card to be replaced and present the cardholder's valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1)*"d"*(2)"3" or 154.4(1)*"c"*(3)"4."

b. A patient or primary caregiver to whom a medical cannabidiol registration card is issued shall notify the department of a change in current residence address, name, or sex designation listed on the card, within ten calendar days of the change. To replace a medical cannabidiol registration card to change the current residence address, name, or sex designation listed on the card, the cardholder shall surrender to the department the card to be replaced and present a valid state-issued driver's license, nonoperator's identification card, or alternative form of valid photo identification provided pursuant to paragraph 154.3(1)*"d"*(2)"3" or 154.4(1)*"c"*(3)"4" that has been updated according to the procedures established by the state or agency of issuance to reflect the requested residence address, name, or sex designation.

c. To replace a medical cannabidiol registration card held by a primary caregiver to change, add, or remove a patient's medical cannabidiol registration number or the name of a patient's parent or legal guardian listed on the primary caregiver's card, the primary caregiver shall submit a new application

to the department pursuant to rule 641—154.4(124E). A medical cannabidiol registration card issued pursuant to this paragraph shall not be considered a duplicate card.

154.8(3) *Expiration date.* A duplicate medical cannabidiol registration card shall have the same expiration date as the medical cannabidiol registration card being replaced, changed, or amended.
[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.9(124E) Renewal. A medical cannabidiol registration card shall be valid for one year from the date of issuance unless canceled pursuant to rule 641—154.6(124E).

154.9(1) A cardholder seeking renewal of a medical cannabidiol registration card shall submit a renewal application and fee to the department at least 60 days prior to the date of expiration.

a. A patient applying for renewal of a medical cannabidiol registration card shall submit a renewal application and fee to the department on a form approved by the department.

b. A primary caregiver applying for a renewal of a medical cannabidiol registration card shall submit a renewal application and fee to the department on a form approved by the department.

154.9(2) A cardholder who fails to renew the medical cannabidiol registration card may not lawfully possess medical cannabidiol pursuant to this chapter.
[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17]

641—154.10(124E) Confidentiality. The department shall maintain a confidential file of the names of each patient to or for whom the department issues a medical cannabidiol registration card and the name of each primary caregiver to whom the department issues a medical cannabidiol registration card under Iowa Code section 124E.4.

154.10(1) Personally identifiable information of patients and primary caregivers shall be maintained as confidential and is not accessible to the public. The department shall release aggregate and statistical information regarding the medical cannabidiol act registration card program in a manner which prevents the identification of any patient or primary caregiver.

154.10(2) Personally identifiable information of patients and primary caregivers may be disclosed under the following limited circumstances:

a. To authorized employees or agents of the department as necessary to perform the duties of the department pursuant to Iowa Code chapter 124E and these rules.

b. To authorized employees of state or local law enforcement agencies located in Iowa, solely for the purpose of verifying that a person is lawfully in possession of a medical cannabidiol registration card issued pursuant to Iowa Code chapter 124E and these rules.

c. To a patient, primary caregiver, or health care practitioner, upon written authorization of the patient or primary caregiver.

d. To a health care practitioner for the purpose of determining whether a patient seeking a written certification pursuant to Iowa Code section 124E.3 and these rules has already received a written certification from another health care practitioner.

e. To authorized employees of a medical cannabidiol dispensary, but only for the purposes of verifying that a person is lawfully in possession of a medical cannabidiol registration card issued pursuant to Iowa Code chapter 124E and these rules and that a person has not purchased total tetrahydrocannabinol in excess of the amount authorized by Iowa Code chapter 124E and these rules.
[**ARC 1640C**, IAB 10/1/14, effective 1/30/15; **ARC 3150C**, IAB 7/5/17, effective 6/13/17; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.11(124E) Agreement with department of transportation. Rescinded **ARC 5200C**, IAB 10/7/20, effective 11/11/20.

641—154.12(124E) Fees. All fees are nonrefundable.

154.12(1) *Patient medical cannabidiol registration card fee.*

a. Each application fee is $100 unless the patient qualifies for a reduced fee as described in paragraph 154.12(1)*"b."*

b. Each reduced application fee is $25 if the patient attests to receiving social security disability benefits, supplemental security income payments, or is enrolled in the medical assistance program as defined in rule 641—154.1(124E).

c. Each renewal fee is the same as the initial card application fee.

154.12(2) *Primary caregiver medical cannabidiol registration card fee.*

a. Each application fee is $25.

b. Each renewal fee is $25.

[**ARC 3150C**, IAB 7/5/17, effective 6/13/17]

641—154.13(124E) Use of medical cannabidiol—smoking prohibited. A patient shall not consume medical cannabidiol possessed or used pursuant to Iowa Code chapter 124E by smoking medical cannabidiol.

[**ARC 3150C**, IAB 7/5/17, effective 6/13/17]

641—154.14(124E) Allowable forms of medical cannabidiol.

154.14(1) *Modification of allowable forms.* The allowable forms of medical cannabidiol authorized in this rule may be modified pursuant to recommendations by the medical cannabidiol board, subsequent approval of the recommendations by the board of medicine and adoption of the recommendations by the department by rule.

154.14(2) *Allowable forms.*

a. A manufacturer may only manufacture medical cannabidiol in the following forms:

(1) Oral forms, including but not limited to:

1. Tablet.
2. Capsule.
3. Liquid.
4. Tincture.
5. Sublingual.

(2) Topical forms, including but not limited to:

1. Gel.
2. Ointment, cream or lotion.
3. Transdermal patch.

(3) Inhaled forms, limited to:

1. Nebulizable.
2. Vaporizable.

(4) Rectal/vaginal forms, including but not limited to suppository.

b. A manufacturer may not produce medical cannabidiol in any form that may be smoked.

c. A manufacturer may not produce medical cannabidiol in an edible form as defined in rule 641—154.1(124E).

[**ARC 3150C**, IAB 7/5/17, effective 6/13/17; **ARC 3836C**, IAB 6/6/18, effective 7/11/18; **ARC 4399C**, IAB 4/10/19, effective 5/15/19; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.15 Reserved.

MANUFACTURING

641—154.16(124E) Duties of the department.

154.16(1) *Interagency agreements.* The department may enter into any interagency agreements with other state agencies for technical services or other assistance related to the regulation or inspection of manufacturers.

154.16(2) *Notice to law enforcement.* The department shall notify local law enforcement agencies and the department of public safety of the locations of manufacturers. If the department determines there is a threat to public safety, the department shall notify local law enforcement agencies and the department of public safety of any conditions that pose a threat to public safety, including but not limited to:

a. Loss or theft of medical cannabidiol or plant material;

b. Diversion or potential diversion of medical cannabidiol or plant material;

c. Unauthorized access to the secure sales and inventory tracking system or other patient and caregiver information system or file; or

d. Other violations of law.

154.16(3) *Inspection of manufacturers.* The department or its agents shall conduct regular inspections of manufacturers and manufacturing facilities as described in rule 641—154.28(124E).

154.16(4) *Establishment and maintenance of a secure sales and inventory tracking system.* The department shall establish and maintain a secure, electronic system that is available 24 hours a day, seven days a week to track:

a. Inventory of plant material, medical cannabidiol, and waste material;

b. Transport of plant material, waste material, and laboratory samples;

c. Application and use of crop inputs and other solvents and chemicals;

d. Sales of medical cannabidiol to dispensaries;

e. Sales of medical cannabidiol from dispensaries to patients and primary caregivers.

154.16(5) *Licensure and licensure renewal of manufacturers.* The department shall issue a request for proposals to select and license by December 1, 2017, up to two manufacturers to manufacture and to possess, cultivate, harvest, transport, package, process, and supply medical cannabidiol within the state consistent with the provisions of Iowa Code chapter 124E and these rules.

a. To be eligible for licensure, an applicant manufacturer shall provide information on forms and in a manner required by the department of public safety for the completion of a background investigation. In addition, the applicant manufacturer shall submit to the department of public safety necessary funds to satisfy the full reimbursement of costs associated with completing the background investigations. If an applicant manufacturer is not found suitable for licensure as a result of the background investigation, a license shall not be issued by the department.

b. As a condition for licensure, an applicant manufacturer shall agree to begin supplying medical cannabidiol to licensed medical cannabidiol dispensaries in Iowa no later than December 1, 2018.

c. The initial license to manufacture medical cannabidiol shall be valid from December 1, 2017, through November 30, 2018. The license shall be renewed annually unless a manufacturer relinquishes the license, there is a change in state law prohibiting the department from renewing the license, or the license is revoked pursuant to Iowa Code chapter 124E or these rules.

d. A license to manufacture issued by the department pursuant to these rules is not assignable or transferable.

e. The department shall consider the following factors in determining whether to select and license a medical cannabidiol manufacturer:

(1) The technical expertise of an applicant manufacturer regarding medical cannabidiol;

(2) The qualifications of an applicant manufacturer's employees;

(3) The long-term financial stability of an applicant manufacturer;

(4) The ability to provide appropriate security measures on the premises of an applicant manufacturer;

(5) Whether an applicant manufacturer has demonstrated an ability to meet certain medical cannabidiol production needs for medical use regarding the range of recommended dosages for each debilitating medical condition, the range of chemical compositions of any plant of the genus cannabis that will likely be medically beneficial for each of the debilitating medical conditions, and the form or forms of medical cannabidiol that may be appropriate for the approved debilitating medical conditions;

(6) An applicant manufacturer's projection of and ongoing assessment of wholesale product costs.

f. Pursuant to Iowa Code section 124E.6(1)*"b,"* information submitted during the application process shall be confidential until the licensure process is completed unless otherwise protected from disclosure under state or federal law.

g. A licensed manufacturer shall submit an application to renew its license with the department at least six months before the license expires. The application shall be submitted on a form created by the department.

h. The department shall notify a manufacturer of the decision to approve or deny the manufacturer's license by August 1 of the year in which the renewal application is submitted.

154.16(6) *Collection of fees from manufacturers.* Except as provided in this rule, all fees are nonrefundable, shall be retained by the department, and shall be considered repayment receipts as defined in Iowa Code section 8.2.

a. Fees to the department.

(1) Each application for licensure as a manufacturer shall include a nonrefundable application fee of $7,500.

(2) Licensed manufacturers shall pay an annual fee to the department to cover costs associated with regulating and inspecting manufacturers and for other expenses necessary for the administration of the medical cannabidiol program. The department shall assess the fee with the notice of approval of license renewal each year by August 1, payable by the manufacturer to the department no later than December 1.

b. Fees to the department of public safety.

(1) An applicant manufacturer shall be responsible to reimburse the department of public safety the full cost of conducting background investigations related to an application for licensure and operation as a licensed manufacturer. The department of public safety shall retain the right to bill a manufacturer for additional background investigations, as needed.

(2) Each manufacturer submitting an application for licensure shall, at the time of application, submit to the department of public safety a deposit of $10,000 for each business owner subject to a background investigation and a national criminal history background check. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the applicant shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the manufacturer.

(3) A licensed manufacturer shall pay a deposit of $200 per employee to the department of public safety for a background investigation and a national criminal history background check on any person being considered for hire as an employee of the manufacturer. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the manufacturer shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the manufacturer. The department shall retain the right to preclude a potential employee from hire based upon the results of the background investigation and national criminal history background check.

154.16(7) *Recall of medical cannabidiol products.* Medical cannabidiol products may be recalled in the following ways:

a. By manufacturer. Recalls may be undertaken voluntarily and at any time by a licensed manufacturer.

b. By department. If the department determines, based on an evaluation of the health hazard presented, that there is a reasonable probability that use of, or exposure to, a violative medical cannabidiol product will cause a serious adverse health consequence or death, the department may require a manufacturer to recall such violative medical cannabidiol products from dispensaries. An evaluation of the health hazard presented by medical cannabidiol being considered for recall shall be conducted by an ad hoc committee of scientists appointed by the director of the department and shall take into account, but need not be limited to, each of the following factors:

(1) Whether any disease or injuries have already occurred from the use of the medical cannabidiol.

(2) Whether any existing conditions could contribute to a clinical situation that could expose humans to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.

(3) Assessment of hazard to various segments of the population, e.g., children, who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.

(4) Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.

(5) Assessment of the likelihood of occurrence of the hazard.

(6) Assessment of the consequences (immediate or long-range) of occurrence of the hazard.

(7) The findings of the department during a directed inspection of the licensed manufacturing facility.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter; **ARC 4928C**, IAB 2/12/20, effective 6/1/20; see correction note at end of chapter]

641—154.17(124E) Manufacturer operations.

154.17(1) *Operating documents.*

a. A manufacturer shall maintain operating documents that accurately reflect the manufacturer's standard operating procedures. Unless otherwise noted, a manufacturer shall make the operating documents available to the department upon request through secure electronic mail, an electronic file-sharing service, or other secure means.

b. The operating documents of a manufacturer shall include all of the following:

(1) Procedures for the oversight of the manufacturer, including descriptions of operational and management practices regarding:

1. The forms and quantities of medical cannabidiol products that are produced at the manufacturing facility;

2. The methods of planting, harvesting, drying, and storing cannabis. A manufacturer may make operating documents for these procedures available on site only;

3. The estimated types and amounts of all crop inputs used in the production of medical cannabidiol;

4. The estimated types and amounts of medical cannabidiol waste and plant material waste to be generated;

5. The disposal methods for all waste materials;

6. Employee training methods for the specific phases of production. A manufacturer may make operating documents for these procedures available on site only;

7. Biosecurity measures and standard operating procedures used in the production and manufacturing of medical cannabidiol. A manufacturer may make operating documents for these procedures available on site only;

8. Strategies for identifying and reconciling discrepancies in inventory of plant material or medical cannabidiol;

9. Sampling strategy and quality testing for labeling purposes. A manufacturer may make operating documents for these procedures available on site only;

10. Medical cannabidiol packaging and labeling procedures;

11. Procedures for recall and market withdrawal of medical cannabidiol;

12. Plans for responding to a security breach at a manufacturing facility or while medical cannabidiol is in transit to a dispensary. A manufacturer may make operating documents for these procedures available on site only;

13. A business continuity plan. A manufacturer may make this operating document available on site only;

14. Records relating to all transport activities; and

15. Other information requested by the department.

(2) Procedures to ensure accurate record keeping.

(3) Procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabidiol and unauthorized entrance into areas containing medical cannabidiol. A manufacturer may make operating documents for these procedures available on site only.

c. Operating documents may be trade secrets if designated as such by a manufacturer and shall be considered confidential records pursuant to Iowa Code section 22.7(3).

154.17(2) *Prohibited activities.* A manufacturer shall not:

a. Own or operate a medical cannabidiol manufacturing facility unless the manufacturer is licensed by the department pursuant to Iowa Code chapter 124E and these rules;

b. Produce or manufacture medical cannabidiol in any location except in those areas approved by the department;

c. Sell, deliver, transport, or distribute medical cannabidiol from any location except its manufacturing facility or a dispensary facility;

d. Produce or manufacture medical cannabidiol in Iowa for sales or distribution outside of Iowa;

e. Sell or distribute medical cannabidiol to any person or business other than a dispensary;

f. Refuse to sell, deliver, transport, or distribute medical cannabidiol in any form or quantity produced by the manufacturer to a dispensary, unless deemed appropriate in the manufacturer's reasonable business judgment and approved by the department in writing;

g. Transport or deliver medical cannabidiol to any location except as allowed in subrule 154.22(1);

h. Sell medical cannabidiol that is not packaged and labeled in accordance with rule 641—154.21(124E);

i. Sell medical cannabidiol in any form or quantity other than a form or quantity approved by the department, subject to recommendation by the medical cannabidiol board and approval by the board of medicine;

j. Permit any person to consume medical cannabidiol on the property of the manufacturer;

k. Employ a person who is under 18 years of age or who has been convicted of a disqualifying felony offense;

l. Manufacture edible medical cannabidiol products.

154.17(3) *Criminal background investigations.*

a. A manufacturer shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history record check.

b. An employee of a manufacturer shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

c. An applicant or licensed manufacturer shall respond within 30 days to a request from the department or the department of public safety for more information to complete a background investigation and national criminal history background check on an owner, investor, or employee.

154.17(4) *Relationship to health care practitioners.* A manufacturer shall not share office space with, refer patients to, or have any financial relationship with a health care practitioner.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 3836C**, IAB 6/6/18, effective 7/11/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19]

641—154.18(124E) Security requirements. The department may request assistance from the department of public safety in ensuring manufacturers meet the security requirements in this rule.

154.18(1) *Visitor logs.* Visitors to the manufacturing facility shall sign visitor manifests with name, date, and times of entry and exit, and shall wear badges that are visible at all times and that identify them as visitors.

154.18(2) *Restricted access.* A manufacturer shall use a controlled access system and written manifests to limit entrance to all restricted access areas of its manufacturing facility and shall retain a record of all persons who entered the restricted access areas.

a. The controlled access system shall do all of the following:

(1) Limit access to authorized individuals;

(2) Maintain a log of individuals with approved access, including dates of approvals and revocations;

(3) Track times of personnel entry to and exit from the facility;

(4) Store data for retrieval for a minimum of one year; and

(5) Limit access to authorized individuals in the event of a power failure.

b. Separate written manifests of visitors to restricted access areas shall be kept and stored for a minimum of one year if the controlled access system does not include electronic records of visitors to the restricted access areas.

c. A manufacturer shall promptly, but no later than five business days after receipt of request, submit stored controlled access system data to the department.

d. Restricted access areas shall be identified with signs that state: "Do Not Enter – Restricted Access Area – Access Limited to Authorized Personnel Only."

154.18(3) *Perimeter intrusion detection system.*

a. *Computer-controlled video surveillance system.* A manufacturer shall operate and maintain in good working order a computer-controlled, closed-circuit television surveillance system on its premises that operates 24 hours per day, seven days a week, and visually records:

(1) All phases of medical cannabidiol production;

(2) All areas that might contain plant material and medical cannabidiol, including all safes and vaults;

(3) All points of entry and exit;

(4) The entrance to the video surveillance control room; and

(5) Parking areas, which shall have appropriate lighting for the normal conditions of the area under surveillance.

b. *Camera specifications.* Cameras shall:

(1) Capture clear and certain identification of any person entering or exiting a manufacturing facility or its parking areas to the extent identification is technologically feasible with generally accepted commercial security cameras;

(2) Have the ability to produce a clear, color still photograph live or from a recording;

(3) Have on all recordings an embedded date-and-time stamp that is synchronized to the recording and does not obscure the picture; and

(4) Continue to operate during a power outage.

c. *Video recording specifications.*

(1) A video recording shall export still images in an industry standard image format, such as .jpg, .bmp, or .gif.

(2) Exported video shall be archived in a format that ensures authentication and guarantees that the recorded image has not been altered.

(3) Exported video shall also be saved in an industry standard file format that can be played on a standard computer operating system.

(4) All recordings shall be erased or destroyed at the end of the retention period and prior to disposal of any storage medium.

d. *Additional requirements.* A manufacturer shall maintain all security system equipment and recordings in a secure location to prevent theft, loss, destruction, corruption, and alterations.

e. *Retention.* A manufacturer shall ensure that recordings from all video cameras are:

(1) Available for viewing by the department upon request;

(2) Retained for at least 60 days;

(3) Maintained free of alteration or corruption; and

(4) Retained longer, as needed, if a manufacturer is given actual notice of a pending criminal, civil, or administrative investigation, or other legal proceeding for which the recording may contain relevant information.

f. *Required signage.* A manufacturer shall post a sign in capital letters in a conspicuous location at every entrance to the manufacturing facility that reads, "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE."

154.18(4) *Security alarm system requirements.*

a. A manufacturer shall install and maintain a professionally monitored security alarm system that provides intrusion and fire detection of all:

(1) Facility entrances and exits;

(2) Rooms with exterior windows;
(3) Rooms with exterior walls;
(4) Roof hatches;
(5) Skylights; and
(6) Storage rooms.

b. For the purposes of this subrule, a security alarm system means a device or series of devices that summons law enforcement personnel during, or as a result of, an alarm condition. Devices may include:

(1) Hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audio, visual, or electronic signal;
(2) Motion detectors;
(3) Pressure switches;
(4) A duress alarm;
(5) A panic alarm;
(6) A holdup alarm;
(7) An automatic voice dialer; and
(8) A failure notification system that provides an audio, text, or visual notification of any failure in the surveillance system.

c. A manufacturer's security alarm system and all devices shall continue to operate during a power outage.

d. A manufacturer's security alarm system shall be inspected and all devices tested annually by a qualified alarm vendor. A manufacturer shall provide documentation of the annual inspection and device testing to the department upon request.

154.18(5) *Personnel identification system.* A manufacturer shall use a personnel identification system that controls and monitors individual employee access to restricted access areas within the manufacturing facility and that meets the requirements of this subrule and subrule 154.18(1).

a. Requirement for employee identification card. An employee identification card shall contain:
(1) The name of the employee;
(2) The date of issuance and expiration;
(3) An alphanumeric identification number that is unique to the employee; and
(4) A photographic image of the employee.

b. A manufacturer's employee shall keep the identification card visible at all times when the employee is in a manufacturing facility, a dispensary, or a vehicle transporting medical cannabidiol.

c. Upon termination or resignation of an employee, a manufacturer shall immediately:
(1) Revoke the employee's access to the manufacturing facility; and
(2) Obtain and destroy the employee's identification card, if possible.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.19(124E) Location. All of a manufacturer's manufacturing, cultivating, harvesting, packaging, processing, and storage of medical cannabidiol shall take place in one secured manufacturing facility location at a physical address provided to the department during the licensure and application processes.

154.19(1) *Proximity to dispensary.* A manufacturer shall not operate a manufacturing facility at the same physical location as a medical cannabidiol dispensary.

154.19(2) *Proximity to school.* A manufacturer shall not operate a manufacturing facility in any location, whether for manufacturing, possessing, cultivating, harvesting, transporting, packaging, processing, storing, or supplying, within 1,000 feet of a public or private school existing before the date of the manufacturer's licensure by the department.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.20(124E) Advertising and marketing.

154.20(1) *Permitted marketing and advertising activities.*

a. A manufacturer may:

(1) Display the manufacturer's business name and logo on medical cannabidiol labels, signs, website, and informational material provided to patients. The name or logo shall not include:

1. Images of cannabis or cannabis-use paraphernalia;
2. Colloquial references to cannabis;
3. Names of cannabis plant strains or varieties;
4. Unsubstantiated medical claims; or
5. Medical symbols that bear a reasonable resemblance to established medical associations. Examples of established medical organizations include the American Medical Association or American Academy of Pediatrics. The use of medical symbols is subject to approval by the department;

(2) Display signs on the manufacturing facility; and

(3) Maintain a business website that contains the following information:

1. The manufacturer's name and contact information;
2. The medical cannabidiol forms and quantities manufactured in Iowa; and
3. Other information as approved by the department.

b. The business website shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

c. The department reserves the right to review a manufacturer's marketing and advertising materials and to require a manufacturer to make changes to the content. The department has 30 calendar days following submission to approve or deny marketing and advertising materials of a manufacturer.

154.20(2) *Other marketing and advertising activities.* A manufacturer shall request and receive the department's written approval before beginning marketing or advertising activities that are not specified in subrule 154.20(1). The department has 30 calendar days to approve, deny, or request additional information regarding marketing and advertising activity requests from a manufacturer. In the event the department fails to respond to a manufacturer within 30 days with an approval, denial, or request for additional information, the manufacturer's marketing and advertising activity requests shall be deemed approved.

154.20(3) *Inconspicuous display.* A manufacturer shall arrange displays of medical cannabidiol, interior signs, and other exhibits to reasonably prevent public viewing from outside the manufacturing facility.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.21(124E) Packaging and labeling.

154.21(1) *Medical cannabidiol packaging.* A manufacturer shall package all medical cannabidiol intended for distribution according to the following standards:

a. The manufacturer shall properly package medical cannabidiol in compliance with the United States Poison Prevention Packing Act regarding child-resistant packaging and exemptions for packaging for elderly patients.

b. The manufacturer shall label packaged medical cannabidiol as described in subrule 154.21(3).

c. The manufacturer shall use medical containers that are:

(1) Of sufficient size to accommodate a separate dispensary label containing the information described in rule 641—154.46(124E);

(2) Designed to maximize the shelf life of the contained medical cannabidiol;

(3) Tamper-evident; and

(4) Child-resistant.

d. Medical cannabidiol packaging shall not bear a reasonable resemblance to commonly available nonmedical commercial products.

e. The manufacturer shall package medical cannabidiol in a manner that minimizes the package's appeal to children.

f. The manufacturer shall not depict images other than the manufacturer's business name or logo on the packaging.

154.21(2) *Trade names.* A manufacturer's medical cannabidiol trade names shall comply with the following:

a. Names shall be limited to those that clearly reflect the form's medical cannabidiol nature;

b. Any name that is identical to, or similar to, the name of an existing nonmedical cannabidiol product is prohibited;

c. Any name that is identical to, or similar to, the name of an unlawful product or substance is prohibited; and

d. Any name that contains language that suggests using medical cannabidiol for recreational purposes or for a condition other than a qualifying debilitating medical condition is prohibited.

154.21(3) *Package labeling.*

a. A manufacturer shall ensure that all medical cannabidiol packaging is labeled with the following information:

(1) The name of the manufacturer;

(2) The medical cannabidiol's primary active ingredients, including concentrations of tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid. Concentrations of tetrahydrocannabinolic acid and cannabidiolic acid may be omitted if the manufacturer uses chemical decarboxylation or other means to substantially remove the acids from the product prior to testing;

(3) All ingredients of the product shown with common or usual names, including any colors, artificial flavors, and preservatives, listed in descending order by predominance of weight;

(4) Instructions for storage, including light and temperature requirements, if any;

(5) Product expiration date;

(6) The date of manufacture and lot number;

(7) A notice with the statement, including capitalization: "This product has not been analyzed or approved by the United States Food and Drug Administration. There is limited information on the side effects of using this product, and there may be associated health risks and medication interactions. This product is not recommended for use by pregnant or breastfeeding women. KEEP THIS PRODUCT OUT OF REACH OF CHILDREN.";

(8) The universal warning symbol provided by the department; and

(9) A notice with the statement: "This medical cannabidiol is for therapeutic use only. Use of this product by a person other than the patient listed on the label is unlawful and may result in the cancellation of the patient's medical cannabidiol registration card. Return unused medical cannabidiol to a dispensary for disposal."

b. Labeling text shall not include any false or misleading statements.

c. A package may contain multiple labels if the information required by this rule is not obstructed.

d. A manufacturer shall ensure that directions for use of the product, including recommended and maximum amount by age and weight, if applicable, are included with the product.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 3836C**, IAB 6/6/18, effective 7/11/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19]

641—154.22(124E) Transportation of medical cannabidiol and plant material.

154.22(1) *Transport of medical cannabidiol.* A manufacturer is authorized to transport medical cannabidiol to and from:

a. Dispensaries;

b. A laboratory for testing;

c. A waste facility for disposal;

d. Other sites only with departmental approval.

154.22(2) *Transport of plant material.* A manufacturer is authorized to transport cannabis plant material from its manufacturing facility to:

a. A waste disposal site;

b. Other sites only with departmental approval.

154.22(3) *Chain-of-custody tracking system.*

a. A manufacturer shall use the secure sales and inventory tracking system, if available, or a department-approved manifest system to track shipping of medical cannabidiol. The system shall include a chain of custody that records:

(1) The name and address of the destination;

(2) The weight and description of each individual package that is part of the shipment, and the total number of individual packages;

(3) The date and time the medical cannabidiol shipment is placed into the transport vehicle;

(4) The date and time the shipment is accepted at the delivery destination;

(5) The person's identity, and the circumstances, duration, and disposition of any other person who had custody or control of the shipment; and

(6) Any handling or storage instructions.

b. Before transporting medical cannabidiol, a manufacturer shall:

(1) Record in the secure sales and inventory tracking system or on the manifest information about the material to be transported; and

(2) Notify the dispensary, laboratory, or waste facility, as applicable, of the expected arrival time and transmit a copy of the manifest to the dispensary, laboratory, or waste facility, if applicable.

c. Each transport shall be approved electronically or in writing by:

(1) An authorized manufacturer employee when the transport vehicle is departing the manufacturing facility; and

(2) An authorized employee of the receiving dispensary, laboratory, or waste facility.

d. An authorized employee at the dispensary, laboratory, or waste facility receiving medical cannabidiol shall:

(1) Verify and document the type and quantity of the transported medical cannabidiol against the information in the secure sales and inventory tracking system or written manifest;

(2) Approve the transport electronically or return a signed copy of the manifest to the manufacturing facility; and

(3) Record the medical cannabidiol that is received as inventory in the secure sales and inventory tracking system, if available. If a manifest system is being used, the dispensary, laboratory, or waste facility shall also maintain a signed copy of manifest, and shall maintain records of the inventory received consistent with these rules.

e. A manufacturer shall maintain all manifests for at least five years and make them available upon request of the department.

154.22(4) *Vehicle requirements for transport.*

a. A manufacturer shall ensure that all medical cannabidiol transported on public roadways is:

(1) Packaged in tamper-evident, bulk containers;

(2) Transported so it is not visible or recognizable from outside the vehicle; and

(3) Transported in a vehicle that does not bear any markings to indicate that the vehicle contains medical cannabidiol or bears the name or logo of the manufacturer.

b. When the motor vehicle contains medical cannabidiol, manufacturer employees who are transporting the medical cannabidiol on public roadways shall:

(1) Travel directly to a dispensary or other department-approved locations; and

(2) Document refueling and all other stops in transit, including:

1. The reason for the stop;
2. The duration of the stop; and
3. The location of the stop.

c. If the vehicle must be stopped due to an emergency situation, the employee shall notify 911 and complete an incident report on a form approved by the department.

d. Under no circumstance shall any person other than a designated manufacturer employee have actual physical control of the motor vehicle that is transporting the medical cannabidiol.

e. A single employee may transport medical cannabidiol to the laboratory.

f. An employee in a transport motor vehicle shall have telephone or other communication access with the manufacturer's personnel and have the ability to contact law enforcement via telephone or other method at all times that the motor vehicle contains medical cannabidiol.

g. An employee shall carry the employee's identification card at all times when transporting or delivering medical cannabidiol and, upon request, produce the identification card to the department or to a law enforcement officer acting in the course of official duties.

h. A manufacturer shall not leave a vehicle that is transporting medical cannabidiol unattended overnight.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4928C**, IAB 2/12/20, effective 6/1/20; see correction note at end of chapter]

641—154.23(124E) Disposal of medical cannabidiol and plant material.

154.23(1) *Return of medical cannabidiol from dispensaries and laboratory.*

a. A manufacturer shall collect at no charge medical cannabidiol waste from dispensaries. A manufacturer shall:

(1) Collect medical cannabidiol waste from each dispensary on a schedule mutually agreed upon by the manufacturer and dispensary;

(2) Dispose of medical cannabidiol waste as provided in subrule 154.23(2); and

(3) Maintain a written record of disposal that includes:

1. The tracking number assigned at the time of the dispensing, if available, or the name of the patient, if the tracking number is unavailable, when the medical cannabidiol was returned to the dispensary from a patient or primary caregiver;

2. The date the medical cannabidiol waste was collected;

3. The quantity of medical cannabidiol waste collected; and

4. The type and lot number of medical cannabidiol waste collected.

b. A manufacturer shall collect at no charge medical cannabidiol and medical cannabidiol waste from a laboratory that has tested samples submitted by the manufacturer. A manufacturer shall:

(1) Collect medical cannabidiol and medical cannabidiol waste from a laboratory on a schedule mutually agreed upon by the manufacturer and laboratory.

(2) Maintain a written record of return that includes:

1. The date the medical cannabidiol and medical cannabidiol waste were collected;

2. The quantity of medical cannabidiol and medical cannabidiol waste collected; and

3. The type and lot number of medical cannabidiol collected.

(3) A manufacturer may use medical cannabidiol returned from a laboratory for research and development or retained samples, but a manufacturer shall not introduce medical cannabidiol returned from a laboratory into lots or products intended for sale.

(4) A manufacturer shall dispose of medical cannabidiol waste returned from a laboratory as provided in subrule 154.23(2).

154.23(2) *Medical cannabidiol and plant material waste.* A manufacturer shall store, secure, and manage medical cannabidiol waste and plant material waste in accordance with all applicable federal, state, and local regulations.

a. The manufacturer shall dispose of medical cannabidiol waste at a waste facility according to federal and state law and in a manner which renders it unusable.

b. The manufacturer shall dispose of plant material waste at an approved solid waste disposal facility, according to federal and state law.

c. Before transport of plant material waste, the manufacturer shall render the plant material waste unusable and unrecognizable by grinding and incorporating the waste with a greater quantity of nonconsumable, solid wastes including:

(1) Paper waste;

(2) Cardboard waste;

(3) Food waste;

(4) Yard waste;

(5) Vegetative wastes generated from industrial or manufacturing processes that prepare food for human consumption;

(6) Soil; or

(7) Other waste approved by the department.

154.23(3) *Liquid and chemical waste disposal.* A manufacturer shall dispose of all liquid and chemical product waste generated in the process of cultivating, manufacturing, and distributing medical cannabidiol in accordance with all applicable federal, state, and local regulations.

154.23(4) *Waste-tracking requirements.* A manufacturer shall use forms approved by the department to maintain accurate and comprehensive records regarding waste material. The records shall account for, reconcile, and evidence all waste activity related to the disposal of medical cannabidiol waste and plant material waste.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter; **ARC 4928C**, IAB 2/12/20, effective 6/1/20; see correction note at end of chapter]

641—154.24(124E) Record-keeping requirements.

154.24(1) *Sales and distribution.* A manufacturer shall maintain complete and accurate electronic sales transaction records in the department's secure sales and inventory tracking system, including:

a. The date of each sale or distribution;

b. The item number, product name and description, and quantity of medical cannabidiol sold or otherwise distributed; and

c. The sale price.

154.24(2) *Financial transactions.* A manufacturer shall maintain records that reflect all financial transactions and the financial condition of the business. The following records shall be maintained for at least five years and made available for review, upon request of the department:

a. Purchase invoices, bills of lading, sales records, copies of bills of sale, and any supporting documents, to include the items or services purchased, from whom the items were purchased, and the date of purchase;

b. Bank statements and canceled checks for all business accounts;

c. Accounting and tax records;

d. Records of all financial transactions, including contracts and agreements for services performed or services received;

154.24(3) *Other records.*

a. A manufacturer shall maintain the following for at least five years, unless otherwise noted, and provide to the department upon request:

(1) All personnel records;

(2) Records of any theft, loss, or other unaccountability of any medical cannabidiol or plant material;

(3) Transport manifests and incident reports; and

(4) Records of all samples sent to a testing laboratory and the quality assurance test results.

b. A manufacturer shall maintain for at least one year and provide to the department upon request its controlled access system data and visitor manifests.

c. A manufacturer shall use the department's secure sales and inventory tracking system to maintain the following:

(1) Crop input records;

(2) Production records;

(3) Transportation records; and

(4) Inventory records, including disposal of waste.

154.24(4) *Entry into the department's secure sales and inventory tracking system.* Unless otherwise provided in these rules, a manufacturer shall adhere to the following schedule for entering data into the department's secure sales and inventory tracking system.

a. A manufacturer shall enter data in real time for data related to:

(1) Transport of plant material, waste material, and laboratory samples; and

(2) Sales of medical cannabidiol to dispensaries.

b. A manufacturer shall enter data on changes to inventory of plant material, medical cannabidiol, and waste material by the end of the business day in which the changes occurred.

c. A manufacturer shall enter data within five business days for data related to:

(1) Application and use of crop inputs and other solvents and chemicals; and

(2) Other manufacturing and production records not related to inventory of plant material, medical cannabidiol, and waste material.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter]

641—154.25(124E) Production requirements.

154.25(1) *Cultivation and processing.*

a. Only a licensed manufacturer is authorized to produce and manufacture medical cannabidiol.

b. All phases of production shall take place in designated, restricted access areas that are monitored by a surveillance camera system in accordance with rule 641—154.18(124E).

c. The production process shall be designed to limit contamination. Examples of contamination include mold, fungus, bacterial diseases, rot, pests, nonorganic pesticides, and mildew.

d. Each production area shall allow for access, observation, and inventory of each plant group.

e. Biosecurity measures shall be in effect as described in the operating documents pursuant to subrule 154.17(1).

154.25(2) *Crop inputs and plant batches.*

a. The manufacturer shall use the department's secure sales and inventory tracking system to maintain an electronic record of all crop inputs. The record shall include the following:

(1) The date of input application;

(2) The name of the employee applying the crop input;

(3) The crop input that was applied;

(4) The plants that received the application; and

(5) A copy of or electronic link to the safety data sheet for the crop input applied.

b. At the time of harvesting, all plants shall be tracked in a batch process with a unique batch number that shall remain with the batch through final processing into medical cannabidiol.

c. Each batch or part of a batch of cannabis plants that contributes to a lot of medical cannabidiol shall be recorded in the department's secure sales and inventory tracking system or other manifest system.

154.25(3) *Production of medical cannabidiol.*

a. A manufacturer shall comply with all state and local building and fire code requirements.

b. A manufacturer shall obtain approval from the department for use of any hydrocarbon-based extraction process. Examples of a hydrocarbon-based extraction process include the use of butane, ethanol, hexane, and isopropyl alcohol.

c. Medical cannabidiol shall be prepared, handled, and stored in compliance with the sanitation requirements in this rule.

d. A manufacturer shall produce shelf-stable, nonperishable forms of medical cannabidiol.

e. A manufacturer shall ensure that the cannabinoid content of the medical cannabidiol it produces is homogenous.

f. Each lot of medical cannabidiol shall be assigned a unique lot number and recorded in the department's secure sales and inventory tracking system or other manifest system.

154.25(4) *General sanitation requirements.* A manufacturer shall take all reasonable measures and precautions to ensure that:

a. Any employee who has a communicable disease does not perform any tasks that might contaminate plant material or medical cannabidiol;

b. Hand-washing facilities are:

(1) Convenient and furnished with running water at a suitable temperature;

(2) Located in all production areas; and

(3) Equipped with effective hand-cleaning and -sanitizing preparations and sanitary towel service or electronic drying devices;

c. All employees working in direct contact with plant material and medical cannabidiol use hygienic practices while on duty, including:

(1) Maintaining personal cleanliness; and

(2) Washing hands thoroughly in a hand-washing area before starting work and at any other time when the hands may have become soiled or contaminated;

d. Litter and waste are routinely removed and the operating systems for waste disposal are routinely inspected;

e. Floors, walls, and ceilings are constructed with a surface that can be easily cleaned and maintained in good repair to inhibit microbial growth;

f. Lighting is adequate in all areas where plant material and medical cannabidiol are processed, stored, or sold;

g. Screening or other protection against the entry of pests is provided, including that rubbish is disposed of to minimize the development of odor and the potential for the waste becoming an attractant, harborage, or breeding place for pests;

h. Any buildings, fixtures, and other facilities are maintained in a sanitary condition;

i. Toxic cleaning compounds, sanitizing agents, and other potentially harmful chemicals are identified and stored in a separate location away from plant material and medical cannabidiol and in accordance with applicable local, state, or federal law;

j. All contact surfaces, utensils, and equipment used in the production of plant material and medical cannabidiol are maintained in a clean and sanitary condition;

k. The manufacturing facility water supply is sufficient for necessary operations;

l. Plumbing size and design meets operational needs and all applicable state and local laws;

m. Employees have accessible toilet facilities that are sanitary and in good repair; and

n. Plant material and medical cannabidiol that could support the rapid growth of undesirable microorganisms are isolated to prevent the growth of those microorganisms.

154.25(5) *Storage.*

a. A manufacturer shall store plant material and medical cannabidiol during production, transport, and testing to prevent diversion, theft, or loss, including ensuring that:

(1) Plant material and medical cannabidiol are returned to a secure location immediately after completion of the process or at the end of the scheduled business day; and

(2) The tanks, vessels, bins, or bulk containers containing plant material or medical cannabidiol are locked inside a secure area if a process is not completed at the end of a business day.

b. A manufacturer shall store all plant material and medical cannabidiol during production, transport, and testing, and all saleable medical cannabidiol:

(1) In areas that are maintained in a clean, orderly, and well-ventilated condition; and

(2) In storage areas that are free from infestation by insects, rodents, birds, and other pests of any kind.

c. To prevent degradation, a manufacturer shall store all plant material and medical cannabidiol in production, transport, and testing, and all saleable medical cannabidiol under conditions that will protect the product and its container against physical, chemical, and microbial contamination and deterioration.

d. A manufacturer shall maintain a separate secure storage area for medical cannabidiol that is returned from a dispensary, including medical cannabidiol that is outdated, damaged, deteriorated, mislabeled, or contaminated, or whose containers or packaging has been opened or breached, until the returned medical cannabidiol is destroyed. For purposes of this rule, a separate secure storage area includes a container, closet, or room that can be locked or secured.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter; **ARC 4928C**, IAB 2/12/20, effective 6/1/20; see correction note at end of chapter]

641—154.26(124E) Quality assurance and control.

154.26(1) *Quality control program.* A manufacturer shall develop and implement a written quality assurance program that assesses the chemical and microbiological composition of medical cannabidiol. Assessment includes a profile of the active ingredients, including shelf life, and the presence of inactive ingredients and contaminants. A manufacturer shall use these testing results to determine appropriate storage conditions and product expiration dates.

154.26(2) *Sampling protocols.* A manufacturer shall develop and follow written procedures for sampling medical cannabidiol that require the manufacturer to:

a. Conduct sample collection in a manner that provides analytically sound and representative samples;

b. Document every sampling event and provide this documentation to the department upon request;

c. Describe all sampling and testing plans in written procedures that include the sampling method and the number of units per lot to be tested;

d. Ensure that random samples from each lot are:

(1) Taken in an amount necessary to conduct the applicable test;

(2) Labeled with the lot number; and

(3) Submitted for testing;

e. Retain the results from the random samples for at least five years; and

f. Notify the department at least two business days prior to sample collection and allow the department or its designees to be present to observe the sampling procedures when the samples are to be sent to a laboratory for testing.

154.26(3) *Sampling and testing.* A manufacturer shall:

a. Work with the department and laboratory personnel to develop acceptance criteria for all potential contaminants based on the levels of metals, microbes, or other contaminants that the manufacturer uses in cultivating and producing medical cannabidiol;

b. Conduct sampling and testing of plant material and medical cannabidiol lots using acceptance criteria that are protective of patient health. The sampling and testing results shall be approved by the department and laboratory personnel and shall ensure that lots of medical cannabidiol meet allowable health risk limits for contaminants. Testing of plant material and lots shall occur as described in the laboratory testing requirements and acceptance criteria document described in subrule 154.69(1).

c. Refrain from packaging or selling medical cannabidiol from a process lot that fails to meet established standards, specifications, and any other relevant quality control criteria. Medical cannabidiol from a process lot that fails quality assurance testing may be remixed and retested;

d. Reject and destroy medical cannabidiol from a lot that fails to meet established standards, specifications, and any other relevant quality control criteria when remixing and retesting are not warranted;

e. Develop and follow a written procedure for responding to results failing to meet established standards, specifications, and any other relevant quality control criteria, including:

(1) Criteria for when remixing and retesting are warranted;

(2) Instructions for destroying contaminated or substandard medical cannabidiol as provided in subrule 154.23(2) when remixing and retesting are not warranted; and

(3) Instructions for determining the source of contamination;

f. Retain documentation of test results, assessment, and destruction of medical cannabidiol for at least five years.

154.26(4) *Stability testing.*

a. The quality assurance program shall include procedures for performing stability testing of each product type produced to determine product expiration dates. The procedures shall describe:

(1) Sample size and test intervals based on statistical criteria and departmental guidance pursuant to subrule 154.69(1) for each attribute examined to ensure valid stability estimates;

(2) Storage conditions for samples retained for testing; and

(3) Reliable and specific test methods.

b. Stability studies shall include:

(1) Medical cannabidiol testing at appropriate intervals; and

(2) Medical cannabidiol testing in the same container-closure system in which the medical cannabidiol is marketed and dispensed.

c. If product-expiration-date studies have not been completed before December 1, 2018, a manufacturer shall assign a tentative product expiration date, not to exceed one year, based on any available stability information. A manufacturer shall concurrently conduct stability studies to determine the actual product expiration date.

d. After a manufacturer verifies the tentative product expiration date, or determines the appropriate product expiration date, a manufacturer shall include that product expiration date on each lot of medical cannabidiol.

e. Stability testing shall be repeated if the manufacturing process or the product's chemical composition is changed.

154.26(5) *Reserve samples.*

a. A manufacturer shall retain a uniquely labeled reserve sample that represents each lot of medical cannabidiol and store the reserve sample under conditions consistent with product labeling. The reserve sample shall be stored in the same immediate container-closure system in which the medical cannabidiol is marketed or in one that has similar characteristics. The reserve sample shall consist of at least twice the quantity necessary to perform all the required tests.

b. A manufacturer shall retain the reserve for at least two years from the date of manufacture.

c. After two years from the date of manufacture, reserve samples shall be destroyed as provided in subrule 154.23(2).

154.26(6) *Retesting.* If the department deems that public health may be at risk, the department may require the manufacturer to retest any sample of plant material or medical cannabidiol.

154.26(7) *Disposal of substandard product.* A manufacturer shall dispose of all medical cannabidiol as provided in subrule 154.23(2) when samples fail to meet established standards, specifications, and other relevant quality control criteria and when an adequate remedy for remixing and retesting as provided in paragraph 154.26(3)*"c"* is unavailable.

154.26(8) *Recall and market withdrawal procedures.* Each manufacturer shall establish a procedure for recalling or withdrawing from the market, as applicable, medical cannabidiol that has a reasonable probability of causing an unexpected or harmful response in a patient population, despite appropriate use, that outweighs the potential benefit of the medical cannabidiol. This procedure shall include:

a. Factors that make a recall or market withdrawal necessary;

b. Manufacturer's personnel who are responsible for overseeing the recall or market withdrawal; and

c. How to notify affected parties of a recall or market withdrawal.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 3836C**, IAB 6/6/18, effective 7/11/18; **ARC 4078C**, IAB 10/10/18, effective 11/14/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter]

641—154.27(124E) Supply and inventory.

154.27(1) *Reliable and ongoing supply.* A manufacturer shall provide a reliable and ongoing supply of medical cannabidiol to medical cannabidiol dispensaries.

154.27(2) *Inventory controls and procedures.* A manufacturer shall establish inventory controls and procedures for conducting inventory reviews to prevent and detect any diversion, theft, or loss in a timely manner.

154.27(3) *Real-time inventory required.* A manufacturer shall use the department-approved secure sales and inventory tracking system to track medical cannabidiol production from seed or plant cutting through distribution of medical cannabidiol to a dispensary. The manufacturer shall use the system to maintain a real-time record of the manufacturer's inventory of plant material and medical cannabidiol to include:

a. The quantity and form of medical cannabidiol maintained by the manufacturer at the manufacturing facility on a daily basis;

b. The amount of plants being grown at the manufacturing facility on a daily basis;

c. The names of the employees or employee conducting the inventory; and

d. Other information deemed necessary and requested by the department.

154.27(4) *Waste inventory.* A manufacturer shall maintain a record of its inventory of all medical cannabidiol waste and plant material waste for disposal.

154.27(5) *Reconciliation.* No less often than every two calendar weeks, a manufacturer shall reconcile its physical inventory with the inventory recorded in the department's secure sales and inventory tracking system.

a. Reconciliation shall include:

(1) Plant material at the manufacturing facility and in transit; and

(2) Medical cannabidiol at the manufacturing facility, at distribution and storage facilities, and in transit.

b. Discrepancies between the physical inventory of the manufacturer and the inventory recorded in the department's secure sales and inventory system shall be handled as follows:

(1) A manufacturer shall report suspected diversion of plant material or medical cannabidiol to the department and law enforcement within 72 hours of discovery.

(2) A manufacturer shall have up to 72 hours to reconcile discrepancies in the manufacturer's physical inventory with the inventory recorded in the secure sales and inventory tracking system. If the manufacturer cannot reconcile the manufacturer's physical inventory with the secure sales and inventory tracking system's inventory within 72 hours but diversion of plant material or medical cannabidiol is not suspected, the manufacturer shall immediately contact the department to report the discrepancy and to initiate a compliance action plan pursuant to paragraph 154.28(4)*"b."*

154.27(6) *Scales.* All scales used to weigh usable plant material for purposes of these rules shall be certified in accordance with ISO/IEC Standard 17025, which is incorporated herein by reference.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4078C**, IAB 10/10/18, effective 11/14/18]

641—154.28(124E) Inspection by department or independent consultant. A manufacturer is subject to reasonable inspection by the department, a department-approved consultant, or other agency pursuant to Iowa Code chapter 124E and these rules and as authorized by laws and regulations.

154.28(1) *Types of inspections.* Inspections may include:

a. Aspects of the business operations;

b. The manufacturing facility;

c. Vehicles used for transport or delivery of medical cannabidiol or plant material;

d. Financial information and inventory documentation;

e. Physical and electronic security alarm systems; and

f. Other inspections as determined by the department.

154.28(2) *Local safety inspections.* A manufacturer may be subject to inspection of its manufacturing facility and grounds by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local licensing authority restrictions related to medical cannabidiol manufacturing or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

154.28(3) *Health and sanitary inspection.* The department has discretion to determine when an inspection by an independent consultant is necessary. The following is a nonexhaustive list of examples that may justify an independent inspection:

a. The department has reasonable grounds to believe that the manufacturer is in violation of one or more of the requirements set forth in these rules or other applicable public health or sanitary laws, rules or regulations; or

b. The department has reasonable grounds to believe that the manufacturer was the cause or source of contamination of medical cannabidiol.

154.28(4) *Compliance required.* A manufacturer shall respond to deficiencies found during inspections or inventory reconciliation as follows:

a. Deficiencies not related to inventory reconciliation.

(1) Upon written notification by the department of deficiencies that do not involve reconciliation of inventory, a manufacturer shall have up to 30 days to submit an action plan to the department with proposed remedies and timelines for completion of the remedies.

(2) The department shall have up to two weeks to accept or require revision of the action plan.

b. Deficiencies related to inventory reconciliation.

(1) Upon notifying the department that the manufacturer cannot reconcile the manufacturer's physical inventory with the inventory recorded in the department's secure sales and inventory tracking system, the manufacturer shall have up to two business days to submit an action plan to the department with proposed remedies and timelines for completion of the remedies.

(2) The department shall have up to two business days to accept or require revision of the action plan.

c. Failure to complete actions in the action plan within the timelines mutually agreed upon by the manufacturer and the department shall result in assessment of penalties or in suspension or revocation of a manufacturer license as authorized by these rules.

d. At the department's request and in a timely manner, a manufacturer shall pay for and undergo an independent health and sanitary inspection in accordance with this rule.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4078C**, IAB 10/10/18, effective 11/14/18]

641—154.29(124E) Assessment of penalties. The department shall assess to a manufacturer a civil penalty of up to $1,000 per violation of Iowa Code chapter 124E or these rules in addition to other applicable penalties.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.30(124E) Suspension or revocation of a manufacturer license.

154.30(1) The department may suspend or revoke a manufacturer license upon any of the following grounds:

a. Submission of false, inaccurate, misleading, or fraudulent information to the department in the application or inspection processes.

b. Failure to submit required reports and documents.

c. Violation of Iowa Code chapter 124E or these rules, or violation of state or local law related to operation of the licensee.

d. Conduct or practices detrimental to the safety, health, or welfare of a patient, primary caregiver, or the public.

e. Criminal, civil, or administration action taken against a license or registration in this or another state or country related to manufacturing or dispensing medical cannabidiol.

f. False, misleading, or deceptive representations to the department, another state or federal agency, or a law enforcement agency.

g. Discontinuance of operation for more than 30 days, unless the department approves an extension of such period for good cause shown.

h. Failure to maintain effective controls against diversion, theft, or loss of medical cannabidiol.

i. Failure to correct a deficiency within the time frame required by the department.

j. Failure of a manufacturer's business owner or investors to have a satisfactory result in a background investigation or national criminal history background check conducted by the department of public safety and as determined by the department.

154.30(2) The department shall notify the licensee of the proposed action pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

154.30(3) A request for appeal concerning the suspension or revocation of a license shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Office of Medical Cannabidiol, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the suspension or revocation has been or will be removed. After the hearing or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of suspension or revocation shall become the department's final agency action.

154.30(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

154.30(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

154.30(6) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

154.30(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

154.30(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections, and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

154.30(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

154.30(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

154.30(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.30(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

154.30(13) Emergency adjudicative proceedings.

a. Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

b. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

(2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

(3) Whether the licensee required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

(4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

c. Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the licensee that is required to comply with the order. The order shall be delivered by one or more of the following methods:

1. Personal delivery.

2. Certified mail, return receipt requested, to the last address on file with the department.

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

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the licensee that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the licensee that is required to comply with the order is the party requesting the continuance.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19]

641—154.31(124E) Closure of operations.

154.31(1) *Notice.* A manufacturer shall notify the department at least six months before the closure of the manufacturing facility.

154.31(2) *Procedures.* If a manufacturer ceases operation, the manufacturer shall work with the department to verify the remaining inventory of the manufacturer and ensure that any plant material, plant material waste, and medical cannabidiol are destroyed at a waste facility as provided in subrule 154.23(2).

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.32 to **154.39** Reserved.

DISPENSING

641—154.40(124E) Duties of the department.

154.40(1) *Interagency agreements.* The department may enter into any interagency agreements with other state agencies for technical services or other assistance related to the regulation or inspection of dispensaries.

154.40(2) *Notice to law enforcement.* The department shall notify local law enforcement agencies and the department of public safety of the locations of dispensaries. If the department has sufficient cause to believe that there is a threat to public safety, the department shall notify local law enforcement agencies and the department of public safety of any conditions that pose a threat to public safety including but not limited to:

a. Loss or theft of medical cannabidiol;

b. Diversion or potential diversion of medical cannabidiol;

c. Unauthorized access to the secure sales and inventory tracking system or other patient and caregiver information system or file; or

d. Other violations of law.

154.40(3) *Inspection of dispensaries.* The department or its agents shall conduct regular inspections of dispensaries and their facilities as described in rule 641—154.52(124E).

154.40(4) *Establishment and maintenance of a secure sales and inventory tracking system.* The department shall establish and maintain a secure, electronic system that is available 24 hours a day, seven days a week to track:

a. Inventory of medical cannabidiol and waste material;

b. Sales of medical cannabidiol from dispensaries to patients and primary caregivers.

c. Total tetrahydrocannabinol purchased in the last 90 days by a patient and the patient's primary caregiver.

154.40(5) *Licensure and licensure renewal of dispensaries.* The department shall issue a request for proposals to select and license by April 1, 2018, up to five dispensaries to dispense medical cannabidiol within the state consistent with the provisions of Iowa Code chapter 124E and these rules.

a. To be eligible for licensure, an applicant dispensary shall provide information on forms and in a manner required by the department of public safety for the completion of a background investigation. In addition, the applicant dispensary shall submit to the department of public safety necessary funds to satisfy the full reimbursement of costs associated with completing the background investigations. If the applicant dispensary is not found suitable for licensure as a result of the background investigation, a license shall not be issued by the department.

b. As a condition for licensure, an applicant dispensary shall agree to begin dispensing medical cannabidiol to patients and primary caregivers in Iowa no later than December 1, 2018.

c. The initial license to dispense medical cannabidiol shall be valid from April 1, 2018, through November 30, 2018. The license shall be renewed annually unless a dispensary relinquishes the license, there is a change in state law prohibiting the department from renewing the license, or the license is revoked pursuant to Iowa Code chapter 124E or these rules.

d. A license to dispense medical cannabidiol issued by the department pursuant to these rules is not assignable or transferable.

e. The department shall consider the following factors in determining whether to select and license a medical cannabidiol dispensary:

(1) Geographical location of the proposed dispensary facility;

(2) The technical expertise of an applicant dispensary's staff regarding medical cannabidiol;

(3) The qualifications of an applicant dispensary's employees;

(4) The long-term financial stability of an applicant dispensary;

(5) The ability of an applicant dispensary to provide appropriate security measures on the premises of the dispensary;

(6) An applicant dispensary's projection of and ongoing assessment of retail product costs, including any dispensing fees.

f. Pursuant to Iowa Code section 124E.8(1)*"b,"* information submitted during the application process shall be confidential until an applicant dispensary is licensed by the department unless otherwise protected from disclosure under state or federal law.

g. A licensed dispensary shall submit an application to renew its license with the department at least six months before the license expires. The application shall be submitted on a form created by the department.

h. The department shall notify a dispensary of the decision to approve or deny the dispensary's license by August 1 of the year in which the renewal application is submitted.

154.40(6) *Collection of fees from dispensaries.* Except as provided in this rule, all fees are nonrefundable, shall be retained by the department, and shall be considered repayment receipts as defined in Iowa Code section 8.2.

a. *Fees to the department.*

(1) One application is required for each dispensary location.

(2) Each application for licensure as a dispensary shall include a nonrefundable application fee of $5,000.

(3) Licensed dispensaries shall pay an annual fee to the department to cover costs associated with regulating and inspecting dispensaries and for other expenses necessary for the administration of the medical cannabidiol program. The department shall assess the fee with the notice of approval of license renewal each year on August 1, payable by the dispensary to the department no later than December 1.

b. *Fees to the department of public safety.*

(1) An applicant dispensary shall be responsible to reimburse the department of public safety the full cost of conducting background investigations related to an application for licensure and operation as a licensed dispensary. The department of public safety shall retain the right to bill a dispensary for additional background investigations, as needed.

(2) Each dispensary submitting an application for licensure shall, at time of application, submit to the department of public safety a deposit of $10,000 for each business owner subject to a background investigation and a national criminal history background check. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the applicant shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the dispensary.

(3) A licensed dispensary shall pay a deposit of $200 per employee to the department of public safety for a background investigation and a national criminal history background check on any person being considered for hire as an employee of the dispensary. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the dispensary shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the dispensary. The department shall retain the right to preclude a potential employee from hire based upon the results of the background investigation and national criminal history background check.

154.40(7) *Recall of medical cannabidiol products.* If the department determines, based on an evaluation of the health hazard presented, that there is a reasonable probability that use of, or exposure to, a violative medical cannabidiol product will cause a serious adverse health consequence or death, the department may require a dispensary to recall such violative medical cannabidiol products from the dispensary facility and from patients. An evaluation of the health hazard presented by medical cannabidiol being considered for recall shall be conducted by an ad hoc committee of scientists appointed by the director of the department and shall take into account, but need not be limited to, each of the following factors:

a. Whether any disease or injuries have already occurred from the use of the medical cannabidiol.

b. Whether any existing conditions could contribute to a clinical situation that could expose humans to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.

c. Assessment of hazard to various segments of the population, e.g., children, who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.

d. Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.

e. Assessment of the likelihood of occurrence of the hazard.

f. Assessment of the consequences (immediate or long-range) of occurrence of the hazard.

g. The findings of the department during a directed inspection of the licensed manufacturing facility.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter; **ARC 4928C**, IAB 2/12/20, effective 6/1/20; see correction note at end of chapter; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.41(124E) Dispensary operations.

154.41(1) *Operating documents.* The operating documents of a dispensary shall include all of the following:

a. Procedures for the oversight of the dispensary, including descriptions of operational and management practices regarding:

(1) The forms and quantities of medical cannabidiol products that will be stored and dispensed at the dispensary;

(2) The estimated forms and quantities of medical cannabidiol waste to be generated or collected;

(3) The disposal methods for all waste materials;

(4) Employee training methods for the dispensary employees;

(5) Strategies for identifying and reconciling discrepancies in inventory of medical cannabidiol;

(6) Procedures to ensure the dispensary does not dispense more than a patient's certified cap of total tetrahydrocannabinol to a patient and the patient's primary caregiver(s) in a 90-day period;

(7) Medical cannabidiol labeling procedures;

(8) Procedures for recall or market withdrawal of medical cannabidiol;

(9) Plans for responding to a security breach at the dispensary facility;

(10) A business continuity plan; and

(11) Other information requested by the department.

b. Procedures to ensure accurate record keeping.

c. Procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabidiol and unauthorized entrance into areas of the dispensary facility containing medical cannabidiol.

154.41(2) *Prohibited activities.*

a. A person or entity shall not own or operate a dispensary unless the person or entity is licensed by the department pursuant to Iowa Code chapter 124E and these rules.

b. A dispensary shall not:

(1) Dispense medical cannabidiol in any location except in those areas approved by the department;

(2) Sell, receive, transport, or distribute medical cannabidiol from any location except its dispensary;

(3) Sell, receive, or distribute medical cannabidiol from any entity other than a manufacturer licensed by the department;

(4) Sell or distribute medical cannabidiol to any person other than an approved patient or primary caregiver;

(5) Sell or distribute more than 4.5 grams of total tetrahydrocannabinol to a patient and the patient's primary caregiver(s) in a 90-day period, unless the patient's health care practitioner has certified a higher total tetrahydrocannabinol cap;

(6) Transport or deliver medical cannabidiol to any location, unless approved by the department;

(7) Sell medical cannabidiol that is not packaged and labeled in accordance with rules 641—154.21(124E) and 641—154.46(124E);

(8) Repackage medical cannabidiol or remove the manufacturer's label;

(9) Sell medical cannabidiol in any form or quantity other than a form or quantity approved by the department and adopted by rule;

(10) Permit any person to consume medical cannabidiol on the property of the dispensary;

(11) Employ a person who is under 18 years of age or who has been convicted of a disqualifying felony offense.

154.41(3) *Criminal background checks.*

a. An owner of a dispensary shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

b. An employee of a dispensary shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

c. An applicant or licensed dispensary shall respond within 30 days to a request from the department or the department of public safety for more information to complete a background investigation and national criminal history background check on an owner, investor, or employee.

154.41(4) *Relationship to health care practitioners.* A dispensary shall not share office space with, refer patients to, or have any financial relationship with a health care practitioner.

154.41(5) *Employment of a pharmacist or pharmacy technician.* A medical cannabidiol dispensary shall employ a pharmacist or pharmacy technician licensed or registered pursuant to Iowa Code chapter 155A for the purpose of making dosing recommendations.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.42(124E) Security requirements. The department may request assistance from the department of public safety in ensuring dispensaries meet the security requirements in this rule.

154.42(1) *Restricted access.* A dispensary shall have a controlled access system to limit entrance to all restricted access areas of the dispensary facility. Visitors to restricted access areas shall sign manifests with name, date, and times of entry and exit, if the controlled access system cannot electronically record visitors. Visitors shall wear badges that are visible at all times and identify them as visitors.

a. The controlled access system shall do all of the following:

(1) Limit access to authorized individuals;

(2) Maintain a log of individuals with approved access, including dates of approvals and revocations;

(3) Track times of personnel entry to and exit from restricted access areas;

(4) Store data for retrieval for a minimum of one year; and

(5) Limit access to authorized individuals in the event of a power failure.

b. A dispensary shall promptly, but no later than five business days after receipt of request, submit stored controlled access system data to the department.

c. Separate written manifests of visitors to restricted access areas shall be kept and stored for a minimum of one year if the controlled access system does not include electronic records of visitors to the restricted access areas.

d. Restricted access areas shall be identified with signs that state: "Do Not Enter – Restricted Access Area – Access Limited to Authorized Personnel Only."

154.42(2) *Perimeter intrusion detection system.*

a. *Computer-controlled video surveillance system.* A dispensary shall operate and maintain in good working order a computer-controlled, closed-circuit television surveillance system on its premises that operates 24 hours per day, seven days a week, and visually records:

(1) All areas that might contain medical cannabidiol, including all safes, vaults, and storage areas;

(2) All points of entry and exit;

(3) The entrance to the video surveillance control room; and

(4) Parking areas, which shall have appropriate lighting for the normal conditions of the area under surveillance.

b. *Camera specifications.* Cameras shall:

(1) Capture clear and certain identification of any person entering or exiting a dispensary or its parking areas to the extent identification is technologically feasible with generally accepted commercial security cameras;

(2) Have the ability to produce a clear, color still photograph live or from a recording;

(3) Have on all recordings an embedded date-and-time stamp that is synchronized to the recording and does not obscure the picture; and

(4) Continue to operate during a power outage.

c. *Video recording specifications.*

(1) A video recording shall export still images in an industry standard image format, such as .jpg, .bmp, or .gif.

(2) Exported video shall be archived in a format that ensures authentication and guarantees that the recorded image has not been altered.

(3) Exported video shall also be saved in an industry standard file format that can be played on a standard computer operating system.

(4) All recordings shall be erased or destroyed at the end of the retention period and prior to disposal of any storage medium.

d. *Additional requirements.* A dispensary shall maintain all security system equipment and recordings in a secure location to prevent theft, loss, destruction, corruption, and alterations.

e. *Retention.* A dispensary shall ensure that recordings from all video cameras are:

(1) Available for viewing by the department upon request;

(2) Retained for at least 60 days;

(3) Maintained free of alteration or corruption; and

(4) Retained longer, as needed, if a dispensary is given actual notice of a pending criminal, civil, or administrative investigation, or other legal proceeding for which the recording may contain relevant information.

f. *Required signage.* A dispensary shall post a sign in capital letters in a conspicuous location at every entrance to the dispensary that reads, "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE."

154.42(3) *Security alarm system requirements.*

a. A dispensary shall install and maintain a professionally monitored security alarm system that provides intrusion and fire detection of all:

(1) Dispensary entrances and exits;

(2) Rooms with exterior windows;

(3) Rooms with exterior walls;

(4) Roof hatches;

(5) Skylights; and

(6) Storage rooms.

b. For the purposes of this subrule, a security alarm system means a device or series of devices that summons law enforcement personnel during, or as a result of, an alarm condition. Devices may include:

(1) Hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audio, visual, or electronic signal;

(2) Motion detectors;

(3) Pressure switches;

(4) A duress alarm;

(5) A panic alarm;

(6) A holdup alarm;

(7) An automatic voice dialer; and

(8) A failure notification system that provides an audio, text, or visual notification of any failure in the surveillance system.

c. A dispensary's security alarm system and all devices shall continue to operate during a power outage.

d. A dispensary's security alarm system shall be inspected and all devices tested annually by a qualified alarm vendor. A dispensary shall provide documentation of the annual inspection and device testing to the department upon request.

154.42(4) *Personnel identification system.* A dispensary shall use a personnel identification system that controls and monitors individual employee access to restricted access areas within the dispensary and that meets the requirements of this subrule and subrule 154.42(1).

a. Requirement for employee identification card. An employee identification card shall contain:

(1) The name of the employee;

(2) The date of issuance and expiration;

(3) An alphanumeric identification number that is unique to the employee; and

(4) A photographic image of the employee.

b. A dispensary's employees shall keep the identification card visible at all times when the employee is in a dispensary or a vehicle transporting medical cannabidiol.

c. Upon termination or resignation of an employee, a dispensary shall immediately:

(1) Revoke the employee's access to restricted access areas of the dispensary; and

(2) Obtain and destroy the employee's identification card, if possible.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.43(124E) Location. All dispensing of medical cannabidiol shall take place in an enclosed facility at one physical address provided to the department during the licensure process.

154.43(1) *Proximity to manufacturers.* A dispensary shall not operate at the same physical location as a manufacturer.

154.43(2) *Proximity to schools.* A dispensary shall not operate in any location within 1,000 feet of a public or private school existing before the date of the dispensary's licensure by the department.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.44(124E) Advertising and marketing.

154.44(1) *Permitted marketing and advertising activities.*

a. A dispensary may:

(1) Display the dispensary's business name and logo on medical cannabidiol labels, signs, website, and informational material provided to patients. The name or logo shall not include:

1. Images of cannabis or cannabis-use paraphernalia;
2. Colloquial references to cannabis;
3. Names of cannabis plant strains or varieties;
4. Unsubstantiated medical claims; or
5. Medical symbols that bear a reasonable resemblance to established medical associations. Examples of established medical organizations include the American Medical Association or American Academy of Pediatrics. The use of medical symbols is subject to approval by the department.

(2) Display signs on the dispensary; and

(3) Maintain a business website that contains the following information:

1. The dispensary's name and contact information;
2. The medical cannabidiol forms and quantities provided;
3. Medical cannabidiol pricing;
4. Hours of operation; and
5. Other information as approved by the department.

b. The business website shall not include any false, misleading, or unsubstantiated statements.

c. The department reserves the right to review a dispensary's marketing and advertising materials and to require a dispensary to make changes to the content. The department has 30 calendar days following submission to approve or deny marketing and advertising materials of a dispensary.

154.44(2) *Other marketing and advertising activities.* A dispensary shall request and receive the department's written approval before beginning marketing or advertising activities that are not specified in subrule 154.44(1). The department has 30 calendar days to approve, deny, or request additional information regarding marketing and advertising activity requests from a dispensary. In the event the department fails to respond to a dispensary within 30 days with an approval, denial, or request for additional information, the dispensary's marketing and advertising activity requests shall be deemed approved.

154.44(3) *Inconspicuous display.* A dispensary shall arrange displays of medical cannabidiol, interior signs, and other exhibits to reasonably prevent public viewing from outside the dispensary.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.45(124E) Storage.

154.45(1) *Storage of saleable medical cannabidiol.*

a. A dispensary shall store medical cannabidiol to prevent diversion, theft, or loss, including ensuring that:

(1) Medical cannabidiol is kept in a secure and monitored location within the dispensary; and

(2) Cabinets or storage containers inside the secure and monitored area are locked at the end of a business day.

b. A dispensary shall store all medical cannabidiol:

(1) In areas that are maintained in a clean, orderly, and well-ventilated condition;

(2) In areas that are free from infestation by insects, rodents, birds, and other pests of any kind;

(3) According to the manufacturer's requirements regarding temperature, light exposure, or other environmental conditions;

(4) Under conditions that will protect the product and its container against physical, chemical, and microbial contamination and deterioration.

154.45(2) *Storage of returned medical cannabidiol.* A dispensary shall maintain a separate secure storage area for medical cannabidiol that is to be returned to a manufacturer for disposal, including medical cannabidiol that is outdated, damaged, deteriorated, mislabeled, or contaminated, or whose containers or packaging has been opened or breached, until the medical cannabidiol is collected by a manufacturer. For purposes of this subrule, a separate secure storage area includes a container, closet, or room that can be locked or secured.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.46(124E) Dispensing.

154.46(1) *Access to all forms of product.* A dispensary shall provide access to all medical cannabidiol forms produced by each licensed manufacturer.

154.46(2) *Dispensing to a patient.*

a. Prior to dispensing any medical cannabidiol to a patient, a dispensary shall do all of the following:

(1) Verify the patient's identity using a valid photo ID. Acceptable photo identification includes:

1. A valid Iowa driver's license,
2. A valid Iowa nonoperator's identification card,
3. A U.S. passport,
4. A U.S. military ID or veteran ID,
5. A tribal ID card/document;

(2) Verify that the patient is registered and listed in the secure sales and inventory tracking system and has a valid medical registration card;

(3) Check the secure sales and inventory tracking system for the patient's total tetrahydrocannabinol 90-day purchase cap and the amount of total tetrahydrocannabinol that the patient and the patient's primary caregiver(s) have purchased on behalf of the patient in the past 90 days to ensure that the amount of total tetrahydrocannabinol sold by the dispensary to the patient does not exceed the patient's cap;

(4) Assign a tracking number to any medical cannabidiol that is to be dispensed to the patient;

(5) Issue a label that contains the following information:

1. The medical cannabidiol tracking number; and
2. The patient registration number;

(6) Ensure the following information, which may be printed on a secondary label or package insert, is issued with dispensed medical cannabidiol:

1. The date and time the medical cannabidiol is dispensed;
2. The name and address of the dispensary;
3. Any specific instructions for use based upon manufacturer guidelines or department rules. Text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

b. The dispensary shall record the patient name, the amount dispensed, the price, the medical cannabidiol tracking number, the time and date, and other information required by the department in the secure sales and inventory tracking system within one business day.

154.46(3) *Dispensing to a primary caregiver.*

a. Prior to dispensing any medical cannabidiol to a primary caregiver, a dispensary shall do all of the following:

(1) Verify the primary caregiver's identity using a valid photo ID. Acceptable photo identification includes:

1. A valid Iowa driver's license,
2. A valid Iowa nonoperator's identification card,
3. A U.S. passport,
4. A U.S. military ID or veteran ID,
5. A tribal ID card/document;

(2) Verify that the patient and the primary caregiver are registered and listed in the secure sales and inventory tracking system and have valid medical registration cards;

(3) Check the secure sales and inventory tracking system for the associated patient's total tetrahydrocannabinol 90-day purchase cap and the amount of total tetrahydrocannabinol that the patient and patient's primary caregiver(s) have purchased on behalf of the patient in the past 90 days to ensure that the amount of total tetrahydrocannabinol sold by the dispensary to the primary caregiver does not exceed the patient's cap;

(4) Assign a medical cannabidiol tracking number to any medical cannabidiol that is to be dispensed to the primary caregiver;

(5) Issue a label that contains the following information:

1. The medical cannabidiol tracking number; and
2. The patient registration number;

(6) Ensure the following information, which may be printed on a secondary label or package insert, is issued with dispensed medical cannabidiol:

1. The date and time the medical cannabidiol is dispensed;
2. The name and address of the dispensary;
3. Any specific instructions for use based upon manufacturer guidelines or department rules. Text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

b. The dispensary shall record the names of the patient and primary caregiver, the amount dispensed, the price, the medical cannabidiol tracking number, the time and date, and other information required by the department in the secure sales and inventory tracking system within one business day.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.47(124E) Transportation of medical cannabidiol. A dispensary is not authorized to transport medical cannabidiol, unless approved by the department. Any approved transport shall be logged in the secure sales and inventory tracking system.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.48(124E) Disposal of medical cannabidiol.

154.48(1) *Identification of excess, expired, or damaged medical cannabidiol.*

a. Dispensaries shall identify unused, excess, expired, or damaged medical cannabidiol for return to manufacturers.

b. Unused, excess, expired, or damaged medical cannabidiol shall be stored as described in subrule 154.45(2).

154.48(2) *Return of medical cannabidiol from a patient or primary caregiver to a dispensary.*

a. A dispensary shall accept at no charge medical cannabidiol waste from any patient or primary caregiver. A dispensary shall provide all medical cannabidiol waste to the manufacturer for disposal.

b. The dispensary shall enter the following information into the secure sales and inventory tracking system for all medical cannabidiol returned from a patient or primary caregiver:

(1) The tracking number assigned at the time of the dispensing, if available, or the name of the patient, if the tracking number is unavailable, when the medical cannabidiol was returned to the dispensary from a patient or primary caregiver;

(2) The date the medical cannabidiol was returned;

(3) The quantity of medical cannabidiol returned; and

(4) The type and lot number of medical cannabidiol returned.

c. A dispensary shall store medical cannabidiol returned from patients and primary caregivers as described in subrule 154.45(2).

154.48(3) *Return of medical cannabidiol to a manufacturer.*

a. A manufacturer shall collect and dispose of medical cannabidiol from dispensaries as provided in rule 641—154.23(124E).

b. A dispensary shall record information on all medical cannabidiol collected by the manufacturer in the secure sales and inventory tracking system. Information shall include:

(1) The date the medical cannabidiol was collected by the manufacturer;

(2) The quantity of medical cannabidiol collected; and

(3) The type and lot number of medical cannabidiol collected.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter]

641—154.49(124E) Record-keeping requirements.

154.49(1) *Sales.* A dispensary shall maintain complete and accurate electronic sales transaction records in the department's secure sales and inventory tracking system, including:

a. The name of the patient and, if purchase is made by the primary caregiver, the name of the primary caregiver;

b. The date of each sale;

c. The item number, product name and description, and quantity of medical cannabidiol sold;

d. The sale price;

e. Other information required by the department.

154.49(2) *Financial transactions.* A dispensary shall maintain records that reflect all financial transactions and the financial condition of the business. The following records shall be maintained for at least five years and made available for review, upon request of the department:

a. Purchase invoices, bills of lading, sales records, copies of bills of sale, and any supporting documents, to include the items or services purchased, from whom the items were purchased, and the date of purchase;

b. Bank statements and canceled checks for all business accounts;

c. Accounting and tax records;

d. Records of all financial transactions, including contracts and agreements for services performed or services received.

154.49(3) *Other records.*

a. A dispensary shall maintain the following for at least five years, unless otherwise noted, and provide to the department upon request:

(1) All personnel records; and

(2) Records of any theft, loss, or other unaccountability of any medical cannabidiol.

b. A dispensary shall maintain for at least one year and provide to the department upon request its controlled access system data and visitor manifests.

c. A dispensary shall use the department's secure sales and inventory tracking system to maintain the following:

(1) Inventory records;

(2) Return of medical cannabidiol from a patient or primary caregiver; and

(3) Return of unused, excess, expired, or damaged medical cannabidiol to a manufacturer.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.50(124E) Quality assurance and control. A dispensary shall cooperate with manufacturers and the department on quality assurance and control procedures, including participating in stability-testing studies, developing sampling strategies, and returning medical cannabidiol that has been recalled or withdrawn from the market.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.51(124E) Inventory.

154.51(1) *Inventory controls and procedures.* A dispensary shall establish inventory controls and procedures for conducting inventory reviews to prevent and detect any diversion, theft, or loss in a timely manner.

154.51(2) *Real-time inventory required.* A dispensary shall use the department-approved secure sales and inventory tracking system to maintain a real-time record of the dispensary's inventory of medical cannabidiol to include:

a. The quantity and form of saleable medical cannabidiol maintained at the dispensary on a daily basis;

b. The amount of damaged, expired, or returned medical cannabidiol being held at the dispensary for return to a manufacturer; and

c. Other information deemed necessary and requested by the department.

154.51(3) *Reconciliation.* At least once a calendar week, a dispensary shall reconcile all medical cannabidiol at the dispensary with the inventory recorded in the department's secure sales and inventory tracking system. Discrepancies shall be handled as follows:

a. A dispensary shall report suspected diversion of medical cannabidiol to the department and law enforcement within 24 hours of discovery.

b. A dispensary shall have up to 24 hours to reconcile the dispensary's physical inventory with the inventory recorded in the secure sales and inventory tracking system. If the dispensary cannot reconcile the dispensary's physical inventory with the secure sales and inventory tracking system's inventory within 24 hours but diversion of product is not suspected, the dispensary shall immediately contact the department to report the discrepancy and to initiate a compliance action plan pursuant to paragraph 154.52(4)*"b."*

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4078C**, IAB 10/10/18, effective 11/14/18]

641—154.52(124E) Inspection by department or independent consultant. A dispensary is subject to reasonable inspection by the department, a department-approved consultant, or other agency as authorized by Iowa Code chapter 124E and these rules or state or local laws and regulations.

154.52(1) *Types of inspections.* Inspections may include:

a. Aspects of the business operations;

b. The physical location of a dispensary, including any storage facilities;

c. Financial information and inventory documentation;

d. Physical and electronic security alarm systems; and

e. Other aspects or areas as determined by the department.

154.52(2) *Local safety inspections.* A dispensary may be subject to inspection of its dispensary by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local licensing authority restrictions related to medical cannabidiol dispensing or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

154.52(3) *Health and sanitary inspection.* The department has discretion to determine when an inspection by an independent consultant is necessary. The following is a nonexhaustive list of examples that may justify an independent inspection:

a. The department has reasonable grounds to believe that the dispensary is in violation of one or more of the requirements set forth in these rules or other applicable public health or sanitary laws, rules or regulations;

b. The department has reasonable grounds to believe that the dispensary was the cause or source of contamination of medical cannabidiol; or

c. The department has reasonable grounds to believe that the dispensary was the cause of loss of product quality or change in chemical composition due to improper storage and handling of medical cannabidiol.

154.52(4) *Compliance required.* A dispensary shall respond to deficiencies found during inspections or inventory reconciliation as follows:

a. Deficiencies not related to inventory reconciliation.

(1) Upon written notification by the department of deficiencies that do not involve reconciliation of inventory, a dispensary shall have up to 30 days to submit an action plan to the department with proposed remedies and timelines for completion of the remedies.

(2) The department shall have up to two weeks to accept or require revision of the action plan.

b. Deficiencies related to inventory reconciliation.

(1) Upon notifying the department that the dispensary cannot reconcile the dispensary's physical inventory with the inventory recorded in the department's secure sales and inventory tracking system, the dispensary shall have up to two business days to submit an action plan to the department with proposed remedies and timelines for completion of the remedies.

(2) The department shall have up to two business days to accept or require revision of the action plan.

c. Failure to complete actions in the action plan within the timelines mutually agreed upon by the dispensary and the department shall result in assessment of penalties or in suspension or revocation of a dispensary license as authorized by these rules.

d. At the department's request and in a timely manner, a dispensary shall pay for and undergo an independent health and sanitary inspection in accordance with this rule.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 4078C**, IAB 10/10/18, effective 11/14/18]

641—154.53(124E) Assessment of penalties. The department shall assess to a dispensary a civil penalty of up to $1,000 per violation of Iowa Code chapter 124E or these rules in addition to other applicable penalties.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.54(124E) Suspension or revocation of a dispensary license.

154.54(1) The department may suspend or revoke a dispensary license upon any of the following grounds:

a. Submission of false, inaccurate, misleading, or fraudulent information to the department in the application or inspection processes.

b. Failure to submit required reports and documents.

c. Violation of Iowa Code chapter 124E or these rules, or violation of state or local law related to operation of the licensee.

d. Conduct or practices detrimental to the safety, health, or welfare of a patient, primary caregiver, or the public.

e. Criminal, civil, or administration action taken against a license or registration in this or another state or country related to manufacturing or dispensing medical cannabidiol.

f. False, misleading, or deceptive representations to the department, another state or federal agency, or a law enforcement agency.

g. Discontinuance of operation for more than 30 days, unless the department approves an extension of such period for good cause shown.

h. Failure to maintain effective controls against diversion, theft, or loss of medical cannabidiol.

i. Failure to correct a deficiency within the time frame required by the department.

j. Failure of a dispensary's business owner to have a satisfactory result in a background investigation or national criminal history background check conducted by the department of public safety and as determined by the department.

154.54(2) The department shall notify the licensee of the proposed action pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

154.54(3) A request for appeal concerning the suspension or revocation of a license shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public

Health, Office of Medical Cannabidiol, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the suspension or revocation has been or will be removed. After the hearing or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of suspension or revocation shall become the department's final agency action.

154.54(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

154.54(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

154.54(6) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

154.54(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

154.54(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections, and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

154.54(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

154.54(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

154.54(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.54(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

154.54(13) Emergency adjudicative proceedings.

a. Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

b. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

(2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

(3) Whether the licensee required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

(4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

c. Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the licensee that is required to comply with the order. The order shall be delivered by one or more of the following methods:

1. Personal delivery.

2. Certified mail, return receipt requested, to the last address on file with the department.

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

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the licensee that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the licensee that is required to comply with the order is the party requesting the continuance.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.55(124E) Closure of operations.

154.55(1) *Notice.* A dispensary shall notify the department at least six months before the closure of the dispensary.

154.55(2) *Procedures.* If a dispensary ceases operation, the dispensary shall work with the department to verify the remaining inventory of the dispensary and ensure that any medical cannabidiol is returned to a manufacturer.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.56 to **154.59** Reserved.

MEDICAL CANNABIDIOL BOARD

641—154.60(124E) Purpose and duties of board.

154.60(1) The purpose of the board is to administer the provisions of Iowa Code section 124E.5.

154.60(2) Responsibilities of the board include but are not limited to:

a. Accepting and reviewing petitions to add medical conditions, medical treatments, or debilitating diseases to the list of debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial under Iowa Code chapter 124E.

b. Making recommendations to the board of medicine relating to the removal or addition of debilitating medical conditions to the list of allowable debilitating medical conditions for which the medical use of cannabidiol under Iowa Code chapter 124E would be medically beneficial.

c. Working with the department regarding the requirements for the licensure of manufacturers and dispensaries, including licensure procedures.

d. Advising the department regarding the location of manufacturers and dispensaries throughout the state.

e. Making recommendations to the board of medicine relating to the form and quantity of allowable medical uses of cannabidiol.

f. Submitting an annual report to the general assembly detailing the activities of the board no later than January 1.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.61(124E) Organization of board and proceedings.

154.61(1) *Membership.* The board shall be composed of nine members appointed by the governor pursuant to Iowa Code section 124E.5. The appointments, unless provided otherwise by law, shall be for three-year staggered terms which shall expire on June 30. Board members shall be knowledgeable about the use of medical cannabidiol. The medical practitioners appointed to the board shall be licensed in Iowa and be nationally board-certified in their area of specialty.

154.61(2) *Vacancies.* Vacancies shall be filled in the same manner in which the original appointments were made for the balance of the unexpired term.

154.61(3) *Absences.* Three consecutive unexcused absences shall be grounds for the governor to consider dismissal of a board member and to appoint another. Department staff is charged with providing notification of absences to the governor's office.

154.61(4) *Board meetings.*

a. The board shall convene at least twice per year.

b. Board meetings shall be conducted in accordance with the open meetings requirements of Iowa Code chapter 21.

c. The department's office of medical cannabidiol shall schedule the time, date and location of meetings.

d. A majority of the members shall constitute a quorum for conducting business of the board.

e. An affirmative vote of a majority of the board members present at a meeting is required for a motion to pass.

154.61(5) *Facilities and staffing.* The department shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter but shall be reimbursed for all costs incurred by fee revenue generated from licensing activities and registration card applications.

154.61(6) *Subcommittees.* The board may designate one or more subcommittees to perform such duties as may be deemed necessary.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.62(124E) Official communications. All official communications, including submissions, petitions and requests, may be addressed to the Medical Cannabidiol Board, Office of Medical Cannabidiol, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.63(124E) Office hours. The board office is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.64(124E) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained through the Iowa department of public health's website (idph.iowa.gov/mcarcp) or directly from the board office.

154.64(1) *Exclusion of participants.* The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

154.64(2) *Recording of meetings.* Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the presiding department staff member at the meeting may request the user to discontinue use of the camera or device.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.65(124E) Petitions for the addition or removal of medical conditions, medical treatments or debilitating diseases. Petitions for the addition or removal of medical conditions, medical treatments, or debilitating conditions for which the medical use of cannabidiol would be medically beneficial under Iowa Code chapter 124E may be submitted to the board pursuant to this rule.

154.65(1) *Petition form.* Any person or entity may file a petition to add or remove medical conditions, medical treatments or debilitating diseases with the board. A petition is deemed filed when it is received by the medical cannabidiol office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE MEDICAL CANNABIDIOL BOARD

Petition by (Name of Petitioner) for the (addition or removal) of (medical conditions, medical treatments or debilitating diseases) to the list of debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial.	}	PETITION FOR (ADDITION or REMOVAL)

The petition must provide the following information:

a. A statement of the specific medical condition, medical treatment or debilitating disease the petitioner is seeking to add to or remove from the list of debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial.

b. A brief summary of the petitioner's arguments in support of the action urged in the petition.

c. A brief summary of any data or scientific evidence supporting the action urged in the petition.

d. A list of reference material supporting the petition.

e. A list of subject matter experts who are willing to testify in support of the petition. The list of subject matter experts must contain names, credentials (if applicable), email addresses, telephone numbers, and mailing addresses.

f. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

154.65(2) *Signature and address.* The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number and email address of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

154.65(3) *Denial for format.* The board may deny a petition because it does not substantially conform to the required form.

154.65(4) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person or entity concerning the substance of the petition.

154.65(5) *Inquiries.* Inquiries concerning the status of a petition may be made to the Office of Medical Cannabidiol, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.65(6) *Additional information.* The board may request the petitioner to submit additional information concerning the petition. The board may also solicit comments from any person on the substance of the petition. Comments on the substance of the petition may be submitted to the board by any person.

154.65(7) *Presentation to the board.* The board may request or allow the petitioner to make an oral presentation of the contents of a petition at a board meeting following submission of the petition.

154.65(8) *Board response.* Within six months after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, either deny the petition and notify the petitioner of the board's action and the reasons therefore, or grant the petition and notify the petitioner that the board has recommended addition or removal of the medical condition, medical treatment, or debilitating disease to the board of medicine. A petitioner shall be deemed notified of the denial or recommendation on the date when the board mails the required notification to the petitioner.

154.65(9) *Denials.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

[**ARC 3606C**, IAB 1/31/18, effective 3/7/18]

641—154.66 to **154.68** Reserved.

LABORATORY TESTING

641—154.69(124E) Requirements of the department.

154.69(1) *Laboratory testing requirements and acceptance criteria.* The department shall work with manufacturers and laboratories to create and maintain a document describing required sampling methodology, acceptance criteria, stability-testing procedures, and other guidance for manufacturers and laboratories on testing procedures. The department shall provide manufacturers and laboratories no less than 14 days in which to comment on proposed revisions to the document, and the department shall provide no less than 30 days' notice before a revision takes effect. The document shall:

a. Describe the minimum number of sample units and reserve samples required for testing by the laboratory;

b. Describe an option for manufacturers to reduce the amount of testing conducted by allowing compositing of sample units or other techniques that reduce the number of tests required without compromising the safety of the products once a manufacturer has satisfactorily completed a control study for a specific extraction or production process;

c. Describe the minimum requirements for sample size and testing intervals for stability testing;

d. Be available on the department's website (www.idph.iowa.gov).

154.69(2) *Review and approval of manufacturer sampling protocols.* The department shall have up to two weeks to review and approve or request revisions to a manufacturer's sampling protocols required pursuant to subrules 154.26(2) and 154.26(3).

154.69(3) *Review and approval of manufacturer stability-testing procedures.* The department shall have up to two weeks to review and approve or request revisions to a manufacturer's stability-testing procedures required pursuant to subrule 154.26(4).

154.69(4) *Establish a laboratory review committee.* The department shall establish a laboratory review committee to assist with the review of applications by laboratories and the establishment of accepted laboratory testing standards and practices.

154.69(5) *Review of laboratory applications.* The department shall establish a process to review applications from prospective medical cannabidiol testing laboratories. Prospective laboratories shall submit an application to the department on a form created by the department. The department shall determine whether the laboratory meets the criteria for an independent medical cannabidiol testing

facility as set forth in the definition of "laboratory" in Iowa Code section 124E.2 in addition to determining whether the laboratory meets laboratory requirements pursuant to rules 641—154.70(124E) to 641—154.76(124E).

154.69(6) *Regulation of independent laboratories.* The department shall determine on an annual basis whether any approved independent laboratory continues to meet criteria as set forth in the definition of "laboratory" in Iowa Code section 124E.2 and laboratory requirements pursuant to rules 641—154.70(124E) to 641—154.76(124E). The department shall establish a process for the annual review of approved independent laboratories. An independent laboratory is subject to reasonable inspection by the department, a department-approved consultant, or other agency pursuant to Iowa Code chapter 124E and these rules and as authorized by laws and regulations.

[**ARC 4078C**, IAB 10/10/18, effective 11/14/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter; **ARC 5200C**, IAB 10/7/20, effective 11/11/20]

641—154.70(124E) Requirements of a laboratory.

154.70(1) *Minimum testing requirements.* A laboratory shall establish and implement test methods and corresponding standard operating procedures for the analyses of cannabinoids, residual solvents and processing chemicals, pesticides, microbiological impurities, and metals.

154.70(2) *Additional tests upon request.* A laboratory shall establish and implement test methods and corresponding standard operating procedures for other analyses as requested by the department.

154.70(3) *Level of quantitation.* A laboratory shall be able to demonstrate that its LOQ is below any action level established by the department.

154.70(4) *Inventory tracking.*

a. A laboratory shall use the department's secure sales and inventory tracking system, if available, or a manifest system to record the receipt of medical cannabis goods from a manufacturer for testing.

b. A laboratory shall use the department's secure sales and inventory tracking system, if available, or a manifest system to record the return of medical cannabis goods or waste to a manufacturer.

154.70(5) *Hazardous waste disposal.*

a. A laboratory shall discard hazardous waste, including hazardous waste containing medical cannabis goods, in accordance with federal and state hazardous waste laws.

b. A laboratory shall document the waste disposal procedures followed for each sample.

[**ARC 3836C**, IAB 6/6/18, effective 7/11/18]

641—154.71(124E) Requirements of a manufacturer.

154.71(1) *Assuming costs.* A manufacturer shall assume the costs for all laboratory testing requested by the department or laboratory for medical cannabis goods produced by the manufacturer.

154.71(2) *Sample waste retrieval.* A manufacturer shall retrieve analyzed samples and waste containing medical cannabis goods from the laboratory at a duration and frequency approved by the department.

154.71(3) *Obtaining approval for sampling protocols.* A manufacturer shall obtain approval from the department for the manufacturer's sampling protocols pursuant to subrule 154.26(2) prior to submitting samples for laboratory testing related to content and contamination.

154.71(4) *Obtaining approval for stability-testing procedures.* A manufacturer shall obtain approval from the department for the manufacturer's stability-testing procedures pursuant to subrule 154.26(4) prior to submitting samples for laboratory testing related to stability testing and product-expiration-date studies.

[**ARC 3836C**, IAB 6/6/18, effective 7/11/18; **ARC 4078C**, IAB 10/10/18, effective 11/14/18]

641—154.72(124E) Content testing.

154.72(1) *Cannabinoids.*

a. For each unique lot of medical cannabidiol, and if asked to do so by a requester for other medical cannabis goods, a laboratory shall, at minimum, test for and report measurements for the following cannabinoid analytes:

(1) THC;

(2) THCA;

(3) CBD; and

(4) CBDA.

b. A laboratory shall report that the primary sample passed or failed THC potency testing according to guidance in the laboratory testing requirements and acceptance criteria document described in subrule 154.69(1).

c. A laboratory shall report that the primary sample passed or failed CBD potency testing according to guidance in the laboratory testing requirements and acceptance criteria document described in subrule 154.69(1).

d. For each cannabinoid analyte test, a laboratory shall issue a certificate of analysis that contains the following:

(1) Concentrations of cannabinoid analytes in mg/ml for liquids and mg/g for solids, or other measures approved by the department.

(2) Whether the primary sample passed or failed the test in accordance with paragraph 154.72(1)*"b."*

e. The laboratory may test for and provide test results for additional cannabinoid analytes if asked to do so by a requester.

154.72(2) *Contaminants—residual solvents and processing chemicals.*

a. For each unique lot of medical cannabidiol, and if asked to do so by a requester for other medical cannabis goods, a laboratory shall analyze primary samples for residual solvents and processing chemicals.

b. The department shall provide a list of residual solvents and processing chemicals for which primary samples are to be tested with corresponding action levels on the department's website (www.idph.iowa.gov).

c. For each residual solvent or processing chemical for which a primary sample is tested, a laboratory shall report that the primary sample passed the testing if the concentration of residual solvent or processing chemical is at or below the action level approved by the department.

d. For each residual solvent or processing chemical for which a laboratory tests, the laboratory shall report that the primary sample failed the testing if the concentration of residual solvent or processing chemical is above the action level approved by the department.

e. If a laboratory is using mass spectrometry instrumentation to analyze primary samples for residual solvents and processing chemicals and the laboratory determines that a primary sample contains residual solvent or processing chemical analytes that are not included in the department-approved list of required tests, the laboratory shall attempt to achieve tentative identification and semiquantitative results of the residual solvent or processing chemical analytes.

f. The laboratory may test for and provide test results for additional residual solvents or processing chemicals if asked to do so by a requester.

g. For each primary sample tested, a laboratory shall issue a certificate of analysis that contains the following:

(1) The name and concentration of each residual solvent or processing chemical for which the primary sample was tested.

1. The concentrations shall be listed in parts per million (ppm) or other units as determined by the department.

2. The laboratory shall report a result of "detected but not quantified" for any target residual solvent or processing chemical that falls below the LOQ, has a signal-to-noise ratio of greater than 3:1, and meets identification criteria.

(2) Whether the primary sample passed or failed the test in accordance with paragraphs 154.72(2)*"c"* and 154.72(2)*"d."*

(3) The names and amounts of any additional residual solvents and processing chemicals identified by the laboratory.

h. If the primary sample fails testing for residual solvents and processing chemicals, the lot fails laboratory testing.

i. When a laboratory identifies additional residual solvents and processing chemicals in a primary sample, the laboratory shall:

(1) Notify the department of the additional residual solvents and processing chemicals and the amounts detected.

(2) Refrain from issuing a final certificate of analysis to a manufacturer until given approval to do so by the department.

154.72(3) *Contaminants—pesticides.*

a. For each unique lot of medical cannabidiol, and if asked to do so by a requester for other medical cannabis goods, the laboratory shall analyze primary samples for pesticides.

b. The department shall provide a list of pesticides for which primary samples are to be tested with corresponding action levels on the department's website (www.idph.iowa.gov).

c. For each pesticide for which a laboratory tests, the laboratory shall report that the primary sample passed the testing if the concentration of pesticide is at or below the action level approved by the department.

d. For each pesticide for which a laboratory tests, the laboratory shall report that the primary sample failed the testing if the concentration of pesticide is above the action level approved by the department.

e. If a laboratory is using mass spectrometry instrumentation to analyze primary samples for pesticides and the laboratory determines that a primary sample contains pesticide analytes that are not included in the department-approved list of required tests, the laboratory shall attempt to achieve tentative identification and semiquantitative results of the pesticide analytes.

f. The laboratory may test for and provide test results for additional pesticides if asked to do so by a requester.

g. For each primary sample tested, a laboratory shall issue a certificate of analysis that contains the following:

(1) The name and concentration of each pesticide for which the primary sample was tested.

1. The concentrations shall be listed in parts per million (ppm) or other units as determined by the department.

2. The laboratory shall report a result of "detected but not quantified" for any pesticide that falls below the LOQ, has a signal-to-noise ratio of greater than 3:1, and meets identification criteria.

(2) Whether the primary sample passed or failed the test in accordance with paragraphs 154.72(3)*"c"* and 154.72(3)*"d."*

(3) The names and amounts of any additional pesticides identified by the laboratory.

h. If the primary sample fails testing for pesticides, the lot fails laboratory testing.

i. When a laboratory identifies additional pesticides in a primary sample, the laboratory shall:

(1) Notify the department of the additional pesticides and the amounts detected.

(2) Refrain from issuing a final certificate of analysis to a manufacturer until given approval to do so by the department.

154.72(4) *Contaminants—metals.*

a. For each unique lot of medical cannabidiol, and if asked to do so by a requester for other medical cannabis goods, the laboratory shall analyze primary samples for metals.

b. The department shall provide a list of metals for which primary samples are to be tested with corresponding action levels on the department's website (www.idph.iowa.gov).

c. For each metal for which a laboratory tests, the laboratory shall report that the primary sample passed the testing if the concentration of metal is at or below the action level approved by the department.

d. For each metal for which a laboratory tests, the laboratory shall report that the primary sample failed the testing if the concentration of metal is above the action level approved by the department.

e. If a laboratory is using mass spectrometry instrumentation to analyze primary samples for metals and the laboratory determines that a primary sample contains metal analytes that are not included in the department-approved list of required tests, the laboratory shall attempt to achieve tentative identification and semiquantitative results of the metal analytes.

f. The laboratory may test for and provide test results for additional metals if asked to do so by a requester.

g. For each primary sample tested, a laboratory shall issue a certificate of analysis that contains the following:

(1) The name and concentration of each metal for which the primary sample was tested.

1. The concentrations shall be listed in micrograms per gram or other units as determined by the department.

2. The laboratory shall report a result of "detected but not quantified" for any metal that falls below the LOQ, has a signal-to-noise ratio of greater than 3:1, and meets identification criteria.

(2) Whether the primary sample passed or failed the test in accordance with paragraphs 154.72(4)*"c"* and 154.72(4)*"d."*

(3) The names and amounts of any additional metals identified by the laboratory.

h. If the primary sample fails testing for metals, the lot fails laboratory testing.

i. When a laboratory identifies additional metals in a primary sample, the laboratory shall:

(1) Notify the department of the additional metals and the amounts detected.

(2) Refrain from issuing a final certificate of analysis to a manufacturer until given approval to do so by the department.

154.72(5) *Contaminants—microbiological impurities.*

a. For each unique lot of medical cannabidiol, and if asked to do so by a requester for other medical cannabis goods, the laboratory shall analyze primary samples for microbiological impurities.

b. The department shall provide a list of microbiological impurities for which primary samples are to be tested on the department's website (www.idph.iowa.gov).

c. For each microbiological impurity for which a laboratory tests, the laboratory shall report that the primary sample passed the testing if the microbiological impurity is not detected in 1 gram of matrix or as approved by the department. A primary sample may be reported as passed if a screening procedure yields a negative result or if a presumptively positive result is not found to be positive on the confirmatory procedure.

d. For each microbiological impurity for which a laboratory tests, the laboratory shall report that the primary sample failed the testing if the microbiological impurity is detected in 1 gram of matrix or as approved by the department. Confirmatory procedures shall be conducted on all presumptively positive results.

e. If a laboratory is using methods to test primary samples for microbiological impurities and the laboratory determines that a primary sample contains microbiological impurities that are not included in the department-approved list of required tests, the laboratory shall attempt to achieve tentative identification of the biological impurity.

f. The laboratory may test for and provide test results for additional microbiological impurities if asked to do so by a requester.

g. For each primary sample tested, a laboratory shall issue a certificate of analysis that contains the following:

(1) The name of each microbiological impurity for which the primary sample was tested.

(2) Whether the primary sample passed or failed the test in accordance with paragraphs 154.72(5)*"c"* and 154.72(5)*"d."*

(3) The names of any additional microbiological impurities identified by the laboratory.

h. If the primary sample fails testing for microbiological impurities, the lot fails laboratory testing.

i. When a laboratory identifies additional microbiological impurities in a primary sample, the laboratory shall:

(1) Notify the department of the additional microbiological impurities detected.

(2) Refrain from issuing a final certificate of analysis to a manufacturer until given approval to do so by the department.

154.72(6) *Additional tests.* The laboratory may perform additional tests if asked to do so by a requester.

[**ARC 3836C**, IAB 6/6/18, effective 7/11/18; **ARC 4078C**, IAB 10/10/18, effective 11/14/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19; see Delay note at end of chapter]

641—154.73(124E) Reporting requirements.

154.73(1) *Reporting test results.* The laboratory shall generate a certificate of analysis for each primary sample that it tests and make the certificate of analysis available to the manufacturer who ordered the tests and the department through the department's secure sales and inventory tracking system, if available, or another laboratory information management system.

154.73(2) *Tentatively identified analytes.* A laboratory shall report on the certificate of analysis any tentatively identified analytes detected during the analysis of the primary sample. When a laboratory identifies additional analytes in a primary sample, the laboratory shall:

a. Notify the department of the additional analytes detected.

b. Refrain from issuing a final certificate of analysis to a manufacturer until given approval to do so by the department.

154.73(3) *Additional reporting requirements.*

a. In addition to the requirements described in rule 641—154.72(124E), the certificate of analysis shall contain, at a minimum, the following information:

(1) All requirements of Standard ISO/IEC 17025;

(2) Date of primary sample collection;

(3) Date the primary sample was received by the laboratory;

(4) Date of each analysis;

(5) The LOQ and action level for each analyte, as applicable;

(6) Whether the primary sample and lot passed or failed laboratory testing; and

(7) A signature by the laboratory quality officer and the date the certificate of analysis was validated as being accurate by the laboratory quality officer.

b. Any test result that is not covered under the laboratory's ISO/IEC 17025 scope of accreditation shall be clearly identified on the certificate of analysis.

c. Measurements below a method's limit of detection shall be reported as "<" (less than) or "not detected" and reference the reportable limit. The reporting of zero concentration is not permitted.

d. Measurements ≥ LOD but < LOQ shall be reported as "detected but not quantified."

e. The number of significant figures reported shall reflect the precision of the analysis.

[**ARC 3836C**, IAB 6/6/18, effective 7/11/18]

641—154.74(124E) Record-keeping requirements.

154.74(1) *Data package.* A laboratory shall create a data package for each analytical batch of primary samples that the laboratory analyzes. The data package shall contain at minimum the following information:

a. The name and address of the laboratory that performed the analytical procedures;

b. The names, functions, and signatures (electronic or handwritten) of the laboratory personnel that performed the primary sample preparation, analyzed the primary samples, and reviewed and approved the data;

c. All primary sample and analytical batch quality control sample results;

d. Raw data for each primary sample analyzed;

e. Instrument raw data, if any was produced;

f. Instrument test method with parameters;

g. Instrument tune report, if one was created;

h. All instrument standard calibration data;

i. Test-method worksheets or forms used for primary sample identification, characterization, and calculations, including chromatograms, sample-preparation worksheets, and final datasheets;

j. The quality control report with worksheets, forms, or copies of laboratory notebook pages containing pertinent information related to the identification and traceability of all reagents, reference materials, and standards used for analysis;

k. The analytical batch sample sequence;

l. The field sample log; and

m. The chain-of-custody form.

154.74(2) *Review of data package.* After the laboratory has compiled a data package, another individual at the laboratory shall independently review the data package. The reviewer shall:

a. Assess the analytical results for technical correctness and completeness;

b. Verify that the results of each analysis carried out by the laboratory are reported accurately, clearly, unambiguously, and objectively;

c. Verify that the measurements can be traced back; and

d. Approve the measurement results by signing and dating the data package prior to release of the certificate of analysis by the laboratory.

154.74(3) *Data package record retention.* The entire data package shall be stored by a laboratory for a minimum of five years and shall be made available upon request by the department or the requester of the laboratory testing.

154.74(4) *Other records.* A laboratory shall maintain all documents, forms, records, and standard operating procedures associated with the testing of medical cannabis goods.

a. A laboratory shall maintain analytical testing laboratory records in such a manner that the analyst, the date the analysis was performed, the approver of the certificate of analysis, the reviewer and approver of the data package, the test method, and the materials that were used can be determined by the department.

b. Records shall be stored in such a way that the data may be readily retrieved when requested by the department.

c. All testing laboratory records shall be kept for a minimum of five years, unless otherwise noted in these rules.

d. The department shall be allowed access to all electronic data, including standards records, calibration records, extraction logs, and laboratory notebooks.

e. A laboratory shall keep and make available to the department the following records related to the testing of medical cannabis goods:

(1) Personnel qualification, training, and competency documentation, including but not limited to résumés, training records, continuing education records, analytical proficiency testing records, and demonstration of competency records for laboratory work. These records shall be kept current.

(2) Method verification and validation records, including method modification records, method detection limit and quantitation limit determination records, ongoing verification records such as proficiency test records and reference material analysis records.

(3) Quality control and quality assurance records, including the laboratory's quality assurance manual and control charts with control limits.

(4) Chain-of-custody records, including chain-of-custody forms, field sample logs, sample-receipt records, sample-description records, sample-rejection records, laboratory information management system records, sample-storage records, sample-retention records, and disposal records.

(5) Purchasing and supply records, equipment-services records, and other equipment records, including purchase requisition records, packing slips, supplier records, and certificates of analysis.

(6) Laboratory equipment installation records, maintenance records, and calibration records. These records shall include the date and name of the person performing the installation of, calibration of, or maintenance on the equipment, with a description of the work performed, maintenance logs, pipette calibration records, balance calibration records, working and reference mass calibration records, and daily verification-of-calibration records.

(7) Customer service records, including customer contracts, customer requests, certificates of analysis, customer transactions, customer feedback, records related to the handling of complaints and nonconformities, and corrective action pertaining to complaints.

(8) Nonconforming work and corrective action records, including corrective action, nonconformance, nonconformities resolved by correction, customer notification of nonconformities, internal investigations, implementation of corrective action, and resumption-of-work records.

(9) Internal-audit and external-audit records, including audit checklists, standard operating procedures, and audit observation and findings reports. These records shall include the date and name of the person performing the audit.

(10) Management review records, including technical data review reports and final management-review reports. These records shall include the review date and the name of the reviewer.

(11) Laboratory data reports, data review, and data approval records, including instrument and equipment identification records, records with unique sample identifiers, analysts' laboratory notebooks and logbooks, traceability records, test-method worksheets and forms, instrumentation-calibration data, and test-method raw data. These records shall include the analysis date and the name of the analyst.

(12) Proficiency testing records, including the proficiency test schedule, proficiency tests, data-review records, data-reporting records, nonconforming work and corrective actions, and quality control and quality assurance records related to proficiency testing.

(13) Electronic data, backed-up data, records regarding the protection of data, including unprocessed instrument output data files and processed quantitation output files, electronic data protocols and records, and authorized personnel records.

(14) Security data, including laboratory-security records and laboratory-access records, surveillance-equipment records, and security-equipment records. These records shall be stored for at least one year.

(15) Traceability, raw data, standards records, calibration records, extraction logs, reference materials records, analysts' laboratory notebooks and logbooks, supplier records, and certificates of analysis, and all other data-related records.

(16) Laboratory contamination and cleaning records, including autoclave records, acid-wash logs and records, and general laboratory-safety and chemical-hygiene protocols.

[**ARC 3836C**, IAB 6/6/18, effective 7/11/18]

641—154.75(124E) Quality control. The laboratory shall have quality control protocols that include the following elements:

154.75(1) *Quality control samples required.*

a. The laboratory shall run quality control samples with every analytical batch of samples for chemical and microbiological analysis.

b. For microbiological analysis, the laboratory shall develop procedures for quality control requirements for each analytical batch of samples.

c. The laboratory shall analyze the quality control samples in exactly the same manner as the test samples to validate the laboratory testing results.

154.75(2) *Types of quality control samples.* At a minimum, a laboratory shall have the following quality control samples as part of every analytical batch tested for chemical analytes:

a. Negative control (method blank). A laboratory shall prepare and run at least one method blank sample with an analytical batch of 10 to 20 samples along with and under the same conditions, including all sample preparation steps, as the other samples in the analytical batch, to demonstrate that the analytical process did not introduce contamination.

b. Positive control (laboratory control sample). A laboratory shall prepare and run at least one laboratory control sample with an analytical batch of 10 to 20 samples along with and under the same conditions, including all sample preparation steps, as the other samples in the analytical batch.

c. Matrix spike sample. A laboratory shall prepare and run one or more matrix spike samples for each analytical batch.

(1) A laboratory shall calculate the percent recovery for quantitative chemical analysis by dividing the sample result by the expected result and multiplying that by 100. All quality control measures shall be assessed and evaluated on an ongoing basis, and quality control acceptance criteria shall be

used. When necessary, the department may establish acceptance criteria on the department's website (www.idph.iowa.gov).

(2) If quality control acceptance criteria are not acceptable, a laboratory shall investigate the cause, correct the problem, and rerun the analytical batch of samples. If the problem persists, the laboratory shall reprepare the samples and run the analysis again, if possible.

d. Field duplicate sample. A laboratory shall prepare and run a duplicate sample as described in the laboratory testing requirements and acceptance criteria document in subrule 154.69(1). The acceptance criterion between the primary sample and the duplicate sample is less than or equal to 20 percent relative percent difference.

154.75(3) *Certified reference material for chemical analysis.* The laboratory shall use a reference material for each analytical batch in accordance with the following standards:

a. The reference material should be certified and obtained from an outside source, if possible. If a reference material is not available from an outside source, the laboratory shall make its own in-house reference material.

b. Reference material made in-house should be made from a different source of standards than the source from which the calibration standards are made.

c. The test result for the reference material shall fall within the quality control acceptance criteria. If it does not, the laboratory shall document and correct the problem and run the analytical batch again.

154.75(4) *Calibration standards.* The laboratory shall prepare calibration standards by serially diluting a standard solution to produce working standards used for calibration of an instrument and quantitation of analyses in samples.

154.75(5) *Quality control-sample report.* A laboratory shall generate a quality control-sample report that includes quality control parameters and measurements, analysis date, and type of matrix.

154.75(6) *Limit-of-detection and limit-of-quantitation calculations.* For chemical method analysis, a laboratory shall calculate the limit of detection and limit of quantitation using generally accepted methodology.

[**ARC 3836C**, IAB 6/6/18, effective 7/11/18; **ARC 4489C**, IAB 6/5/19, effective 7/10/19]

641—154.76(124E) Security requirements. The department may request assistance from the department of public safety in ensuring a laboratory meets the security requirements in this rule.

154.76(1) *Security policy requirement.* A laboratory shall maintain a security policy to prevent the loss, theft, or diversion of medical cannabis goods and samples. The security policy shall apply to all staff and visitors at a laboratory facility.

154.76(2) *Visitor logs.* Visitors to a laboratory facility shall sign visitor manifests with name, date, and times of entry and exit, and shall wear badges that are visible at all times and that identify them as visitors.

154.76(3) *Restricted access.* A laboratory shall use a controlled access system and written manifests to limit entrance to all restricted access areas of its laboratory facility and shall retain a record of all persons who entered the restricted access areas.

a. The controlled access system shall do all of the following:

(1) Limit access to authorized individuals;

(2) Maintain a log of individuals with approved access, including dates of approvals and revocations;

(3) Track times of personnel entry;

(4) Track times of personnel movement between restricted access areas;

(5) Store data for retrieval for a minimum of one year; and

(6) Remain operable in the event of a power failure.

b. Separate written manifests of visitors to restricted areas shall be kept and stored for a minimum of one year if the controlled access system does not include electronic records of visitors to the restricted areas.

c. A laboratory shall promptly, but no later than five business days after receipt of request, submit stored controlled access system data to the department.

154.76(4) *Personnel identification system.* A laboratory shall use a personnel identification system that controls and monitors individual employee access to restricted access areas within the laboratory facility and that meets the requirements of this subrule and subrule 154.76(2).

a. Requirement for employee identification card. An employee identification card shall contain:

(1) The name of the employee;

(2) The date of issuance;

(3) An alphanumeric identification number that is unique to the employee; and

(4) A photographic image of the employee.

b. A laboratory employee shall keep the identification card visible at all times when the employee is in the laboratory.

c. Upon termination or resignation of an employee, a laboratory shall immediately:

(1) Revoke the employee's access to the laboratory; and

(2) Obtain and destroy the employee's identification card, if possible.

154.76(5) *Video monitoring and surveillance.*

a. *Video surveillance system.* A laboratory shall operate and maintain in good working order a video surveillance system for its premises that operates 24 hours per day, seven days a week, and visually records all areas where medical cannabis goods are stored or tested.

b. *Camera specifications.* Cameras shall:

(1) Capture clear and certain identification of any person entering or exiting a restricted access area containing medical cannabis goods;

(2) Have the ability to produce a clear, color still photograph live or from a recording;

(3) Have on all recordings an embedded date-and-time stamp that is synchronized to the recording and does not obscure the picture; and

(4) Continue to operate during a power outage.

c. *Video recording specifications.*

(1) A video recording shall export still images in an industry standard image format, such as .jpg, .bmp, or .gif.

(2) Exported video shall be archived in a format that ensures authentication and guarantees that the recorded image has not been altered.

(3) Exported video shall also be saved in an industry standard file format that can be played on a standard computer operating system.

(4) All recordings shall be erased or destroyed at the end of the retention period and prior to disposal of any storage medium.

d. *Additional requirements.* A laboratory shall maintain all security system equipment and recordings in a secure location to prevent theft, loss, destruction, corruption, and alterations.

e. *Retention.* A laboratory shall ensure that 24-hour recordings from all video cameras are:

(1) Available for viewing by the department upon request;

(2) Retained for a minimum of 60 days;

(3) Maintained free of alteration or corruption; and

(4) Retained longer, as needed, if a manufacturer is given actual notice of a pending criminal, civil, or administrative investigation, or other legal proceeding for which the recording may contain relevant information.

154.76(6) *Chain-of-custody policy and procedures.* A laboratory shall maintain a current chain-of-custody policy and procedures. The policy should ensure that:

a. Chain of custody is maintained for samples which may have probable forensic evidentiary value; and

b. Annual training is available for individuals who will be involved with testing medical cannabis goods.

154.76(7) *Information technology systems security.* A laboratory shall maintain information technology systems protection by employing comprehensive security controls that include security

firewall protection, antivirus protection, network and desktop password protection, and security patch management procedures.

[**ARC 3836C**, IAB 6/6/18, effective 7/11/18]

These rules are intended to implement Iowa Code chapter 124E as amended by 2020 Iowa Acts, House File 2589.

[Filed ARC 1640C (Notice ARC 1571C, IAB 8/6/14), IAB 10/1/14, effective 1/30/15]
[Filed Emergency ARC 3150C, IAB 7/5/17, effective 6/13/17]
[Filed ARC 3606C (Notice ARC 3420C, IAB 10/25/17), IAB 1/31/18, effective 3/7/18]
[Filed ARC 3836C (Notice ARC 3707C, IAB 3/28/18), IAB 6/6/18, effective 7/11/18]
[Filed ARC 4078C (Notice ARC 3899C, IAB 7/18/18), IAB 10/10/18, effective 11/14/18]
[Filed ARC 4399C (Notice ARC 4240C, IAB 1/16/19), IAB 4/10/19, effective 5/15/19]
[Filed ARC 4489C (Notice ARC 4363C, IAB 3/27/19), IAB 6/5/19, effective 7/10/19][1]
[Filed ARC 4928C (Notice ARC 4772C, IAB 11/20/19), IAB 2/12/20, effective 6/1/20][2]
[Filed ARC 5200C (Notice ARC 5082C, IAB 7/15/20), IAB 10/7/20, effective 11/11/20]

[1] July 10, 2019, effective date of Items 1, 4, 7, 10, 11, 12, 13, 15, 21, 22, and 24 of **ARC 4489C** delayed until the adjournment of the 2020 session of the General Assembly by the Administrative Rules Review Committee at its meeting held July 9, 2019.

[2] The effective date of **ARC 4928C** was corrected to June 1, 2020, in the March 11, 2020, Iowa Administrative Bulletin.

PSYCHOLOGISTS

CHAPTER 240 LICENSURE OF PSYCHOLOGISTS
CHAPTER 241 CONTINUING EDUCATION FOR PSYCHOLOGISTS
CHAPTER 242 DISCIPLINE FOR PSYCHOLOGISTS
CHAPTER 243 RESERVED
CHAPTER 244 PRESCRIBING PSYCHOLOGISTS

CHAPTER 240
LICENSURE OF PSYCHOLOGISTS

645—240.1(154B) Definitions. For purposes of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"ASPPB" means the Association of State and Provincial Psychology Boards.

"Board" means the board of psychology.

"Certified health service provider in psychology" means a person who works in a clinical setting, who is licensed to practice psychology and who has a doctoral degree in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders.

"Clinical experience" means the provision of health services in psychology by the applicant to individuals or groups of clients/patients. Clinical experience does not include teaching or research performed in an academic setting.

"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 psychologist or health service provider in psychology in the state of Iowa.

"License expiration date" means June 30 of even-numbered years.

"Licensure by endorsement" means the issuance of an Iowa license to practice psychology to an applicant who is or has been licensed in another jurisdiction.

"Mandatory training" means training on identifying and reporting child abuse or dependent adult abuse required of psychologists 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.

"National examination" means the Examination for Professional Practice in Psychology (EPPP).

"Provisional license" means a license issued to a person who has met the educational qualifications for licensure and is engaged in professional experience under supervision.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—240.14(17A,147,272C) by which an inactive license is restored to active status.

"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.

[**ARC 9937B**, IAB 12/28/11, effective 2/1/12; **ARC 1834C**, IAB 1/21/15, effective 2/25/15; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.2(154B) Requirements for licensure. The following criteria shall apply to licensure:

240.2(1) An applicant shall complete a board-approved application packet. Application forms may be obtained from the board's website at idph.iowa.gov/Licensure or directly from the board office. All

applications shall be sent to Board of Psychology, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. The applicant may complete the application online at ibplicense.iowa.gov.

240.2(2) An 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.

240.2(3) Each application shall be accompanied by the appropriate fees payable to the Board of Psychology. The fees are nonrefundable.

240.2(4) Except as otherwise stated in these rules, no application will be considered by the board until:

a. Official copies of academic transcripts sent directly from the school to the board of psychology have been received by the board; and

b. Satisfactory evidence of the candidate's qualifications has been supplied in writing on the prescribed forms by the candidate's supervisors.

240.2(5) An applicant shall successfully pass the national examination.

240.2(6) The applicant shall have the national examination score sent directly from the ASPPB to the board.

240.2(7) Incomplete applications that have been on file in the board office for more than two years without additional supporting documentation 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 1029C**, IAB 9/18/13, effective 10/23/13; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.3(154B) Educational qualifications. An applicant for licensure to practice as a psychologist shall possess a doctoral degree in psychology.

240.3(1) At the time of an applicant's graduation:

a. The program from which the doctoral degree in psychology is granted must be:

(1) Accredited by the American Psychological Association; or

(2) Accredited by the Canadian Psychological Association; or

(3) Designated by the ASPPB/National Register; or

b. The applicant must hold current board certification from the American Board of Professional Psychology; or

c. The applicant must possess a postdoctoral respecialization certificate from a program accredited by the American Psychological Association.

240.3(2) Foreign-trained psychologists who possess a doctoral degree in psychology and who do not meet the requirements of subrule 240.3(1) shall:

a. Provide an equivalency evaluation of their educational credentials by the National Register of Health Service Psychologists, 1200 New York Avenue NW, Suite 800, Washington, D.C. 20005, telephone (202)783-7663, website www.nationalregister.org, or by an evaluation service with membership in the National Association of Credentials Evaluation Services at www.naces.org. A certified translation of documents submitted in a language other than English shall be provided. The candidate shall bear the expense of the curriculum evaluation and translation of application documents. The educational credentials must be equivalent to programs stated in subrule 240.3(1).

b. Provide a notarized copy of the doctoral degree certificate or diploma awarded to the applicant from a psychology program in the country in which the applicant was educated.

c. Submit evidence of meeting all other requirements for licensure stated in these rules.

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

[**ARC 9937B**, IAB 12/28/11, effective 2/1/12; **ARC 1029C**, IAB 9/18/13, effective 10/23/13; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.4(154B) Examination requirements. An applicant must pass the national examination to be eligible for licensure in Iowa.

240.4(1) To be eligible to take the national examination, the applicant shall:

a. Meet all requirements of subrules 240.2(1) to 240.2(3);

b. Provide official copies of academic transcripts sent directly from the school to the board of psychology; and

c. Provide the completed supervision registration form according to the instructions on the form.

240.4(2) Notification of an applicant's eligibility for the examination shall be transmitted by the board office to the online examination portal of the ASPPB.

240.4(3) The EPPP passing score shall be utilized as the Iowa passing score.

240.4(4) The board of psychology shall provide examination results to the applicant.

[**ARC 1029C**, IAB 9/18/13, effective 10/23/13; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.5(154B,147) Title designations.

240.5(1) Applicants for licensure who have met educational requirements and who are fulfilling the experience requirements specified herein for licensure may be designated "psychology resident" or "resident in psychology." The designation of "resident" shall not be used except in the employment and supervised experience that meet the requirements of subrules 240.6(1) and 240.6(2).

240.5(2) Persons who possess provisional licenses shall add the designation "provisional license in psychology" following the "resident" designation.

240.5(3) A licensed psychologist who possesses a doctoral degree may use the prefix "Dr." or "Doctor" but shall add after the person's name the word "psychologist."

[**ARC 9937B**, IAB 12/28/11, effective 2/1/12; **ARC 1834C**, IAB 1/21/15, effective 2/25/15; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.6(154B) Supervised professional experience.

240.6(1) The supervised professional experience shall:

a. Be a minimum of 1500 hours that are completed in no less than ten months;

b. Apply the principles of psychology;

c. Be supervised by a licensed psychologist in accordance with subrule 240.6(2) and rule 645—240.9(154B);

d. Be performed competently as attested to by the supervisor; and

e. Have the fees and receipt of payment schedule remain the sole domain of the employing agency or supervising psychologist.

240.6(2) Requirements.

a. To meet the requirements of the supervised professional experience, the supervisee must:

(1) Meet face to face and individually with the supervisor during each week in which experience hours are accrued, for no less than a total of 45 hours during the period of supervised professional experience;

(2) Have training that is appropriate to the functions to be performed;

(3) Work in the same physical setting as the supervisor unless a completed off-site supervision form is submitted to and approved by the board;

(4) Offer work in the name of the supervising psychologist;

(5) Begin the experience after all academic requirements for the doctoral degree are met and when all degree requirements are verified in writing;

(6) Not apply professional employment that occurs prior to meeting the doctoral academic requirements to the supervised professional experience; and

(7) Have the background, training, and experience that is appropriate to the functions performed.

b. To meet the requirements of the supervised professional experience, the supervisor must:

(1) Be a licensed psychologist who, during the time in which supervision is provided, is actively licensed in the jurisdiction where the supervision occurs;

(2) Complete the supervision form provided by the board;

(3) Meet face to face and individually with the supervisee during each week in which experience hours are accrued, for no less than a total of 45 hours during the period of supervised professional experience;

(4) Provide training that is appropriate to the functions to be performed;

(5) Have reasonable access to the clinical records corresponding to the work being supervised;

(6) Have work offered in the name of the supervising psychologist;

(7) Have no more than three full-time persons associated with the supervisor as listed on the supervisor report form obtained from the board;

(8) Not provide group supervision as part of the 45 hours required for individual supervision;

(9) Not supervise any psychological practice or permit the supervisor's supervisee to engage in any psychological practice which the supervisor cannot perform competently;

(10) Be responsible for determining competency of the work performed by the supervisee and the designation of the title of the supervisee; and

(11) Work in the same physical setting as the supervisee, or if the supervisee is working off-site, ensure the off-site location has a licensed mental health provider or primary care provider on-site whenever the supervisee is working for purposes of providing emergency consultation. A supervisee may work off-site at a K-12 school without the need for on-site consultation by a licensed mental health provider or primary care provider.

240.6(3) Employment experience which is offered to satisfy one provision of the law may not be simultaneously offered to satisfy the educational provisions of the law. For example, employment experiences which are part of the required preparation for the doctoral degree will be applicable only to the doctoral degree requirements and may not be simultaneously offered to satisfy the supervised professional experience requirement.

240.6(4) Professional employment experience acquired by the applicant between the time all requirements were fulfilled for the doctoral degree and the time of the actual conferral of the degree may be credited toward the professional employment experience requirements for licensing, provided that the date of completion of all degree requirements is verified in writing by an appropriate academic official. Verification must come directly to the board from the academic official.

[**ARC 9937B**, IAB 12/28/11, effective 2/1/12; **ARC 1834C**, IAB 1/21/15, effective 2/25/15; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.7(154B) Certified health service provider in psychology.

240.7(1) *Requirements for the health service provider in psychology.* The applicant shall:

a. Verify at least one year of clinical experience in an organized health service training program that meets the requirements of subrule 240.7(2) and at least one year of clinical experience in a health service setting that meets the requirements for supervised professional experience stated in subrules 240.6(1) and 240.6(2). Alternatively, an applicant may submit verification of current registration at the doctoral level by the National Register of Health Service Providers in Psychology to verify completion of the required clinical experience.

b. Complete a board-approved application and submit supporting documentation. Application forms may be obtained from the board's website at idph.iowa.gov/Licensure or directly from the board office. All applications shall be sent to the Board of Psychology, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. The applicant may complete the application online at ibplicense.iowa.gov. An applicant shall complete the application 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. Incomplete applications that have been on file in the board office for more than two years without additional supporting documentation shall be:

(1) Considered invalid and shall be destroyed; or

(2) Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

c. Submit with the application the health service provider fee payable to the Board of Psychology. The fee is nonrefundable.

d. Renew the certificate biennially at the same time as the psychology license.

240.7(2) *Requirements of the organized health service training program.* Internship programs in professional psychology that are accredited by the American Psychological Association (APA) or the

Canadian Psychological Association (CPA) or that hold membership in the Association of Psychology Postdoctoral and Internship Centers (APPIC) are deemed approved. Applicants completing an organized health service training program that is not accredited by the APA or the CPA, or is not APPIC-designated at the time the applicant completes the training shall cause documentation to be sent from the program to establish that the program:

a. Provides the intern with a planned, programmed sequence of training experiences.

b. Has a clearly designated doctoral-level staff psychologist who is responsible for the integrity and quality of the training program and is actively licensed by the board of psychology in the jurisdiction in which the program exists.

c. Has two or more doctoral-level psychologists on the staff who serve as supervisors, at least one of whom is actively licensed by the board of psychology in the jurisdiction in which the program exists.

d. Has supervision that is provided by staff members of the organized health service training program or by an affiliate of the organized health service training program who carries clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one or more doctoral-level psychologists.

e. Provides training in a range of psychological assessment and treatment activities conducted directly with recipients of psychological services.

f. Ensures that trainees have a minimum of 375 hours of direct patient contact.

g. Includes a minimum of two hours per week (regardless of whether the internship is completed in one year or two years) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as case conferences involving a case in which the intern is actively involved, seminars dealing with clinical issues, cotherapy with a staff person including discussion, group supervision, and additional individual supervision.

h. Has training that is at the postclerkship, postpracticum, and postexternship level.

i. Has a minimum of two interns at the internship level of training during any period of training.

j. Designates for internship-level trainees titles such as "intern," "resident," "fellow," or other designation of trainee status.

k. Has a written statement or brochure which describes the goals and content of the internship, states clear expectations for quantity and quality of trainees' work and is made available to prospective interns.

l. Provides a minimum of 1500 hours of training experience that shall be completed in no less than 12 months within a 24-consecutive-month period.

[**ARC 9937B**, IAB 12/28/11, effective 2/1/12; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.8(154B) Exemption to licensure. Psychologists residing outside the state of Iowa and intending to practice in Iowa under the provisions of Iowa Code section 154B.3(5) shall complete and submit the application for the exemption to licensure according to the instructions contained in the application.

240.8(1) Application forms may be obtained from the board's website at idph.iowa.gov/Licensure or directly from the board office. All applications shall be sent to Board of Psychology, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. The applicant may complete the application online at ibplicense.iowa.gov.

240.8(2) The applicant shall provide a summary of the intent to practice and a verification of the license in the applicant's jurisdiction of residence, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

a. Licensee's name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the license.

240.8(3) The application and supporting documentation shall be accompanied by the processing fee for the exemption to licensure pursuant to 645—Chapter 5. The fee is nonrefundable and shall be submitted payable to the Board of Psychology.

240.8(4) The exemption must be issued prior to practice in Iowa. The exemption shall be valid for 10 consecutive business days or not to exceed 15 business days in any 90-day period.

[**ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.9(154B) Psychologists' supervision of unlicensed persons in a practice setting. The supervising psychologist shall:

1. Be vested with administrative control over the functioning of assistants in order to maintain ultimate responsibility for the welfare of every client. When the employer is a person other than the supervising psychologist, the supervising psychologist must have direct input into administrative matters.
2. Have sufficient knowledge of all clients, including face-to-face contact when necessary, in order to plan effective service delivery procedures. The progress of the work shall be monitored through such means as will ensure that full legal and professional responsibility can be accepted by the supervisor for all services rendered. Supervisors shall also be available for emergency consultation and intervention.
3. Provide work assignments that shall be commensurate with the skills of the supervisee. All procedures shall be planned in consultation with the supervisor.
4. Work in the same physical setting as the supervisee, unless the supervisee is receiving formal training pursuant to the requirements for licensure as a psychologist. For supervisees working off-site while receiving formal licensure training, ensure the off-site location has a licensed mental health provider or primary care provider on-site whenever the supervisee is working for purposes of providing emergency consultation.
5. Make public announcement of services and fees; contact with laypersons or the professional community shall be offered only by or in the name of the supervising psychologist. Titles of unlicensed persons must clearly indicate their supervised status.
6. Provide specific information to clients when an unlicensed person delivers services to those clients, including disclosure of the unlicensed person's status and information regarding the person's qualifications and functions.
7. Inform clients of the possibility of periodic meetings with the supervising psychologist at the client's, the supervisee's or the supervisor's request.
8. Provide for setting and receipt of payment that shall remain the sole domain of the employing agency or supervising psychologist.
9. Establish and maintain a level of supervisory contact consistent with established professional standards, and be fully accountable in the event that professional, ethical or legal issues are raised.
10. Provide a detailed job description in which functions are designated at varying levels of difficulty, requiring increasing levels of training, skill and experience. This job description shall be made available to representatives of the board and service recipients upon request.
11. Be responsible for the planning, course, and outcome of the work. The conduct of supervision shall ensure the professional, ethical, and legal protection of the client and of the unlicensed persons.
12. Maintain an ongoing record of supervision which details the types of activities in which the unlicensed person is engaged, the level of competence in each, and the type and outcome of all procedures.
13. Countersign all written reports and communications as "Reviewed and Approved" by the supervising psychologist.

[**ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.10(147) Licensure by endorsement. An applicant who possesses a doctoral degree in psychology and has been a licensed psychologist at the doctoral level under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may license by endorsement any applicant from the District of Columbia or another state, territory, province, or foreign country who:

240.10(1) Submits to the board a completed application.

240.10(2) Pays the licensure fee.

240.10(3) Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

a. Licensee's name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the license.

240.10(4) Provides verification of a current Certificate of Professional Qualification (CPQ) issued by the ASPPB, or verification of a doctoral degree in psychology and an independent license to practice psychology in another jurisdiction for at least five years with no disciplinary history. Except as stated in subrule 240.3(2), applicants providing certification or verification are deemed to have met the requirements stated in paragraphs 240.10(4)*"a"* and *"b."* The board may license by endorsement any other applicant who:

a. Provides the official EPPP score sent directly to the board from the ASPPB or verification of the EPPP score sent directly from the state of initial licensure. The recommended passing score established by the ASPPB shall be considered passing.

b. Shows evidence of licensure requirements that are substantially equivalent to those required in Iowa by one of the following means:

(1) Provides:

1. Official copies of academic transcripts that have been sent directly from the school; and

2. Satisfactory evidence of the applicant's qualifications in writing on the prescribed forms by the applicant's supervisors. If verification of professional experience is not available, the board may consider submission of documentation from the jurisdiction in which the applicant is currently licensed or equivalent documentation of supervision; or

(2) Has an official copy of one of the following certifications sent directly to the board from the certifying organization:

1. Current credentialing at the doctoral level as a health service provider in psychology by the National Register of Health Service Providers in Psychology.

2. Board certification by the American Board of Professional Psychology that was originally granted on or after January 1, 1983.

[**ARC 9937B**, IAB 12/28/11, effective 2/1/12; **ARC 1029C**, IAB 9/18/13, effective 10/23/13; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.11(147) Licensure by reciprocal agreement. The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure in psychology.

645—240.12(85GA,ch1043) Requirements for provisional licensure. A provisional license shall not be granted unless the applicant has submitted a completed licensure application and the required licensure application fee.

240.12(1) An applicant for a provisional license shall provide the following:

a. A completed provisional license application. Applications are obtained and submitted via the board's website at ibplicense.iowa.gov.

b. The provisional application fee payable to the Board of Psychology. The fee is nonrefundable.

240.12(2) The following documents must be received by the board office:

a. Official copies of academic transcripts sent directly from the school establishing that the requirements stated in 645—240.3(154B) are met; and

b. A completed supervision plan on the prescribed board form, signed by the applicant's supervisors. A change in a supervisor or in the supervision plan requires submission of a new supervision plan on the prescribed board form.

240.12(3) The provisional license is effective for two years from the date of issuance. A provisional license may be renewed one time for a period of two years upon submission of the following:

a. A provisional license renewal application;

b. A provisional license renewal fee; and

c. A current supervision plan as required in these rules.

[**ARC 1834C**, IAB 1/21/15, effective 2/25/15; **ARC 5225C**, IAB 10/7/20, effective 11/11/20]

645—240.13(147) License renewal.

240.13(1) The biennial license renewal period for a license to practice psychology shall begin on July 1 of even-numbered years and end on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

240.13(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

240.13(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—241.2(272C) and the mandatory reporting requirements of subrule 240.13(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.

240.13(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 as required by Iowa Code section 232.69(3)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 240.13(4)*"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 training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)*"b"* in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 240.13(4)*"e."*

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

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs 240.13(4)*"a"* to *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in rule 645—4.14(272C).

f. The board may select licensees for audit of compliance with the requirements in paragraphs 240.13(4)*"a"* to *"e."*

240.13(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.

240.13(6) A person licensed to practice as a psychologist shall keep the person's license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

240.13(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 5.16(3).

a. To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

b. No continuing education shall be required.

240.13(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a psychologist or health service provider in psychology in Iowa until the license is reactivated. A licensee who practices as a psychologist or health service provider in psychology in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[**ARC 9937B**, IAB 12/28/11, effective 2/1/12; **ARC 1834C**, IAB 1/21/15, effective 2/25/15; **ARC 5073C**, IAB 7/1/20, effective 8/5/20]

645—240.14(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

240.14(1) Submit a reactivation application on a form provided by the board.

240.14(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

240.14(3) Provide verification of current competence to practice as a psychologist or health service provider in psychology 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 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.

[**ARC 1834C**, IAB 1/21/15, effective 2/25/15]

645—240.15(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 645—240.14(17A,147,272C) prior to practicing as a psychologist or health service provider in psychology in this state.

[**ARC 1834C**, IAB 1/21/15, effective 2/25/15]

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[Prior to 12/17/86, Revenue Department[730]]

701—18.1(422,423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of Iowa Code section 422.44, shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code sections 422.44 and 423.3.

701—18.2(422,423) Sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The gross receipts from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. Gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(11), 423.1 and 423.2.

701—18.3(422,423) Chemical compounds used to treat water. Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds which are used to treat water that is not sold at retail or which are not used directly in processing shall be subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and does become a part of the finished product, shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1, and 423.2.

701—18.4(422) Mortgages and trustees. Pursuant to the provisions of a chattel mortgage, the receipts from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to inventory and noninventory goods provided the owner is in the business of making retail sales of tangible personal property or taxable services. In Re *Hubs Repair Shop, Inc.* 28 B.R. 858 (Bkrtcy. 1983).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1 and 423.2.

701—18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government.

18.5(1) The gross receipts from the sale of tangible personal property or enumerated taxable services made directly by or to the United States government or to recognized agencies or departments of the United States government shall not be subject to sales tax.

The gross receipts from sales at retail made directly to patients, inmates or employees of an institution or department of the United States government shall be taxable, since they are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

18.5(2) The gross receipts from sales to the United States government, state of Iowa, or federal bureaus, departments, or instrumentalities are not taxable. A sale to government occurs only if a government, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. No sale to government occurs if a government pays some portion of the cost of sale of an item of tangible personal property but title to and ownership of the property are transferred to another person as a result of the sale. See *AVCO Manufacturing Corporation v. Connelly,* 145 Conn. 161, 140 A.2d 479 (1958) and *Akron Home Medical Services, Inc. v. Lindley,* 25 Ohio St.3d 107, 495 N.E.2d 417 (1986).

EXAMPLE A: Patient A purchases a hospital bed from a drugstore. A percentage of patient A's bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale.

EXAMPLE B: A is a federal government employee. A stays at a hotel while on government business and eats meals there. A pays for the hotel room (treated as the sale of tangible personal property under Iowa sales tax law) and the meals with a credit card. The credit card was issued in A's name, and the cost of the room and meals is billed to A, who pays it. The federal government later reimburses A the entire cost of the room and meals. A has purchased the room and meals, and Iowa sales tax should be charged accordingly.

EXAMPLE C: B is a federal government employee who eats at a restaurant while on government business. B uses a credit card to pay for the meal. The credit card is issued in B's name, but the cost of the meal is billed to the U.S. government which pays that cost. In this situation, the government is the purchaser of the meal on B's behalf, and the sale is exempt from tax.

See rule 701—34.12(423) for an example of the application of this subrule to the motor vehicle use tax.

18.5(3) The gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, merchandise or services used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, pay television service, or heat to the general public, shall be exempt. The exclusion from exemption for municipally owned pay television service is applicable to sales occurring and services provided on and after July 1, 1991. On and after April 1, 1992, providing sewage service or solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality shall be taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information). Goods, wares, merchandise, or services used for public purposes and sold to any municipally owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally owned public utility shall be exempt.

EXAMPLES:

a. A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

b. Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

c. An instrumentality of government includes an area agency on aging as designated by the Iowa department on aging pursuant to Iowa Code section 231.32.

This tax exemption does not apply to independent contractors who deal with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services which a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor. See 701—Chapter 19. See also *NLO, Inc. v. Limbach,* 613 N.E.2d 193, 66 Ohio St.3d 389 (1993); *Bill Roberts Inc. v. McNamara,* 539 So.2d 1226 (La. 1989) reh. den. April 27, 1989; *White Oak Corporation v. Department of Revenue Services,* 503 A.2d 582, 198 Conn. 413 (1986).

This rule is intended to implement Iowa Code section 422.45(5).

701—18.6(422,423) Relief agencies.

18.6(1) Relief agency means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work. Nonexclusive examples of relief agencies are Salvation Army, Royal Neighbors, and Masonic Lodge. The sales of tangible personal property or enumerated services to relief agencies are subject to tax. A relief agency may apply to the director for refund of the amount of tax imposed and paid by it, upon the purchase of goods, wares, merchandise, or services rendered, furnished, or performed that are used for free distribution to the poor and needy.

18.6(2) Persons are determined to be in the poor and needy category when their incomes and resources are at or below poverty level. The department will use federal poverty guidelines in making this determination.

18.6(3) Listed below are some examples where the tax may or may not be refunded to the relief agency:

EXAMPLE: A relief agency purchases clothing for free distribution to a poor and needy person. The tax is refundable.

EXAMPLE: A relief agency pays the gas, light, or telephone bill for a person who is poor and needy. The tax is refundable.

EXAMPLE: An agency purchases items of clothing for residents of their living facility, and is partially reimbursed by the person using the items based upon the recipient's ability to pay. Tax on the portion of cost not recovered by the agency can be claimed as a refund of tax paid by using formula stated in 18.6(6).

18.6(4) Demolition v. repair costs. A nonprofit noneducational relief agency is not entitled to a refund of sales tax paid by contractors on building materials used in the alteration, expansion, repair, remodeling or construction of the facility since the materials were sold tax paid to the contractor who is the consumer of the material by statute. See Iowa Code section 422.42(9). However, the relief agency would be entitled to a refund of sales tax paid on the cost of the demolition of the building since the demolition of the building indirectly benefited the poor and needy. 1968 O.A.G. #841.

EXAMPLE: A relief agency, which is not part of a governmental unit, operates a home or orphanage for persons who are poor and needy or for orphan children. Food, lodging, and necessary items are furnished free-of-charge to the residents. The relief agency would be entitled to a refund of any taxes paid to operate this facility; such as, but not limited to, lights, heat, water, telephone, and repair items or services needed to maintain the facility.

18.6(5) Claims for refund must be filed quarterly with the department within 45 days after the end of the quarter for which the refund is claimed. Claims are to be submitted on forms provided by the department.

The claim shall include the following information:

a. The total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed used for free distribution to the poor and needy.

b. List the persons making the sales to the relief agency.

1. Include the date of the sale.
2. Include the total amount expended, itemizing sales tax.
3. Include the date of payment.
4. Include the check number, receipt number, or paid invoice verifying payment.

c. List the total operating income received (residents, donations, etc.)

d. List the operating income received from residents only.

e. The claim shall be signed by an authorized agent of the relief agency.

18.6(6) When a relief agency receives part of its operating income from the poor and needy it is serving, this income will be considered in computing the tax refund paid upon sales to it of products or services used for free distribution to the poor and needy.

To reasonably approximate the correct amount of tax to be refunded, where only a portion of the tax qualifies for refund, a formula will be used by the department. The prescribed formula the department will allow is operating income received from the poor and needy served divided by total operating income received. This percentage will be multiplied by the applicable gross receipts which are considered refundable to arrive at the correct amount of tax to be refunded.

If a person requests an alternative formula, the person shall first list the reasons why an alternative formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw the approval or require adjustments in the formula upon notice to the person. Additional refunds or assessments may be made if an audit discloses the formula is incorrect.

This rule is intended to implement Iowa Code sections 422.42(7), 422.43, 422.47, 423.1 and 423.2.

701—18.7(422,423) Containers, including packing cases, shipping cases, wrapping material and similar items. The gross receipts from the sale of containers, labels, cartons, pallets, packing cases, wrapping paper, twine, bags, bottles, shipping cases, garment hangers, and other similar articles and receptacles sold to retailers or manufacturers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property which is sold either at retail or for resale shall be exempt from the tax.

For the purpose of this rule, producers, wholesalers and jobbers are considered retailers or manufacturers.

18.7(1) *Sales to other than retailers or manufacturers.*

a. Containers and all other specified items delivered with tangible personal property which are sold to a final buyer or ultimate consumer shall be exempt from the tax when no separate charge is made for the container. This group includes such items as boxes, cartons, pallets, paper bags, bottles, shipping cases, wrapping paper and twine. If a separate charge is made for the container, the sale of the container is subject to the tax. The sale of wrapping paper, paper bags and like items are subject to the tax when sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers to whom meat is sold. The wrapping paper and tape would be exempt from tax as being purchased as a packaging material of tangible personal property sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who own the meat. The meat locker only performs the service of processing the meat. The wrapping paper and tape are subject to tax as they were not purchased for packaging or for the facilitating of transportation of tangible personal property sold at retail, but were used in the rendering of a service.

b. Packing paper, lining paper, paper used to line boxes and crates, and similar items shall be exempt from the tax if delivered with tangible personal property ultimately sold at retail when no separate charge is made for the paper.

18.7(2) *Labels, tags and nameplates.* Sales of labels, tags, and nameplates attached to products for the benefit of the vendor such as shipping tags, price tags and instructions to cashiers are subject to the tax, unless such items are sold to manufacturers and retailers for packaging or facilitating the transportation of tangible personal property ultimately sold at retail. Labels, tags or nameplates attached to products for the benefit of the final consumer which describe contents, or which relate to the product and are affixed to the product, are exempt from tax.

18.7(3) *Pallets.* Pallets purchased by manufacturers or retailers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property ultimately sold at retail shall be exempt from the tax.

18.7(4) *Garment hangers.* Garment hangers purchased by manufacturers or retailers and used to facilitate the transportation of tangible personal property or garment hangers delivered with tangible personal property ultimately sold at retail when no separate charge is made are exempt from tax.

Garment hangers used merely to display tangible personal property are taxable.

This rule is intended to implement Iowa Code sections 422.42(3), 422.45(19) and 423.1(1).

701—18.8(422) Auctioneers.

18.8(1) An auctioneer in making a sale, whether of tangible personal property or realty, is by virtue of this employment making the sale as the agent of the principal.

18.8(2) Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 422.42(12), the gross receipts from the sale are exempt from the tax. See 1970 O.A.G. 774.

18.8(3) When an auctioneer is conducting a sale and the principal is in the business of making sales of tangible personal property or taxable services on a recurring basis, the gross receipts from the sale are taxable.

18.8(4) Where an auctioneer is selling tangible personal property that the auctioneer owns, the sale of the tangible property owned by the auctioneer is taxable.

This rule is intended to implement Iowa Code section 422.43.

701—18.9(422) Sales by farmers. The sale of grain, livestock or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing or human consumption and shall not be subject to tax.

Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the gross receipts from their sales.

701—18.10(422,423) Florists.

18.10(1) Florists are engaged in the business of selling tangible personal property at retail and shall be liable for payment of tax measured by the receipts from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property.

18.10(2) When florists conduct transactions through a florists' telephonic delivery association, the following rules shall apply when computing tax liability:

a. On all orders taken by an Iowa florist and telephoned to a second florist in Iowa for delivery in the state, the sending florist shall be liable for tax, measured at the current rate of tax on gross receipts from the total amount collected from the customer, except the cost of a telegram when a separate charge is made therefor.

b. In cases where a florist receives an order pursuant to which the florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, tax is not owing with respect to any receipts which the florist may realize from the transaction.

c. In cases where Iowa florists receive telephonic instructions from other florists located either within or outside of Iowa for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which the florist may realize from the transaction.

d. Rescinded IAB 2/28/96, effective 4/3/96.

18.10(3) Florists engaged in selling shrubbery, trees, and similar items. See rule 18.11(422,423).

This rule is intended to implement Iowa Code section 422.43.

701—18.11(422,423) Landscaping materials. The gross receipts from the sale of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials, when used for landscaping and sold to final consumers, shall be subject to sales tax. For the purpose of this rule, "final consumer" ordinarily means the owner of the land to which the landscaping materials are applied, or a general building contractor when the landscaping contractor contracts with the general building contractor. When a landscaping contractor uses materials to fulfill a contract, the landscape contractor is considered the retailer of the landscaping materials and shall be obligated to collect sales tax on the selling price from the final consumer.

When the retailer of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials installs these items as a part of a contract for landscaping or improving land for a lump sum, the entire gross receipts shall be subject to tax. Any retailer's charges for "landscaping" shall be taxable. See rule 701—26.62(422) for a description of this service. However, a retailer's charges for nontaxable services are not taxable if contracted for separately; or, if no written contract exists, the charges are itemized separately on the invoice.

EXAMPLE: A sodding contractor agrees to furnish and install 20 yards of sod for the lump sum of $20.00 per yard. The sodding contractor must charge the customer $20.00 sales tax (5% x $400.00).

EXAMPLE: XYZ Company enters into a contract for the landscaping of an existing office building. XYZ Company agrees to furnish shrubs at $25.00 each, white rock for $5.00 per bag and woodchips for $4.00 per bag. XYZ Company also contracts to install all of the landscaping materials for a fee of $25.00 per hour. XYZ Company's hourly fee is taxable if paid for the service of "landscaping" or for some other taxable service, e.g., excavation. If the service is not taxable, the charge is excluded from tax because it was separately contracted for.

The gross receipts from the sale of uncut sod and unexcavated trees, shrubs, and rock shall not be subject to sales or use tax. This is considered a sale of intangible property and not the sale of tangible personal property.

This rule does not apply to the gross receipts from the sale of plants and trees which are eligible for purchase with food coupons under rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42, 422.45(12) and 423.1.

701—18.12(422,423) Hatcheries. The gross receipts from the sale of egg-type cockerel chicks, broiler chicks and turkey poults shall be subject to tax. If sale of domestic poultry is for breeding, see rule 701—17.9(422,423).

When pullets and poults are sold for production purposes, the receipts from the sales shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.13(422,423) Sales by the state of Iowa, its agencies and instrumentalities. The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the gross receipts from taxable retail sales of tangible personal property and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa which are specifically exempted from collecting tax by Iowa Code section 422.45(20).

This rule is intended to implement Iowa Code chapters 422 and 423.

701—18.14(422,423) Sales of livestock and poultry feeds. Tax shall not apply to the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets.

Antibiotics, when administered as an additive to feed or drinking water, and vitamins and minerals sold for livestock and poultry shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.15(422,423) Student fraternities and sororities. Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail within the meaning of the sales tax law when they provide their members with meals and lodging for which a flat rate or lump sum is charged. A person engaged in the selling of foods and beverages to such organizations for use in the preparation of meals is making exempt sales at retail and shall not be liable for tax if the food purchases would be exempt under rule 701—20.1(422,423).

Student fraternities or sororities engaged in the business of serving meals to persons other than members for which separate charges are made, or owning and operating canteens through which tangible personal property is sold are deemed to be making taxable sales.

When student fraternities or sororities do not provide their own meals but are provided by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of tax with respect to their receipts from meals furnished. A similar liability is attached to persons engaged in the business of operating boarding houses, whether for students or other persons.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.16(422,423) Photographers and photostaters. Tax shall apply to the sale of photographs and photostat copies, whether or not produced to the special order of the customer and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

Tax shall not apply to the sale of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sale of materials to photographers or producers which is used in the processing of photographs or photostat copies.

18.16(1) *Sales of photographs to newspaper or magazine publishers for reproduction.* The sale of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

18.16(2) Reserved.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.17(422,423) Gravel and stone. When a contract is entered between a contractor and a governmental body and the contract calls for a stockpile delivery along a road to be improved, it is a sale of tangible personal property to the governmental body. Transactions of this type are exempt from tax. When a contract not only provides for the sale and delivery of materials but also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and shall be liable for tax. Tax shall apply on the purchase price of the material.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(5), 423.1 and 423.2.

701—18.18(422,423) Sale of ice. The sale of ice for human consumption which may be purchased with food coupons is exempt from tax. The sale of ice used for cooling is subject to tax. See rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(12), 423.2 and 423.4.

701—18.19(422,423) Antiques, curios, old coins or collector's postage stamps. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail and shall be subject to tax.

18.19(1) Stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

18.19(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, it shall not be subject to either sales or use tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.20(422,423) Communication services. This rule applies to sales of communication services billed prior to November 23, 2011. For communication service, telecommunication service, ancillary service and other related communication service billed on or after November 23, 2011, refer to 701—Chapter 224, Iowa Administrative Code. The gross receipts from the sale of all communication services provided in this state are subject to tax. (Communication services are not subject to use tax prior to July 1, 2001. See rule 701—31.7(423).)

18.20(1) Definitions.

a. Communication service shall mean the act of providing, for a consideration, any medium or method for, or the act of transmission and receipt of, information between two or more points. Each point must be capable of both transmitting and receiving information if "communication" is to occur. The term "communication service" includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and materials printed by teletype), other images perceived visually and data encoded in computer languages. Any separate charge for the service of transmitting and receiving information between automatic data processing equipment and remote facilities shall be subject to tax, see paragraph 18.34(3)*"c."*

b. Communication service is provided "in this state" only if both the points of origination and termination of the communication are within the borders of Iowa. Communication service between any other points is "interstate" in nature and not subject to tax.

c. "Gross receipts" from the sale of communication service in this state shall mean all charges to any person which are necessary for the ultimate user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 18.20(4)). Such charges shall be taxable if the charges are necessary to secure communication service in this state even though payment of the charge may also be necessary to secure other services. Any charge necessary to secure only interstate communication service shall not be subject to tax if the nature of the service is separately stated and the charge for the service separately billed. For the present, the charges imposed by the Federal Communications Commission and referred to as "access charges for interstate or foreign access services" to an "end user" shall not be subject to tax if separately stated and billed.

Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, "end user intrastate access charges," are taxable. Such charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

If company A collects gross receipts from ultimate users for communication services performed in this state by company B, company A shall treat those gross receipts as its own, collect tax upon them, and remit the tax to the department. The situation is similar to a consignment sale of tangible personal property, and tax must be remitted by the company collecting the gross receipts from the users of the communication services.

d. Paging services. A one-way paging service is not a taxable enumerated service in Iowa because one-way paging only receives information and is not capable of transmitting information. As a result, this type of pager service is not a two-way transmission.

18.20(2) This subrule is applicable to various specific circumstances involving the sale of communication services.

a. Companies which bill their subscribers for communication services on a quarterly, semiannual, annual or any other periodic basis shall include the amount of such billings in their gross receipts. The date of the billing shall determine the period for which sales tax shall be remitted. Thus, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill shall be included in the sales tax return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a sales tax deposit to the department.

b. The gross receipts from the service of transmitting messages, night letters, day letters and all other messages of similar nature between two or more points within this state are subject to sales tax.

c. Receipts from communication services performed for all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government, and private, nonprofit educational institutions in this state for educational purposes are exempt from tax, except sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax.

18.20(3) This subrule is specifically applicable to companies and other persons providing telephone service in this state. Any reasoning contained in this subrule may also be applied to companies or other persons providing other communication services.

a. All companies must have a permit for each business office which provides communication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of such offices.

b. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax shall be computed on the minimum amount guaranteed or the actual taxable gross receipts collected whichever is the greater.

c. In computing tax due, the federal taxes identified as such, separately billed and payable by the customer shall be excluded from gross receipts. If the taxes are not separately billed, they shall be subject to Iowa sales tax.

d. Telegrams and like charges made to the accounts of subscribers and billed by companies providing telephone service which appear on the subscribers' toll bills are subject to tax.

e. Charges for directory assistance service rendered in this state shall be subject to tax. Charges for directory assistance service, separately stated and billed, shall not be subject to tax if the service is interstate in nature.

f. The gross receipts from the installation or repair of any inside wire which provides electrical current that allows an electronics device to function shall be subject to tax. Such gross receipts are from the enumerated service of electrical repair or installation, and are thus subject to tax. The gross receipts from "inside wire maintenance charges" for services performed under a service or warranty contract shall also be subject to tax. Depending on circumstances, such receipts are for the enumerated service of "electrical repair" or are incurred under an "optional service or warranty contract" for an enumerated service. In either event, the receipts are subject to tax. See rule 701—18.25(422,423).

g. The gross receipts from the rental of any device for home or office use or to provide a communication service to others shall be fully taxable; such receipts are for the enumerated service of "rental of tangible personal property." The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device shall also be subject to tax.

h. The sale of any device, new or used, in place at the time of sale on the customer's premises or sold to the customer elsewhere is the sale of tangible personal property, and thus a sale subject to tax. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it does

or does not come within the purview of the casual sales exemption, see Iowa Code section 422.42(2) and subrule 18.28(3). Other exemptions may be applicable as well. See Iowa Code section 422.45 and 701—Chapter 17.

i. The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment shall, as a general rule, be subject to tax whether the customer or purchaser is billed by way of a flat fee or flat hourly charge covering all costs including labor and materials, or by way of a premises visit or trip charge, or by a single charge covering and not distinguishing between charges for labor and materials, or is billed by a charge with labor and material segregated, or is billed for labor only. An exception is this: If the gross receipts are for services on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, the gross receipts shall not be subject to tax. For further information concerning the conditions under which such gross receipts for repair or installation would not be subject to tax, see rule 701—19.1(422,423) and 701—subrule 26.2(1).

j. If a company bills a handling charge to a customer for sending the customer an electronic device by mail or by a delivery service, this charge shall constitute a part of the gross receipts from the sale of the device and shall be subject to tax. The gross receipts of a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and thus subject to tax.

k. The purchase or rental of tangible personal property by companies providing communication services shall be subject to tax.

l. The amount of any deposit paid by a customer to a company providing communication service if returned to the customer shall not be subject to tax. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service shall be included in gross receipts or gross taxable services and shall be subject to tax.

m. On and after July 1, 1997, the gross receipts from sales of prepaid telephone calling cards and prepaid authorization numbers are subject to tax as sales of tangible personal property.

18.20(4) When one commercial communication company furnishes another commercial communication company services or facilities which are used by the second company in furnishing communication service to its customers, such services or facilities furnished to the second company are in the nature of a sale for resale; and the charges, including any carrier access charges, shall be exempt from sales tax. The charges for services or facilities initially purchased for resale and subsequently used or consumed by the second company shall be subject to tax, and the tax shall be collected and paid by the seller unless the seller has taken a valid exemption certificate in good faith from the purchaser and other requirements of 701—subrule 15.3(2) are met.

18.20(5) Prior to July 1, 1999, charges for access to or use of what is commonly referred to as the "Internet" or charges for other contracted on-line services are the gross receipts from the performance of a taxable service if access is by way of a local or in-state long distance telephone number and if the predominant service offered is two-way transmission and receipt of information from one site to another as described in paragraph *"a"* of subrule 18.20(1). If a user's billing address is located in Iowa, a service provider should assume that Internet access or contracted on-line service is provided to that user in Iowa unless the user presents suitable evidence that the site or sites at which these services are furnished are located outside this state.

On and after July 1, 1999, gross receipts from charges paid to a provider for access to an on-line computer service are exempt from tax. An "on-line computer service" is one which provides for or enables multiple users to have computer access to the Internet. Charges paid to a provider for other contracted on-line services which do not provide access to the Internet and which are communication services remain subject to Iowa tax through May 14, 2000.

On and after May 15, 2000, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

18.20(6) The gross receipts paid for the performance of the service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state are subject to

sales tax. See 18.20(1)*"a."* Gross receipts paid for the service of providing a telephone line or other transmission path for the use of what is commonly called a "fax" machine are the gross receipts from the performance of a taxable service if the points of transmission and receipt of a fax are in this state. See 18.20(1)*"a"* and *"b."*

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer $2 to transmit a fax (via its machine) to Dubuque, Iowa. The $2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy $500 per month for the intrastate communications on Klear Kopy's dedicated fax line. The $500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, break out the amount of a billing which is attributable to expenses for faxing. For example, "bill to John Smith for August, 1997, $1,000 for legal services performed, fax expenses which are part of this billing—$30." The $30 is not gross receipts for the performance of any taxable service, the faxing service performed being only incidental to the performance of the nontaxable legal services.

EXAMPLE C. The TUV Hospital is located in Cedar Rapids, Iowa. The surgeons successfully perform delicate brain surgery on patient W. To perform that surgery it was necessary for the surgeons to consult with a number of colleagues; the consultation was via email. After the operation, the TUV Hospital sent patient W a bill for $10,000 of nontaxable hospital services. Listed as an expense is "email—$200." The email services are performed incidentally to the nontaxable hospital services; therefore, the $200 is not taxable gross receipts.

EXAMPLE D. D is a dentist practicing in Mason City, Iowa. D subscribes to an on-line service which, in return for a monthly fee, informs its subscribers of the latest dental surgery techniques and advises them about how these techniques can be applied to individual patients. After consultation on patient E's problem through the on-line service, D performs complex surgery on patient E. D's bill to patient E reads as follows: "dental reconstruction—$2,750; on-line consultation portion—$240." The $240 is not taxable gross receipts, this charge being incidental to the nontaxable charge for dental work.

18.20(7) *Communication service, telecommunications service, ancillary service, and other similar communication service.*

a. Purpose. This subrule covers various provisions related to communication service, telecommunications service, ancillary service, and other similar communication service.

b. Definitions.

(1) *"Air-to-ground radio telephone service"* means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) *"Ancillary services"* means services that are associated with or incidental to the provision of a telecommunications service. The term includes, but is not limited to, detailed communications billing service, directory assistance, vertical service, and voice mail services.

(3) *"Call-by-call basis"* means any method of charging for telecommunications services where the price is measured by individual calls.

(4) *"Communications channel"* means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(5) *"Communication service"* means the act of communicating using any system or the act of transmission and receipt of information between two or more points. Each point must be capable of both transmitting and receiving information if communication is to occur. The term "communication service" includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and other materials), other images perceived visually and data encoded in computer languages. Communication service also includes telecommunications service, ancillary service and other similar communication service.

(6) *"Conference bridging service"* means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include telecommunications services used to reach the conference bridge.

(7) *"Customer"* means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. For purposes of sourcing sales of telecommunications services, the end user of the telecommunications service is the customer of the telecommunications service when the end user is not also the contracting party. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(8) *"Customer channel termination point"* means the location where the customer either inputs or receives the communications.

(9) *"Detailed telecommunications billing service"* means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(10) *"Directory assistance"* means an ancillary service of providing telephone number information and address information.

(11) *"End user"* means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(12) *"Fixed wireless service"* means a telecommunications service that provides radio communication between fixed points.

(13) *"Home service provider"* means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. § 124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(14) *"Interstate"* means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

(15) *"Intrastate"* means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

(16) *"Mobile telecommunications service"* means commercial mobile radio service; that is, a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves.

(17) *"Mobile wireless service"* means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunications services that are provided by a commercial mobile radio service provider.

(18) *"Paging service"* means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

(19) *"Pay telephone service"* means a telecommunications service provided through any pay telephone. Pay telephone service also includes coin operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(20) *"Place of primary use"* means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

(21) *"Postpaid calling service"* means the telecommunications service obtained by making a payment on a call-by-call basis, either through use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(22) *"Prepaid calling service"* means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that are sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) *"Prepaid wireless calling service"* means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(24) *"Private communication service"* means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(25) *"Residential telecommunications service"* means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.

(26) *"Service address"* means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in numbered paragraph "1" of this subparagraph is not known, "service address" means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in numbered paragraphs "1" and "2" of this subparagraph are not known, the service address means the location of the customer's place of primary use.

(27) *"Telecommunications service"* means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. "Telecommunications service" does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;

2. Installation or maintenance of wiring or equipment on a customer's premises;

3. Tangible personal property;

4. Advertising, including but not limited to directory advertising;

5. Billing and collection services provided to third parties;

6. Internet access service;

7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service and audio and video programming services delivered by a commercial mobile radio service provider;

8. Ancillary service;

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

(28) *"Value-added non-voice data service"* means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(29) *"Vertical service"* means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

(30) *"Voice mail service"* means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

c. Taxable communication service, telecommunications service, ancillary service, and other similar communication service. The sales price from the sale of communication service, telecommunications service, ancillary service, and other similar communication service is subject to the sales or use tax. The following is a nonexclusive list of services subject to the Iowa sales and use tax:

(1) Air-to-ground radio telephone service;

(2) Ancillary services except detailed communications billing service;

(3) Conference bridging service;

(4) Fixed wireless service;

(5) Mobile wireless service;

(6) Pay telephone service;

(7) Postpaid calling service;

(8) Prepaid calling service;

(9) Prepaid wireless calling service;

(10) Private communication service;

(11) Residential telecommunications service.

d. Nontaxable communication service, telecommunications service, ancillary service, and other similar communication service. The following services are not subject to the Iowa sales and use tax:

(1) Detailed communications billing service;

(2) Internet access fees or charges;

(3) One-way paging services that only receive information and are not capable of transmitting information;

(4) Value-added non-voice data service;

(5) Any charge necessary to secure only interstate communication service if the nature of the service is separately stated and the charge for the interstate service is separately billed.

e. Sourcing of telecommunications services.

(1) General sourcing principles apply to telecommunications services unless the service falls under one of the exceptions set out in paragraph *"e."*

(2) Exceptions. The following telecommunications services and products are sourced in accordance with the principles set out in subparagraph (2):

1. Mobile telecommunications service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

2. Prepaid calling service is sourced as provided under Iowa Code section 423.15. However, if the seller has sufficient information available, the sale of prepaid wireless calling service may be sourced to the location of the place of primary use.

3. A sale of a private telecommunications service is sourced as follows:

- Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.
- Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

- Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.
- Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

4. The sale of Internet access service is sourced to the customer's place of primary use.

5. The sale of an ancillary service is sourced to the customer's place of primary use.

6. A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system or (b) information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

7. The sale of telecommunications service sold on a call-by-call basis is sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

8. The sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

9. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

- A sale of mobile telecommunications services, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.
- A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

f. Bundled transaction.

(1) A "bundled transaction" is the retail sale of two or more products where (a) the products are otherwise distinct and identifiable, and (b) the products are sold for one non-itemized price. A bundled transaction does not include the sale of any products in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

(2) In the case of a bundled transaction that includes any of the following: telecommunications service, ancillary service, Internet access, or audio or video programming service:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including but not limited to non-tax purposes.

3. The provisions of this subrule shall apply unless otherwise provided by federal law.

g. Direct pay permit. The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. The direct pay permit holder cannot use the direct pay permit for the purchase of communication service, telecommunications service, ancillary services, or other similar communication service. The seller should charge and collect the sales or use tax from the purchaser on the taxable sales of communication service, telecommunications service, ancillary services, and other similar communication service.

h. Credit. A taxpayer subject to sales or use tax on communication service, telecommunications service, ancillary service or other similar communication service who has paid any legally imposed sales

or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdictions.

i. Sales of communication service, telecommunications service, ancillary service, or other similar communication service to the United States government or the state government of Iowa. Sales of communication service, telecommunications services, ancillary services, or other similar communication service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. In order to be a sale to the United States government or to the state government of Iowa, the government or agency involved must make the purchase of the services and pay directly to the vendor the purchase price of the services. Telecommunications service providers should obtain an exemption certificate from each agency for their records.

j. Retailers liable for collecting and remitting tax. Retailers that sell taxable communication service, telecommunications service, ancillary services, or other similar communication service are liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

This rule is intended to implement Iowa Code sections 34A.7(1)*"c"*(2), 422.42(2), 422.42(3), 422.43(9), 422.45(5), 422.45(8), 422.45 and 422.51(1) and Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1189, section 29.

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701—18.21(422,423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers, and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, taxable services and nontaxable services, as required by the rules of the Federal Trade Commission, or Iowa Code section 523A.8(1)*"b,"* whichever is applicable, tax is due only upon the gross receipts from the sales of tangible personal property and taxable services. If contrary to the rules or the statute, or if the applicable rules are rescinded or the statute repealed, and the mortician or funeral director charges a lump sum to a customer covering the entire cost of the funeral without dividing the charges for sales of tangible personal property and taxable and nontaxable services, the mortician or funeral director shall report the full amount of the funeral bill less any cash advanced by the mortician or funeral director, with tax due on 50 percent of the difference. *Kistner v. Iowa State Board of Assessment and Review,* 224 Iowa 404, 280 N.W. 587 (1938). Cash advance items may include, but are not limited to, the following: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians, singers, nurses, obituary notices, gratuities, and death certificates.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The mortician or director should present the supplier with a certificate of resale as set out in rule 701—15.3(422,423). A mortician or director is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles and accessories, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items if title or possession does not pass to the customer. *Kistner,* supra.

For purposes of this rule, the terms of morticians or funeral directors shall also include cemeteries, cemetery associations and anyone engaged in activities similar to those discussed in the rule.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians shall

not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under 701—Chapter 20.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual's own use. For example, the purchase for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property to ophthalmologists, oculists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of an item of equipment that is utilized directly in the care of an illness, injury or disease, which item would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(13-15), 423.2 and 423.4(4).

701—18.23(422) Veterinarians. Purchase of food, drugs, medicines, bandages, dressings, serums, tonics, and the like, but not to include tools and equipment, which are used in treating livestock raised as part of agricultural production is exempt from tax. Where these same items are used in treating animals maintained as pets for hobby purposes, sales tax is due. See rule 701—18.48(422,423) for an exemption for machinery used in livestock or dairy production which may be applicable to veterinarians but should be claimed only with caution by them.

A veterinarian engaged in retail sales, in addition to furnishing professional services, must account for sales tax on the gross receipts from such sales.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

701—18.24(422,423) Hospitals, infirmaries and sanitariums. Hospitals, infirmaries, sanitariums, and like institutions are engaged primarily in rendering services. These facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under 701—Chapter 20 when the items would be exempt if purchased by the individual and if the item is used substantially for the tax-exempt purpose. See rule 18.59(422,423) for an exemption applicable to sales of goods and furnishing of services on and after July 1, 1998, to a nonprofit hospital.

Hospitals, infirmaries, and sanitariums may be the purchasers for use or consumption of tangible personal property used or consumed in furnishing services. *Modern Dairy Co. v. Department of Revenue,* 413 Ill. 55, 108 N.E.2d 8 (1952). However, tangible personal property can be purchased for resale by these facilities and, if purchased for resale, is exempt from tax on the purchases. *Burrows Co. v. Hollingsworth,* 415 Ill. 202, 112 N.E.2d 706 (1953); *Fefferman v. Marohn,* 408 Ill. 542, 97 N.E.2d 785 (1951). Property is purchased for resale if the conditions in subrule 18.31(1) are applicable. See also 701—subrule 15.3(2) with respect to resale exemption certificates.

Depending upon the circumstances, a nonprofit facility may be a charitable institution or organization; a profit facility is not. *Northwest Community Hospital v. Board of Review of City of Des Moines,* 229 N.W.2d 738 (Iowa 1975); *Readlyn Hospital v. Hoth,* 223 Iowa 341, 272 N.W. 90 (1937).

Sales by these nonprofit facilities would be exempt from tax if the requirements of Iowa Code section 422.45(3) are met. See rule 701—17.1(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, House File 2513, and chapter 423.

701—18.25(422,423) Warranties and maintenance contracts.

18.25(1) In general—definitions. "Mandatory warranty." A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. "Optional warranty." A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller.

18.25(2) Mandatory warranties. When the sale of tangible personal property or services includes the furnishing or replacement of parts or materials which are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty which is in connection with an enumerated taxable service is also exempt from tax.

18.25(3) Optional warranties. For periods after June 30, 1981.

a. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 422.43 is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale except as described below.

b. On and after July 1, 1995, the sale of a residential service contract regulated under Iowa Code chapter 523C is not considered to be the sale of tangible personal property, and gross receipts from the sales of these service contracts are no longer subject to tax, and the gross receipts from taxable services performed for the providers of residential service contracts are now subject to tax. See the examples below for more detailed explanation. A "residential service contract" is defined in Iowa Code subsection 523C.1(8) to be: a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

EXAMPLE A. John Jones purchases a residential service contract for $3,000 on July 1, 1994. He pays $150 of Iowa state sales tax. On December 1, 1994, his furnace malfunctions. The service company which sold Mr. Jones the contract pays Smith Furnace Repair $700 to fix the furnace. No sales tax is due on the $700 charge.

EXAMPLE B. Bob Jones purchases a residential service contract for $3,000 on July 1, 1995. No sales tax is owing or paid. On December 1, 1995, his furnace becomes inoperable. The service company which sold Mr. Jones the contract pays Smith Furnace Repair $900 to fix Mr. Jones' furnace. Sales tax of $45 is due based on the $900.

c. On and after July 1, 1998, if an optional service or warranty contract is a computer software maintenance or support service contract and the contract provides for the furnishing of technical support services only and not for the furnishing of any materials, then no tax is imposed on the furnishing of those services under this subrule. If a computer software maintenance or support service contract provides for the performance of nontaxable services and the taxable transfer of tangible personal property, and no separate fee is stated for either the performance of the service or the transfer of the property, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of the contract. If a charge for the performance of the nontaxable service is separately stated, see subrule 18.25(5) below.

18.25(4) A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. The gross receipts from the sale of a preventive maintenance contract is not subject to tax.

18.25(5) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code sections 422.42 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

701—18.26(422) Service charge and gratuity. When the purchase of any food, beverage or meals automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term "service charge" means either a fixed percentage of the total price of or a charge for food, beverage or meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, beverage or meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, beverage or meal it shall be considered a tip and not subject to tax.

Cohen v. Playboy Club International, Inc., 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury,* 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code section 422.43.

701—18.27(422) Advertising agencies, commercial artists, and designers.

18.27(1) *Nontaxable services.* Tax does not apply to charges by advertising agencies, commercial artists, or designers for services rendered that do not represent services that are a part of a sale of tangible personal property, or a labor or service cost in the production of tangible personal property. Examples of such nontaxable services are: writing original manuscripts and news releases; writing copy for use in newspapers, magazines, or other advertising, or to be broadcast on television or radio, compiling statistical and other information; placing or arranging for the placing of advertising in media, such as newspapers, magazines, or other publications; billboards and other facilities used in public transportation; and delivering or causing the delivery of brochures, pamphlets, cards, and similar items. Charges for such items as supervision, consultation, research, postage, express, transportation and travel expense, if involved in the rendering of such services, are likewise not taxable.

18.27(2) *Agency fee or commission.* When an amount billed as an agency "fee," "service charge," or "commission" represents a charge or part of the charge for any of the nontaxable services described under 18.27(1), the amount so billed is not taxable. Such charge by an advertising agency will be considered to be made for nontaxable services.

18.27(3) *Items taxable.* The tax applies to the entire amount charged to clients for items of tangible personal property such as drawings, paintings, designs, photographs, lettering, assemblies and printed matter. This includes the cost of typography and reproduction proofs when the latter is used as part of a paste-up, "mechanical" or assembly. Whether the items of property are used for reproduction or display purposes is immaterial.

18.27(4) *Preliminary art.* "Preliminary art" as used herein means roughs, visualizations, comprehensives and layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art. ("Finished art" as used herein means the final art used for actual reproduction by photo-mechanical or other processes.) Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art as for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction.

The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as preliminary art, of one or more of the types mentioned in the preceding paragraph. Proof of ordering or

producing the preliminary art prior to date of contract or approval for finished art shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller.

The following situations are examples of when the sale of "finished art" is taxable:

a. Finished art which is sold to customers to be used for advertising purposes in newspapers, magazines or the like. After the advertiser contracts with the ad agency for the development of an advertising message or theme, the agency devises ideas (preliminary art) and produces the finished art. The finished art is then delivered to the advertiser or to an agent of the advertiser such as a printer or publisher who is under contract with the advertiser to publish the ad.

b. Finished art which is sold to customers, or their agents (e.g., printers), for use in producing printed material. The charge for finished art is taxable even though the art work may later be returned to the ad agency by the purchaser or the printer or used by the customer or the customer's agent to produce a nontaxable item. Since the finished art is not a part of the printed materials, the ad agency's customer is consuming the material and not buying it for resale, or using it in an exempt manner.

c. Finished art which is used to produce other tangible personal property sold by the ad agency such as letterhead stationery and business cards. The charge for such art is taxable as part of the selling price for such stationery or business cards. This is true whether or not the agency separately itemizes the charge for such stationery or business cards.

18.27(5) *Items purchased by agency, artist or designer.* An advertising agency, artist, or designer is the consumer of tangible personal property used in the operation of its business, such as stationery, ink, paint, tools, drawing tables, T-squares, pens, pencils, and other office supplies. Tax applies to the sale of such property to the agency, artist, or designer. Tax also applies where the agency, artist or designer is the consumer of taxable services.

The agency, artist, or designer is the seller of, and may purchase for resale, any item resold before use, or that becomes physically an ingredient or component part of tangible personal property sold, as, for example, illustration board, paint, ink, rubber cement, flap paper, wrapping paper, photographs, photostats, or art purchased from other artists. Tax also applies where the agency, artist, or designer is the seller at retail of taxable services.

In the event that an agency, artist, or designer is both a consumer and a retailer of such items of tangible personal property as noted in this subsection, such agency, artist or designer should:

a. Purchase such items without tax liability if the majority of the items are sold at retail and remit the tax at the time of resale or at the time such items are consumed in the operation of the business.

b. Pay tax to suppliers at the time of purchase if the majority of the items will be consumed in the operation of the business and deduct the original cost of any such items subsequently sold at retail when reporting tax on their returns.

18.27(6) *Construction.* Nothing contained in this rule shall be construed to provide for an exemption from tax for services expressly taxable in rules 701—26.17(422) and 26.39(422).

18.27(7) *Advertising agencies, commercial artists and designers as agent of client or as a nonagent.*

a. In general. A true agent relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

b. When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the gross receipts from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total amount received for such property. Further, nothing in this rule should be construed to be in variance with the opinion of the Iowa Supreme Court in *Rowe vs. Iowa State Tax Commission,* 249 Iowa 1207, 91 N.W.2d 548 (1958).

c. To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively herein referred to as agency) shall act as follows:

1. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

2. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

3. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

d. Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency's services directly related to the acquisition of personal property.

e. Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

f. Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

18.27(8) *Scope.* The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—18.28(422,423) Casual sales.

18.28(1) *Casual sales by persons not retailers or by retailers outside the regular course of business.* Casual sales are exempt from the Iowa sales and use taxes except for the casual sale of vehicles subject to registration, and vehicles subject only to the issuance of a certificate of title. On and after July 1, 1988, the casual sale of aircraft is also taxable. In order for a casual sale to qualify for exemption under this subrule, two conditions must be present: (1) the sale of tangible personal property or taxable services must be of a nonrecurring nature, and (2) the seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 422.43 or, if so engaged, the sale must be outside the regular course of the seller's business (Order of State Board of Tax Review, Martin Development Corporation, Docket No. 136, December 1, 1976, incorporating by reference Order of Department of Revenue Hearing Officer in Docket No. 75-28-6A-A, July 9, 1976). See subrule 18.28(2) for an explanation of the casual sale exemption applicable to the liquidation of a trade or business.

If either of the conditions above are lacking, no casual sale occurs. Moreover, prior to July 1, 1985, the casual sale exemption was limited to sales of tangible personal property, and casual enumerated taxable services did not qualify for the exemption. *KTVO, Inc. v. Bair,* Equity No. 385 Linn County District Court, September 5, 1975.

For the purposes of this subrule, the word "aircraft" refers to any contrivance now known or hereafter invented, which is designed or used for navigation of or flight in the air, for the purpose of transporting persons, property, or both or for crop dusting, aerial surveillance, recreational flying, or for providing some other service. By way of nonexclusive example, balloons, gliders, helicopters, and "ultra lights" are aircraft. Also included within the meaning of the word "aircraft" is any craft registered under Iowa Code section 328.20 or any successor statute thereto.

Sales of capital assets such as equipment, machinery, and furnishings which are not sold as inventory shall be deemed outside the regular course of business (including sales of capital assets during a retailer's liquidation) and the casual sales exemption shall apply as long as such sales are nonrecurring. This will include transactions exempted from state and federal income tax under Section 351 of the Internal Revenue Code.

Two separate selling events outside the regular course of business within a 12-month period shall be considered nonrecurring. Three such separate selling events within a 12-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year. *Des Moines Police Department v. Bair,* Equity No. CE3-1591, Polk County District Court, November 1, 1976.

EXAMPLE: Corporation A sells the company copy machine at retail to B. At the time of this sale, Corporation A is engaged in the business for profit of selling clothes at retail. Assuming that the sale of the copy machine constitutes a sale of a nonrecurring nature, there is a casual sale because the sale is outside the regular course of Corporation A's business.

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible goods or services for a profit, since the sales are recurring, there is no casual sale. *S & M Finance Co., Fort Dodge v. Iowa State Tax Commission,* 1968, Iowa 162 N.W.2d 505.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in the performance of any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. See rule 18.8(422).

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring. *Des Moines Police Department v. Bair,* Equity No. CE3-1591, Polk County District Court, November 1, 1976.

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets which it has no use for or desires to replace. This event has been a planned function of I and is conducted regularly and consistently over a span of years. Even though this sale event occurs only once a year, it is of a recurring nature because of the pattern of repetitiveness present and, therefore, the casual sale exemption would not apply, regardless of the number of items sold at such sale event each year.

EXAMPLE: J, a corporation engaged in the sale for resale of tangible personal property, sells three capital assets used in J's trade or business consisting of a copy machine, a desk, and a computer. Each sale is made to different buyers and is unrelated to the other sales. The three sales occur in January, June, and October of the same year. The sale made in October consists of a desk. J has not established a pattern of recurring sales of capital assets prior to aforementioned sales of capital assets. Under these circumstances, the sale of the desk is not a casual sale, but the sales of the copy machine and the computer are casual and exempt.

EXAMPLE: K, a corporation, is primarily engaged in the business of road construction. From time to time, it sells used capital assets and scrap materials reclaimed from its road construction work to individuals and businesses. It does not advertise itself as a retailer of these assets and materials but sells them as a matter of courtesy to persons who cannot purchase them elsewhere. After 42 years of operation, it decides to liquidate. Pursuant to that decision, K employs two auctioneers to sell its capital assets and ceases operation after its assets are sold. K had only one capital asset sale during the 12 months immediately preceding each liquidation auction sale. The auction sales are exempt casual sales under this subrule (1) because they are nonrecurring, and (2) because K is not a retailer of the capital assets sold during its liquidation. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review,* 611 N.W.2d 495 (Iowa 2000).

EXAMPLE: L, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of L are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply, but only because of the exemption set out in subrule 18.28(2) infra, since the transfer involves a liquidation of L's business and the sale of L's inventory to another person (the corporatin) which will continue to engage in a similar trade or business.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

18.28(2) *Special rules for casual sales involving the liquidation of a trade or business.* When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt those sales only when the following circumstances exist: (1) the trade or business must be transferred to another person, and (2) the transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review,* 611 N.W.2d 495 (Iowa 2000). One effect of this is that a retailer who is closing as opposed to transferring a business and is selling inventory in the process of this closing is not entitled to claim the casual sale exemption under this subrule, but see subrule 18.28(1), and the resale exemption is always potentially applicable to sales of inventory. See the examples below for further explanation.

EXAMPLE: L, a hardware store, desires to liquidate the business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which a sales tax permit was required to be held. L, however, does not transfer the trade or business to anyone else. Under these circumstances, the casual sales exemption does not apply to the sale of the inventory, but see subrule 18.28(1) for criteria which determine whether the casual sales exemption applies to the equipment and fixtures.

EXAMPLE: The facts are the same as those in the previous example, except that L is liquidating its business because it attempted to build a new store and its entire inventory was destroyed by fire while in storage. An auctioneer sells L's equipment and trade fixtures to various purchasers. The auctioneer's sale of the equipment and trade fixtures is an exempt casual sale of the type described in subrule 18.28(1) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business. See *Holland Bros. Construction Co., Inc.,* supra.

EXAMPLE: M, a sole proprietorship, incorporated. The assets of M are sold to the new corporation for stock. The new corporation engaged in a similar business. The casual sale exemption would apply.

EXAMPLE: N, an oil company, sells all or substantially all of the tangible personal property of ten company-owned service stations which were held or used in the course of its business, for which N was required to hold a sales tax permit, by bulk sales or otherwise. The sales were made to O, P, and Q and occurred at different times during the same year, each sale being unrelated. N was required to have a sales tax permit for each service station. N transferred its trade or business (each service station) to O, P, and Q, each of whom will engage in the same business N did, i.e., operation of service stations. Even though under these circumstances, the sales by N are recurring, the casual sales exemption would apply since each trade or business was transferred to another person who did engage in a similar trade or business.

EXAMPLE: R, an operator of a restaurant, auctions off to various purchasers who are not engaged in the restaurant business all or substantially all of the tangible personal property held or used in the business for which R was required to hold a retail sales tax permit. R transfers the trade or business to S who then operates a restaurant at the same location R did. Even if S did not purchase any of the tangible

personal property, under these circumstances, the casual sales exemption applies. The tangible personal property held or used in the trade or business need not be sold to the same person to whom the trade or business is sold for the exemption to apply.

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. This subrule's casual sales exemption will not apply, but see subrule 18.28(1) for the criteria of a casual sale exemption which could apply.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

18.28(3) *Casual sales of services.* Special rule for services rendered, furnished, or performed on or after July 1, 1985. The "casual sale" of an enumerated service has occurred if the following circumstances exist:

a. The service was rendered, furnished, or performed on or after July 1, 1985; and

b. The service was rendered, furnished, or performed on a nonrecurring basis by a seller who, at the time of the sale of the service, is not engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 422.43, or, if so engaged, the sale was outside the regular course of the seller's business; or

c. The sales of all, or substantially all of the services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit, if the retailer sells or otherwise transfers the trade or business to another person who engages in a similar trade or business.

EXAMPLE: V ordinarily engages in janitorial and building maintenance or cleaning which are taxable services; see rule 701—26.60(422). Once, as a favor to customer W, V cut customer W's lawn and otherwise performed the taxable service of "lawn care" for customer W. Since this performance of lawn care was not "within V's regular course of business" and was not "recurring," gross receipts from the lawn care are not subject to tax.

EXAMPLE: Corporation X rents a piece of equipment from Y. Y does not otherwise rent equipment and does not engage in the business for profit of selling tangible goods or taxable enumerated services. A casual sale qualifying for the exemption exists.

This rule is intended to implement Iowa Code sections 422.42(12), 422.45(6) and 423.4.

701—18.29(422,423) Processing, a definition of the word, its beginning and completion characterized with specific examples of processing.

18.29(1) *Processing—a definition.* For the purpose of these rules, "processing" means an operation or a series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing. *Linwood Stone Products Co. v. State Department of Revenue,* 175 N.W.2d 393 (Iowa 1970).

18.29(2) *The beginning of processing.* Processing begins when the "form, context, or condition" of tangible personal property is changed with the intent of eventually transforming the property into a saleable finished product. The severance of raw material from real estate is not processing, even if this severance results in a change in the form, context, or condition of the real estate. *Linwood Stone Products Co. v. State Department of Revenue,* 175 N. W.2d 393 (Iowa 1970). Furthermore, transportation of raw material after it is severed from real estate but prior to the time the initial change in the form, context, or condition of the raw material occurs is not processing. *Southern Sioux County Rural Water System, Inc. v. Iowa Department of Revenue,* 383 N.W.2d 585 (Iowa 1986).

18.29(3) *The completion of processing.* Processing ends when the property being processed is in the form in which it is ultimately intended to be sold at retail, *Hy-Vee Food Stores v. Iowa Department of Revenue,* 379 N.W.2d 37 (Iowa App. 1985). The storage or transport of property after that property is transformed into a finished product is not a part of processing.

18.29(4) *Examples of when processing begins and ends.* The following examples are intended to clarify but not to contradict the explanation of processing set out in subrules 18.29(2) and 18.29(3).

EXAMPLE A: A company blasts limestone from the ground, bulldozers pick the limestone up and put it in trucks; these trucks transport the limestone to a crusher some distance from the quarry site. The first change in the "form" or "condition" of the limestone, while it is tangible personal property, occurs when the stone is crushed in the crusher. The blasting of the stone from the ground and its transport to the crusher would be acts preparatory to and not a part of processing. Thus, fuel used in the bulldozers and transport trucks would not be fuel used in processing, *Linwood Stone Products,* supra.

EXAMPLE B: Pumps remove water from underground wells and pump that water through pipes to a water treatment plant. At the treatment plant, the water passes initially through an aeration system which adds oxygen to it. At other points in the plant, potassium and chlorine are added to the water and iron is removed. After these acts are performed, clean, drinkable water exists. The first change, however, in the condition of the water occurs when it passes through the aeration system and oxygen is added to it. The withdrawal of the water from the ground and its transport to the aeration system would not be a part of processing. Thus, electricity used by the pumps which pump the water to the aeration system would not be used in processing. However, by way of contrast, electricity used to transport the water between, for example, the aeration system and the point where potassium is added to the water would be used in processing. *Southern Sioux Rural Water System, Inc.,* supra.

EXAMPLE C: Water is processed in a treatment plant. The last act at the plant necessary to render the water drinkable or a "finished product" is the addition of chlorine. After the addition of chlorine, the water is pumped first into wells and later into water towers where it is held for distribution. The pumping of this drinkable water from the point where the chlorine is added to the wells and the tower is not a part of processing because processing of the water ended with the addition of the chlorine; thus, electricity used in these pumps is not electricity used in processing. *Southern Sioux County Rural Water System, Inc.,* supra.

18.29(5) *Integral part of the production of the product test.* Certain activities may be exempt as part of processing if those activities are very closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Southern Sioux Rural Water System, Inc.,* supra. Merely because an activity is vital or essential to a processing operation does not make that activity exempt as part of processing unless the activity itself is closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Mississippi Valley Milk Producers Ass'n v. Iowa Dept. of Revenue,* 387 N.W.2d 611 (Iowa App. 1986). See the nonexclusive example below.

A manufactures nails. In A's factory is a machine which draws steel into long rods the width of whatever nail A may wish to manufacture. After this machine draws the steel into the desired-size rods, the rods are moved to a second machine by a conveyor belt. This second machine cuts the rods into the length of nail which A desires. A second conveyor belt then transports these cut rods to a third machine which sharpens one end of the rod to a point and puts a "nail head" on the other end of the rod. The activities of the three machines are clearly processing, in that they are activities which change the form, context or condition of raw material, and as a result of those activities, marketable tangible personal property or a finished product is created. The two conveyor belts move the partially finished nails from one piece of processing equipment to another while processing is occurring. Since the activities of the conveyors are very closely interconnected with and an integral part of the operation of the various pieces of processing equipment while processing is occurring, the conveyor belts are involved in processing as well.

18.29(6) *Other specific examples of processing.* The Iowa Supreme Court has also stated that the following activities are processing: manufacturing ice, refrigerating cheese to age it from "green" to edible, refrigerating eggs to change their flavor, pasteurizing and subsequent refrigeration of milk, "hard" freezing of meat and butter for aging, canning vegetables and cooking foodstuffs; *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission,* 248 Iowa 497, 81 N.W.2d 437 (1957); and, *Mississippi Valley Milk Producers v. Iowa Dept. of Revenue and Finance,* 387 N.W.2d 611 (Ia. App. 1986), also crushing of "flat rock" limestone and treating limestone in kilns. *Linwood Stone Products Co. v. State*

Dept. of Revenue, 175 N.W.2d 393 (Iowa 1970). See 701—subrule 17.3(2) for an expanded definition of processing with regard to food manufacturing.

18.29(7) *Other department rules concerned with processing.* Various sections of the Iowa Code set out activities that are defined by statute to be "processing." The rules interpreting these statutes for the purposes of sales and use tax law are the following:

a. 701—15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

b. 701—17.2(422) Fuel used in processing—when exempt.

c. 701—17.3(422,423) Processing exemptions.

d. 701—17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.

e. 701—17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.

f. 701—18.3(422,423) Chemical compounds used to treat water.

g. 701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.

h. 701—18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997, but before July 1, 2016.

i. 701—26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.

j. 701—28.2(423) Processing of property defined.

k. 701—33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.

l. 701—33.7(423) Property used to manufacture certain vehicles to be leased.

m. For property sold on or after July 1, 2016, computers, machinery, equipment, replacement parts, and supplies used for an exempt purpose under Iowa Code section 423.3(47). See rules 701—230.14(423) to 701—230.22(423).

[**ARC 2349C**, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter; **ARC 2768C**, IAB 10/12/16, effective 11/16/16]

701—18.30(422) Taxation of American Indians.

18.30(1) *Definitions.*

"American Indians" means all persons of Indian descent who are members of any recognized tribe.

"Settlement" means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

18.30(2) *Retail sales tax—tangible personal property.* Retail sales of tangible personal property made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation, where delivery occurs on the reservation, are exempt from tax *(Bryan v. Itasca County,* 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 475-81 (1976)). Retail sales of tangible personal property made on a recognized settlement or reservation to Indians where delivery occurs off the reservation are subject to tax. Retail sales of tangible personal property made to non-Indians on a recognized settlement or reservation are subject to tax regardless of where the delivery occurs. Sales made to non-Indians are taxable even though the seller may be a member of a recognized settlement or reservation.

18.30(3) *Retail sales tax—services.* Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians who are members of the tribe located on the recognized settlement or reservation where delivery of the service occurs are exempt from tax *(Bryan v. Itasca County,* 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 475-81 (1976)). Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or

communication services to Indians where delivery of the services occurs off a recognized settlement or reservation are subject to tax.

18.30(4) *Off-reservation purchases.* Purchases made by Indians off a recognized settlement or reservation are subject to tax if delivery occurs off the reservation. Purchases made by Indians off a recognized settlement or reservation are not subject to tax if delivery is made on the reservation to Indians who are members of the tribe located on that reservation.

See rule 701—33.5(423) for the taxation of tangible personal property and services where the state use tax may be applicable.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(1).

701—18.31(422,423) Tangible personal property purchased by one who is engaged in the performance of a service.

18.31(1) *In general. (Effective July 1, 1990)*

a. On and after July 1, 1990, tangible personal property purchased by one who is engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Prior to July 1, 1990, in those circumstances in which tangible personal property is purchased by one who is engaged in the performance of a service and the property is transferred to the customer in conjunction with a performance of the service in a form or quantity which is capable of any fixed or definite price value, but the actual sale of the property is not indicated by a separate charge for the identifiable item, the burden of proving that the property was purchased for resale by one engaged in the performance of a service and not subject to tax at the time of purchase is upon the person engaged in the performance of a service who asserts this.

c. Tangible personal property which is not sold in the manner set forth in *"a"* or *"b"* above is not purchased for resale and thus is subject to tax at the time of purchase by one engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor's clients regarding their accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity which is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a "resale" of the item.

An automobile repair shop purchases solvents which are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvent since the solvents are not sold to the customer and, in this case, the item is not transferred to a customer in a form or quantity which is capable of a fixed or definite price value. Thus, the solvent is deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE: A retailer purchases television tubes tax-free where the retailer makes a separate charge for the tube to the customer and since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A beauty or barber shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty or barber shop purchases such items from its supplier, where the customers of the beauty or barber shop are not separately billed for the item, and because it is not transferred to the customer in a form or quantity capable of a fixed or definite price value, it is being consumed by the beauty or barber shop.

EXAMPLE: A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas and tax is due at the time of purchase. The items

purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the item.

EXAMPLE: An accounting firm purchases plastic binders which are used to cover the reports issued to its customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, there being no sale to the customer in such a case.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A jeweler purchases materials such as main springs and crystals to be used in the performance of a service. These items are purchased by the jeweler for resale where they are transferred to the customer in a form or quantity capable of a fixed or definite price value and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE: A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers which are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal....$60"; "Fertilizer...50 lbs....$100"; and "Materials applied to lawn...4 bushel...$40". The following are examples of information placed upon an invoice which would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...$30" or "Fifty pounds of fertilizer was applied to this lawn."

18.31(2) *Purchases made by automobile body shops or garages with body shops (effective October 1, 1980).*

Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

1. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. See Iowa Code section 422.42(2) and *Cedar Valley Leasing Inc. v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979).

2. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two events is missing, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items which will be resold (see list of items in this rule) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. See rule 701—15.3(422,423). Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" which such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

Abrasives
Accessories
Battery water
Body filler or putty
Body lead
Bolts, nuts and washers

Brake fluid
Buffing pads
Chamois
Cleaning compounds
Degreasing compounds
Floor dry
Hydraulic jack oil
Lubricants
Masking tape
Paint
Polishes
Rags
Rivets and cotter pins
Sand paper
Sanding discs
Scuff pads
Sealer and primer
Sheet metal
Solder
Solvents
Spark plug sand
Striping tape
Thinner
Upholstery tacks
Waxes
White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts.

Batteries
Brackets
Bulbs
Bumpers
Cab corners
Chassis parts
Doors
Door guards
Door handles
Engine parts
Fenders
Floor mats
Grills
Headlamps
Hoods
Hub caps
Radiators
Rocker panels
Shock absorbers
Side molding
Spark plugs
Tires
Trim

Trunk lids
Wheels
Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies which are generally not transferred to the body shop's customer during the course of the repair and therefore could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer and therefore the body shop must pay tax to the vendor at the time of purchase.

Air compressors and parts
Body frame straightening equipment
Brooms and mops
Buffers
Chisels
Drill bit
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Spreaders for putty
Signs
Washing equipment and parts
Welding equipment and parts

Because of the nature of their business and the formulas devised by the insurance industry to reimburse body shops for cost of "materials," it is possible for body shops, in their invoices to their customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shops and some of such individual materials are not even transferred by body shops to their customers. Therefore, the body shops are generally the "consumers" of "materials" and do not purchase them for resale. *W.J. Sandberg Co. v. Iowa State Board of Assessments and Review,* 225 Iowa 103, 278 N.W. 643 (1938). Thus, body shops should pay tax to their suppliers on all materials purchased and consumed by them. If materials are purchased from non-Iowa suppliers who do not collect Iowa tax from body shops, such body shops should remit consumer use tax to the Department of Revenue on such materials.

Body shops must collect sales tax on the taxable service of repairing motor vehicles. See rule 701—26.5(422). However, due to the nature of the insurance formulas, it is possible for body shops to itemize that portion of their billing which would be for repair services and that portion relating to consumed "materials." It is also possible for body shops to itemize that portion of their charges for parts which they purchase for resale to their customers. Body shops do not and cannot resell the tools and supplies previously listed in this rule and are taxable on their purchases of such items.

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials," body shops should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, solder and polishes. In its invoice to

the customer, the labor is separately listed at $300, the part (fender) is separately listed at $300, and the category of "materials" is separately listed for a lump sum of $100, for a total billing of $700. The Iowa sales tax computed by the body shop should be on $600 which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for "gross taxable services" as defined in Iowa Code subsection 422.42(16), which is taxable in Iowa Code section 422.43.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or part charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at time of purchase.

This rule is intended to implement Iowa Code sections 422.42, 422.43 and 423.2.

701—18.32(422,423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations. Rescinded **ARC 5201C**, IAB 10/7/20, effective 11/11/20.

701—18.33(422,423) Printers' and publishers' supplies exemption with retroactive effective date.

18.33(1) For the purposes of this rule, a "printer" is any person, a portion of whose business involves the completion of a finished, printed product for sale at retail by that person or another person. A "printer" is also any person, a portion of whose business involves the completion of a finished printed packaging material used to package products for ultimate sale at retail. The term "printer" does not include any person printing or copyrighting printed material for its own use or consumption and not for resale. A "publisher" means and includes any person who owns the right to produce, market, and distribute printed literature and information for ultimate sale at retail.

18.33(2) Effective May 4, 1995, and retroactive to July 1, 1983, the gross receipts from the sale or rental of the following to a printer or publisher are exempt from tax: acetate; antihalation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models, modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; Veloxes; wood mounts; and any other items used in a similar capacity to any of the above-enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies not enumerated in this subrule are subject to tax.

18.33(3) Claim for refunds of tax, interest, or penalty paid for the period of July 1, 1983, to June 30, 1995, must be limited to $25,000 in the aggregate and will not be allowed unless filed prior to October 1, 1995. If the amount of claimed refunds for this period totals more than $25,000, the department must prorate the $25,000 among all claims.

701—18.34(422,423) Automatic data processing.

18.34(1) *In general.*

a. Applicability of tax. For the purposes of this rule, the tax on automatic data processing is applicable to the gross receipts of:

(1) Sales and rentals of data processing equipment (hardware).

(2) Sales and rentals of tangible personal property produced or consumed by data processing equipment or prewritten (canned) computer software used in data processing operations.

(3) Certain enumerated services performed on or connected with data processing such as rental of tangible personal property, machine repair, services of machine operators, office and business machines repair, electrical installation, and any other taxable service enumerated in Iowa Code section 422.43.

b. Definitions.

(1) Rescinded by 2020 Iowa Acts, House File 2641, section 97, effective July 1, 2020.

(2) *"Hardware"* means the physical computer assembly and peripherals including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers.

(3) *"Canned software"* is prewritten computer software which is offered for general or repeated sale or rental to customers with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Canned software is tangible personal property. The term also includes programs offered for general or repeated sale or rental which were initially developed as custom software. Evidence of canned software includes the selling or renting of the software more than once. Software may qualify as custom software for the original purchaser or lessor but is canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.

(4) *"Custom software"* is specified, designed, and created by a vendor at the specific request of a customer to meet a particular need and is considered to be a sale of a service rather than a sale of tangible personal property. It includes those services represented by separately stated charges for the modification of existing prewritten software when the modifications are written or prepared exclusively for a customer. Modification to existing prewritten software to meet the customer's needs is custom computer programming only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program before modification was previously marketed, the new program will qualify as a custom program if the price of the prewritten program was 50 percent or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced by the records of the seller, was more than 50 percent of the contract price to the customer.

The department will consider the following records in determining the extent of modification to prewritten software when there is not a separate charge for the modification: logbooks, timesheets, dated documents, source codes, specifications of work to be done, design of the system, performance requirements, diagrams of programs, flow diagrams, coding sheets, error printouts, translation printouts, correction notes, and invoices or billing notices to the client.

(5) *"Storage media"* includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by a computer.

(6) *"Rental"* includes any lease or license agreement between a vendor and a customer for the customer's use of hardware or software.

(7) *"Program"* is interchangeable with the term "software" for purposes of this rule.

18.34(2) *Taxable sales, rentals and services.*

a. Sales of equipment. Tax applies to sales of automatic data processing equipment and related equipment.

b. Rental or leasing of equipment. Where a lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be used on the lessee's premises, the rental or lease payments are subject to tax. See rule 701—26.18 on tangible personal property rental.

c. Canned software. The sale or rental for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software may be transferred to a customer in the form of diskettes, disks, magnetic tape, or other storage media or by listing the program instructions on coding sheets.

(1) Tax applies whether title to the storage media on which the software is recorded, coded, or punched passes to the customer or the software is recorded, coded, or punched on storage media furnished by the customer. A fee for the temporary transfer of possession of canned software for the purpose of direct use to be recorded, coded, or punched by the customer or by the lessor on the customer's premises, is a sale or rental of canned software and is taxable.

(2) Tax applies to the entire amount charged to the customer for canned software. Where the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees includable in the purchase price are subject to tax.

d. Training materials. Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

e. Services a part of the sale or lease of equipment. Where services, such as programming, training or maintenance services, are provided to those who purchase or lease automatic data processing and related equipment, on a mandatory basis as an inseparable part of the sale or taxable lease of the equipment, charges for the furnishing of the services are includable in the measure of tax from the sale or lease of the equipment whether or not the charges are separately stated. (Where the purchaser or lessee has the option to acquire the equipment either with the services or without the services, charges for the services may not be excluded from the measure of tax if they are taxable enumerated services.)

f. Materials and supplies. The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated is a sale subject to tax.

Generally service bureaus are consumers of all tangible personal property, including cards and forms, which they use in providing services unless a separate charge is made to customers for the materials, in which case, tax applies to the charge made for the materials.

g. Additional copies. When additional copies of records, reports, tabulation, etc., are sold, tax applies to the charges made for the additional copies. "Additional copies" are all copies in excess of those produced on multipart carbon paper simultaneously with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. If no separate charge is made for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any) and the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting or line drawings, and put on microfilm or photorecording paper.

h. Mailing lists. Addressing (including labels) for mailing. Where the service bureau addresses, through the use of its automatic data processing equipment or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares, through the use of its automatic data processing equipment or otherwise, labels to be affixed to material to be mailed, with names and address furnished by the customer or maintained by the service bureau for the

customer, tax does not apply to the charge for producing the labels, regardless of whether the service bureau itself affixes the labels to the material to be mailed. However, tax would be due on any tangible personal property, such as labels, consumed by the service bureau. (See *"f"* above.) Mailing lists in the form of Cheshire tapes, gummed labels, and heat transfers which are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

i. Services of a machine operator. The services of a machine operator, such as a key punch operator or the operator of any other data processing equipment, when hired to operate another person's machinery or equipment, are subject to tax when contracted for and performed by someone other than an employee of the owner of the machinery and equipment.

j. Maintenance contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements have been recorded. The maintenance contract may also provide that the purchaser will be entitled to receive certain services, including error corrections and telephone or on-site consultation services.

(1) Nonoptional maintenance contract. If the maintenance contract is required as a condition of the sale or rental of canned software, it will be considered as part of the sale or rental of the canned software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software.

(2) Optional maintenance contracts prior to July 1, 1998. If the maintenance contract is optional to the purchaser of canned software, then only the portion of the contract fee representing improvements delivered on storage media is subject to sales tax if the fee for other services, including consultation services and error corrections, is separately stated. If the fee for other services, including consultation services and error corrections, is not separately stated from the fee for improvements delivered on storage media, the entire charge for the maintenance contract is subject to sales tax.

(3) Optional maintenance contracts on and after July 1, 1998. If an optional software maintenance or support contract provides for technical support services only, then no tax is imposed on the gross receipts from the performance of those services. If an optional software maintenance or support contract separately states the charges which represent improvements delivered on storage media from charges which represent other services, including consultation services and error correction, then only that portion of the contract fee representing improvements delivered on the storage media is subject to sales tax. If an optional software maintenance or support contract provides for the taxable transfer of tangible personal property and the provision of nontaxable services, and there is no separately stated charge for the taxable transfer of property or for the nontaxable service, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of such contracts. See 701—paragraph 18.25(3)*"c"* for more information.

18.34(3) *Nontaxable items and activities.*

a. Custom programs. These are programs prepared to the special order of a customer. Tax does not apply to the transfer of custom programs in the form of written procedures, such as program instructions listed on coding sheets. Tax applies to the sale of material transferred to the customer in the form of typed or printed sheets if separately invoiced.

b. Processing a client's data. Generally speaking, if a person enters into a contract to process a client's data by the use of a computer program, or through an electrical accounting machine programmed by a wired plugboard, the processing of a client's data is nontaxable. Such contracts usually provide that the person will receive the client's source documents, record data in machine readable form, such as in punch cards or on magnetic tape, make necessary corrections, rearrange or create new information as the result of the processing and then provide tabulated listings or record output on other media. This service will be considered nontaxable even if the total charge is broken down into specific charges for each step. The furnishing of computer programs and data by the client for processing under direction and control of the person providing the service is nontaxable even though charges may be based on computer time. The true object of these contracts is considered to be a service, even though some tangible personal property is incidentally transferred to the client. However, tax will apply to tangible personal property separately invoiced to the client.

c. Time sharing. Charges made for the use of automatic data processing equipment, on a time-sharing basis, where access to the equipment is by means of remote facilities, are not subject to tax. Time sharing which is, in fact, a rental of equipment and the lessee exercises the right of possession or control over the equipment is subject to tax. See 18.34(2)*"b"* and rule 701—26.18(422).

d. Designing of systems, converting of systems, consulting, training, and miscellaneous services. These services consist of the developing of ideas, concepts and designs. Common examples of these nontaxable services are:

(1) Designing and implementing computer systems (e.g., determining equipment and personnel required and how they will be utilized).

(2) Designing storage and data retrieval systems (e.g., determining what data communications and high speed input-output terminals are required).

(3) Converting manual systems to automatic data processing systems, converting present automatic data processing systems to new systems (e.g., changing a second generation system to a third generation system).

(4) Consulting services (e.g., studies of all or part of a data processing system).

(5) Feasibility studies (e.g., studies to determine what benefits would be derived if procedures were automated).

(6) Evaluation of bids (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial).

(7) Providing technical help such as analysts and programmers, usually on an hourly basis.

(8) Writing (coding) and testing of programs—contract programming. These services result in the production of customized programs. This type of service is not taxable because programming requires the development or ascertainment of information, and the evaluation of data, in addition to other development skills.

Persons engaged in providing nontaxable computer services are the consumers of all tangible personal property used in such activities, and the tax must be paid on their acquisition of such property.

This paragraph, 18.34(3)*"d,"* shall become effective for periods beginning on or after April 1, 1992.

e. Installation charges. Where installation charges are separately contracted for or where no contract exists, are separately invoiced, or do not constitute enumerated taxable services, they are exempt from tax. See rule 701—15.14(422,423).

f. Pickup and delivery charges. The tax will not apply to pickup and delivery charges which are separately contracted for or where no contract exists, are separately invoiced.

g. Rental of computer programs. Prior to July 1, 1984, the rental of computer programs was not subject to tax since the program did not constitute equipment. *KTVO, Inc. vs. Bair,* 1977, Iowa 225 N.W.2d, 111. For the rule regarding prewritten (canned) programs subsequent to that date, see 18.3(2)*"c."*

This rule is intended to implement Iowa Code sections 422.42, 422.45 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

[see Rescission note at end of chapter]

701—18.35(422,423) Drainage tile. The sale or installation of drainage tile which is to be used in disease control, weed control, or the health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. Drainage tile, when purchased for these purposes, is therefore not subject to tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code subsection 422.42(9).

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(9), and 423.2.

701—18.36(422,423) True leases and purchases of tangible personal property by lessors.

18.36(1) *True leases and purchases by lessors prior to, on, and subsequent to July 1, 1978.* The definition of a sale specified in Iowa Code subsection 422.42(2) does not include leases. Hence, the exemption from tax on sales for resale is inapplicable to the purchase of tangible personal property for the purpose of leasing such property to others, but not for the purpose of reselling such property.

Cedar Valley Leasing, Inc. v. Iowa Department of Revenue, 274 N.W.2d 357 (Iowa 1979). However, even though the general rule is that the acquisition cost of tangible personal property purchased for the purpose of leasing it to others is subject to the Iowa sales or use tax, certain transactions are exempted from tax by statute. See subrule 18.36(4).

18.36(2) *General.* Prior to July 1, 1984, tax is due on the lease or rental payments derived from the service of equipment rental only and not from the lease or rental of other tangible personal property. See 701—subrule 26.18(1). Tax would also be due on the gross receipts received on the disposal of the tangible personal property provided no exemption exists. When property is purchased for the purpose of financing under a conditional sales contract, the property is purchased for resale, and the acquisition of the property is not subject to Iowa tax. See rule 701—16.47(422,423).

The gross receipts from the leasing of property for subletting purposes is exempt from tax as a resale of a service, but the lessee must collect tax on the gross receipts from subletting unless such subletting is otherwise exempt from tax.

a. Where a resident or nonresident lessor leases equipment to a resident or nonresident lessee and the lease contract is executed in Iowa and the equipment is delivered to the lessee in Iowa, the rental payments are subject to Iowa sales tax, even if the equipment is taken by the lessee to another state. *Williams Rentals, Inc. v Tidwell,* 516 S.W.2d 614 (Tenn. 1974).

b. Where a nonresident lessor leases equipment to a resident or nonresident lessee and the lessee uses the equipment in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments, provided the lessor maintains a place of business in Iowa as provided in Iowa Code sections 423.1(6) and 423.9. Whether the lease agreement is executed in Iowa or not is irrelevant. *State Tax Commission v. General Trading Co.,* 322 U.S. 335, 64 S.Ct. 1028,88 L.Ed 1309, (1944).

c. Where a lessee is the recipient of equipment rental services as defined in *"a"* and *"b"* above and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee is the recipient of equipment rental services, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.10, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside of Iowa, and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa and uses it in Iowa, Iowa use tax applies to rental payments, but see *"g"* below.

e. Where a resident or nonresident lessor purchases tangible personal property in Iowa for subsequent lease in or out of Iowa and takes delivery of the equipment in Iowa, the lessor's purchase is subject to Iowa sales tax. *Dodgen Industries, Inc. v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968).

f. When a resident or nonresident lessor purchases tangible personal property outside of Iowa for the purpose of leasing it in Iowa and the equipment is brought into Iowa and used by the resident or nonresident lessee in this state, the lessor is considered as having a "use" of the property in Iowa and Iowa use tax will apply to the lessor's purchase price of the property, regardless whether or not the lessor makes any physical use of the property in Iowa. *Union Oil Company of California v. State Board of Equalization,* 1963, 34 Cal. Rpts. 872, 386 P.2d 496.

g. If a sales or use tax has already been paid to another state on the purchase price of equipment prior to the use of that equipment in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if a sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given. *Henneford v. Silas Mason Co.,* 1937, U.S.577, 57 S.Ct. 524, S1 L.Ed. 814.

18.36(3) *Leases relating to vehicles subject to registration.*

a. Vehicles as defined in Iowa Code subsections 321.1(4), (6), (8), (9), and (10) (motor trucks, truck tractors, road tractors, trailers, and semitrailers), except when designed primarily for carrying

persons, can be purchased free of use tax when purchased for lease and actually leased for use outside Iowa if the subsequent sole use in Iowa is in interstate commerce or interstate transportation.

b. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles as defined in 18.36(3)*"a"* when manufactured for lease and actually leased to a lessee for use outside the state of Iowa, can be purchased free of use tax provided the sole subsequent use of the vehicle in Iowa is in interstate commerce or interstate transportation. (Iowa purchases which would be subject to Iowa sales tax do not qualify for this exemption.) See rule 701—33.7(423).

The provisions of *"a"* and *"b"* are effective for periods beginning on January 1, 1973. Also see 701—Chapter 34 of the rules relating to vehicles subject to registration.

18.36(4) *Special rules for lessors on or after July 1, 1978.* If tangible personal property is purchased for leasing, the purchase of the property is exempt from tax if the following conditions are met:

a. The person (lessor) purchasing the property is regularly engaged in the business of leasing,

b. The period of the lease is for more than one year for sales or property occurring from July 1, 1978, to May 18, 1997, inclusive; for sales of property occurring on and after May 19, 1997, the period of the lease must be for more than five months, and

c. The lease or rental receipts must be subject to tax under the service of equipment rental.

All three conditions must be met before the exemption applies.

If the exemption is properly claimed, it is lost when the property is made use of for any purpose other than leasing and the person claiming the exemption is liable for the tax based on the original purchase price. Tax paid on the leasing or rental payments would be allowed as a credit against the tax due on the purchase price.

In the following examples, assume, unless stated to the contrary, that the lease or rental receipts are subject to tax. The examples are written on the assumption that the period for an exempt lease is five months or longer. Thus, these examples are basically applicable to the period beginning May 19, 1997; however, the examples illustrate principles which are applicable to the purchase for lease exemption for periods longer than one year which was the requirements for exemption prior to May 19, 1997.

EXAMPLE: A restaurant makes a one-time purchase of office furniture which it leases to an insurance company for a period of four years. The purchase of office furniture by the restaurant would be subject to tax because the restaurant is not regularly engaged in the business of leasing. However, if the restaurant established a pattern of regularly purchasing office furniture or other tangible personal property for lease, the exemption would apply.

EXAMPLE: A company purchases a computer which will be leased for a period of three years, at which time the computer is returned to the company. The sole business of the company is to purchase this one computer for lease. The purchase of the computer is exempt from tax because the company is regularly engaged in the business of leasing.

EXAMPLE: A leasing company purchases three lawn mowers which will be leased to individuals for periods of time less than five months. The purchase of the lawn mowers by the leasing company would be subject to tax because the periods of the leases are for less than five months.

EXAMPLE: A leasing company purchases a computer which will be leased for a period of three years. The purchase of the computer is exempt from tax because the period of the lease is for more than five months.

EXAMPLE: A leasing company buys a computer. The company claims the exemption from tax, but the company uses the computer in its own operations. Tax is due on the original purchase price and the leasing company is liable for the tax due.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned to the leasing company and then the machine is immediately re-leased without being used by the leasing company for any other purpose. The exemption would apply because it was properly claimed and nothing occurred to cause loss of the exemption.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned and the leasing company then uses the machine in its own business. The exemption would no longer apply and the leasing company would be liable for the

tax based on the original purchase price. Credit would be allowed against the tax due on the purchase price for any tax paid on the lease or rental payments. Assume the leasing company paid $2,000 for the copying machine and charged $200 per month plus $10 in tax per month. Since the machine is returned and the exemption is not applicable, the leasing company would owe $100 on the $2,000 acquisition cost. However, the leasing company collected $40 (four months x $10) tax on the monthly rental charges. Allowing the credit for tax collected of $40 against the total tax liability of $100 leaves a net tax liability of $60 owed by the leasing company.

EXAMPLE: A manufacturer and seller of office furniture also leases office furniture. The leases always run for a period longer than five months and the company usually has only two leases per year. The leasing operation only accounts for 1 percent of the company's total business. The company still qualifies for the exemption because it is regularly engaged in the business of leasing and the period of the lease is for more than five months.

EXAMPLE: A leasing company purchases an airplane from an aircraft dealer and leases it for a period of three years. The lease or rental payments are not taxed because of the exemption for transportation services. The leasing company would owe tax based on the acquisition cost because the lease or rental payments are not subject to tax under the service of equipment rental.

EXAMPLE: A leasing company purchases equipment and leases it to a lessee for a period of 18 months. For the first 3 months, the equipment is used by the lessee in making repairs to existing structures and the lease receipts are taxable. For the remainder of the lease period, the equipment is used in new construction of buildings and structures and the lease receipts are exempt from tax. The acquisition cost of the equipment is exempt because the exemption was properly claimed and was not subsequently lost by a use other than leasing.

EXAMPLE: A leasing company purchases from an Iowa retailer equipment on May 18, 1997, for the purpose of leasing it for a period of six months. The lease receipts will be taxable. The sales tax exemption on the acquisition cost to the lessor cannot be claimed because the sale occurred before May 19, 1997, and, at the time of the sale, no sales tax exemption applied to such acquisition cost. The exemption for acquisition cost should not be given a retroactive effect. *Jones v. Gordy,* 1935, 169 Md. 173, 180 Atl. 272.

EXAMPLE: A leasing company purchases equipment outside of Iowa on May 1, 1997. The lessee brings the equipment into Iowa on June 1, 1997, and uses it in Iowa. The lease period is nine months, and the lessee's use in Iowa is subject to Iowa use tax on the lease payments. Under these circumstances, the Iowa use tax exemption on the lessor's acquisition cost applies because it is the law in effect at the time of use in Iowa, not at the time of sale, which determines whether a use tax exemption applies. *City of Ames v. Iowa State Tax Commission,* 1955, 246 Iowa 1016, 71 N.W.2d 15; *Allis-Chalmers Mfg. Co. v. Iowa State Tax Commission,* 1958, 250 Iowa 193, 92 N.W.2d 129.

EXAMPLE: A leasing company purchases equipment not for resale and leases it to the lessee for a period of more than five months. After three months, the equipment is returned to the leasing company which then sells the equipment. Such sale is not part of the regular course of the leasing company's business. The exemption, though properly claimed, is lost because, by reason of such sale, the leasing company made use of the property for a purpose other than leasing or renting. Had the equipment been returned to the leasing company on or after five months and one day from the commencement of the lease period, and the leasing company then sold the equipment outside the regular course of its business or used the equipment in its business, the exemption for acquisition cost would not be lost. Had the equipment been purchased for resale and leased prior to such resale, the acquisition cost to the leasing company would be exempt from tax. *Herman M. Brown Co. v. Johnson,* 1957, 248 Iowa 1143, 82 N.W.2d 134. If the equipment is traded in toward the purchase price of other equipment by the leasing company, or if the leasing company disposes of the equipment after it is fully depreciated, the exemption for acquisition cost is not lost. Where sale of equipment outside the regular course of business is made by the leasing company, see also rule 18.28(422) to determine whether the casual sale exemption applies to the receipts from such sale.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee. Assume that the exemption for acquisition cost of the equipment was properly claimed. Thereafter, the lessee makes an

assignment of the lease. The exemption is not lost since the assignee stands in the same position as the original lessee and such an assignment does not change the nature of the original lease period. *Berg v. Ridgway,* 1966, 258 Iowa 640, 140 N.W.2d 95.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. The leasing company sells the lease contracts, as commercial paper, to others. The exemption for acquisition cost can still be claimed and such sales of lease contracts do not cause loss of the exemption.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lease can no longer be performed because the property is destroyed by an act of God. The acquisition cost exemption is not lost.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lessee is adjudged bankrupt and the equipment is returned to the leasing company and is re-leased without being used by the leasing company for any other purpose. The acquisition cost exemption is not lost since the leasing company makes no use for any purpose other than leasing or renting.

EXAMPLE: A leasing company purchases equipment which is leased to a lessee. The criteria for the acquisition cost exemption are present. The lessee then sublets the equipment to another for a period less than five months. The acquisition cost exemption is not lost.

18.36(5) *Lease or rental of all tangible personal property now subject to tax.* On and after July 1, 1984, the lease or rental of all tangible personal property is subject to tax. See rule 701—26.18(422) for information concerning additional transactions subject to tax after that effective date.

This rule is intended to implement Iowa Code sections 422.42(2), 422.43, 422.45, 423.1, and 423.4.

701—18.37(422,423) Motor fuel, special fuel, aviation fuels and gasoline.

18.37(1) *In general.* The gross receipts from the sale of motor fuel and special fuel are exempt from sales tax under Iowa Code section 422.45(11) if (1) the fuel is consumed for highway use, in watercraft, or in aircraft, (2) the Iowa fuel tax has been imposed and paid, and (3) no refund or credit of fuel tax has been made or will be allowed. However, beginning July 1, 1985, the gross receipts from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa are exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat. Prior to July 1, 1988, retail sales of aviation gasoline were not exempt from sales tax under Iowa Code subsection 422.45(11). See subrule 18.37(4).

18.37(2) *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax paid and used for purposes other than to propel a motor vehicle or used in watercraft.

18.37(3) *Refunds of tax on fuel purchased in Iowa and consumed out of Iowa.* Even though fuel is purchased in Iowa, fuel tax paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to Iowa Code subsection 422.45(11). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission,* 1977, 429 U.S. 319, 97 S.Ct. 599,50 L.Ed.2d 514 and *Coe v. Errol,* 1886, 116 U.S. 517, 6 S.Ct. 475, 29L.Ed. 715.

18.37(4) *Aviation gasoline.* Tax treatment prior to July 1, 1988. Prior to July 1, 1988, all Iowa fuel tax paid on aviation gasoline used in aircraft was refundable under Iowa Code section 452A.17. Generally, aviation gasoline is not purchased for highway use or for use in watercraft, therefore, the

exemption from sales and use tax found in Iowa Code subsection 422.45(11) was generally not applicable to purchases of aviation gasoline. However, Iowa Code subsection 422.52(4) provides for the collection of sales tax by way of deduction from motor fuel tax refunds allowable under Iowa Code chapter 452A. Therefore, sales tax is not assessed at the retail level but only in instances where the fuel tax paid on aviation gasoline has been refunded. If no application for a fuel tax refund relating to aviation fuel has been made, no sales tax is assessed on the aviation gasoline purchase.

18.37(5) *Ethanol.* For tax periods after April 30, 1981. Retail sales of ethanol are exempt from Iowa sales or use tax.

18.37(6) *Tax base.* The basis for computing the Iowa sales tax will be the retail selling price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the selling price in determining the proper sales tax due. *W.M. Gurley v. Arny Rhoden* supra. Also see rule 701—15.12(422,423).

This rule is intended to implement Iowa Code sections 422.31, 422.43, 422.45(11), 422.45(22), 422.52(4), 423.1, 452A.3, and 452A.17.

701—18.38(422,423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit systems charter.

Tax shall not apply to fuel purchases, made by a privately owned urban transit company, for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether it is created by government.
2. Whether it is wholly owned by government.
3. Whether it is operated for profit.
4. Whether it is primarily engaged in the performance of some essential governmental function.
5. Whether the payment of tax will impose an economic burden upon the corporation, or that payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

These above enumerated considerations are not all inclusive and the presence of some and absence of others does not necessarily establish the exemption. *Unemployment compensation of North Carolina v. Wachovia Bank and Trust Company,* 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code subsection 422.45(1).

701—18.39(422,423) Sales or services rendered, furnished, or performed by a county or city. The gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication service rendered, furnished, or performed by a county or city are subject to the tax. On and after July 1, 1985, the gross receipts from fees paid to cities and counties for the privilege of participating in any athletic sports are also subject to tax. On or after July 1, 1991, the gross receipts from any municipally owned pay television service are taxable as well. On and after April 1, 1992, the gross receipts from a county or municipality furnishing sewage service or solid waste collection and disposal service to nonresidential commercial operations are taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information).

Any other sales or services rendered, furnished, or performed by a county or city are not subject to the tax.

A "sport" is any activity or experience which involves some movement of the human body and gives enjoyment or recreation. An "athletic" sport is any sport which requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports:

baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

The following is a list of various fees which would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

1. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

2. Fees paid to enter any tournament or league which involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

1. Fees paid for lesson or instruction in how to play or to improve one's ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

2. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

3. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport which can be played within the facility.

4. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

EXAMPLE: A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee which the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

5. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code sections 422.43 and 422.45.

701—18.40(422,423) Renting of rooms. The gross receipts from the renting of any and all rooms, including but not limited to sleeping rooms, banquet rooms or conference rooms in any hotel, motel, inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals, are subject to the tax. The rental of a mobile home or of manufactured housing which is tangible personal property is treated as room rental rather than tangible personal property rental. The renting of all rooms would be exempt from the tax if rented by the same person for a period of more than 31 consecutive days. The renter must contract to rent for a single period of 31 days or more. The renter may not accumulate these 31 days by contracting for two or more rental transactions. The incremental manner in which the hotel, motel, inn, public lodging house, rooming or tourist court, or any place where sleeping accommodations are furnished to transient guests bills its customers does not influence the accumulation of days that is required to claim the exemption.

This rule is intended to implement Iowa Code section 422.43.

701—18.41(422,423) Envelopes for advertising.

18.41(1) Some envelopes which contain advertising are exempt from tax. Envelopes which are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt. *Iowa Movers and Warehouseman's Assn. v. Briggs,* 237 N.W.2d 759 (Iowa 1976).

EXAMPLE 1: XYZ mails coupons and advertisements to persons giving discounts on a certain item which is sold at retail. The envelope used to package these materials is exempt from tax since it is primarily used to contain advertising materials.

EXAMPLE 2: XYZ mails a monthly billing statement to its charge account customers. In addition to the billing statement, XYZ Company encloses an advertisement in the envelope. The envelope has a dual purpose: (1) the collection of accounts receivable and (2) the distribution of advertising. However, the envelope is not primarily used for advertising but for billing the customer, therefore, the exemption does not apply.

18.41(2) Because of the difficulty of administering this exemption, purchasers of envelopes may petition to the department for permission to use a formula to represent to the seller the portion of taxable and exempt gross receipts from envelope purchases.

This rule is intended to implement Iowa Code subsection 422.45(9).

701—18.42(422,423) Newspapers, free newspapers and shoppers' guides.

18.42(1) *General observations.* The gross receipts from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The gross receipts from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable. Recent cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance,* 461 N.W.2d 295 (Iowa 1990).

18.42(2) *General characteristics of a newspaper.* "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material. Other frequent characteristics of newspapers are the following:

a. Newspapers usually contain photographs. The photographs are more often in black and white rather than color.

b. Information printed on newspapers is usually contained in columns on the newspaper pages.

c. The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

18.42(3) *Characteristics of newspaper publishing companies.* Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or "wire services." A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

18.42(4) *Characteristics which distinguish a newsletter from a newspaper.* A "newsletter" is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than the paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 422.45(9).

701—18.43(422,423) Written contract. On and after July 1, 1985, the gross receipts from certain additional services are subject to tax. However, these newly taxable services are exempt from tax if

performed pursuant to a written services contract in effect on April 1, 1985. The exemption from taxation for these services expires June 30, 1986. The services to which this "written contract" exemption is applicable are the following: cable television; campgrounds; gun repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; lobbying service; pet grooming; reflexology; security and detective services; tanning beds or salons; water conditioning and softening; the rental of recreational vehicles, recreational boats or motor vehicles subject to registration which are registered for a gross weight of 13 tons or less; and fees paid to cities and counties for the privilege of participating in any athletic sports.

A "written contract" is one which is entirely in writing, so that all of its essential terms and provisions exist in writing, and oral statements are not necessary to set out any essential term or provision, such as who the parties to the contract are or what their rights and duties are under the contract. However, if it is necessary to resort to oral statements to explain the meaning of a written provision in a contract, a "written contract" can still exist. A written contract need not consist of one document or instrument only. It can consist of two or more writings, if all the necessary provisions of the contract are contained in those writings. For the purposes of this rule, the following must be stated in writing if a written contract is to exist: The nature and specification of the service to be provided, the name of the party providing the service, the name of the party receiving the service, the "consideration" (amount and method of payment) for providing the service, the signature of one or both of the parties to the contract, depending upon circumstances, and the date upon which the contract became effective.

The written contract must be in effect on April 1, 1985, if the service to which the contract pertains is to be exempt from tax. If a contract is signed by only one of the parties to it, that contract is still a "written contract" if the party which has not signed the contract acquiesces in the promises which the party who has signed the document makes within it. *McDermott v. Mahoney,* 139 Iowa 292, 115 N.W. 32, (Iowa 1908).

EXAMPLE: A security agency sends a proposed agreement to a potential customer promising to provide the services of a uniformed security guard for the customer's business premises beginning March 15, 1985, and continuing until March 15, 1987. The agreement is signed by the security agency's president and dated February 15, 1985. The agreement is received by the potential customer's president, who does not sign it, but, on March 15, 1985, allows the security agency's uniformed guard on the premises, and makes payment for those services as stipulated in the agreement. This agreement is a "written contract"; the services of the uniformed guard are not subject to tax for the period beginning July 1, 1985, and ending June 30, 1986. The services performed between July 1, 1986, and March 15, 1987, would be subject to tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—18.44(422,423) Sale or rental of farm machinery and equipment. On and after July 1, 1987, the gross receipts from the sale or rental of farm machinery and equipment will be exempt from tax. Effective July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case or other similar article or receptacle sold for use in agricultural, livestock or dairy production are not subject to sales tax.

18.44(1) *Characteristics of and limitations upon farm machinery and equipment.* To be eligible for exemption from or refund of tax under this rule the machinery or equipment must:

a. Be directly and primarily used in production of agricultural products; and

b. Be one of the following:

(1) A self-propelled implement; or

(2) An implement customarily drawn or attached to a self-propelled implement; or

(3) A grain dryer; or

(4) An auxiliary attachment which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer if sale or first use in Iowa is on or after July 1, 1995; or

(5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).

(6) Effective July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock or dairy production.

c. No vehicle subject to registration, as defined in Iowa Code subsection 423.1(7), implement customarily drawn or attached to a vehicle, auxiliary attachment, or any replacement part for a vehicle, implement, or auxiliary attachment is eligible for the exemption or refund allowed under this rule.

18.44(2) *Definitions and characterizations.* For the purposes of this rule, the following definitions apply.

a. Production of agricultural products means the same as the term "agricultural production" which is defined in 701—subrule 17.9(3), paragraph *"a,"* to mean a farming operation undertaken for profit by raising crops or livestock. Production of agricultural products begins with the cultivation of land previously cleared for planting of crops or with the purchase or breeding of livestock or domesticated fowl. Not included within the meaning of the phrase are the clearing or preparation of previously uncultivated land, the creation of farm ponds or the erection of machine sheds, confinement facilities, storage bins or other farm buildings. See *Trullinger v. Fremont County,* 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to but not a part of the production of agricultural products. The production of agricultural products ceases when an agricultural product has been transported to the point where it will be sold by the farmer or processed.

EXAMPLE. Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later the same tractor and wagon are used to deliver the corn from the farm to the local elevator where it is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products and the refund or exemption would apply. The elevator has not used its tractor and wagon in such production; refund or exemption would not be lawful.

b. Farm machinery and equipment means machinery and equipment specifically designed for use in the production of agricultural products or equipment and machinery not specifically designed for this use but which are directly and primarily used in the production of agricultural products.

EXAMPLE. Farmer Jones raises livestock and the farming operation requires that fences be built to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to construct the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but would be directly and primarily used in the production of agricultural products. Therefore, the exemption or refund applies.

c. Self-propelled implement has the same meaning as in 701—subrule 17.9(5), paragraph *"c,"* where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: Augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

e. Direct use in agricultural production. In determining whether farm machinery, equipment or any grain dryer is directly used in agricultural production, the fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment coming into actual physical contact with the soil or

crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Grain dryer. The term grain dryer includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

g. Replacement parts, differing meanings of the term for the period ending June 30, 1988, and for the period beginning July 1, 1988.

(1) For the period beginning July 1, 1985, and ending June 30, 1988, a replacement part is refundable or exempt only if its cost is depreciable for state and federal income tax purposes. Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of machinery or equipment or appreciably prolong its life. Replacement parts which only keep the machinery or equipment in its ordinarily efficient operating condition are not eligible for exemption or refund. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for refund or exemption from tax. However, the person claiming the refund or exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

(2) On and after July 1, 1988, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products. The term "replacement part" does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories are: cigarette lighters, radios, and add-on air-conditioning units.

18.44(3) *Taxable and nontaxable transactions.* The following are nonexclusive examples of sales and leases of farm machinery and equipment which are or are not subject to exemption and refund.

a. A lessor's purchase of farm machinery and equipment is not subject to tax, or is taxable subject to refund, if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee's use of the machinery or equipment is otherwise exempt or subject to refund. To claim exemption from tax or a refund of tax paid, the lessor need not make exempt use of the machinery or equipment so long as the lessee does.

b. To claim refund or exemption, the owner or lessee of farm machinery or equipment need not be a farmer so long as the machinery and equipment is directly and primarily used in the production of agricultural products, and the owner or lessee and the equipment or machinery meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and so used after purchase is entitled to the benefits of this rule even though that person is not the owner or occupant of the land where the airplane is used.

c. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for refund or exemption if those transactions are otherwise qualified under this rule.

18.44(4) *Auxiliary attachments.* The following is a list (not inclusive) of auxiliary attachments described in 18.44(1)*"b"*(4), the sale or first use in Iowa which is exempt from tax on and after July 1, 1995: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upperbeaters, silage bags, and weights.

18.44(5) and **18.44(6)** Rescinded IAB 9/7/88, effective 10/12/88.

This rule is intended to implement Iowa Code subsections 422.43(3) and 422.45(26), Iowa Code chapter 422, Division IV, and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997. The sale or rental of computers, industrial machinery and equipment, including pollution control equipment, used in manufacturing, in research and development, or in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise is, under certain circumstances, exempt from tax and, under other circumstances, is subject to refund of sales or use tax paid. The sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products is also exempt from tax; see subrule 18.45(8). For purposes of the organization of this rule, items that may be exempt or subject to refund of tax are referred to as specified property unless the context of the rule indicates otherwise. See subrule 18.45(1) for definition of what constitutes specified property. See rule 18.58(422,423) for the manner in which the sale or rental of machinery, equipment, and computers to manufacturers and the sale or rental of computers to commercial enterprises are treated on and after July 1, 1997.

18.45(1) *Definitions.* The following words are defined for the purposes of this rule in the manner set out below.

"Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a "commercial enterprise." The term "professions" means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term "occupations" means the principal business of an individual. Included within the meaning of "occupations" is the business of farming. A professional corporation which carries on any business which is a "profession" or "occupation" is not a commercial enterprise.

"Directly used." Property is "directly used" only if it is used to initiate, sustain, or terminate the transformation of any activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

"Financial institution" is a bank incorporated under Iowa Code chapter 524 or federal law; a savings and loan association incorporated under Iowa Code chapter 534 or federal law; a credit union organized under Iowa Code chapter 533 or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

"Industrial machinery and equipment" means machinery and equipment used by a manufacturer in a manufacturing establishment. Machinery is any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result. The word includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The word also includes all devices used or required to control, regulate or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be "machinery." See *Deere Manufacturing Co. v. Zeiner,* 247 Iowa 1264 78 N.W.2d 527 (1956). Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are: tables on which property is assembled on an assembly line and chairs used by assembly line workers.

"Insurance company" means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 519, or 520 or authorized to do business in Iowa as an insurer. An insurance company must have 50 or more persons employed in Iowa, excluding licensed insurance agents. Effective April 8, 1996, an insurance company means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in this state as an insurer or licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of "insurance company" are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

"Manufacturer" means any person, firm, or corporation who purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; quarrying; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transporation for hire; mining; and the activities of restaurateurs, hospitals, and medical doctors are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982).

"Pollution control equipment" means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution. The term does not include any apparatus used to eliminate "noise pollution." Liquid, solid, and gaseous wastes are included within the meaning of the word "pollution."

"Processing" means an operation or series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. See rule 18.29(422,423).

"Processing or storage of data or information." Not only a computer, but machinery or equipment may be used in the processing or storage of data or information. All computers store and process information. However, only if the "final output" for a user or consumer is stored or processed data will the computer be subject to refund or exemption of tax.

"Recycling" means any process by which waste, or materials which would otherwise become waste, are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. "Recycling" does not include any form of energy recovery.

"Replacement parts." Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives. Replacement parts which only keep machinery, equipment, or computers in their ordinarily efficient operating condition are not eligible for exemption. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for exemption from tax. However, the person claiming the exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

"Research and development" means experimental or laboratory activity which has as its ultimate goal the development of new products, processes of manufacturing, refining, purifying, combining of different materials, or meat packing. The ultimate goal of research and development must be that of adding value to products. The term "research and development" does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical, or similar projects. Machinery, equipment, and computers are used "directly" in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

"Specified property" means property that is a computer or industrial machinery and equipment including pollution control equipment and depreciable replacement parts for that property.

18.45(2) *Requirements.* The sale or rental of specified property is exempt from tax if:

a. The property is real property within the scope of Iowa Code section 427A.1(1)*"e"* or *"j."* For sales occurring after January 1, 1994, the property is not required to be subject to taxation as real property (however, see subrules 18.45(4) and 18.45(8)); and

b. The property is directly and primarily used in one of the following:

1. By a manufacturer in processing tangible personal property; or

2. In research and development of new products or processes of manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purposes of adding value to products; or

3. In processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

c. To qualify for refund or exemption, a computer may be taxable as either commercial or industrial real estate. Machinery and equipment must be taxable as industrial real estate only to be similarly qualified. Research and development machinery and equipment that is not taxable as industrial real estate does not qualify for refund or exemption. See 701—subrules 71.1(5) and 71.1(6) for characterizations of "commercial" and "industrial" real estate. However, see subrule 18.45(4) for an exception to the requirement that certain property be taxable as real property.

d. The following are examples of machinery which is not directly used in manufacturing:

1. Machinery used exclusively for the efficient use of other machinery. Examples are: air cooling, air conditioning, and exhaust systems.

2. Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained or repaired.

3. Machinery used by administrative, accounting, and personnel departments.

4. Machinery used by plant security, fire prevention, first aid, and hospital stations.

5. Machinery used in plant cleaning, disposal of scrap and waste, plant communications, lighting, safety, or heating.

e. The following is an example of property directly used in research and development: Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a "steam cleaner" for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director's secretary. The computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

f. The following is an example of property used in processing or storage of information or data: A health insurance company has three computers. Computer A is used to monitor the temperature within the insurance company's building. The computer transmits messages to the building's heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefit paid out for various classes of insured. The "final output" of Computer A is neither stored nor processed information. The final output of Computer B is stored information. The final output of Computer C is processed information. The sale, lease, or use of Computers B and C would qualify for exemption or refund.

g. The following is an example of property not used in manufacturing: A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns and the metal press machine is used for no other purpose than to fabricate the

patterns. The metal press machine is not used in manufacturing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.45(3) *Exceptions.* The following specified property is not exempt:

a. Property assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434 and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to as well as owned by the company is assessed by the department. See 701—Chapters 71 and 77.

b. Hand tools.

c. Point-of-sale equipment. See 701—subrule 71.1(7).

18.45(4) *Inclusions.* Property exempt from taxation for property tax purposes under the provisions of Iowa Code chapters 404 and 427B relating to urban revitalization property and industrial machinery receiving partial exemption by ordinance is also eligible for exemption from sales and use taxes even though the property is not subject to taxation as real property. Urban revitalization property and industrial machinery receiving partial exemption by ordinance are discussed in rules 701—80.8(404) and 80.6(427B), respectively. This property must meet the other requirements in subrule 18.45(2) in order to be exempt from sales and use taxes.

18.45(5) *Lessor purchases of specified property.* The analysis contained in rule 18.44(422,423) regarding lessor purchases of farm machinery and equipment is applicable to explain that same problem regarding specified property. See subrule 18.44(3) for analysis.

18.45(6) *Rights of refund and exemption.* Rescinded IAB 10/13/93, effective 11/17/93.

18.45(7) *Designing or installing new industrial machinery or equipment.* On and after July 1, 1985, the gross receipts from the services of designing or installing new industrial machinery or equipment shall be exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to refund or exemption under this rule. In addition, the machinery or equipment must be "new." For purposes of this subrule, "new" means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A "computer" is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.45(8) *Property used in recycling or reprocessing of waste products.* On and after July 1, 1989, the gross receipts from the sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products shall be exempt from tax. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an endloader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. See 18.45(8)*"c."* The sale of a bin for storage ordinarily would not be exempt from tax, storage without more not being a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing.

For example, machinery, equipment or a computer need not meet the requirements of 18.45(2)*"a"* concerning specified property being real property for the exemption to apply. Furthermore, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. For instance, a person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were

directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.45(1) for the definition of "directly used" which is applicable to this subrule. The examples of machinery not directly used in manufacturing set out in 18.45(2)*"d"* should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.45(2)*"d"*"4") is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an "integral part" of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of "processing." Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material in which it will be used in manufacturing or in the form of a product which will be sold for use other than as a raw material in manufacturing. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, and crates and other waste wood into wood chips. After grinding, the wood chips are sold and transported to purchasers to various sites where the chips are dumped on and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in reprocessing because, at the time the chips are placed in the truck, they are in the form in which they will be sold for use other than as a raw material in manufacturing.

This rule is intended to implement Iowa Code section 422.45(26), Iowa Code section 422.45(27) as amended by 1996 Iowa Acts, chapter 1049, and Iowa Code section 422.45(29).
[see Rescission note at end of chapter]

701—18.46(422,423) Automotive fluids. The gross receipts from the sales of certain automotive fluids are exempt from tax. To be considered exempt, the sale must possess the following characteristics: (1) the sale must be to a retailer who will install the automotive fluid in or apply the automotive fluid to a motor vehicle; and (2) the installation or application must be done while the retailer is providing a taxable enumerated service (e.g., automobile lubrication); or (3) the automotive fluid must be installed in or applied to a motor vehicle which the retailer intends to sell and the sale of which will be subject to Iowa use tax.

Specific but nonexclusive examples of "automotive fluids" are motor oil and other automobile lubricants, hydraulic, brake, and transmission fluids, sealants, undercoatings, antifreeze, and gasoline additives.

This rule is intended to implement Iowa Code section 422.45(33).

701—18.47(422,423) Maintenance or repair of fabric or clothing.

18.47(1) As of July 1, 1987, sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See 701—subrule 17.14(1) for definitions of the terms "chemical, solvent, sorbent or reagent." This subrule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances which do not come into direct contact

with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethlyene "perch" or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

18.47(2) Also, on and after July 1, 1987, the sale of property which is a container, label, or similar article or receptacle for transfer in association with the maintenance or repair of fabric or clothing is exempt from tax. In general, the sale of any article which protects dry-cleaned or laundered clothing from dirt or helps the dry-cleaned or laundered clothing to maintain its proper shape or form in the same fashion as a container does would be exempt from tax under this subrule. By way of nonexclusive example, the sale of plastic garment bags, which protect clothing from dirt, is exempt from tax. The sale of "shirt boards" and garment hangers, both of which help clothing to maintain its proper shape, would also be exempt.

A container, label, or similar article's sale is exempt from tax only if the item is transferred to the customer of a commercial laundry, dry cleaner, or other retailer. Thus, "bundle bags" and "meese carts," used to transfer or transport clothing within a dry-cleaning establishment, are not subject to the exemption because these bags and carts remain with the dry cleaner and are not transferred to a customer.

Concerning labels, the sale of which would be exempt from tax, these labels must be affixed to the dry-cleaned or laundered clothing and transferred to the customer of the dry-cleaning or laundering establishment. By way of nonexclusive example, the sale to dry cleaners, of "special attention," "invoice" and "sorry" tags would be exempt from tax.

The sale of safety pins and other types of clips used to hang skirts and other garments from hangers would not be exempt from tax. These items do not sufficiently resemble containers or labels to the extent that their sale is exempt from tax.

This rule is intended to implement Division IV of Iowa Code chapter 422.

701—18.48(422,423) Sale or rental of farm machinery, equipment, replacement parts, and repairs used in livestock, dairy, or plant production. Sales or rental of farm machinery and equipment used in livestock or dairy production and replacement parts which occur on or after July 1, 1988, are exempt from sales and use tax. On and after July 1, 1995, machinery, equipment, and replacement parts used in the production of flowering, ornamental, or vegetable plants are exempt from tax. See rule 701—18.57(422,423).

18.48(1) *Definitions and characterizations.* For the purposes of this rule, the following definitions and characterizations of words apply.

a. "Machinery" means major mechanical machines or major components thereof which contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts which performs work by the expenditure of energy, either mechanical (e.g., gasoline or kerosene) or electrical.

b. "Equipment" is tangible personal property (other than a machine) directly and primarily used in livestock or dairy production. It may be characterized as property which performs a specialized function which, of itself, has no moving parts or if it does possess moving parts, its source of power is external to it. The following examples attempt to differentiate between machinery and equipment:

EXAMPLE A. An electric pump is used to pump milk into a bulk milk tank. The electric pump is machinery; the bulk milk tank is equipment.

EXAMPLE B. An auger places feed into a cattle feeder. If not "real property" (see 18.48(1)*"c"*) the auger is a piece of machinery; the cattle feeder is a piece of equipment.

c. Property used in livestock or dairy production which is neither "equipment" nor "machinery."

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment, *Mid-American Growers, Inc. v. Dept. of Revenue,* 493 N.E.2d 1097 (Ill. App. Ct. 1986). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that it will become a part of the ground or the building is taxable. Generally, property incorporated into the ground or a building has become a part of the ground or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. The property referred to in 18.48(1)*"c"*(1) can be identified by applying the following test: Assume that the property is being sold to a contractor rather than a person engaged in livestock or dairy production. If sold to a contractor, would the retailer be required to consider the property "building material" and charge the contractor sales tax upon the purchase of this building material. If this is the case, sale of the property is not exempt from Iowa tax law. Iowa department of revenue rule 701—19.3(422,423) contains a characterization of "building material" and a list of specific examples of building material.

(2) "Supplies" are neither machinery nor equipment. Tangible personal property is part of farm supplies if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply which is not machinery or equipment. The sale of some farm supplies is exempt from tax. See 701—subrule 17.9(3). See List B in subrule 18.48(7) for examples of farm supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

d. "Hand tools" are tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as "equipment." Mechanical devices that are held in the hand and driven by electricity or some source other than human muscle power are, if otherwise qualified, exempt from tax as "farm machinery." See subrule 18.48(7), List C, for examples of "hand tools" exempt and not exempt from tax.

e. Directly used in livestock or dairy production. To determine if machinery or equipment is "directly" used in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. Subrule 18.48(1), paragraph *"g,"* describes when livestock or dairy production begins and ends. If the machinery or equipment is used in livestock or dairy production, to be "directly" so used, that use must constitute an integral and essential part of production as distinguished from a use in production which is incidental, merely convenient to or remote from production. The fact that machinery or equipment is essential or necessary to livestock or dairy production does not mean that it is also "directly" used in production. Machinery or equipment may be necessary to livestock or dairy production but so remote from it that it is not directly used in that production.

(1) In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questioned is to the machinery or equipment whose direct use is not questioned, the more likely it is that the former is directly used in livestock or dairy production.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questioned. The closer in time the use, the more likely that the questioned machinery or equipment's use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

(2) The following are examples of machinery and equipment directly used in livestock or dairy production:

1. Machinery and equipment used to transport or limit the movement of livestock and dairy animals (e.g., electric fence equipment, head gates, and loading chutes).

2. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment).

3. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property).

4. Machinery or equipment used to test or inspect livestock or dairy animals during production.

(3) The following are nonexclusive examples of machinery or equipment which would not be directly used in livestock or dairy production.

1. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

2. Machinery used in farm management, administration, advertising, or selling (e.g., a recordkeeping computer, calculating machine, office safe, telephone, books, and farm magazines).

3. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

4. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

5. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer are not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home or of a migrant labor camp, or other facilities for farm employees.

6. Machinery and equipment used for heating, cooling, ventilation, and illumination of farm buildings generally rather than specifically in the immediate area where livestock are kept.

7. Vehicles subject to registration.

f. "Primarily" used in livestock or dairy production. Machinery or equipment is "primarily used in livestock or dairy production" if of the total time that unit of machinery or equipment is used, more than 50 percent of the time is in livestock or dairy production. If a unit of machinery or equipment is used more than 50 percent of the time for production and the balance of time for other business purposes, the exemption applies. If a unit of equipment is used 50 percent or more of the time for business purposes other than livestock or dairy production, the exemption does not apply. Any unit of machinery or equipment used more than 50 percent of the time directly in livestock or dairy production is subject to the exemption.

g. Beginning and end of livestock or dairy production. Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock and dairy production ceases when an animal or the product of an animal's body (e.g., wool or milk) has been transported to the point where it will be sold by the farmer or processed.

h. Farm machinery and equipment means machinery and equipment specifically designed for use in livestock and dairy production or equipment and machinery not specifically designed for this use but which are directly and primarily used in livestock or dairy production except for common or ordinary hand tools. See 18.48(1)*"d"* for a definition of "hand tools."

EXAMPLE. Farmer Jones raises livestock and fans must be used to cool the animals. Farmer Jones buys fans designed for use in a residence which he uses directly and solely to cool the livestock. The exemption applies.

i. "Self-propelled implement" has the same meaning as in 701—subrule 17.9(5), paragraph *"c"* where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following

items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

j. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, posthole diggers, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

k. The term "grain dryer" includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

l. The term "replacement parts essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, and tools or utility boxes.

18.48(2) *Right of refund for farm machinery and equipment used in livestock or dairy production, basic requirements.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(3) *Treatment of replacement parts.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(4) *Packing material used in agricultural, livestock, or dairy production.* For sales occurring on or after July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural.

18.48(5) Rescinded IAB 11/20/96, effective 12/25/96.

18.48(6) *Auxiliary attachments exemption.* On and after July 1, 1995, sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt on and after that date.

18.48(7) *Lists.* Lists (representative but not all-inclusive) of tangible personal property for which sales or use tax paid is or is not refundable.

LIST A. Property Used in Livestock and Dairy Production Which is Usually Real Property. See 18.48(1)*"c"*(1). Its sale is usually taxable.

barn ventilators*	livestock feeders*
conveyers*	silos
farrowing crates*	specialized flooring*
fence posts	sprinklers
fencing wire	stanchions
furnaces*	watering tanks*
gestation stalls*	ventilators*

*These items also appear in List D. Tax paid on their sale can be refundable or their sale exempt if the items are not real property.

LIST B. Taxable Farm Supplies
Which Are Not Machinery or Equipment

burlap*
disposable hypodermic syringes
ear tags
hog rings
lubricants
marking chalk
packages for one-time use

*Burlap is exempt when used in the form of a bag, container, wrap or other receptacle or packaging material.

LIST C. Hand Tools—Taxable and Nontaxable

axes
brooms
buckets
cleaning brushes
dehorners (nonelectric)*
garden hoses
grease guns
hammers
hay hooks*
hog ringers*
lamps
lanterns
milk cans*
mops
paintbrushes
pliers
scrapers
screwdrivers
shovels
wheelbarrows
wrenches

*Hand tools specially designed for use in livestock or dairy production are equipment. Tax paid on the sale or use of these hand tools is refundable.

LIST D. Farm Machinery and Equipment Directly and
Primarily Used in Livestock or Dairy Production.
Tax Paid is Usually Refundable or the Sale Exempt.

artificial insemination equipment
augers*
automatic feeding systems*
bulk feeding tanks*
bulk milk coolers
bulk milk tanks
cattle weaners and feeders
cattle currying and oiling machines
cattle feeders*
conveyers*
dehorners, electric
electric fence equipment
fans*
farrowing crates, houses and stalls*
feed bins*
feed carts
feed elevators*
feed grinders
feed tanks*
feeders
foggers
furnaces*
gates*
grain augers
head gates
heating pads and lamps
hog feeders*
hypodermic syringes and needles, nondisposable
livestock feeding, watering and handling equipment*
loading chutes*
LP gas tanks
manure handling equipment*
milk coolers
milk strainers
milking machines
refrigerators used to cool raw milk
silo unloaders
specialized flooring*
space heaters
sprayers
squeeze chutes*
vacuum coolers
ventilators*

If not real property. See 18.48(1)"c"*(1).

18.48(8) *Seller's and purchaser's liability for sales tax.* The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery or equipment meeting the requirements of subrule 18.48(4). An exemption certificate can take the form of a stamp imprinted onto one of the documents of sale. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the tax directly to the department.

This rule is intended to implement Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.49(422,423) Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999.

18.49(1) Prior to July 1, 1999, sales in Iowa of aircraft subject to registration were subject to sales tax. On and after July 1, 1999, sales of aircraft in Iowa are subject to Iowa use tax rather than Iowa sales tax. See rule 701—31.6(423). Also, on and after that date, the use tax imposed on sales of aircraft in Iowa is collected by the Iowa department of transportation at the time of the aircraft's registration. Sales of certain aircraft parts in Iowa, the performance of taxable services in Iowa on or in connection with the repair, remodeling, or maintenance of aircraft, and the rental of aircraft in Iowa remain subject to Iowa sales tax on and after July 1, 1999. See subrule 18.49(3).

18.49(2) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air and is used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

a. *Exempt aircraft sales.* As of July 1, 1988, and up to and including June 30, 1999, gross receipts from the sale of aircraft are exempt from tax.

b. *Exempt rental of aircraft.* Effective May 1, 1995, and retroactive to July 1, 1988, the taxable rental (see 701—26.74(422,423)) of aircraft, as defined in the introductory paragraph of this subrule, is exempt from tax.

c. *Exempt sale or rental of aircraft parts.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the sale or rental of tangible personal property permanently affixed to any aircraft as a component part of that aircraft are exempt from tax. The term "component parts" includes, but is not limited to, repair or replacement parts and materials.

d. *Exempt performance of services.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the rendering, furnishing, or performing of services in connection with the repair, remodeling, or maintenance of aircraft (including aircraft engines and component materials or parts) are exempt from tax.

18.49(3) For the purposes of this subrule only, an "aircraft" is any aircraft used in a nonscheduled interstate Federal Aviation Administration certified air carrier operation conducted under 14 CFR ch. 1, pt. 135. On and after July 1, 1998, the gross receipts from the sale or rental of tangible personal property permanently affixed or permanently attached as a component part of these aircraft, including but not limited to repair or replacement materials or parts, are exempt from tax. Also exempt, on and after that date, are the gross receipts from the performance of any service used for aircraft repair, remodeling, or maintenance when the service is performed on an aircraft, aircraft engine, or aircraft component material or part exempt under this subrule. Gross receipts from the sale or rental of aircraft are not exempt from tax under this subrule.

18.49(4) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air. On and after July 1, 1998, and up to and including June 30, 1999, the gross receipts from the sale of an aircraft to an aircraft dealer who rents or leases the aircraft to another are exempt from tax if all of the following circumstances exist:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

As soon as an aircraft, the sale of which is exempt under this subrule, is used for any purpose other than leasing or renting, or the conditions set out in paragraphs *"a," "b,"* and *"c"* are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—32.13(423) for a description of the manner in which transactions described in this subrule are exempted from tax on and after July 1, 1999.

This rule is intended to implement Iowa Code section 422.45, subsections 38, 38A, 38B and 38C and Iowa Code section 423.2 as amended by 1999 Iowa Acts, chapter 168.

701—18.50(422,423) Property used by a lending organization. On and after July 1, 1988, the gross receipts from the sale of tangible personal property to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) which the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 422.45(36).

701—18.51(422,423) Sales to nonprofit legal aid organizations. On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit legal aid organization are exempt from tax.

This rule is intended to implement Iowa Code subsection 422.45(37).

701—18.52(422,423) Irrigation equipment used in farming operations. On and after July 1, 1989, the gross receipts from the sale or rental of irrigation equipment used in farming operations are exempt from tax. The term "irrigation equipment" includes, but is not limited to, circle irrigation systems and trickle irrigation systems. The term "farming operations" has the same meaning as the term "agricultural production" set out in 701—subrule 17.9(3), paragraph *"a,"* and as further characterized in 18.44(2)*"a."*

Effective May 18, 2001, and retroactive to April 1, 1995, the gross receipts from the sale or rental of irrigation equipment, as defined above, whether installed above or below ground are exempt from tax as long as the equipment is sold or rented by a contractor or farmer and the equipment is primarily used in agricultural operations.

Contractors or farmers entitled to the exemption set forth in the previous paragraph may apply for a refund of taxes, interest or penalties paid on the sale or rental of qualifying irrigation equipment for transactions that occurred between April 1, 1995, and May 18, 2001. To be eligible for refund, refund claims must be filed with the department prior to October 1, 2001. Refund claims are limited to $25,000 in the aggregate and will not be allowed if not timely filed. If the amount of refund claims totals more than $25,000 in the aggregate, the department will prorate the $25,000 among all claimants in relation to the amounts of the claimants' valid claims.

This rule is intended to implement Iowa Code section 422.45 and 2001 Iowa Acts, House File 723.

701—18.53(422,423) Sales to persons engaged in the consumer rental purchase business. On and after July 1, 1989, the gross receipts from the sale of tangible personal property, except vehicles subject to registration, to persons regularly engaged in the consumer purchase business are exempt from tax if the property (1) is sold for the purpose of utilization in a transaction involving a "consumer rental purchase agreement" as defined in Iowa Code subsection 537.3604(8), and (2) the gross receipts from the consumer rental of the property are subject to Iowa sales or use tax.

If property exempt under this rule is made use of for any purpose other than a consumer rental purchase, the person claiming the exemption is liable for the tax that would have been due had the exemption not existed. The tax shall be computed on the original purchase price to the person claiming

the exemption. The aggregate of the tax paid on the consumer rental purchase of the property, not exceeding the amount of sales or use tax owed, shall be credited against the tax.

This rule is intended to implement Iowa Code section 422.45(18).

701—18.54(422,423) Sales of advertising material. On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of that person, will, after the sale, send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.

For the purposes of this rule "advertising material" is tangible personal property only, including paper. "Advertising material" is limited to the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, floppy discs, CD-ROMs, videotapes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

701—18.55(422,423) Drop shipment sales. A "drop shipment" generally involves two sales transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. The two sales transactions in question are the sale of property from the supplier to the out-of-state retailer, and the further sale of that property from the out-of-state retailer to the consumer in Iowa.

A "drop shipment sale" occurs when the consumer places an order for the purchase of tangible personal property with the out-of-state retailer. The retailer does not own the property ordered at the same time the consumer's order is placed. The retailer then purchases the property from the supplier. The supplier in turn ships the property directly to the consumer in Iowa. Under Iowa law the supplier in a drop shipment sale cannot be required to collect tax (either sales or use) from the consumer, even if the requisite "nexus" to require collection exists. See the next to last paragraph of this rule for a characterization of "nexus." The supplier transfers possession of the goods to the consumer; however, transfer of possession alone has never been held to be a "sale" for the purposes of Iowa sales and use tax law. *Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985) and *Cedar Valley Leasing v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979).

With reference to drop shipment sales: If delivery of the goods under the contract for sale has occurred outside of Iowa, sale of the goods has occurred outside of Iowa. If delivery of the goods under the contract for sale has occurred within Iowa, the sale has occurred here. See *Sturtz* above for more information regarding sales and delivery. If the sale has occurred in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa sales tax upon the "gross receipts" from its sale of the goods to the consumer. If the sale has occurred outside this state, and the retailer possesses the nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa retailer's use tax upon the purchase price of the goods. If the retailer does not have nexus sufficient to require it to collect either Iowa sales or Iowa use tax, or if the retailer fails to collect either tax, the consumer is obligated to pay a consumer use tax directly to the department upon the purchase price of the goods. These rules are illustrated in the following examples.

EXAMPLE A: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minneapolis retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has nexus with Iowa, and delivery under the contract for sale has occurred in this state. In this case, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE B: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minnesota retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has no nexus with Iowa. Delivery under the contract of sale is in Iowa. Under these circumstances, the consumer is obligated to pay consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE C: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to

the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale occurs in Iowa. Under these circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE D: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with this state; delivery under the contract for sale is in Minnesota. Under the circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa retailer's use tax. The supplier is not obligated to collect or pay any Iowa tax.

EXAMPLE E: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has no nexus with this state. Delivery can occur in either Minnesota or Iowa. In this example, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE F: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale is in Iowa. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE G: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa with delivery in Madison, Wisconsin. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa retailer's use tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE H: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has no nexus with Iowa. Delivery under the contract for sale may be in Iowa or Wisconsin. Under these circumstances, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

As used in these examples, the requirement of "nexus" is discussed in *Good's Furniture House Inc. v. Iowa State Bd. of Tax Review,* 382 N.W.2d 145 (Iowa 1986); cert. den. 479 U.S. 817; *State Tax Commission v. General Trading Co.,* 10 N.W.2d 659, 233 Iowa 877 (1943) affd. 64 S.Ct. 1028, 322 U.S. 335, 88 L.Ed. 1309; and *Nelson v. Sears, Roebuck & Co.,* 292 N.W. 130, 228 Iowa 1273 (1940) reversed 61 S.Ct. 586, 312 U.S. 359, 85 L.Ed. 522, as well as other judicial decisions, and Iowa Code section 422.43(12).

This rule is intended to implement Iowa Code subsections 422.42(2) and 422.42(5).

701—18.56(422,423) Wind energy conversion property. On and after July 1, 1993, the gross receipts from the sale of property used to convert wind energy to electrical energy or the gross receipts from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy shall be exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 422.45 as amended by 1993 Iowa Acts, chapter 161.

701—18.57(422,423) Exemptions applicable to the production of flowering, ornamental, and vegetable plants. On and after July 1, 1995, the production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production. The word "plants" does not include trees, shrubs, other woody perennials,

or fungus. The exemption also applies to implements, machinery, equipment, and replacement parts directly and primarily used in the production of flowering, ornamental, or vegetable plants and fuel used for providing heating or cooling for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The following exemptions are applicable to the production of flowering, ornamental, or vegetable plants.

18.57(1) Sales of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, insect control, or other health promotion of flowering, ornamental, or vegetable plants to a commercial greenhouse are exempt from tax. For the purposes of this subrule a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an "insecticide" or "pesticide." See rules 701—226.6(423) and 701—17.9(422,423) for more information regarding these exemptions.

18.57(2) Sales of fuel to provide heating or cooling for a greenhouse or building or a part of a building dedicated to the production of flowering, ornamental, or vegetable plants held for sale in the ordinary course of business are exempt from tax. Electricity is a "fuel" for the purposes of this subrule. Fuel used in a plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in plant production (e.g., heating or cooling office space) is not eligible for this exemption. For example, assume that there is a separate meter for electricity used only for heating or cooling. If a greenhouse is used, partially for growing plants and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the greenhouse heated or cooled and used for raising plants, and the denominator of which is the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in plant production. Plant production has ended when a plant has grown to the point that it is of the size or weight at which it will be prepared for shipment to the destination where it will be marketed. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space, loading docks, storage of property other than plants, housing of heating and cooling equipment and portions used for packaging plants for shipment. See rule 701—15.3(422,423) regarding fuel exemption certificates and subrule 18.48(8) regarding seller's and purchaser's liability for sales tax.

18.57(3) Sales of gas, electricity, steam or other tangible personal property for use as a fuel in implements of husbandry used in the production of plants in a commercial greenhouse or elsewhere are exempt from tax. See 701—subrule 17.9(6), paragraph *"a,"* for a definition of "implements of husbandry."

18.57(4) Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn by or attached to self-propelled implements and replacement parts for the same are exempt from tax if the implements are used directly and primarily in the production of plants in commercial greenhouses or elsewhere. See rule 701—18.44(422,423) for an extensive explanation of this exemption. Implements exempt under this subrule include, but are not limited to, forklifts used to transport pallets of plants; wagons containing sterilized soil and tractors used to pull the same.

18.57(5) Sale of water used in the production of plants is exempt from tax. If water is not separately metered, the grower of plants must determine by use of a percentage that portion which is used for a taxable purpose and that portion which is used for an exempt purpose.

Nonexclusive examples of taxable usage would be rest rooms, sanitation, lawns, and vehicle wash.

18.57(6) For sales occurring on or after July 1, 1996, the gross receipts for the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural. A noninclusive list of containers and packaging materials would include boxes, trays, labels, sleeves, tape, and staples.

18.57(7) Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are also exempt from tax. See rule 701—18.48(422,423) for a thorough explanation of this exemption. Listed below are a number of examples of machinery and equipment which are directly and primarily used in plant production. Sales of this machinery and equipment to commercial growers are usually exempt from tax.

Air-conditioning pads*
Airflow control tubes
Atmospheric CO_2 control and monitoring equipment
Backup generators
Bins holding sterilized soil
Control panels = heating and cooling
Coolers used to chill plants*
Cooling walls* or membranes
Equipment used to control water levels for subirrigation
Fans = cooling and ventilating*
Floor mesh for controlling weeds
Germination chambers
Greenhouse boilers*
Greenhouse netting or mesh = used for light and heat control
Greenhouse monorail systems*
Greenhouse thermometers
Handcarts used to move plants
Lighting which provides artificial sunlight
Overhead heating, lighting and watering systems
Overhead tracks for holding potted plants*
Plant tables*
Plant watering systems*
Portable buildings used to grow plants*
Seeding and transplanting machines
Soil pot and soil flat filling machines
Steam generators for soil sterilization*
Warning devices = excess heat or cold
Watering booms

If not real property. See 18.48(1)"c"*(1).

18.57(8) Miscellaneous exempt and taxable sales. Sales of pots, soil, seeds, bulbs, and "starter plants" for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product. Sales of portable buildings which will be used to display plants for retail sales are taxable. Finally, sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those houses are taxable sales of a "supply" rather than exempt sales of equipment. See 18.48(1)*"c"*(2) relating to "supplies." See rule 701—18.7(422,423) relating to containers, including packaging cases, shipping cases, wrapping materials, and similar items sold to retailers, and see subrule 18.57(6).

This rule is intended to implement Iowa Code sections 422.42(1), 422.42(4), 422.42(11), 422.45(39) and 422.47(4) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.
[**ARC 4117C**, IAB 11/7/18, effective 12/12/18]

701—18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997, but before July 1, 2016. The sale or rental of machinery, equipment, or computers used by a manufacturer in processing; the sale or rental of a computer used in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise; and the sale or rental of various other types of tangible personal

property are, under certain circumstances, exempt from tax as of July 1, 1997, but before July 1, 2016. For sales that occur on or after July 1, 2016, see rules 701—230.14(423) to 701—230.22(423).

18.58(1) *Definitions.* The following terms are defined for the purposes of this rule in the manner set out below.

"Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a "commercial enterprise." The term "professions" means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term "occupations" means the principal business of an individual. Included within the meaning of "occupations" is the business of farming. A professional corporation which carries on any business which is a "profession" or "occupation" is not a commercial enterprise.

"Contract manufacturer" is any manufacturer who falls within the definition of "manufacturer" set out subsequently in this subrule except that a contract manufacturer does not sell the tangible personal property which it processes on behalf of other manufacturers.

"Directly used." Property is "directly used" only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

"Financial institution" is a bank incorporated under any state or federal law; a savings and loan association incorporated under any state or federal law; a credit union organized under any state or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

"Insurance company" means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in Iowa as an insurer or as a licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of "insurance company" are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

"Machinery and equipment" means machinery and equipment used by a manufacturer. Machinery is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The term also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be "machinery." See *Deere Manufacturing Co. v. Zeiner,* 247 Iowa 1264, 78 N.W.2d 527 (1956). Also see the definition of "replacement parts" infra. Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are tables on which property is assembled on an assembly line and chairs used by assembly line workers.

"Manufacturer" means any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production

of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; and the activities of restaurateurs, hospitals, medical doctors, and those who merely process data are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982). The term "manufacturer" includes a contract manufacturer. Ordinarily, the word does not include those commercial enterprises engaged in quarrying or mining. However, effective July 1, 1998, a commercial enterprise, the principal business of which is quarrying or mining, is a manufacturer with respect to activities in which it engages subsequent to quarrying or mining. These subsequent activities include, by way of nonexclusive example, crushing, washing, sizing, and blending of aggregate materials.

EXAMPLE: Company A owns and operates a gravel pit. It sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit. It then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities which occur after it severs the gravel from the ground.

"Pollution control equipment" means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. The term does not include any apparatus used to eliminate "noise pollution." Liquid, solid, and gaseous wastes are included within the meaning of the word "pollution." "Pollution control equipment" specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or the United States Government. Wastewater treatment facilities and scrubbers used in smokestacks are examples of pollution control equipment. However, pollution control equipment does not include any equipment used only for worker safety (e.g., a gas mask).

"Processing" means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the manufacturer.

"Processing or storage of data or information." All computers store and process information. However, only if the "final output" for a user or consumer is stored or processed data will the computer be eligible for exemption of tax.

"Receipt or producing of raw materials" means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, "production of raw materials" is deemed to occur immediately following the severance of the raw materials from the real estate.

"Recycling" means any process by which waste or materials which would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. "Recycling" does not include any form of energy recovery.

"Replacement parts." A "replacement part" is any machinery, equipment, or computer part which is substituted for another part that has broken, has become worn out or obsolete, or is otherwise unable to perform its intended function. "Replacement parts" are those parts which materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives or keep them in their ordinarily efficient operating condition. Excluded from the meaning of the term "replacement parts" are supplies, the use of which is necessary if machinery is to accomplish its intended function. Drill bits,

grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters are nonexclusive examples of supplies. Sales of supplies remain taxable.

Tangible personal property with an expected useful life of 12 months or more which is used in the operation of machinery, equipment, or computers is rebuttably presumed to be a "replacement part." Tangible personal property used in the same manner with an expected useful life of less than 12 months is rebuttably presumed to be a "supply."

"Research and development" means experimental or laboratory activity which has as its ultimate goal the development of new products or processes of processing. Machinery, equipment, and computers are used "directly" in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

18.58(2) *Exempt sales.* On and after July 1, 1997, sales or rentals of the following machinery, equipment, or computers (including replacement parts) are exempt from tax:

a. Machinery, equipment, and computers directly and primarily used in processing by a manufacturer.

b. Machinery, equipment, and computers directly and primarily used to maintain a manufactured product's integrity or to maintain any unique environmental conditions required for the product.

c. Machinery, equipment and computers directly and primarily used to maintain unique environmental conditions required for other machinery, equipment, or computers used in processing by a manufacturer.

d. Test equipment directly and primarily used by a manufacturer in processing to control the quality and specifications of a product.

e. Machinery, equipment, or computers directly and primarily used in research and development of new products or processes of processing.

f. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

g. Machinery, equipment, and computers directly and primarily used in recycling or reprocessing of waste products.

h. Pollution control equipment used by a manufacturer. It is not necessary that the equipment be "directly and primarily" used in any kind of processing.

i. Materials used to construct or self-construct any machinery, equipment, or computer, the sale of which is exempted by paragraphs *"a"* through *"h"* above.

j. Exempt sales of fuel and electricity. Sales of fuel or electricity consumed by machinery, equipment, or computers used in any exempt manner described in paragraphs *"a," "b," "c," "d," "e," "g,"* and *"h"* of this subrule are exempt from tax. Sales of electricity consumed by computers used in the manner described in paragraph *"f"* remain subject to tax.

18.58(3) *Examples of exempt items.* Sales of the following nonexclusive types of machinery and equipment, previously taxable, are exempt on and after July 1, 1997, if that machinery or equipment is sold for direct and primary use in processing by a manufacturer: coolers which do not change the nature of materials stored in them; equipment which eliminates bacteria; palletizers; storage bins; property used to transport raw, semifinished, or finished goods; vehicle-mounted cement mixers; self-constructed machinery and equipment; packaging and bagging equipment (including conveyer systems); equipment which maintains an environment necessary to preserve a product's integrity; equipment which maintains a product's integrity directly; quality control equipment and electricity or other fuel used to power the machinery and equipment mentioned above.

18.58(4) *Processing—beginning to end.*

a. *The beginning of processing.* Processing begins with a manufacturer's receipt or production of raw material. Thus, when a manufacturer produces its own raw material it is engaged in processing. Processing also begins when raw materials are transferred to a manufacturer's possession by a manufacturer's supplier.

b. *The completion of processing.* Processing ends when the finished product is transferred from the manufacturer or delivered for shipment by the manufacturer. Therefore, a manufacturer's packaging,

storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

c. *Examples of the beginning, intervening steps, and the ending of processing.* Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A. Company A manufactures fine furniture. Company A owns a grove of walnut trees which it uses as raw material. A's employees cut the trees, transport the logs to A's factory, offload them there, and store the logs in a warehouse (to begin the curing of their wood) before taking them to A's sawmill. The walnut trees are real property, *Kennedy v. Board of Assessment and Review,* 276 N.W. 205, 224 Iowa 405 (1937). Thus, no "production of raw materials" has occurred with regard to the trees until they have been severed from the soil and transformed into logs. In this example, "processing" of the logs begins when they are placed on vehicles for transport to A's factory. However, note that even though the transport vehicles are used in processing, if they are "vehicles subject to registration," their use is not exempt from tax. See 18.58(6)*"d"* infra.

EXAMPLE B. Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its own equipment to offload the logs from railroad cars at its manufacturing facility and then transports, stores, and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C. Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer which it brews. It also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing whether those stages involve the transformation of the raw materials from one state to another, e.g., fermentation or aging, or simply involve holding the materials in an existing state, e.g., storage of hops in a bin or storage of the beer immediately prior to bottling. Also, any movement of the beer between containers is an activity which is a part of processing, whether this movement is an "integral part" of the production of the beer or not.

EXAMPLE D. After the brewing process is complete, Company C places its beer in various containers, stores it, and moves the beer to its customers by a common carrier that picks up the beer at C's brewery. C's activities of placing the beer into bottles, cans, and kegs, storing it after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are activities which are part of processing.

18.58(5) *Various unrelated inclusions in and exclusions from this exemption.*

a. The following are nonexclusive examples of machinery which is not directly used in processing:

(1) Machinery used exclusively for the comfort of workers. Examples are air cooling, air conditioning, and ventilation systems.

(2) Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained, or repaired.

(3) Machinery used by administrative, accounting, and personnel departments.

(4) Machinery used by plant security, fire prevention, first aid, and hospital stations.

(5) Machinery used in plant communications and safety.

b. The following is an example of property directly used in research and development. Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a "steam cleaner" for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director's secretary. The computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

c. The following is an example of computers used and not used in processing or storage of information or data. A health insurance company has four computers. Computer A is used to monitor

the temperature within the insurance company's building. The computer transmits messages to the building's heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company's employees to perform various additional tasks or to better perform work they can already do. Computer D uses various canned programs to accomplish this. The "final output" of Computer A is neither stored nor processed information. Therefore, Computer A does not fit the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sale, lease, or use of Computers B, C, and D would qualify for exemption.

d. The following is an example of property not used in processing. A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns, and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in processing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.58(6) *Exceptions.* Sales of the following machinery, equipment, or computers are not exempt:

a. Machinery, equipment, or computers assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434, and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to, as well as owned by, the company is assessed by the department. See 701—Chapters 71 and 77.

b. Hand tools. These are tools which can be held in the hand or hands and which are powered by human effort.

c. Point-of-sale equipment. See 701—subrule 71.1(7).

d. Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

e. Machinery and equipment purchased by a person engaged in processing who is not a manufacturer. Restaurants, retail bakeries, food stores, and blacksmith shops are nonexclusive examples of businesses which process tangible personal property but are not manufacturers as that word is defined for the purposes of this rule.

f. The fact that the acquisition cost of rented or purchased machinery, equipment, or computers can be capitalized for the purposes of Iowa or federal income tax law is not an indication that their sale or rental would be exempt from tax under this rule.

18.58(7) *Lessor purchases of machinery, equipment, or computers.* The analysis regarding lessor purchases of farm machinery and equipment contained in subrule 18.44(3) explains that same problem regarding machinery, equipment, and computers.

18.58(8) *Designing or installing new industrial machinery or equipment.* The gross receipts from the services of designing or installing new industrial machinery or equipment are exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to exemption under this rule. In addition, the machinery or equipment must be "new." For purposes of this subrule, "new" means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt, or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A "computer" is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.58(9) *Property used in recycling or reprocessing of waste products.* Gross receipts from the sale or rental of machinery (including vehicles subject to registration), equipment, or computers directly and

primarily used in the recycling or reprocessing of waste products are exempt from tax. "Reprocessing" is not a subcategory of "processing." Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an end loader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. The sale of a bin for storage ordinarily would not be exempt from tax; storage without more activity would not be a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing. For example, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. A person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.58(1) for the definition of "directly used" which is applicable to this subrule. The examples of machinery not directly used in processing set out in 18.58(5)*"a"* should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.58(5)*"a"*(4)) is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an "integral part" of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of "processing." Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material or in the form of a product. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, crates, and other waste wood into wood chips. After grinding, the wood chips are sold and transported to various sites where the chips are dumped and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in recycling because at the time the chips are placed in the truck they are in the form in which they will be used in erosion control.

This rule is intended to implement Iowa Code Supplement section 422.45(27) as amended by 1998 Iowa Acts, Senate File 2288; Iowa Code section 422.45(29); and Iowa Code chapter 423.

[**ARC 2349C**, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter; **ARC 2768C**, IAB 10/12/16, effective 11/16/16; see Rescission note at end of chapter]

701—18.59(422,423) Exempt sales to nonprofit hospitals. On and after July 1, 1998, the gross receipts from sales or rentals of tangible personal property to and from the rendering, furnishing, or performing of services for a nonprofit hospital licensed under Iowa Code chapter 135B are exempt from tax if the property or service purchased is used in the operation of the hospital. A hospital is not entitled to claim

a refund for tax paid by a contractor on the sale or use of tangible personal property or the performance of services in the fulfillment of a written construction contract with the hospital. However, see the circumstances set out below in which sales of goods, wares or merchandise, or taxable services to a hospital for use in the fulfillment of a construction contract, are exempt from Iowa tax.

For the purposes of this rule, the word "hospital" means a place which is devoted primarily to the maintenance and operation of facilities for diagnosis, treatment, or care, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, or a medical condition (such as pregnancy). The word "hospital" includes general hospitals, specialized hospitals (e.g., pediatric, mental, and orthopedic hospitals, and cancer treatment centers), sanatoriums, and other hospitals licensed under Iowa Code chapter 135B. Also included are institutions, places, buildings, or agencies in which any accommodation is primarily maintained, furnished, or offered for the care, over a period exceeding 24 hours, of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care. Excluded from the meaning of the term "hospital" are institutions for well children; day nursery and child care centers; foster boarding homes and houses; homes for handicapped children; homes, houses, or institutions for aged persons which limit their function to providing food, lodging, and provide no medical or nursing care, and house no bedridden person; dispensaries or first-aid stations maintained for the care of employees, students, customers, members of any commercial or industrial plan, educational institution, or convent; freestanding hospice facilities which operate a hospice program in accordance with 42 CFR § 418 and freestanding clinics which do not provide diagnosis, treatment, or care for periods exceeding 24 hours. This list of inclusions and exclusions is not exclusive. For additional information see 481—Chapter 51.

Ordinarily, goods, wares, or merchandise (such as building materials, supplies, and equipment; see rule 701—19.3(422,423) for definitions) which is purchased by a hospital and used by a contractor in the fulfillment of a written contract with the hospital cannot be purchased exempt from Iowa tax. The goods, wares, and merchandise used in the fulfillment of these construction contracts are not used in the "operation" of a hospital but in activities at least one step removed from that operation. See *Polich v. Anderson-Robinson Coal Co.,* 227 Iowa 553, 288 N.W. 650 (1939).

However, for a limited period, the gross receipts from all sales of goods, wares, or merchandise or from services rendered, furnished, or performed are exempt from tax (or a claim for refund may be filed for tax paid) if the tangible personal property or the taxable service is used in the fulfillment of a written construction contract with a hospital and all of the following circumstances exist:

1. Deliveries under contracts of sale of the goods, wares, or merchandise occurred or the taxable services were rendered, furnished, or performed between July 1, 1998, and December 31, 2001, inclusive. A claim for refund may be filed for any tax paid for this period, so long as the claim is filed prior to April 1, 2002, and the requirements of "2" and "3" below are also met. Claims for refunds of tax, interest, or penalty paid for the period of July 1, 1998, to December 31, 2001, are limited to $25,000 in the aggregate. If the amount of the claimed refunds for this period totals more than $25,000, the department must prorate the $25,000 among all claimants in relation to the amounts of the claimants' valid claims.

2. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

3. The property or services were purchased directly by the hospital or by a contractor as an agent of the hospital. For the purposes of this exemption, no hospital can retroactively designate a contractor to be its agent and by this means transform a contractor's purchases of goods, wares, merchandise, or services into its own. Upon the department's request, a hospital claiming that a contractor is or has been its purchasing agent must present suitable evidence of a principal-agent relationship between itself and the contractor during any period for which exempt sales or a refund is claimed. The best evidence of a principal and purchasing agent relationship is a written document setting out the terms of the relationship and the period for which the agency is in effect; however, other evidence, which is the equivalent of a written document in reliability, will be considered by the department when necessary.

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1207.

701—18.60(422,423) Exempt sales of gases used in the manufacturing process. Effective May 24, 1999, but retroactive to January 1, 1991, sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases which are similar to argon. An "inert gas" is any gas which is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, nitrogen, carbon dioxide, helium, neon, krypton, and xenon are nonexclusive examples of inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for used in "processing," as those terms are defined in subrule 18.45(1), for the period prior to July 1, 1997, and as those terms are defined in subrule 18.58(1) for the period beginning July 1, 1997.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 170.

701—18.61(422,423) Exclusion from tax for property delivered by certain media. For the period beginning March 15, 1995, a taxable "sale" of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is not applicable to any leasing of tangible personal property, a lease not being a "sale" of tangible personal property for the purposes of Iowa sales and use tax law, *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue,* 274 N.W.2d 357 (Iowa 1979). The exclusion is also not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, "canned" software (see subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. See rule 701—26.56(422). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

This rule is intended to implement Iowa Code Supplement section 422.43 as amended by 2002 Iowa Acts, Senate File 2321.

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◊ Two or more ARCs

1 Effective date of 18.20(5) and 18.20(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 10, 1997.

2 Amendments to 18.29(7) and 18.58, introductory paragraph, (ARC 2349C, Items 2 and 3) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

3 The definition of "computer" in subparagraph 18.34(1)"b"(1), subrule 18.45(1), and subrule 18.58(1) rescinded by 2020 Iowa Acts, House File 2641, section 97, effective July 1, 2020.

CHAPTER 213
MISCELLANEOUS TAXABLE SALES

Rules in this chapter include cross references to provisions in 701—Chapters 15 and 18 that were applicable prior to July 1, 2004.

701—213.1(423) Tax imposed. The Iowa state retail sales tax is imposed at the rate of 5 percent of the sales price from the sale at retail of tangible personal property and certain enumerated services. The rules in this chapter deal with certain specific attributes of the Iowa state retail sales tax, but such rules are by no means exclusive in explaining what are taxable sales and are not exclusive in explaining which transactions constitute taxable sales. There are other transactions which constitute taxable sales under the law and which are not specifically dealt with in these rules.

This rule is intended to implement Iowa Code section 423.2.

701—213.2(423) Athletic events. The sales price from the sale of tickets or admissions to athletic events occurring in the state of Iowa and sponsored by educational institutions, without regard to the use of the proceeds from such sales, shall be subject to tax, except when the events are sponsored by elementary and secondary educational institutions.

This rule is intended to implement Iowa Code section 423.2(3).

701—213.3(423) Conditional sales contracts. Iowa Code section 423.1(46) defines sales to include "conditional sales." A conditional sale is a sale in which the vendee receives the right to the use of the goods which are the subject matter of the sale, but the transfer of title to the vendee is dependent on the performance of some condition by the vendee, usually the full payment of the purchase price.

Conditional sales in most cases are evidenced by the facts supporting the nature of the vendor's business, the intent of the parties, and the facts supporting the control over the tangible personal property by the vendee. A conditional sales contract would exist where: the vendee/lessee has total control over the property and is responsible for all losses or damages; the transfer of the property is complete except for title, which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's "lease" agreements, except in cases of default; and the vendor has no intent of retaining control over the property except for purposes of selling it or financing it for sale. In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

When a conditional sale exists, the seller shall bill the purchaser for the full amount of tax due, and sales tax is due on the full contract price upon delivery of the property which is the subject of the contract. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). No further tax is due on the periodic payments. Interest and finance charges shall not be considered part of the sales price if they are separately stated and reasonable in amount and are, therefore, not subject to tax. *State ex rel. Turner v. Younker Bros., Inc.*, 210 N.W.2d 550, 562 (Iowa 1973).

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.4(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable. However, see rule 701—231.16(423), which provides for a phase-out of and eventual complete exemption from tax for propane and other gases sold for use in residential heating.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, sales or use tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, sales or use tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The sales price from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. The sales price of gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.5(423) Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail, and their sales price shall be subject to tax.

213.5(1) The sales price of stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

213.5(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not the sales price of a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, its sales price shall not be subject to either sales or use tax.

213.5(3) The sales price from any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency shall be subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the sales price or purchase price subject to tax. Currency or coins become articles of tangible personal property having a value greater than face value when the currency or coins are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sales price of the sale shall be subject to tax for the face value alone. *Losana Corp. v. Porterfield*, 14 Ohio St.2d 42, 236 N.E.2d 535 (1968).

EXAMPLE 1. Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties, without regard to the face value of the coins.

EXAMPLE 2. Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax. Also see Attorney General Opinion Griger to Bair, Director of Revenue, May 15, 1980, #80-5-13.

This rule is intended to implement Iowa Code sections 423.1(47), 423.2(1) and 423.5.

701—213.6(423) Communication services furnished by hotel to its guests. As a common practice, hotels in the state of Iowa purchase telephone communication services from telephone companies and furnish those services to the guests of the hotel. The hotel makes a charge for this communication service to its guests in an amount which exceeds the cost of such service to it from the telephone company. Tax shall apply to the entire charge which the hotel makes to its guests for such communication service, regardless of whether a guest's calls are local or long-distance within the state. However, the hotel would purchase any communication service which it furnishes for a charge to a guest exempt from tax as a service purchased for subsequent resale.

This rule is intended to implement Iowa Code section 423.2(2).

701—213.7(423) Consignment sales. When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of tax on the sales price from the sale of other merchandise.

The sales price of sales of tangible personal property by an agent or consignee for another person shall be exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.8(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions. The sales price of electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions shall be subject to tax when sold to users or consumers. Reference rule 701—18.33(422,423) for sales to printers. The listed articles do not become an integral or component part of merchandise intended to be sold ultimately at retail. *Long v. Roberts & Son*, 234 Ala. 570 176 So. 213 (1937); *People ex rel. Walker Engraving Corporation v. Groves*, 268 N.Y. 648, 193 N.E. 539 (1935).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(51).

701—213.9(423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the sales price from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax. *Linwood Stone Products Company v. State Department of Revenue, Iowa*, 175 N.W.2d 393 (1970).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.10(423) Sales on layaway. The sales price from sales on layaway is subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option to purchase, the item is placed aside "on layaway" and is not available for sale to the general public. This option to purchase is exercised by the customer's making one or more "layaway payments." The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. See *Holland v. Brown*, 15 Utah 2d 422, 394 P.2d 77 (1964) and *Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

A sale on layaway should not be confused with a "conditional sale." The differences are these: (1) In a conditional sale, physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; and (2) in a conditional sale, physical possession of and title to the property pass to the buyer at different times. In a conditional sales situation, physical possession passes first; then after all periodic payments are made, title (ownership) passes to the buyer. In a layaway sale, both possession and title pass at the same time after all payments are made. The conditional sale is a much more common commercial arrangement than the sale on layaway.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.11(423) Memorial stones. Persons engaged in the business of selling memorial stones are selling tangible personal property, the sales price of which shall be subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total sales price from such sale shall be taxable. Any separately itemized charge for engraving is part of the taxable sales price of a memorial stone.

The sales price of any designs, lettering or engraving performed on a memorial stone or monument is also subject to tax. See *In Re Des Moines-Winterset Monuments, Inc.*, Docket No. 79-228-6A-DR, March 13, 1980.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.12(423) Creditors and trustees. Pursuant to the provisions of any piece of chattel paper or any other document evidencing a creditor's interest in tangible personal property, the sales price from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to the sales price of inventory and noninventory goods, provided the owner is in the business of making retail sales of tangible personal property or taxable services. *In Re Hubs Repair Shop, Inc.*, 28 B.R. 858 (Bkrtcy. 1983).

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.13(423) Sale of pets. A retailer selling pets shall procure a permit and report tax on the sales price from the sale of such pets.

This rule is intended to implement Iowa Code sections 423.1(54) and 423.2(1).

701—213.14(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of actual purchase of the meal ticket, coupon book, or merchandise card. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.15(423) Rental of personal property in connection with the operation of amusements. The sales price from rental of tangible personal property in connection with the operation of amusements shall be taxable. Such rentals shall include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.16(423) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price which ultimately constitutes a bad debt. Reference rule 701—15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.17(423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The sales price shall be taxable, even when the sales price of the sign includes a charge for maintenance or repair service in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.18(423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials which have been selected by customers, all expenses and profits from the sale of such fabricated articles shall be included in the sales price. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.19(423) Used or secondhand tangible personal property. The sales price on the sale of used or secondhand tangible personal property in the form of goods, wares, or merchandise shall be

taxable in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.20(423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property, and the sales price of these sales is subject to sales or use tax unless the carpeting and other floor coverings are purchased for resale or are otherwise exempt from tax.

The sales price of floor coverings other than carpeting which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials which are used or consumed in the performance of a construction contract. See rule 701—219.2(423) and 701—subrule 219.3(3) for tax treatment.

The sale of carpeting is not to be treated as the sale of a "building material." The sales price of rugs, mats, linoleum, and other types of floor coverings which are not attached but which are simply laid on finished floors and are not considered building materials is subject to tax unless the floor coverings are purchased for resale or are otherwise exempt from tax.

The sale of "carpeting" to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. "Carpeting" is any floor covering made of fabric, usually of wool or synthetic fibers. For purposes of this rule, "carpeting" also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. Sellers of carpeting should charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

The sales price of carpeting, with installation, is taxable in the following manner:

1. If separate contracts exist for the sale of the carpeting and for the installation, only the sales price of the carpeting is subject to tax.

2. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.

3. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 225.4(1) for more information.

In the following examples, assume that contractor A purchases carpeting from supplier B for installation in customer C's home. Whether or not A will purchase the carpeting from B for A's own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A (the contractor) and C (the customer).

EXAMPLE A. A contracts with C to install carpeting in C's home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the sales price of the transaction between A and B; tax is due upon A's resale of the carpet to C, but not upon A's charges for carpet installation, a nontaxable service.

EXAMPLE B. A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the sales price from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C. A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separately from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B.

This rule is intended to implement Iowa Code section 423.2(1)*"b."*

701—213.21(423) Goods damaged in transit. If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the consumer, the retailer and purchaser shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985).

If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

EXAMPLE. A company in Chicago transports furniture in its own truck to customer B in Des Moines. Under the contract of sale, delivery of the furniture would occur in Des Moines and sales tax would ordinarily be due upon the sales price of the sale. However, in East Moline, Illinois, the furniture truck is involved in an accident, and B's furniture is destroyed. There was no delivery of the furniture to B, thus no sale to B and thus no sales tax is due. Had the point of delivery been Chicago, Illinois, a sale would have occurred outside this state, but no use tax would be due because B never made any "use" of the furniture in Iowa.

This rule is intended to implement Iowa Code section 423.2.

701—213.22(423) Snowmobiles, motorboats, and certain other vehicles. The sales price of snowmobiles, all-terrain vehicles, dirt bikes, race karts or go-carts, and motorboats shall be subject to tax when purchased and shall not be classified as vehicles subject to registration.

This rule is intended to implement Iowa Code chapter 423.

701—213.23(423) Photographers and photostaters. Tax shall apply to the sales price of photographs and photostat copies, whether or not produced to the special order of the customer, and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

Tax shall not apply to the sales price of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sales price of materials to photographers or producers which is used in the processing of photographs or photostat copies.

The sales price of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—213.24(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations. The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, including but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent.

This rule is intended to implement Iowa Code section 423.1(50).

[**ARC 5201C**, IAB 10/7/20, effective 11/11/20]

701—213.25(423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit system's charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether the urban transit system is created by government.
2. Whether the urban transit system is wholly owned by government.

3. Whether the urban transit system is operated for profit.

4. Whether the urban transit system is primarily engaged in the performance of some essential governmental function.

5. Whether the payment of tax will impose an economic burden upon the corporation, or whether payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

The considerations enumerated above are not all-inclusive, and the presence of some considerations and absence of others does not necessarily establish the exemption. Unemployment compensation of *North Carolina v. Wachovia Bank and Trust Company*, 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

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TRANSPORTATION DEPARTMENT[761]

Rules transferred from agency number [820] to [761] to conform with the reorganization numbering scheme in general IAC Supp. 6/3/87.

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181.1(1) Special permits.

a. A local authority may issue a special permit, based on this rule, allowing the operation over a bridge within its jurisdiction of a fence-line feeder, grain cart, tank wagon or tracked implement of husbandry with a weight in excess of the weights allowed under Iowa Code chapter 321.

b. A local authority may issue a special permit, based on this rule, allowing the operation over a bridge within its jurisdiction of a self-propelled implement of husbandry used exclusively for the application of organic or inorganic plant food materials, agricultural limestone or agricultural chemicals with a weight in excess of weight limitations established by the local authority by ordinance or resolution but within the weight limitations imposed by Iowa Code chapter 321.

181.1(2) A local authority shall evaluate a bridge according to section 6 of the American Association of State Highway and Transportation Officials (AASHTO) Manual for Bridge Evaluation (MBE), Third Edition (2018). The operating level shall be used for the evaluation of the bridge with only one fence-line feeder, grain cart, tank wagon, self-propelled implement of husbandry as fully described in paragraph 181.1(1)*"b,"* or tracked implement of husbandry on the bridge at a time. The live load to be used in the analysis for permit decisions should be the actual vehicle crossing the bridge, together with a dynamic load allowance in accordance with section 6A.4.4.3 or 6A.4.5.5 of the AASHTO MBE, Third Edition (2018).

181.1(3) A local authority is not liable for damage to any vehicle operating within the terms of a permit the local authority issues under this rule, or to the vehicle's cargo, if the local authority imposes weight limits on a bridge specified in the permit subsequent to the issuance of the permit. The weight limits are effective when signs giving notice of the limits are erected.

181.1(4) The AASHTO publication may be ordered from the website www.transportation.org. The publication may be inspected at the department's bridges and structures bureau.

This rule is intended to implement Iowa Code sections 321.1, 321.463(4) and 321.471.

[**ARC 1451C**, IAB 4/30/14, effective 6/4/14; **ARC 4400C**, IAB 4/10/19, effective 5/15/19; **ARC 5202C**, IAB 10/7/20, effective 11/11/20]

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CHAPTER 450
MOTOR VEHICLE EQUIPMENT

[Appeared as Ch 1, Department of Public Safety, 1973 IDR; amended January 1975 IDR Supplement]
[Prior to 6/3/87, Transportation Department[820]—(07,E)Ch 1]

761—450.1(321) Addresses, information and forms. Assistance under this chapter is available as follows:

450.1(1) Information and forms for vehicle registration and certificate of title may be obtained from the county treasurer or by mail from the Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at Iowa Department of Transportation, 6310 SE Convenience Boulevard, Ankeny, Iowa; by telephone at (515)237-3264; or on the department's website at www.iowadot.gov.

450.1(2) Information for inspections may be obtained from the Bureau of Investigation and Identity Protection, Iowa Department of Transportation, 6310 SE Convenience Boulevard, Ankeny, Iowa; by telephone at (515)237-3050; or on the department's website at www.iowadot.gov.

This rule is intended to implement Iowa Code section 17A.3.

[**ARC 5203C**, IAB 10/7/20, effective 11/11/20]

761—450.2(321) Equipment requirements for specially constructed, reconstructed, street rod, and replica motor vehicles, other than autocycles, motorcycles and motorized bicycles. The following standards are minimum requirements for constructing and equipping specially constructed, reconstructed, street rod, and replica motor vehicles other than autocycles, motorcycles and motorized bicycles.

450.2(1) *Definitions.* The definitions in Iowa Code section 321.1 and rule 761—400.16(321) are hereby made part of this chapter.

450.2(2) *Application.* As outlined in rule 761—400.16(321), the applicant shall submit the required application forms and exhibits to the county treasurer. The vehicle and ownership documents shall be examined by the department. If the department determines that the motor vehicle complies with this rule, that the integral parts and components have been identified as to ownership, and that the application forms have been completed properly, the department shall assign an identification number to the vehicle and certify that the motor vehicle is eligible for titling and registration. If the frame or unibody specified on an application for a specially constructed, reconstructed, street rod, or replica motor vehicle is designated "not for highway use," the application shall not be approved. The exchange of compatible body parts does not constitute a specially constructed, reconstructed, street rod, or replica motor vehicle. The removal, addition, or substitution of reconstructed motor vehicle parts that modifies the vehicle's external appearance so that it does not reflect the original make or manufacturer model for that model does constitute a specially constructed, reconstructed, street rod, or replica motor vehicle.

450.2(3) *Defroster and defogging device.* Every closed motor vehicle shall be equipped with a device capable of defogging or defrosting the windshield area.

450.2(4) *Door latches.* Every motor vehicle that is equipped with doors leading directly into a compartment that contains one or more seating accommodations shall be equipped with mechanically actuated door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened from the inside by the actuation of a convenient lever, handle or other nonelectric device. Interior handles must be visible.

450.2(5) *Floor pan.* Every motor vehicle shall be equipped with a floor pan under the entire passenger-carrying compartment. The floor pan shall support the weight of the number of occupants that the vehicle is designed to carry. The floor pan shall be so constructed that it prevents the entry of exhaust fumes.

450.2(6) *Glazing.*

a. *Windshields.* Every motor vehicle shall be equipped with a laminated safety glass windshield that complies with and bears the approval marking of the American National Standards Institute (ANSI) Z 26.1 Standard. The windshield shall be in such a position that it affords continuous horizontal frontal protection to the driver and front seat occupants. The minimum vertical height of the unobstructed

windshield glass shall be 6 inches. This paragraph does not preclude the use of a windshield that can be folded down to a horizontal position, provided that the windshield can be firmly fastened in both the vertical and horizontal positions.

b. *Side and rear glass.* Side and rear glass is not required in motor vehicles. If present, however, this glass must be either laminated or tempered safety glass bearing the approval of the ANSI Z 26.1 Standard.

450.2(7) *Driver visibility.* Each motor vehicle shall provide the driver with a minimum outward horizontal vision capability of 90 degrees each side of a vertical plane passing through the fore and aft centerline of the vehicle. This plane of vision may be interrupted by window framing and windshield door support posts not exceeding 4 inches in width at each side location.

450.2(8) *Hood latches.* If a motor vehicle is equipped with a front-opening hood, that hood shall be equipped with a primary and secondary latching system to hold the hood in a closed position.

450.2(9) *Instruments and controls.* Each motor vehicle shall be equipped with:

a. An operating speedometer calibrated to indicate "miles per hour."

b. An operating odometer calibrated to indicate "total miles driven."

c. A steering wheel circular or nearly circular in shape, having an outside diameter of not less than 13 inches.

d. An accelerator control system that returns the engine throttle to an idle position automatically when the driver removes the actuating force from the accelerator control.

450.2(10) *Brakes.*

a. Every motor vehicle shall be equipped with brakes acting upon all wheels. The service brakes must be capable of meeting or exceeding the stopping requirements of Iowa Code section 321.431. If necessary, the braking system may be tested by a road test on a public roadway by an officer of the motor vehicle division of the department.

b. Every motor vehicle shall be equipped with a parking brake operating on at least two wheels applied with required effectiveness despite exhaustion of any source of energy or leakage of any kind in the service brake system. The parking brake shall meet the requirements of Iowa Code sections 321.430 and 321.431.

450.2(11) *Rearview mirror.* Every motor vehicle shall be equipped with two rearview mirrors, each having substantial unit magnification. One shall be mounted on the inside of the vehicle in such a position that it affords the driver a clear view to the rear. The other shall be mounted on the outside of the vehicle on the driver's side in such a position that it affords the driver a clear view to the rear. When an inside mirror does not give a clear view to the rear, a right-hand outside mirror shall be required in lieu thereof. The mirror mounting shall provide a stable support for the mirror, and shall provide for mirror adjustment by tilting in both horizontal and vertical directions. Each mirror shall have a minimum of 10 square inches of reflective surface.

450.2(12) *Seat belts.* Every motor vehicle shall be equipped with at least a Type I (lap belt) seat belt for the driver and each passenger seating position. The belts at each location shall comply with DOT Motor Vehicle Safety Standard No. 209, and shall be firmly anchored to the vehicle body.

450.2(13) *Seating.* All bench-type and individual seats in motor vehicles shall be firmly anchored to structural components or body parts.

450.2(14) *Fenders and mud flaps.* Rescinded IAB 9/8/10, effective 10/13/10.

450.2(15) *Bumpers.* Rescinded IAB 9/8/10, effective 10/13/10.

450.2(16) *Exhaust system.* Every motor vehicle shall have an exhaust system meeting the following requirements:

a. The system shall be free of leaks, including the exhaust manifold (or headers), piping forward of the muffler, the muffler(s), and tail piping.

b. Exhaust fumes shall be emitted to the extremity of the vehicle, behind the rear wheels, or to the extremity of the vehicle within 6 inches in front of the rear wheels. Exhaust fumes from trucks, other than enclosed vans, may be emitted to the rear of that part of the vehicle designed for and normally used for carrying the driver and passengers.

c. Each exhaust system must be equipped with a muffler that prevents excessive noise.

d. No part of the exhaust system shall pass through any area of the vehicle that is used as a passenger-carrying compartment, and shall be so constructed that persons entering the vehicle cannot make contact with the exhaust system.

e. All exterior side exhaust pipes must be fully shielded and any vertical truck exhaust stacks shall be shielded to the top of the cab.

450.2(17) *Frame.* Every vehicle shall be equipped with a frame consisting of wall box tubing, round tubing, wall channel or unitized construction capable of supporting the vehicle, its load and the torque produced by the power source.

450.2(18) *Fuel system.* Every motor vehicle shall have a fuel system in which all components are securely fastened with fasteners designed for this purpose, including the tank, tubing, hoses, clamps, etc. The filler from the system shall be located in a position not within the passenger-carrying compartment, and shall be capped. The system shall be leakproof, and fuel lines shall be positioned so as not to come in contact with high temperature surfaces or moving parts.

450.2(19) *Steering and suspension.*

a. Every motor vehicle shall have no parts extending below the wheel rims in their lowest position, except for tires and electrical grounding devices designed for this purpose.

b. The steering system shall remain unobstructed when turned from lock to lock.

c. The steering wheel shall have no less than two turns and no more than six turns when turning the road wheels from lock to lock.

d. While in a sharp turn at a speed between 5 and 15 MPH, release of the steering wheel shall result in a distinct tendency for the vehicle to increase its turning radius.

e. No motor vehicle shall be constructed so that the weight on any axle is less than 20 percent of the gross weight of the vehicle and load.

f. Motor vehicles shall be equipped with a damping device at each wheel location providing a minimum relative motion between the unsprung axle and the chassis of plus or minus 2 inches.

g. When each corner of the vehicle is depressed and released the damping device shall stop vertical body motion within two cycles.

h. There shall be no heating or welding on coil springs, leaf springs, or torsion bars.

450.2(20) *Tires.* Tires shall comply with Iowa Code section 321.440. Each tire shall have a load-bearing capacity in keeping with the size and weight of the vehicle.

450.2(21) *Lighting and electrical system.* Each motor vehicle shall be equipped with approved lighting devices in sufficient number, type, and locations to meet the requirements of Iowa Code sections 321.384 to 321.423, including headlamps, rear lamps, license plate lamp, rear reflectors, parking lamps, stop lamps, turn signals, and high-low beam indicator. In addition, every motor vehicle shall be equipped with:

a. A driver-controlled switch capable of selecting high and low beams (dimmer switch).

b. A motor vehicle more than 40 inches in width shall be equipped with turn signal lamps and have a manually operated switch controlled by the driver that shall cause the turn signal lamps to function. This switch shall be self-canceling.

c. A horn that shall be electrically actuated, and shall emit a sound clearly audible from a distance of 200 feet. The horn shall be actuated with a switch easily accessible to the driver when operating the vehicle.

d. All wiring shall be done in an orderly and workmanlike fashion, with no wiring in contact with high temperature surfaces or moving parts.

e. Headlamps shall be in a plane that is perpendicular to a vertical plane through the longitudinal centerline of the vehicle. The headlamps shall be mounted not less than 24 inches, nor more than 54 inches, above the road surface when measured to the headlamp center.

f. A tail lamp or lamps shall be mounted on the rear of the motor vehicle or vehicle, exhibiting a red light plainly visible from a distance of 500 feet to the rear. The tail lamp or lamps shall be mounted not less than 15 inches, nor more than 72 inches, above the roadway.

g. All original lamps and lighting equipment provided on the motor vehicle by the manufacturer shall be maintained in working condition or shall be replaced with equivalent equipment.

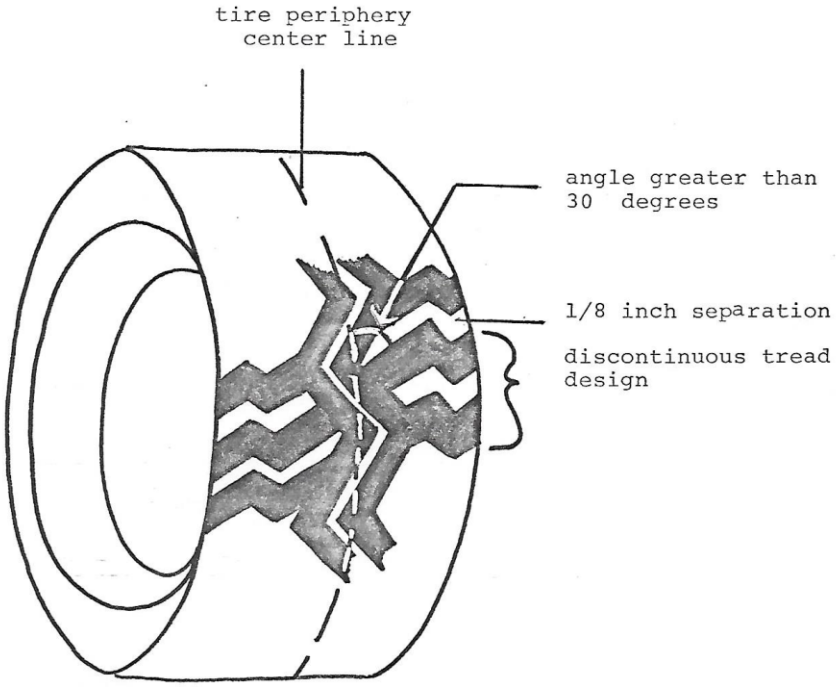
This rule is intended to implement Iowa Code section 321.23.

[**ARC 9048B**, IAB 9/8/10, effective 10/13/10; **ARC 5203C**, IAB 10/7/20, effective 11/11/20]

761—450.3(321) Mud and snow tire. A mud and snow tire is a tire that is designed to provide additional starting, stopping and driving traction in mud and snow. The tread design shall have ribs, lugs, blocks or knobs which are discontinuous and have a minimum separation of one-eighth of an inch between the ribs, lugs, blocks or knobs. A substantial portion of the rib, lug, block or knob edge in the design of the tread shall be at an angle greater than 30 degrees to the periphery centerline. A mud and snow tire must comply with the tire restrictions expressed in Iowa Code section 321.440.

A tire labeled "Mud and Snow" or any contraction using the letters "M" and "S," such as "MS," "M/S," "M-S" or "M & S" shall be considered a mud and snow tire.

A representation of the distinguishing features of a mud and snow tire is pictured below.



This rule is intended to implement Iowa Code subsection 321.236(12).

761—450.4(321) Minimum requirements for constructing and equipping specially constructed or reconstructed motorcycles or motorized bicycles. Minimum requirements for constructing and equipping specially constructed or reconstructed motorcycles or motorized bicycles as defined in Iowa Code section 321.1 are as follows:

450.4(1) *Application.* As outlined in rule 761—400.16(321), the applicant shall submit the required application forms and exhibits to the county treasurer. The vehicle and ownership documents shall be examined by the department. If the department determines that the motor vehicle complies with this rule, that the integral parts and components have been identified as to ownership, and that the application forms have been completed properly, the department shall assign an identification number to the vehicle and certify that the motor vehicle is eligible for titling and registration. If the frame specified on an application for a specially constructed or reconstructed motorcycle or motorized bicycle is designated "not for highway use," the application shall not be approved. The exchange of compatible body parts does not constitute a specially constructed or reconstructed motorcycle or motorized bicycle. The

removal, addition, or substitution of a reconstructed motorcycle or motorized bicycle part that modifies the vehicle's external appearance so that it does not reflect the original make or manufacturer model does constitute a specially constructed, reconstructed, street rod, or replica motorcycle or motorized bicycle. EXEMPTION: The conversion of a manufactured motorcycle from two wheels to three-wheel operation by the addition or substitution of a bolt-on conversion kit shall not constitute a reconstructed motorcycle.

450.4(2) *Upgrade pulls—minimum speed.* No motor vehicle or combination of vehicles which cannot proceed up a 3 percent grade, on dry concrete pavement, at a minimum speed of 20 miles per hour, shall be operated upon the highways of this state.

450.4(3) *Engine.* Rescinded IAB 9/8/10, effective 10/13/10.

450.4(4) *Frame/chassis.* A motorcycle or motorized bicycle frame/chassis, including the suspension components and engine mountings, shall be of sufficient strength, capable of supporting the combined weight of all vehicle components and riders for which the vehicle was designed.

450.4(5) *Front end assembly.*

a. Trail (extended fork measured in inches). No reconstructed or specially constructed motorcycle or motorized bicycle shall have the front fork so extended as to place the center of the front wheel axle farther than 36 inches from a vertical plane through the steering axis.

b. Rake (extended fork measured in degrees). No reconstructed or specially constructed motorcycle or motorized bicycle shall have the front fork so extended as to exceed a 45-degree angle between the fork assembly and a vertical plane through the steering axis.

c. Extensions. No reconstructed or specially constructed motorcycle or motorized bicycle shall be equipped with extension slugs. However, one-piece extension tubes and springer units, if approved, are acceptable.

d. Wheelbase. No reconstructed or specially constructed motorcycle or motorized bicycle shall have an overall wheelbase, measured from the center of the front axle to the center of the rear axle, of less than 40 inches.

e. Motorcycle front end geometry. A representation of the front end geometry of a motorcycle is depicted in the Appendix to this rule.

450.4(6) *Brakes.* Every motorcycle and motorized bicycle shall be equipped with at least a rear brake. If the vehicle is also equipped with a front brake, all control cables, lines and hoses shall be located and secured so as not to become pinched between the fork and frame members when the wheel is turned completely to the left or right. Brake-actuating devices shall be in a readily accessible location, unencumbered by vehicle components. A suitable mechanism shall be provided for the purpose of automatically returning the actuating devices to a normal position upon release.

450.4(7) *Tires, wheels, rims.* Motorcycle tires shall be of pneumatic design with a minimum width of two and twenty-five hundredths inches and designed for highway use. Wheel rim diameters shall not be less than 10 inches and rims shall otherwise comply with applicable federal standards.

450.4(8) *Steering and suspension.*

a. Stability. Motorcycle or motorized bicycle steering and suspension shall provide the operator with the means of safely controlling vehicle direction.

b. Wheel alignment. The rear wheel of a two-wheel motorcycle or motorized bicycle shall track behind the front wheel within 1 inch with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle or motorized bicycle, the two wheels mounted on the rear axle shall have a wheel track distance not less than 30 inches and the midpoint of the rear wheel track distance shall be within 1 inch of the front wheel track when the vehicle is proceeding on a straight course.

c. Steering.

(1) The steering head shall be provided with a bearing or similar device that will allow the steering shaft to turn freely in rotational motion only. All handlebar-mounted control cables, wires, lines and hoses shall be located and secured so as not to become pinched between the fork and frame members when the wheel is turned completely to the right or the left.

(2) A steering wheel may be used on a three-wheel reconstructed or specially constructed motorcycle or motorized bicycle provided:

1. The steering wheel is circular or nearly circular in shape, having an outside diameter of not less than 13 inches.

2. The steering wheel shall have no less than two turns and no more than six turns when the road wheels are turned from lock to lock.

d. Handlebars. Handlebars shall be of sturdy construction, adequate in size (length) to provide proper leverage for steering, and capable of withstanding a minimum force of 100 pounds applied to each hand grip in any direction. The handlebars shall provide a minimum distance of 18 inches between grips after final assembly.

e. Hand grips. Motorcycles or motorized bicycles shall have handlebars equipped with hand grips of nonslip design or material.

f. Suspension. Motorcycles or motorized bicycles shall be equipped with a suspension system, and the suspension system shall be applicable to at least the front wheel. The suspension system(s) shall be designed for the purpose of maximum vehicle stability.

450.4(9) *Fuel system.* All fuel system components, including the tank, pump, tubing, hoses, clamps, etc., shall be securely fastened to the motorcycle or motorized bicycle so as not to interfere with vehicle operation and be leakproof when the vehicle is in its normal operating attitude. Fuel lines and tank shall be positioned in a manner so as to prevent their contact with the engine head, manifold, exhaust system, or other high temperature surfaces or moving components. The fuel system shall be adequately vented and provided with a fuel shutoff valve located between the fuel supply and the engine.

450.4(10) *Exhaust system.* Motorcycles or motorized bicycles with an internal combustion engine shall be equipped with an exhaust system incorporating a muffler or other mechanical device for the purpose of reducing engine noise. Cutouts and bypasses in the exhaust system are prohibited. The system shall be leakproof and all components shall be securely attached to the vehicle and located so as not to interfere with the operation of the motorcycle or motorized bicycle. Shielding shall be provided to prevent inadvertent contact with the exhaust system by the operator and/or passenger during normal operations.

450.4(11) *Mirrors.* Every motorcycle and motorized bicycle shall be equipped with at least one mirror of unit magnification, securely affixed to the handlebar and capable of adjustment within a range that will reflect an image that includes at least the horizon and the road surface to the rear of the motorcycle or motorized bicycle. The mirror shall consist of a minimum reflective surface of 10 square inches. All mirrors shall be regular in shape (circular, oval, rectangular, or square) and shall not contain sharp edges or projections capable of producing injury.

450.4(12) *Fenders.* Rescinded IAB 9/8/10, effective 10/13/10.

450.4(13) *Seat or saddle.* A seat or saddle securely attached to the vehicle shall be provided for the use of the operator. The seat or saddle shall not be less than 20 inches above a level road surface when measured to the lowest point on top of the seat or saddle cushion with the driver seated in a driving position. The seat or saddle adjustment locking device shall prevent relative movement of the seat from its selected and secured position under all normal vehicle operating conditions.

450.4(14) *Horn.* Every motorcycle and motorized bicycle shall be equipped with at least one horn. The horn shall be electrically operated and shall operate from a control device located on the handlebar. When operated the horn shall be audible for at least 200 feet.

450.4(15) *Speedometer and odometer.* Every motorcycle and motorized bicycle shall be equipped with a properly operating speedometer and odometer calibrated in miles per hour and miles respectively and shall be fully illuminated when the headlamp(s) is activated.

450.4(16) *Lighting equipment.* Every motorcycle and motorized bicycle shall be equipped with at least one headlamp but not more than two, mounted securely. Headlamp(s) shall be mounted not less than 24 inches, nor more than 54 inches, above the level road surface. A headlight beam indicator light shall be located within the operator's field of vision and illuminated automatically when the high beam of the headlamp is actuated. Every motorcycle and motorized bicycle shall be equipped with a tail and brake light assembly and a license plate light. All original lamps and lighting equipment provided on the

motor vehicle by the manufacturer shall be maintained in working condition or shall be replaced with equivalent equipment.

450.4(17) *Footrest.* Every motorcycle shall be equipped with two footrests, one on each side of the vehicle and shall be provided for each designated seating position. Footrests shall be located so as to provide reasonable accessibility. Footrests shall be able to fold upward if they protrude beyond the side of the motorcycle's fixed items. Every motorized bicycle shall be equipped with either two footrests or two pedals, one on each side of the vehicle, to provide reasonable accessibility.

450.4(18) *Highway bars.* If a motorcycle or motorized bicycle is so equipped, highway bars (alternate footrests) shall be located at a maximum distance of 26 inches from the foot controls and shall not interfere with the operation of the foot controls.

This rule is intended to implement Iowa Code section 321.23.

[**ARC 9048B**, IAB 9/8/10, effective 10/13/10; **ARC 3108C**, IAB 6/7/17, effective 7/12/17; **ARC 5203C**, IAB 10/7/20, effective 11/11/20]

761—450.5(321) Minimum requirements for constructing and equipping specially constructed or reconstructed autocycles. Minimum requirements for constructing and equipping specially constructed or reconstructed autocycles as defined in Iowa Code section 321.1 are as follows:

450.5(1) *Application.* As outlined in rule 761—400.16(321), the applicant shall submit the required application forms and exhibits to the county treasurer. The vehicle and ownership documents shall be examined by the department. If the department determines that the autocycle complies with rule 761—450.5(321), that the integral parts and components have been identified as to ownership, and that the application forms have been completed properly, the department shall assign an identification number to the autocycle and certify that the autocycle is eligible for titling and registration. If the frame or unibody specified on an application for a specially constructed, reconstructed, street rod, or replica autocycle is designated "not for highway use," the application shall not be approved. The exchange of compatible body parts does not constitute a specially constructed, reconstructed, street rod, or replica autocycle. The removal, addition, or substitution of reconstructed autocycle parts that modifies the autocycle's external appearance so that it does not reflect the original make or manufacturer model for that model does constitute a specially constructed, reconstructed, street rod, or replica autocycle.

450.5(2) *Seat belt.* A seat belt for each seat shall be installed in the autocycle in accordance with Federal Motor Vehicle Safety Standard No. 209.

450.5(3) *Seat.* A seat that is firmly attached to the autocycle and does not require the operator to straddle or sit astride shall be provided for the use of the operator.

450.5(4) *Lighting equipment.* Every autocycle shall be equipped with at least one headlamp, at least one taillight, and either a taillight or a separate white light that illuminates the license plate if a taillight does not. All original lamps and lighting equipment provided on the autocycle by the manufacturer shall be maintained in working condition or shall be replaced with equivalent equipment.

450.5(5) *Warning devices.* Every autocycle shall be equipped with at least one red reflector, either separate or as part of the taillight or taillights.

450.5(6) *Brakes.* Every autocycle shall be equipped with a braking system, other than a parking brake, in accordance with Iowa Code section 321.431.

450.5(7) *Horn.* Every autocycle shall be equipped with a horn that shall be electrically actuated and shall emit a sound clearly audible from a distance of 200 feet.

450.5(8) *Exhaust system.* Each autocycle with an internal combustion engine shall be equipped with a muffler and emission control system in accordance with federal regulation 49 CFR 393.83. When a muffler and emission control system is factory equipped, neither may be removed.

450.5(9) *Mirrors.* Every autocycle shall be equipped with a mirror that shall consist of a minimum reflective surface of 10 square inches. All mirrors shall be regular in shape (circular, oval, rectangular, or square) and shall not contain sharp edges or projections capable of producing injury.

450.5(10) *Tires.* Every autocycle shall be equipped with tires that comply with the requirements of Iowa Code section 321.440.

450.5(11) *Floor pan.* Every autocycle shall be equipped with a floor pan under the entire passenger-carrying compartment. The floor pan shall support the weight of the number of occupants that the autocycle is designed to carry. The floor pan shall be so constructed that it prevents the entry of exhaust fumes.

This rule is intended to implement Iowa Code section 321.23.

[**ARC 5203C**, IAB 10/7/20, effective 11/11/20]

761—450.6(321) Safety requirements for the movement of implements of husbandry on a roadway. The following standards are minimum safety requirements for the movement of implements of husbandry on a roadway.

450.6(1) *Towing standard.* No power unit operated by a retail seller or manufacturer shall tow more than one implement of husbandry, except those implements of husbandry that are not self-propelled and are capable of being towed in tandem, from the manufacturer to the retail seller, from the retail seller to the farm purchaser, or from the manufacturer to the farm purchaser.

450.6(2) *Equipment standards.*

a. *Braking.* The towing unit or self-propelled implement of husbandry operated upon a highway shall be equipped with a braking device(s) which can control the movement of and stop the vehicle(s). When the vehicle is traveling 20 miles per hour, the braking device shall be adequate to stop the vehicle or vehicles within 30 feet if the gross weight is less than 5000 pounds and 50 feet if the gross weight is 5000 pounds or more.

b. *Rearview mirror.* The towing vehicle or self-propelled implement of husbandry shall be equipped with a rearview mirror that reflects to the operator a view of the highway for a distance of at least 200 feet to the rear of the vehicle(s). The rearview mirror equipment standard may be met by the use and installation of a temporary rearview mirror.

c. *Lighting.* The towing or towed vehicle, the rearmost implement of husbandry being towed in tandem, or a self-propelled implement of husbandry shall be equipped with at least one rear taillight which exhibits a red light plainly visible from a distance of 500 feet to the rear. The rear taillight equipment standard may be met by the use and installation of a temporary rear taillight. If an implement of husbandry is being towed by a vehicle which is equipped with brake lights, the towed unit must also have brake lights, constructed and located on the implement of husbandry so as to give a signal of intention to stop. The light shall be red or yellow in color. The signal shall be plainly visible in normal sunlight and at night from a distance of 100 feet to the rear and may be met by the use and installation of a temporary light.

d. *Turn signal.* The towing or towed vehicle, the rearmost implement of husbandry being towed in tandem, or a self-propelled implement of husbandry shall be equipped with a turn-signal device that operates in conjunction with or separately from the rear taillight. The signal shall be plainly visible and understandable from a distance of 100 feet to the rear. The turn-signal device equipment standard may be met by the use and installation of a temporary turn-signal device.

e. *Tires.* Pneumatic tires shall not be used if any part of the ply or cord is exposed; if there is any bump, bulge, or separation; if there is a tread design depth of less than one-sixteenth inch; if there is marking "not for highway use" or "unsafe for highway use."

f. *Warning devices.* A towing vehicle or self-propelled implement of husbandry shall be equipped with flares, red reflectors or reflective triangles if operated after sunset and before sunrise.

g. *Drawbar.* When one vehicle is towing another vehicle, the drawbar shall be of sufficient strength to pull the weight towed and shall be fastened to the frame of the towing unit so as to prevent sidesway. In addition to the principal connection there shall be a safety chain which shall be fastened so it is capable of holding the towed vehicle if the principal connection fails.

This rule is intended to implement Iowa Code section 321.383.

[**ARC 3108C**, IAB 6/7/17, effective 7/12/17]

761—450.7(321) Front windshields, windows or sidewings.

450.7(1) *Prohibition.* Pursuant to Iowa Code subsection 321.438(2), a person shall not operate on the highway a motor vehicle equipped with a front windshield, a side window to the immediate right or

left of the driver (front side window) or a sidewing forward of and to the left or right of the driver (front sidewing) which is excessively dark or reflective.

450.7(2) *Standard of transparency.* "Excessively dark or reflective" means that the windshield, front side window or front sidewing does not meet a minimum standard of transparency of 70 percent light transmittance.

450.7(3) *Dark window exemption.*

a. Effective July 4, 2012, no exemption shall be granted from the minimum standard of transparency set forth in subrule 450.7(2).

b. A motor vehicle fitted with a front windshield, a front side window or a front sidewing with less than 70 percent but not less than 35 percent light transmittance before July 4, 2012, may continue to be maintained and operated with a front windshield, a front side window or a front sidewing with less than 70 percent but not less than 35 percent light transmittance on or after July 4, 2012, so long as the vehicle continues to be used for the transport of a passenger or operator who obtained Form 432020, which documented a medical need for such reduced transparency, and was signed by the person's physician before July 4, 2012. Form 432020 must be carried at all times in the vehicle to which the exemption applies. At such time as the vehicle is no longer used for the transport of the passenger or operator who is the subject of Form 432020, the exemption expires and may not be renewed. The owner of the vehicle to which the exemption applied must return the vehicle to conformance with the minimum standard of transparency set forth in subrule 450.7(2) within 60 days of expiration of the exemption.

c. "Physician" as used in this rule means a person licensed under Iowa Code chapter 148, 151 or 154.

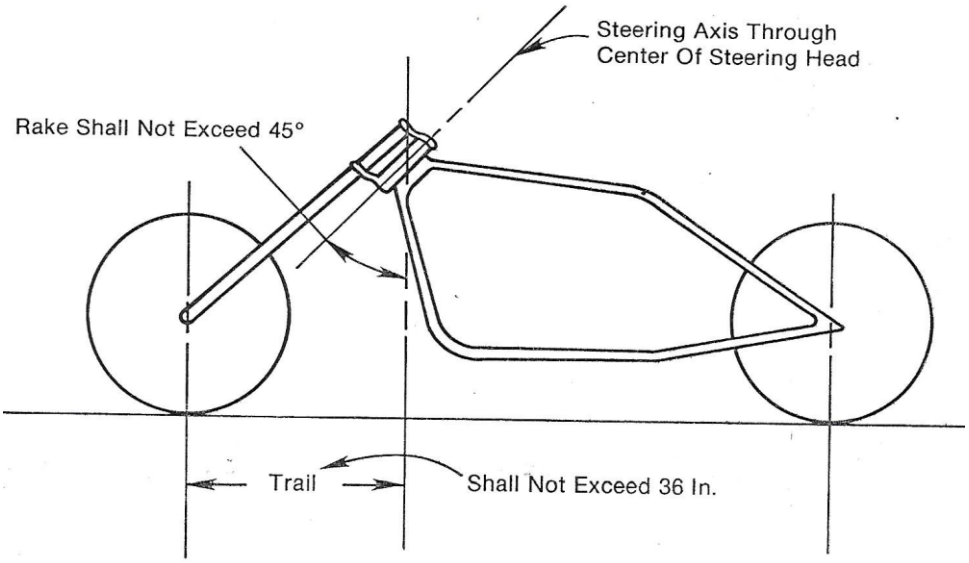
This rule is intended to implement Iowa Code section 321.438.

[**ARC 0136C**, IAB 5/30/12, effective 7/4/12]

APPENDIX TO RULE
761—450.2(321)
Rescinded IAB 9/8/10, effective 10/13/10

APPENDIX TO RULE
761—450.4(321)

MOTORCYCLE FRONT END GEOMETRY



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CHAPTER 602
CLASSES OF DRIVER'S LICENSES

761—602.1(321) Driver's licenses.

602.1(1) *Classes.* The department issues the following classes of driver's licenses. All licenses issued, including special licenses and permits, shall carry a class designation. A license shall be issued for only one class, except that Class M may be issued in combination with another class.

Class A—commercial driver's license (CDL)

Class B—commercial driver's license (CDL)

Class C—commercial driver's license (CDL)

Class C—noncommercial driver's license

Class D—noncommercial driver's license (chauffeur)

Class M—noncommercial driver's license (motorcycle)

602.1(2) *Special licenses and permits.* The department issues the following special licenses and permits. More than one type of special license or permit may be issued to an applicant. On the driver's license, a restriction number designates the type of special license or permit issued, as follows:

1—Motorcycle instruction permit—includes motorcycle instruction permits issued under Iowa Code subsections 321.180(1) and 321.180B(1)

2—Noncommercial instruction permit (vehicle less than 16,001 gross vehicle weight rating)—includes instruction permits, other than motorcycle instruction permits, issued under Iowa Code subsection 321.180(1), section 321.180A and subsection 321.180B(1)

3—Commercial learner's permit

4—Chauffeur's instruction permit

5—Motorized bicycle license

6—Minor's restricted license

7—Minor's school license

602.1(3) *Commercial driver's license (CDL).* See 761—Chapter 607 for information on the procedures, requirements and validity of a commercial driver's license (Classes A, B and C) and a commercial learner's permit, and their restrictions and endorsements.

This rule is intended to implement Iowa Code sections 321.178, 321.180, 321.180A, 321.180B, 321.189, and 321.194.

[**ARC 2071C**, IAB 8/5/15, effective 7/14/15; **ARC 2337C**, IAB 1/6/16, effective 2/10/16; **ARC 2644C**, IAB 8/3/16, effective 9/7/16]

761—602.2(321) Information and forms. Applications, forms and information about driver's licensing are available at any driver's license service center. Assistance is also available by mail from the Driver and Identification Services Bureau, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)244-8725; by facsimile at (515)239-1837; or on the department's website at www.iowadot.gov.

602.2(1) *Certificate of completion.* Form 430036 shall be used to submit proof of successful completion of an Iowa-approved course in driver education, motorcycle rider education or motorized bicycle education, except that proof of successful completion of an Iowa-approved course in driver education or motorcycle rider education may instead be submitted through an online reporting system used by participating Iowa-approved driver education schools or motorcycle rider education providers.

a. If a student completed a course in another state, a public or licensed commercial or private provider of the Iowa-approved course may issue the form or online completion, if applicable, for the student if the provider determines that the out-of-state course is comparable to the Iowa-approved course.

b. If the out-of-state course is comparable but lacks certain components of the Iowa-approved course, the provider may issue the form or online completion, if applicable, after the student completes the missing components.

602.2(2) *Affidavit for school license.* Form 430021 shall be used for submitting the required statements, affidavits and parental consent for a minor's school license. See rule 761—602.26(321).

602.2(3) *Waiver of accompanying driver for intermediate licensee.* Form 431170 is the waiver described in Iowa Code subsection 321.180B(2). This form allows an intermediate licensee to drive unaccompanied between the hours of 12:30 a.m. and 5 a.m. and must be in the licensee's possession when the licensee is driving during the hours to which the waiver applies.

a. If the waiver is for employment, the form must be signed by the licensee's employer.

b. If the licensee attends a public school and the waiver is for school-related extracurricular activities, the form must be signed by the chairperson of the school board, the superintendent of the school, or the principal of the school if authorized by the superintendent. If the licensee attends an accredited nonpublic school and the waiver is for school-related extracurricular activities, the form must be signed by an authority in charge of the accredited nonpublic school or a duly authorized representative of the authority.

c. The form must be signed by the licensee's parent or guardian. However, the parent's or guardian's signature is not required if the licensee is married and the original or a certified copy of the marriage certificate is in the licensee's possession when the licensee is driving during the hours to which the waiver applies.

602.2(4) *Passenger restriction for intermediate licensee.* The passenger restriction required by Iowa Code section 321.180B(2) will be added to an intermediate license unless waived by the licensee's parent or guardian at the time the license is issued. If the restriction is not waived at the time the license is issued, the intermediate license will be designated with a "9" restriction with the following notation: "Only 1 unrelated minor passenger allowed until [six months from the date the license is issued]." The licensee must obey the restriction for the first six months after the intermediate license is issued. If a parent or guardian wishes to waive the passenger restriction after the license has already been issued, the licensee and the parent or guardian must apply for a duplicate license and pay the replacement fee pursuant to 761—subrule 605.11(4).

This rule is intended to implement Iowa Code sections 321.8, 321.178, 321.180B, 321.184, 321.189, and 321.194.

[**ARC 7902B**, IAB 7/1/09, effective 8/5/09; **ARC 2644C**, IAB 8/3/16, effective 9/7/16; **ARC 4271C**, IAB 1/30/19, effective 3/6/19; **ARC 4759C**, IAB 11/6/19, effective 12/11/19; **ARC 4851C**, IAB 1/1/20, effective 2/5/20; **ARC 5204C**, IAB 10/7/20, effective 11/11/20]

761—602.3(321) Examination and fee. Rescinded IAB 8/9/00, effective 7/24/00.

761—602.4(321) Definitions of immediate family.

602.4(1) A "member of the permittee's immediate family" as used in Iowa Code subsection 321.180(1) means the permittee's parent or guardian or a brother, sister or other relative of the permittee who resides at the permittee's residence.

602.4(2) A "member of the permittee's immediate family" as used in Iowa Code section 321.180B, subsections 1 and 2, means a brother, sister or other relative of the permittee who resides at the permittee's residence.

This rule is intended to implement Iowa Code sections 321.180 and 321.180B.

761—602.5 to **602.10** Reserved.

761—602.11(321) Class C noncommercial driver's license. This rule describes a noncommercial Class C driver's license that is not a special license or permit.

602.11(1) *Validity and issuance.*

a. The license is valid for operating:

(1) A motor vehicle, including an autocycle as defined in Iowa Code section 321.1, that does not require a commercial driver's license or a Class D driver's license for its operation.

(2) A motorized bicycle.

(3) A motorcycle only if the license has a motorcycle endorsement.

b. The license is issued for either two years or eight years.

(1) A qualified applicant who is at least 17 years, 11 months of age but not yet 72 years of age shall be issued an eight-year license. However, the expiration date of the license issued shall not exceed the licensee's 74th birthday.

(2) A two-year license shall be issued to a qualified applicant who is under 17 years, 11 months of age or who is 72 years of age or older.

(3) A two-year license may also be issued, at the discretion of the department, to an applicant whose license is restricted due to vision or other physical disabilities.

602.11(2) *Requirements.*

a. An applicant shall be at least 16 years of age.

b. Except as otherwise provided in Iowa Code subsection 321.178(3), an applicant under 18 years of age must meet the requirements of Iowa Code section 321.180B and submit proof of successful completion of an Iowa-approved course in driver education.

c. For purposes of determining eligibility for an intermediate license issued to a person 16 or 17 years of age under Iowa Code subsection 321.180B(2):

(1) The 12-month period during which the applicant is required to possess an instruction permit before applying for an intermediate license shall be calculated cumulatively and shall include any period of time during which the applicant has held a valid instruction permit issued under Iowa Code subsection 321.180B(1), a minor's school license issued under Iowa Code section 321.194, or comparable instruction permit or license issued by another state, but shall exclude any period of time during which the permit or license is suspended, revoked, or canceled, or the applicant otherwise did not have a valid driving privilege.

(2) The six-month period during which the applicant is required to remain accident and violation free shall be calculated continuously and must encompass without interruption the six-month period of time immediately preceding the application. The applicant must hold a valid instruction permit issued under Iowa Code subsection 321.180B(1), a minor's school license issued under Iowa Code section 321.194, or a comparable instruction permit or license issued by another state and maintain a valid driving privilege without interruption throughout the continuous six-month period.

d. For purposes of determining eligibility for a full license issued to a person 17 years of age under Iowa Code subsection 321.180B(4), the 12-month period during which the applicant is required to possess an intermediate license and to remain accident and violation free before applying for a full license shall be calculated together and continuously and must encompass without interruption the 12-month period of time immediately preceding the application. The applicant must hold a valid intermediate license issued under Iowa Code subsection 321.180B(2) or a comparable license issued by another state and maintain a valid driving privilege without interruption throughout the continuous 12-month period.

This rule is intended to implement Iowa Code sections 321.1, 321.177, 321.178, 321.180B, 321.189 and 321.196.

[**ARC 1714C**, IAB 11/12/14, effective 12/17/14; **ARC 2644C**, IAB 8/3/16, effective 9/7/16; **ARC 2985C**, IAB 3/15/17, effective 4/19/17]

761—602.12(321) Class D noncommercial driver's license (chauffeur). This rule describes a noncommercial Class D driver's license.

602.12(1) *Validity and issuance.*

a. The license is valid for operating:

(1) A motor vehicle as a chauffeur as specified by the endorsement on the license, unless the type of vehicle or type of operation requires a commercial driver's license.

(2) A motor vehicle that may be legally operated under a noncommercial Class C driver's license, including a motorized bicycle.

(3) A motorcycle only if the license has a motorcycle endorsement.

b. The license shall have one endorsement authorizing a specific type of motor vehicle or type of operation, as listed in 761—subrule 605.7(3). The gross vehicle weight rating shall be determined pursuant to rule 761—604.35(321).

c. The license is issued for either two years or eight years.

(1) A qualified applicant who is at least 18 years of age but not yet 72 years of age shall be issued an eight-year license. However, the expiration date of the license issued shall not exceed the licensee's 74th birthday.

(2) A two-year license shall be issued to a qualified applicant who is 72 years of age or older.

(3) A two-year license may also be issued, at the discretion of the department, to an applicant whose license is restricted due to vision or other physical disabilities.

602.12(2) *Requirements.*

a. An applicant shall be at least 18 years of age.

b. Reserved.

This rule is intended to implement Iowa Code sections 321.1, 321.177, 321.189, and 321.196.

[**ARC 1714C**, IAB 11/12/14, effective 12/17/14; **ARC 2071C**, IAB 8/5/15, effective 7/14/15; **ARC 2337C**, IAB 1/6/16, effective 2/10/16; **ARC 4586C**, IAB 7/31/19, effective 9/4/19]

761—602.13(321) Class M noncommercial driver's license (motorcycle). This rule describes a noncommercial Class M driver's license that is not a special license or permit.

602.13(1) *Validity and issuance.*

a. The license is valid for operating:

(1) A motorcycle. However, the license may have a restriction which limits operation to a three-wheel motorcycle.

(2) A motorized bicycle.

b. The license is issued for either two years or eight years.

(1) A qualified applicant who is at least 17 years, 11 months of age but not yet 72 years of age shall be issued an eight-year license. However, the expiration date of the license issued shall not exceed the licensee's 74th birthday.

(2) A two-year license shall be issued to a qualified applicant who is under 17 years, 11 months of age or who is 72 years of age or older.

(3) A two-year license may also be issued, at the discretion of the department, to an applicant whose license is restricted due to vision or other physical disabilities.

c. An Iowa driver's license issued before March 15, 1968, which is still valid because of an extension, is valid for motorcycles. An Iowa driver's license issued from March 15, 1968, through June 30, 1972, which is still valid because of an extension, is valid for motorcycles unless the back of the license is stamped "Not valid for motorcycles."

602.13(2) *Requirements.*

a. An applicant shall be at least 16 years of age.

b. Except as otherwise provided in Iowa Code subsection 321.178(3), an applicant under 18 years of age must meet the requirements of Iowa Code section 321.180B and submit proof of successful completion of an Iowa-approved course in driver education.

c. An applicant under 18 years of age must submit proof of successful completion of an Iowa-approved course in motorcycle rider education.

This rule is intended to implement Iowa Code sections 321.177, 321.178, 321.180B, 321.189 and 321.196.

[**ARC 1714C**, IAB 11/12/14, effective 12/17/14]

761—602.14(321) Transition from five-year to eight-year licenses. During the period January 1, 2014, to December 31, 2018, the department shall issue qualified applicants otherwise eligible for an eight-year license a five-year, six-year, seven-year, or eight-year license, subject to all applicable limitations for age and ability. The applicable period shall be randomly assigned to the applicant by the department's computerized issuance system based on a distribution formula intended to spread renewal volumes as equally as practical over the eight-year period beginning January 1, 2019, and ending December 31, 2026.

This rule is intended to implement Iowa Code section 321.196.

[**ARC 1714C**, IAB 11/12/14, effective 12/17/14; **ARC 4271C**, IAB 1/30/19, effective 3/6/19]

761—602.15(321) Minor's restricted license. Renumbered as 761—602.25(321)IAB 1/8/92, effective 2/12/92.

761—602.16(321) Temporary instruction permit. Rescinded IAB 1/8/92, effective 2/12/92.

761—602.17(321) Minor's school license. Renumbered as 761—602.26(321)IAB 1/8/92, effective 2/12/92.

761—602.18(321) Motorcycle instruction permit. This rule describes a motorcycle instruction permit issued under Iowa Code subsection 321.180(1) or 321.180B(1).

602.18(1) *Validity and issuance.*

a. The motorcycle instruction permit is a permit that is added to another driver's license.

b. The permit is valid for operating a motorcycle when the permittee is accompanied by a person specified in Iowa Code subsection 321.180(1) or 321.180B(1), as applicable to the age of the permittee.

c. The permit is not valid for operating a motorized bicycle.

d. The permit is issued for four years and is not renewable.

602.18(2) *Requirement.* An applicant shall be at least 14 years of age.

This rule is intended to implement Iowa Code sections 321.177, 321.180 and 321.180B.

761—602.19(321) Noncommercial instruction permit. This rule describes a noncommercial instruction permit, other than a motorcycle instruction permit, issued under Iowa Code subsection 321.180(1) or 321.180B(1).

602.19(1) *Validity and issuance.*

a. The permit is a restricted, noncommercial Class C driver's license.

b. The permit is valid for operating a motor vehicle that may be legally operated under a noncommercial Class C driver's license when the permittee is accompanied by a person specified in Iowa Code subsection 321.180(1) or 321.180B(1), as applicable to the age of the permittee.

c. The permit is not valid for operating a motorized bicycle.

d. The permit is not valid as a motorcycle instruction permit.

e. The permit is issued for four years.

602.19(2) *Requirement.* An applicant shall be at least 14 years of age.

This rule is intended to implement Iowa Code sections 321.177, 321.180 and 321.180B.

761—602.20 Rescinded IAB 11/18/98, effective 12/23/98.

761—602.21(321) Special noncommercial instruction permit. This rule describes a special noncommercial instruction permit issued under Iowa Code section 321.180A.

602.21(1) *Validity and issuance.*

a. The permit is a restricted, noncommercial Class C driver's license that is issued to a person whose application for driver's license renewal has been denied or whose driver's license has been suspended for incapability due to a physical disability.

b. The permit is valid for operating a motor vehicle that may be legally operated under a noncommercial Class C driver's license when the permittee is accompanied by a person specified in Iowa Code section 321.180A.

c. The permit is not valid for operating a motorized bicycle.

d. The permit is not valid as a motorcycle instruction permit.

e. The permit is valid for six months from the date of issuance. It is invalid after the expiration date on the permit.

f. The permit may be reissued for one additional six-month period.

602.21(2) *Requirement.* An applicant must submit a medical report as referenced in 761—subrule 605.4(6).

This rule is intended to implement Iowa Code section 321.180A.

[**ARC 4586C**, IAB 7/31/19, effective 9/4/19]

761—602.22 Reserved.

761—602.23(321) Chauffeur's instruction permit.

602.23(1) *Validity and issuance.*

a. A chauffeur's instruction permit is a permit that is added to a Class D license or a noncommercial Class C license that is not a special license or permit.

b. The license with the permit is valid for operating:

(1) A motor vehicle that may be legally operated under the class of license (and for Class D, the endorsement) held by the licensee, including a motorized bicycle.

(2) A motor vehicle, other than a commercial motor vehicle or a motorcycle, as a chauffeur if accompanied by a person with a valid Class D license or a commercial driver's license valid for the vehicle being operated.

c. The permit is issued for two years.

602.23(2) *Requirements.*

a. An applicant shall be at least 18 years of age.

b. Reserved.

This rule is intended to implement Iowa Code sections 321.1, 321.177 and 321.180.

761—602.24(321) Motorized bicycle license.

602.24(1) *Validity and issuance.*

a. A motorized bicycle license is a restricted, noncommercial Class C license.

b. The license is valid for operating a motorized bicycle.

c. The license is issued for two years.

602.24(2) *Requirements.*

a. An applicant shall be at least 14 years of age.

b. An applicant under 16 years of age must submit proof of successful completion of an Iowa-approved course in motorized bicycle education.

This rule is intended to implement Iowa Code sections 321.177 and 321.189.

761—602.25(321) Minor's restricted license.

602.25(1) *Validity and issuance.*

a. A minor's restricted license is a restricted, noncommercial Class C or Class M driver's license.

b. The license is valid for driving to and from the licensee's place of employment or to transport dependents to and from temporary care facilities, if necessary to maintain the licensee's present employment.

c. The type of motor vehicle that may be operated is controlled by the class of driver's license issued. A Class C minor's restricted license is valid for operating a motorcycle only if the license has a motorcycle endorsement. A minor's restricted license is valid for operating a motorized bicycle only for the purposes specified in paragraph *"b"* of this subrule.

d. The license is issued for two years.

602.25(2) *Requirements.*

a. The applicant shall be at least 16 years of age but not yet 18.

b. The applicant shall submit to the department a statement from the employer confirming the applicant's employment.

c. Proof of nonattendance is required. Proof of nonattendance is receipt of notification from the appropriate school authority that the applicant does not attend school, as set out in 761—subrule 615.23(2).

d. The applicant shall submit proof of successful completion of an Iowa-approved course in driver education.

e. For a Class M minor's restricted license or a motorcycle endorsement, the applicant shall also submit proof of successful completion of an Iowa-approved course in motorcycle rider education.

This rule is intended to implement Iowa Code sections 299.1B, 321.178, 321.180B, 321.189, 321.196 and 321.213B.

761—602.26(321) Minor's school license.

602.26(1) *Validity and issuance.*

a. A minor's school license is a restricted, noncommercial Class C or Class M driver's license.

b. The license is valid during the times and for the purposes set forth in Iowa Code section 321.194 and at any time when the licensee is accompanied in accordance with Iowa Code section 321.180B(1).

c. The type of motor vehicle that may be operated is controlled by the class of driver's license issued. A Class C minor's school license is valid for operating a motorcycle only if the license has a motorcycle endorsement. A minor's school license is valid for operating a motorized bicycle.

d. The license is issued for two years.

602.26(2) *Requirements.*

a. An applicant shall be at least 14 years of age but not yet 18 and meet the requirements of Iowa Code section 321.194.

b. An applicant who attends a public school shall submit a statement of necessity signed by the chairperson of the school board, the superintendent of the school, or the principal of the school if authorized by the superintendent. An applicant who attends an accredited nonpublic school shall submit a statement of necessity signed by an authority in charge of the accredited nonpublic school or a duly authorized representative of the authority. The statement shall be on Form 430021.

c. An applicant shall submit proof of successful completion of an Iowa-approved course in driver education.

d. For a Class M minor's school license or a motorcycle endorsement, an applicant shall also submit proof of successful completion of an Iowa-approved course in motorcycle rider education.

602.26(3) *Exemption.*

a. An applicant is not required to have completed an approved driver education course if the applicant demonstrates to the satisfaction of the department that completion of the course would impose a hardship upon the applicant; however, the applicant must meet all other requirements for a school license. "Hardship" means:

(1) If the applicant is 14 years old, that a driver education course will not begin at the applicant's school(s) of enrollment or at a public school in the applicant's district of residence within one year following the applicant's fourteenth birthday; or

(2) If the applicant is 15 years old, that a driver education course will not begin at the applicant's school(s) of enrollment or at a public school in the applicant's district of residence within six months following the applicant's fifteenth birthday; or

(3) If the applicant is between 16 and 18 years old, that a driver education course is not offered at the applicant's school(s) of enrollment or at a public school in the applicant's district of residence at the time the request for hardship status is submitted to the department; or

(4) That the applicant is a person with a disability. In this rule, "person with a disability" means that, because of a disability or impairment, the applicant is unable to walk in excess of 200 feet unassisted or cannot walk without causing serious detriment or injury to the applicant's health.

b. "Demonstrates to the satisfaction of the department" means that the department has received written proof that a hardship exists. An applicant who attends a public school shall submit written proof of hardship signed by the applicant's parent, custodian or guardian and by the superintendent, the chairperson of the school board, or the principal, if authorized by the superintendent, of the applicant's school or school district of residence. An applicant who attends an accredited nonpublic school shall submit written proof of hardship signed by the applicant's parent, custodian or guardian and by either an authority in charge of the accredited nonpublic school or a duly authorized representative of the

authority, or by the superintendent, the chairperson of the school board, or the principal, if authorized by the superintendent, of the applicant's school district of residence.

602.26(4) *Multiple residences.*

a. An applicant whose parents are divorced or separated and who as a result of shared custody maintains more than one residence may be authorized to operate a motor vehicle from either residence during the times and for the purposes set forth in Iowa Code section 321.194 if one of the following applies:

(1) If the applicant attends a public school, the statement of necessity provided to the department certifies that a need exists to drive from each residence, that the school of enrollment identified in the statement of necessity meets the geographic requirements for an applicant attending a public school set forth in Iowa Code section 321.194 as determined by the primary residence identified in the statement of necessity, and that the secondary residence identified in the statement of necessity is either within the school district that includes the applicant's school of enrollment or within an Iowa school district contiguous to the applicant's school of enrollment.

(2) If the applicant attends an accredited nonpublic school, the statement of necessity provided to the department certifies that a need exists to drive from each residence, that the school of enrollment identified in the statement of necessity meets the geographic requirements for an applicant attending an accredited nonpublic school set forth in Iowa Code section 321.194 as determined by the primary residence identified in the statement of necessity, and that the secondary residence identified in the statement of necessity is no more than 50 miles driving distance from the school of enrollment.

b. The fact that either residence is less than one mile from the applicant's school of enrollment shall not preclude travel to and from each residence at the times and for the purposes set forth in Iowa Code section 321.194 provided that need is otherwise demonstrated.

c. A minor's school license approved for travel to and from two residences for the purposes set forth in Iowa Code section 321.194 shall not be valid for travel directly between each residence unless the licensee is accompanied in accordance with Iowa Code section 321.180B(1).

d. The primary residential address listed in the statement of necessity shall appear on the face of the license. A minor's school license approved for travel to and from two residences shall include a "J" restriction on the face of the license, and the secondary address listed in the statement of necessity shall be listed on the reverse side of the license as part of the "J" restriction, with the following notation: "Also valid to drive to and from [secondary residential address] in compliance with 321.194."

This rule is intended to implement Iowa Code sections 321.177; 321.180B; 321.189; 321.194 as amended by 2019 Iowa Acts, Senate File 140, sections 1 and 2; and 321.196.

[**ARC 2644C**, IAB 8/3/16, effective 9/7/16; **ARC 4271C**, IAB 1/30/19, effective 3/6/19; **ARC 4759C**, IAB 11/6/19, effective 12/11/19]

761—602.27 to **602.29** Reserved.

761—602.30(321) Special instruction permit. Rescinded IAB 1/8/92, effective 2/12/92.

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CHAPTER 625
DRIVER'S LICENSES FOR UNDERCOVER LAW ENFORCEMENT OFFICERS

761—625.1(321) Purpose. This chapter addresses the issuance of undercover driver's licenses.

761—625.2(321) Application.

625.2(1) The application for an undercover driver's license must:

a. Be in writing.

b. Include a fictitious name as well as the applicant's true identity.

c. Include a statement of need.

d. Be signed by both the applicant and the head of the law enforcement agency employing the applicant.

e. Be submitted to the Bureau of Investigation and Identity Protection, Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021.

625.2(2) All applications shall be investigated by the department. An investigation shall include, but not be limited to, a 50-state check of the fictitious name and verification of the applicant's employment with the sponsoring law enforcement agency.

625.2(3) The department shall determine if the undercover license is necessary.

625.2(4) The department shall approve or disapprove the application, based on the results of the investigation and the determination of necessity.

[**ARC 4002C**, IAB 9/12/18, effective 10/17/18]

761—625.3(321) Issuance.

625.3(1) To obtain an undercover license after the application is approved, the applicant must appear at the Motor Vehicle Division offices, Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa, with all applicable documents necessary for the issuance of an undercover license.

625.3(2) The license will be issued with an applicable expiration date as provided in Iowa Code section 321.196. The applicant must pay all fees and meet all requirements for the class of license applied for, except that rule 761—601.5(321) is waived in accordance with the provisions in 6 CFR 37.11.

625.3(3) An undercover license may not be renewed. The department may issue a subsequent new undercover license to an applicant who submits a new application and continues to meet the requirements of rule 761—625.2(321).

[**ARC 0347C**, IAB 10/3/12, effective 11/7/12; **ARC 4002C**, IAB 9/12/18, effective 10/17/18; **ARC 5205C**, IAB 10/7/20, effective 11/11/20]

761—625.4(321) Renewal not permitted. Rescinded **ARC 4002C**, IAB 9/12/18, effective 10/17/18.

761—625.5(321) Cancellation. When the need for an undercover license no longer exists or if the licensee ceases to be employed by the sponsoring law enforcement agency, the licensee shall surrender the undercover license to the department for cancellation.

761—625.6(321) Records.

625.6(1) Applications, forms and other records of the department that establish the true identity of an applicant or licensee under this chapter are confidential public records under Iowa Code sections 22.7, 80G.3 and 321.189A. The fictitious license information itself is not confidential, except as provided in Iowa Code section 321.11.

625.6(2) The open public records of the department shall contain no information or indicator that would distinguish any undercover license issued under this chapter from any other driver's license issued by the department.

625.6(3) An undercover license issued under this chapter will appear on the driver's license record system.

[**ARC 4002C**, IAB 9/12/18, effective 10/17/18]

These rules are intended to implement Iowa Code sections 22.7, 80G.3, 321.189A, 321.196 and 6 CFR Part 37.

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CHAPTER 635
MOTORCYCLE RIDER EDUCATION (MRE)

761—635.1(321) Definitions.

"Approved course" means the motorcycle rider education course approved by the department.

"MRE" means motorcycle rider education.

"Sponsor" means an entity that delivers the approved course.

761—635.2(321) Approved course in motorcycle rider education.

635.2(1) Any entity providing motorcycle rider education to persons under the age of 18 for purposes of early licensing or seeking reimbursement under Iowa Code section 321.179 for providing motorcycle rider education to persons aged 18 and older must teach the motorcycle rider education course approved by the department.

635.2(2) A sponsor must receive approval from the department prior to the beginning of the first class offered and annually thereafter. Private or commercial sponsors must also be licensed by the department prior to the beginning of the first class that is offered and annually thereafter. Application for license issuance or renewal shall be made to the department in a manner determined by the department. The fee for a license or the renewal of a license is $25 for a private or a commercial sponsor. The fee must be paid by cash, money order or check unless the department approves payment of the fee by electronic means. A money order or check must be for the exact amount and should be made payable to the Treasurer, State of Iowa, or the Department of Transportation.

635.2(3) A license to provide motorcycle rider education shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 but remains valid for an additional 30 days after the expiration date. The application for renewal shall be submitted to the department within 60 days of the expiration date, unless otherwise approved by the department.

635.2(4) The approved course uses a nationally recognized, research-based curriculum. Only persons successfully completing all elements of the approved course shall be issued an Iowa certificate of completion for motorcycle rider education. The certificate of completion shall be submitted to the department by the methods provided in 761—subrule 602.2(1). Issuance of an Iowa certificate of completion to persons who do not successfully complete the approved course is cause for revocation of the instructor's license and denial of reimbursement to the sponsor for each student involved.

635.2(5) Prior to the beginning of on-cycle instruction, a student enrolled in the approved course must be at least 14 years of age, possess a valid driver's license as defined in Iowa Code section 321.1, be able to touch the ground with the balls of both feet while sitting astride the training motorcycle, and complete the motorcycle safety course waiver form, including the signature of a parent or legal guardian if the student is under the age of 18.

635.2(6) The scheduled time for instruction—classroom, on-cycle, or a combination of both—shall not exceed eight hours in any one calendar day. During on-cycle instruction, a student shall wear a U.S. DOT-approved helmet, an eye-protective device, and protective clothing, including gloves, a long-sleeved shirt or jacket, long pants, and shoes or boots that cover the feet and ankles.

635.2(7) The student-instructor ratio for classroom instruction shall not exceed 36 to 1. No more than 12 students may receive on-cycle instruction at one time on a single full-size range. The student-instructor ratio for on-cycle instruction shall not exceed 6 to 1.

635.2(8) A driving range used for on-cycle instruction must be paved, free of hazards to motorcycle travel, and have an unobstructed, paved runoff of at least 20 feet in all directions.

635.2(9) The sponsor shall provide for each student engaged in on-cycle instruction one fully operational motorcycle manufactured for highway use.

a. Each motorcycle must meet two of the following three criteria:

(1) Have an engine displacement of 500 cubic centimeters or less, or an electric motor of 30 kW or less.

(2) Have a curb (wet) weight of 440 pounds or less.

(3) Have a seat height of 30 inches or less.

b. A motorcycle that has been modified or contains aftermarket equipment for the purposes of meeting the criteria under paragraph 635.2(9)*"a"* shall not be used for instruction under this subrule.

635.2(10) The driving test for a Class M driver's license or a motorcycle endorsement may be waived under 761—subrule 604.31(2) provided the applicant has successfully completed the approved course.
[**ARC 3452C**, IAB 11/8/17, effective 12/13/17; **ARC 5204C**, IAB 10/7/20, effective 11/11/20]

761—635.3(321) Instructors.

635.3(1) *License.* An instructor of the approved course must be licensed by the department. However, an individual who meets the qualifications for a license except for paragraph 635.3(2)*"d"* or whose license is denied under paragraph 635.3(3)*"c"* may teach the approved course as provided in those paragraphs.

635.3(2) *Licensing provisions.* A motorcycle rider education instructor's license shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 but remains valid for an additional 30 days after the expiration date of the year it is issued. The application for renewal shall be submitted to the department within 60 days of the expiration date, unless otherwise approved by the department. To obtain and retain an MRE instructor's license, an individual must:

a. Possess a valid Class M driver's license or a motorcycle endorsement or equivalent license or endorsement that is valid for a two-wheel motorcycle.

b. Successfully complete a nationally recognized, research-based instructor preparation course approved by the department.

c. Possess a current instructor certification from a nationally recognized motorcycle safety organization approved by the department.

d. Before a license is granted, teach one class of the approved course under the guidance of an experienced, licensed instructor approved by the department.

e. After the year in which a license is granted, teach at least one nationally recognized, research-based motorcycle rider preparation course approved by the department in Iowa or another state each calendar year.

f. After the year in which a license is granted, complete at least one state-sponsored or state-approved instructor update each calendar year. The update must be completed in Iowa every other year.

g. Have a clear driving record for the previous two years. A clear driving record means the individual has:

(1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

(2) No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.

(3) Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.

(4) No record of a law enforcement investigative report indicating a contributive motor vehicle accident that caused the death or serious injury of another person.

(5) No record of two or more contributive motor vehicle accidents in a two-year period.

635.3(3) *License cancellations and denials.*

a. The department shall cancel or deny the MRE license of an MRE instructor who does not have a clear driving record under paragraph 635.3(2)*"g."* The cancellation or denial shall remain in effect until the individual has a clear driving record, as defined in paragraph 635.3(2)*"g."*

b. The department shall cancel or deny the MRE license of an MRE instructor who fails to maintain a current instructor certification from a nationally recognized motorcycle safety organization approved by the department. The cancellation or denial shall remain in effect until the certification is current.

c. Each January, the department shall review each MRE instructor's teaching activity and update completion. The department shall deny renewal of the MRE license of an MRE instructor who fails to meet these licensing provisions. The denial shall remain in effect until the individual has done the following:

(1) Obtained instructor certification from a nationally recognized motorcycle safety organization approved by the department.

(2) Taught one class of the approved course under the guidance of an experienced, licensed instructor approved by the department.

[**ARC 5204C**, IAB 10/7/20, effective 11/11/20]

761—635.4(321) Responsibilities of sponsors.

635.4(1) Sponsors shall:

a. Comply with all teaching and instructor provisions of the approved course.

b. Use only instructors licensed by the department to teach the approved course. However, an individual who meets the qualifications for a license except for paragraph 635.3(2)*"d"* or whose license is denied under paragraph 635.3(3)*"c"* may teach the approved course as provided in those paragraphs.

c. Maintain liability insurance in an amount of not less than $1 million, combined single limit, with an aggregate limit of not less than $2 million, and file a certificate of this insurance with the department. The certificate shall verify coverage for scheduled courses of instruction. The certificate shall name the department and its officers, agents, representatives and employees as additional insureds with respect to all work, deliveries or services performed for them by the named insured, and shall specify that the department of transportation, driver and identification services bureau, shall be given at least 30 days' prior notice of any material change in or cancellation of the insurance.

A sponsor who is a state agency or public educational institution shall provide written verification of self-insurance to the department.

d. Maintain complete instructional accident report files and furnish this information to the department in a manner determined by the department.

e. Maintain a record of costs incurred in providing the approved course.

f. Allow the department or the department's designee to audit any class of the approved course, either announced or unannounced.

g. Involve a program administrator in an annual department-sponsored, in-service seminar.

h. Provide and maintain adequate instructional facilities and equipment to accommodate all components—lecture, audio-visual, and on-cycle—of the approved course.

635.4(2) The department shall deny approval to a sponsor applying for initial or annual approval from the department under subrule 635.2(2) if the sponsor fails to comply with all of the provisions of subrule 635.4(1).

[**ARC 5204C**, IAB 10/7/20, effective 11/11/20]

761—635.5(321) Use of motorcycle rider education fund. The motorcycle rider education fund may be used for the following purposes:

635.5(1) *Course development.* New or current sponsors may apply to the department for funds to establish delivery of the approved course at an unserved site. Current sponsors may apply for funds to expand delivery at an existing site.

a. Expenditures eligible for funding are limited to:

(1) Acquisition of necessary classroom furnishings and audio-visual systems if used exclusively to deliver the approved course.

(2) Required curriculum materials including necessary audio and visual components.

(3) Range development and maintenance excluding land acquisition, surfacing and resurfacing.

(4) Training motorcycles and motorcycle maintenance equipment if the equipment is to be used exclusively for the upkeep of the motorcycles.

(5) On-cycle safety equipment limited to helmets, eye-protective devices and gloves.

b. Application for funds shall be made in a manner determined by the department. Departmental approval shall be based on the geographical area, the number of students to be served and the availability of moneys in the motorcycle rider education fund. The number of students to be served is determined by range size, the number of courses to be offered, and the number of sponsors providing the course.

c. Payment to the sponsor for course development expenditures shall be on a cost-reimbursement basis and shall be made after claims under subrule 635.5(5) are paid.

635.5(2) *Instructor preparation.* The department shall sponsor initial instructor preparation courses.

a. An instructor preparation course is open to any individual who:

(1) Possesses a valid Class M driver's license or a motorcycle endorsement or equivalent license or endorsement that is valid for a two-wheel motorcycle.

(2) Submits verification from an approved sponsor of employment as an instructor of the approved course to be offered within the next 12 months.

b. Upon proof of successful completion of the instructor preparation course, an individual may be reimbursed for course tuition.

c. Applications for enrollment shall be made in a manner determined by the department.

635.5(3) *Instructor updates.* The department shall sponsor and fund instructor updates held in Iowa. Instructor updates shall be open to all state-licensed MRE instructors and instructor trainers.

635.5(4) *Instructor trainer preparation.*

a. An experienced, state-licensed MRE instructor may apply to the department for funding assistance on forms provided by the department if both the following occur:

(1) The instructor is accepted for enrollment in a nationally recognized instructor trainer preparation course approved by the department.

(2) The instructor agrees to be an instructor trainer in a department-sponsored instructor preparation course within 12 months following successful completion of the instructor trainer preparation course.

b. The department may approve the application if the department determines there is a need for additional instructor trainers.

c. If the department approves the application, then all the following shall apply:

(1) Funding assistance shall be limited to course tuition, travel, and subsistence (meals and lodging).

(2) Upon approval of the application, the department shall pay for course tuition and travel to the training site.

(3) Upon receipt by the department of evidence of successful completion accompanied by documentation of subsistence expenses incurred, the department shall reimburse the instructor for food and lodging based on the in-state reimbursement limits established for state employees by the department of administrative services.

(4) If the instructor fails to attend the training, the instructor must repay the department both the course tuition and the travel purchased.

(5) If the instructor fails to successfully complete the course, the instructor must repay the department one-half the course tuition and one-half the travel purchased. Meal and lodging expenses shall not be reimbursed.

635.5(5) *Reimbursement of per pupil costs.* The department shall reimburse a sponsor for each student who completes the approved course contingent upon the availability of moneys in the motorcycle rider education fund.

a. Reimbursement shall be paid twice each calendar year, once for training provided from January to June and once for training provided from July to December.

b. The reimbursement will be based on a per pupil rate determined semiannually by the department. The rate will be based on the amount of moneys available in the motorcycle rider education fund, less the administrative and instructor training costs, and will be distributed to sponsors based on the total number of students who complete the approved course.

c. Claims for reimbursement shall include a summary of courses taught with site, date, and instructor information, and a report for each class taught that provides the name, age, and driver's license number of each student, and any other information required by the department. Claims for reimbursement shall be submitted in a manner determined by the department.

d. Failure to provide course, instructor and student information, failure to meet instructor certification and licensure requirements, or failure to meet prescribed instructor-student ratios shall result in the forfeiture of reimbursement for those courses and students involved.

[**ARC 5204C**, IAB 10/7/20, effective 11/11/20]

761—635.6(321) Information and location. Applications, forms and information regarding this chapter are available by mail from the Driver and Identification Services Bureau, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)244-8725; by facsimile at (515)239-1837; or by email at mre.dot@iowadot.us.
[**ARC 5204C**, IAB 10/7/20, effective 11/11/20]

761—635.7(321) License issuance. To be licensed to provide MRE, the sponsor's course and instructors must be approved by the department in accordance with this chapter.

635.7(1) *Issuance and renewal.* A license to provide MRE shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 and must be renewed annually.

635.7(2) *Cancellation.* A license to provide MRE shall be canceled if the course or instructors are no longer approved. Also, a license to provide MRE shall be canceled if the sponsor does not comply with this chapter.
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