State of Iowa

Iowa

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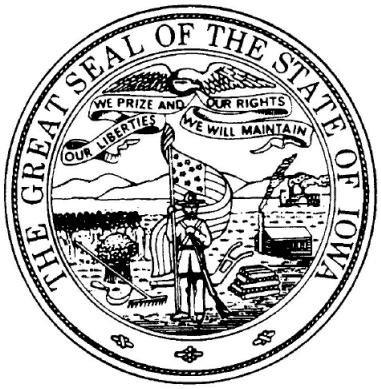

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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with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

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

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

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

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

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

Administrative Services Department[11]

Replace Chapter 117

Chief Information Officer, Office of the[129]

Replace Analysis
Insert Chapter 22

Utilities Division[199]

Replace Analysis
Replace Chapter 29

Iowa Public Employees' Retirement System[495]

Replace Chapter 11

Iowa Public Information Board[497]

Replace Chapter 1
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Replace Chapter 5

Professional Licensure Division[645]

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Replace Chapter 200

Dental Board[650]

Replace Analysis
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Replace Chapter 28 with Reserved Chapter 28

Medicine Board[653]

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Pharmacy Board[657]

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Secretary of State[721]

Replace Analysis
Replace Reserved Chapter 29 with Chapter 29

Veterans Affairs, Iowa Department of[801]

Replace Chapter 14

TITLE VI
CENTRAL PROCUREMENT

CHAPTER 117
PROCUREMENT OF GOODS AND SERVICES OF GENERAL USE

[Prior to 10/29/03, see 401—Chapters 7, 8, and 9]
[Prior to 8/18/04, see 471—Chapter 13]
[Prior to 8/21/13, see 11—Chapter 105]

11—117.1(8A) General provisions.

117.1(1) *Applicability.*

a. Goods and services of general use. Under the provisions of Iowa Code chapter 8A, these rules apply to the purchase of goods and services of general use by any unit of the state executive branch including a commission, board, institution, bureau, office, agency or department, except items used by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies or instrumentalities of the state exempted by law.

b. Services. Procurement of services shall also meet the provisions of Iowa Administrative Code, 11—Chapters 118 and 119.

c. Information technology. Pursuant to Iowa Code chapter 8A, procurement of information technology devices and services by participating agencies shall also meet the requirements of rule 11—117.11(8A). Rule 11—117.11(8A) shall apply to:

(1) The process by which the department shall ensure effective and efficient compliance with standards prescribed by the department with respect to the procurement of information technology devices and services by participating agencies, and

(2) The acquisition of information technology devices and services by the department for the department or by the department for a participating agency that has requested that the department procure information technology devices or services on the agency's behalf.

117.1(2) *Funding.* The department and agencies shall follow procurement policies regardless of the funding source supporting the procurement. However, when these rules prevent the state from obtaining and using a federal grant, these rules are suspended to the extent required to comply with the federal grant requirements.

117.1(3) *Electronic processing.* Notwithstanding other administrative rules, requirements for paper transactions in the procurement of goods and services shall be waived when an alternative electronic process is available. If the vendor is unable to use the electronic process, an alternative paper process may be available.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.2(8A) Definitions.

"Acquisition" or *"acquire"* is defined in the same manner as "procurement," "procure," or "purchase."

"Agency" or *"state agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

"All or none" means an award based on the total for all items included in the solicitation.

"American-based business" means an entity that has its principal place of business in the United States of America.

"American-made product" means product(s) produced or grown in the United States of America.

"American motor vehicles" means those vehicles manufactured in this state and those vehicles in which at least 70 percent of the value of the motor vehicle was manufactured in the United States or Canada and at least 50 percent of the motor vehicle sales of the manufacturer are in the United States or Canada.

"Award" means the selection of a vendor to receive a master agreement or order of a good or service.

"Bid specification" means the standards or qualities which must be met before a contract to purchase will be awarded and any terms which the director has set as a condition precedent to the awarding of a contract.

"Board" means the technology governance board established by Iowa Code section 8A.204.

"Competent and qualified" means an architect or engineer who, at the sole discretion of the department, has the capability in all respects to satisfactorily perform the scope of services required by the proposed contract in a timely manner.

"Competitive bidding procedure" means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, evaluated, accepted, rejected or awarded. A "competitive bidding procedure" refers to all types of competitive solicitation processes referenced in this chapter and may include a transaction accomplished in an electronic format.

"Competitive selection documents" means documents prepared for a competitive selection by a department or agency to purchase goods and services. Competitive selection documents may include requests for proposal, invitations to bid, or any other type of document a department or agency is authorized to use that is designed to procure a good or service for state government. A competitive selection document may be an electronic document.

"Department" means the department of administrative services.

"Director" means the director of the department of administrative services or the director's designee.

"Emergency" includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the department or agency must act to preserve critical services or programs; or
4. In which the need is a result of events or circumstances not reasonably foreseeable.

"Emergency procurement" means an acquisition resulting from an emergency need.

"Enterprise" means most or all state agencies acting collectively, unless it is used in a manner such as "state accounting enterprise," in which case it means the specific unit of the department of administrative services.

"Fair and reasonable price" means a price that is commensurate with the extent and complexity of the services to be provided and is comparable to the price paid by the department or other entities for projects of similar scope and complexity.

"Formal competition" means a competitive selection process that employs a request for proposals or other means of competitive selection authorized by applicable law and results in procurement of a good or service.

"Good" or *"goods"* means products or personal property other than money that is tangible or movable at the time of purchase, including specially manufactured goods. A contract for goods is a contract in which the predominant factor, thrust, and purpose of the contract as reasonably stated is for the acquisition of goods. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the acquisition of goods, a contract for goods exists.

"Goods and services of general use" means goods and services that are not unique to an agency's program or that are needed by more than one agency. This chapter applies to the purchase of goods and services of general use.

"Governmental entity" means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its

political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

"Informal competition" means a streamlined competitive selection process in which a department or agency makes an effort to contact at least three prospective vendors identified by the department or purchasing agency as qualified to perform the work described in the scope of work to request that they provide bids or proposals for the delivery of the goods or services the department or agency is seeking.

"Information technology device" means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. "Information technology device" includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

"Information technology services" means services designed to provide functions, maintenance, and support of information technology devices, or services including but not limited to computer systems application development and maintenance; systems integration and interoperability; operating systems maintenance and design; computer systems programming; computer systems software support; planning and security relating to information technology devices; data management consultation; information technology education and consulting; information technology planning and standards; and establishment of local area network and workstation management standards.

"Iowa-based business" means an entity that has its principal place of business in Iowa.

"Iowa product" means a product(s) produced or grown in Iowa.

"Life cycle cost" means the expected total cost of ownership during the life of a product, including disposal costs.

"Limited scope" means only a few specific services are required for a project. An example is a project for which all existing conditions and parameters are clearly evident or defined in a request for proposal, such as a project calling for development of specifications and bidding documents for replacement of an existing boiler.

"Lowest responsible bidder" means the responsible bidder that is fully compliant with the requirements and terms of the competitive selection document and that submits the lowest price(s) or cost(s).

"Master agreement" means a contract competitively bid and entered into by the department which establishes prices, terms, and conditions for the purchase of goods and services of general use. These contracts may involve the needs of one or more state agencies. Agencies may purchase from a master agreement without further competition. Master agreements (also referred to as "master contracts") for a particular item or class of items may be awarded to a single vendor or multiple vendors. The department is the sole agency authorized to enter into master agreements for goods and services of general use.

"Material modification" relating to an approved IT procurement means a change in the procurement of 10 percent or $50,000, whichever is less, or a change of sufficient importance or relevance so as to have possible significant influence on the outcome.

"Negotiated contract" means a master agreement for a procurement that meets the requirements of Iowa Code section 8A.207(4)*"b."*

"Newspaper of general circulation" means a newspaper meeting the definition set forth in Iowa Code section 618.3.

"Operational standards" means information technology standards established by the department according to Iowa Code sections 8A.202 to 8A.207 that include but are not limited to specifications, requirements, processes, or initiatives that foster compatibility, interoperability, connectivity, and use of information technology devices and services among agencies.

"Order" means a direct purchase or a purchase from a state contract or master agreement.

"Participating agency," applicable only to information technology purchases, means any agency other than:

1. The state board of regents and institutions operated under its authority;
2. The public broadcasting division of the department of education;
3. The department of transportation's mobile radio network;

4. The department of public safety law enforcement communications systems and capitol complex security systems in use for the legislative branch;

5. The Iowa telecommunications and technology commission, with respect to information technology that is unique to the Iowa communications network;

6. The Iowa lottery authority; and

7. A judicial district department of correctional services established pursuant to Iowa Code section 905.2.

"Printing" means the reproduction of an image from a printing surface made generally by a contact impression that causes a transfer of ink, the reproduction of an impression by a photographic process, or the reproduction of an image by electronic means and shall include binding and may include material, processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books, journals, pamphlets, magazines and literary articles by a library of the state or any of its offices, departments, boards, and commissions held as a part of their library collection.

"Printing equipment" means offset presses, gravure presses, silk-screen equipment, large format ink jet printers, digital printing/copying equipment, letterpress equipment, office copiers and bindery equipment.

"Procurement," "procure," or *"purchase"* means the acquisition of goods and services through lease, lease/purchase, acceptance of, contracting for, obtaining title to, use of, or any other manner or method for acquiring an interest in a good or service.

"Procurement authority" means an agency authorized by statute to purchase goods and services.

"Responsible bidder" means a vendor that has the capability in all material respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the department may consider various factors including, but not limited to, the vendor's competence and qualification for the type of good or service required, the vendor's integrity and reliability, the past performance of the vendor relative to the quality of the good or service, the past experience of the department in relation to the vendor's performance, the relative quality of the good or service, the proposed terms of delivery, and the best interest of the state.

"Sealed" means the submission of responses to a solicitation in a form that prevents disclosure of the contents prior to a date and time established by the department for opening the responses. Sealed responses may be received electronically.

"Service" or *"services"* means work performed for an agency or its clients by a service provider. A contract for services is a procurement where the predominant factor, thrust, and purpose of the contract as reasonably stated is for services. When there is a mixed contract for goods and services, if the predominant factor, thrust, and purpose of the contract as reasonably stated is for service, with goods incidentally involved, a contract for services exists.

"Software" means an ordered set of instructions or statements that causes information technology devices to process data and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in these rules, "software" also includes, but is not limited to, an operating system; compiler; assembler; utility; library resource; maintenance routine; application; or a computer networking program's nonmechanized and nonphysical components; arrangements; algorithms; procedures; programs; services; sequences and routines utilized to support, guide, control, direct, or monitor information technology equipment or applications; and "data processing software" as defined in Iowa Code section 22.3A(1)*"e."*

"Sole source procurement" means a purchase of a good or service in which the department or agency selects a vendor without engaging in a competitive selection process.

"Systems software" means software designed to support, guide, control, direct, or monitor information technology equipment, other system software, mechanical and physical components, arrangements, procedures, programs, services or routines.

"Targeted small business (TSB)" means a targeted small business as defined in Iowa Code section 15.102 that is certified by the economic development authority pursuant to Iowa Code section 15.108 and as authorized by Iowa Code chapter 73.

"Upgrade" means additional hardware or software enhancements, extensions, features, options, or devices to support, enhance, or extend the life or increase the usefulness of previously procured information technology devices.

"Vendor" means a person, firm, corporation, partnership, business or other commercial entity that provides services or offers goods for sale or lease.

"Vendor on-line system" means a state computer system that enables vendors to conduct business electronically with the state through an Internet location on the World Wide Web.

"Web" or *"website"* refers to an Internet location on the World Wide Web that provides information, communications, and the means to conduct business electronically.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15; **ARC 4097C**, IAB 10/24/18, effective 11/28/18]

11—117.3(8A) Competitive procurement. It is the policy of the state to obtain goods and services from the private sector for public purposes to achieve value for the taxpayer through a competitive selection process that is fair, open, and objective. Where feasible, common use items will be purchased cooperatively with state agencies having independent procurement authority to leverage economies of scale, add convenience, standardize common items, and increase efficiencies.

117.3(1) *Informal competition.* The department may use informal competition or formal competition for the purchase of any good or service or group of goods or services of general use costing less than $50,000.

117.3(2) *Formal competition.* The department shall use formal competition for the procurement of any good or service or group of goods or services of general use costing $50,000 or more.

117.3(3) *Construction procurement.* Formal competition shall be used for selection of a vendor for construction, erection, demolition, alteration, or repair of a public improvement when the cost of the work exceeds $100,000 or the adjusted competitive threshold established in Iowa Code section 314.1B.

117.3(4) *Purchasing services.* Thresholds for the use of formal or informal competition for the procurement of services are governed by rule 11—118.5(8A).

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 1485C**, IAB 6/11/14, effective 7/16/14]

11—117.4(8A) Master agreements.

117.4(1) *Use of master agreements.* The department shall enter into master agreements to procure goods and services of general use for all state agencies with the exception of those purchases made by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies exempted by law. If the department has entered into a master agreement for a good or service of general use, a state agency that is not otherwise exempt shall purchase the good or service through the master agreement, unless a comparable good or service is available from a different vendor and the quantity required or an emergency or immediate need makes it cost-effective to purchase from that vendor. If an agency or agencies routinely or on a recurring basis purchase a specific good or service not available through a master agreement, the department may establish a master agreement for that good or service in cooperation with the affected agencies.

117.4(2) *Term of master agreements.* The initial term of a master agreement shall be no more than three years. Following the initial term, a master agreement may be renewed by the department for periods of one to three years; provided, however, that a master agreement, including all optional renewals, shall not exceed a term of six years unless a waiver of this provision is granted pursuant to rule 11—117.21(8A) (goods) or rule 11—118.16(8A) (services).

117.4(3) *Master agreements available to governmental subdivisions.* Master agreements entered into by the department may be extended to and made available for the use of other governmental entities as defined in Iowa Code section 8A.101. The department shall provide a list of current master agreements to a governmental subdivision upon request. The list may be provided in an electronic format. A governmental subdivision may request a copy of a specific master agreement. The department may provide the master agreement in an electronic format and assess a copying charge when a printed copy is requested.

[**ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.5(8A) Exemptions from competitive procurement. The director or designee may exempt goods and services of general use from competitive procurement processes when the procurement meets one of the following conditions. All procurements that are exempt from competitive processes shall be recorded as such, and appropriate justification shall be maintained by the agency initiating the action. Each of the following exemptions from competitive procurement procedures require additional review and approvals.

117.5(1) *Emergency procurement.*

a. Justification for emergency procurement. An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the department or agency should consider price and availability of the good or service procured so that the department or agency obtains the best value for the funds spent under the circumstances. The department and agencies shall attempt to acquire goods and services of general use with as much competition as practicable under the circumstances.

b. Special procedures required for emergency procurements. Justification for the emergency purchase shall be documented and submitted to the director or designee for approval. The justification shall include the good or service that is to be or was purchased, the cost, and the reasons the purchase should be or was considered an emergency.

117.5(2) *Targeted small business (TSB) procurement.*

a. Justification for TSB procurement. Agencies may purchase from a TSB without competition for a purchase up to $10,000.

b. Special procedures for TSB procurements. Agencies must confirm that the vendor is certified as a TSB by the economic development authority. An agency may contact the TSB directly.

117.5(3) *Iowa Prison Industries (IPI) procurement.*

a. Justification for IPI procurement. If IPI manufactures or formulates a product, agencies shall purchase the product from IPI or obtain a written waiver in accordance with Iowa Code section 904.808, except as otherwise permitted in paragraphs *"b"* and *"c."*

b. Purchase of standard modular office systems and related components. Purchase of standard modular office systems and related components and other furniture items shall be in accordance with 11—subrule 100.6(6).

c. Procurement of product manufactured in Iowa. An agency may conduct a competitive procurement for a product that IPI manufactures or formulates if the competitive procurement requires that the product must be manufactured in Iowa. In such procurements, IPI shall be allowed to submit a bid to provide the product. If a vendor other than IPI is the lowest responsible bidder, the agency shall obtain written verification that the vendor's product is manufactured in Iowa before making the award.

d. Special procedures for IPI purchases. An agency may contact IPI directly.

117.5(4) *Procurement based on competition managed by other governmental entities.*

a. Justification for procurement based on competition managed by other governmental entities. The department may utilize a current contract, agreement, or purchase order issued by a governmental entity to establish an enterprise master agreement or make a purchase without further competition. The department may join a contract or agreement let by a purchasing consortium when the department reasonably believes it is in the best interest of the enterprise and reasonably believes the contract, agreement, or order was awarded in a fair and competitive manner.

b. Special procedures for procurement based on competition managed by other governmental entities. The department shall notify the other governmental entity and the requesting agency of its intent to use a contract, agreement, or purchase order prior to procuring the good or service in this manner. The department may purchase goods or services from contracts let by other governmental entities provided that the vendor is in agreement and the terms and conditions of the purchase do not adversely impact the governmental entity which was the original signatory to the contract.

117.5(5) *Sole source procurement.*

a. Justification for sole source procurement. A sole source procurement shall be avoided unless clearly necessary and justifiable. The director or designee may exempt the purchase of a good or

service of general use from competitive selection processes when the purchase qualifies as a sole source procurement as a result of the following circumstances:

(1) One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good or service; or

(2) The procurement is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the good or service; or

(3) Applicable law requires, provides for, or permits use of a sole source procurement; or

(4) The federal government or other provider of funds for the goods and services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the use of the funds in a way that restricts the procurement to only one vendor; or

(5) The procurement is an information technology device or service that is systems software or an upgrade, or compatibility is the overriding consideration, or the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation; or

(6) Other circumstances for services exist as outlined in rule 11—118.7(8A).

b. Special procedures required for sole source procurement. For exemption from competitive processes, the requesting agency shall submit to the director justification that the procurement meets the definition of sole source procurement. Use of a sole source procurement does not relieve the department or an agency from negotiating a fair and reasonable price, investigating the vendor's qualifications and any other data pertinent to the procurement, and thoroughly documenting the action. The agency initiating the procurement shall maintain in a file attached to the order the justification and response from the director. The justification, response, and order shall be available for public inspection.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15; **ARC 3676C**, IAB 3/14/18, effective 4/18/18; **ARC 4097C**, IAB 10/24/18, effective 11/28/18]

11—117.6(8A) Preferred products and vendors.

117.6(1) *Preference to Iowa products and services.*

a. All requests for proposals for materials, products, supplies, provisions and other needed articles and services to be purchased at public expense shall not knowingly be written in such a way as to exclude an Iowa-based company capable of filling the needs of the purchasing entity from submitting a responsive proposal.

b. The department and state agencies shall make every effort to support Iowa products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa products. Tied bids between Iowa products shall be decided in accordance with subrule 117.13(4).

117.6(2) *Preference to Iowa-based businesses.* The department and state agencies shall make every effort to support Iowa-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa-based business. Tied bids between Iowa-based businesses shall be decided in accordance with subrule 117.13(4).

117.6(3) *American-made products.* The department and agencies shall make every effort to support American-made products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-made product. Tied bids between American-made products shall be decided in accordance with subrule 117.13(4).

117.6(4) *American-based businesses.* The department and agencies shall make every effort to support American-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-based business. Tied bids between American-based businesses shall be decided in accordance with subrule 117.13(4).

117.6(5) *Recycled product and content.* The department and agencies shall make every effort to protect Iowa's environment in the procurement of goods. Recycled goods and goods that include recycled content shall be acquired when those goods are available and comparable in quality, performance, and price and there are not other mitigating factors. As required by Executive Order

Number 56, the department and agencies shall whenever possible procure durable items that are readily recyclable when discarded, have minimal packaging, and are less toxic.

117.6(6) *Products made by persons with disabilities.* The department and agencies shall make every effort to procure those products for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation, other developmental disabilities, or mental illness if the products meet the required specifications.

117.6(7) *Targeted small businesses.* The department and agencies may buy from a targeted small business if a targeted small business is able to provide the good or service, pursuant to Iowa Code section 73.20. When enterprise master agreements with targeted small businesses are available, purchases shall be made through these master agreements.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.7(8A) Centralized procurement authority and responsibilities.

117.7(1) *Centralized procurement of goods and services of general use.* The department shall procure goods and services of general use for all state agencies with the exceptions of those purchases made by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies exempted by law.

117.7(2) *Delegation of procurement authority.* The department shall establish guidelines for implementation of procurement authority delegated to agencies. The department shall assist agencies in developing purchasing procedures consistent with central purchasing policy and procedures and recommended governmental procurement standards.

117.7(3) *Planning, research, and development.* The director may establish advisory groups and customer councils of agency representatives appointed by the respective agency directors to assist the department in procurement planning and research and to advise on policies, procedures, and financing. This advice includes, but need not be limited to, market research, product specifications, terms and conditions; purchasing rules and guidelines; purchasing system development; and equitable financing of the enterprise purchasing system. The department will provide staff support for any advisory groups and councils that are created.

The department may periodically require forecasts from state agencies and institutions regarding future procurements. When requesting forecasts, the department shall assist agencies in securing and analyzing historical information related to previous purchasing activity.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.8(8A) Notice of solicitations.

117.8(1) *General notification.*

a. Bid posting. The department and each state agency shall provide notice of solicitations. The department and each state agency shall post notice of every formal competitive bidding opportunity and proposal to the official Internet site, bidopportunities.iowa.gov, operated by the department of administrative services in accordance with Iowa Code sections 73.2, 8A.311, and 362.3. Instead of direct posting, the agency may add a link to bidopportunities.iowa.gov that connects to the website maintained by the agency on which requests for bids and proposals for that agency are posted. For the purposes of this subrule, a formal solicitation is as defined by the appropriate procurement authority. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state Internet site operated by the department of administrative services.

b. Other forms of notice. Notice of competitive bidding opportunities and proposals may be provided by telephone or fax, in print, or by other means that give reasonable notice to vendors, in addition to the posting or linking of formal solicitations to the official Internet site operated by the department of administrative services.

c. Posting of requests for architectural and engineering services. A request for proposals for architectural or engineering services may be posted electronically by a department or state agency in addition to other methods of advertisement required by law.

d. Bids voided. A formal competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this subrule is void and shall be rebid. This requirement shall be effective for formal competitive bidding opportunities issued on or after September 1, 2005.

117.8(2) *Targeted small business notification.* Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa's 48-hour procurement notice website for posting.

117.8(3) *Direct vendor notification.* All procurement opportunities shall be directly communicated to vendors registered through the state's electronic procurement system, Vendor Self-Serve (VSS), if the vendors have indicated an interest in the type of good or service that is the subject of the solicitation. The notice shall be sent to the email or fax or other address entered on VSS by the vendor.

117.8(4) *Advertisement of construction procurement.* Construction solicitations shall be advertised twice in a newspaper of general circulation published in the county within which the work is to be done when the cost of the work exceeds $100,000 or the adjusted competitive threshold established in Iowa Code section 314.1B. Additional means of advertisement used shall be consistent with practices in the construction industry. The department may publish an advertisement in an electronic format as an additional method of soliciting bids.

117.8(5) *Vendor intent to participate.* In the event the department elects to conduct any procurement electronically or otherwise, it may require that vendors prequalify or otherwise indicate their intention to participate in the procurement process.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 1485C**, IAB 6/11/14, effective 7/16/14; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.9(8A) Types of solicitations. The department may use the following solicitation methods when procuring goods and services of general use for the enterprise.

117.9(1) *Informal competition.*

a. Description of solicitation. The informal request for bids or proposals may be completed electronically, by telephone or fax, or by other means determined by the department.

b. Response and evaluation. Informal bids shall be tabulated, evaluated, documented and attached to the purchase order.

117.9(2) *Formal competition.*

a. Description of solicitation. A formal request for bids or proposals shall include:

(1) Bid due date.

(2) Time of public bid opening.

(3) Complete description of commodity needed.

(4) Buyer's name or code.

b. Response and evaluation. Bids submitted shall be sealed until the date and time of opening. All bids received prior to the date and time set forth on the solicitation will be publicly opened and announced at the designated time and place. All responses shall be documented, evaluated, tabulated and available for public inspection.

117.9(3) *Request for bids.* A request for bids shall be used to select the lowest responsible bidder from which to purchase goods and services of general use on the basis of price. Vendors may offer goods and services that equal or exceed the state's specifications. Bids that do not meet specifications shall be rejected. The state will not give weight to goods and services offered which exceed specifications. When it is feasible to do so and objective data exists to support the state's decision, the award may be made on a life cycle cost basis.

117.9(4) *Requests for proposals.*

a. Description of solicitation. The department shall issue a request for proposals whenever a requirement exists for a procurement and cost is not the sole evaluation criterion for selection. The request for proposals shall provide information about a requirement for technical equipment or professional services that is sufficient for the vendor to propose a solution to the requirement. Elements of a request for proposals shall include, but need not be limited to:

(1) Purpose, intent and background of the requirement.

(2) Key dates in the solicitation process.
(3) Administrative requirements for submitting a proposal and format for the proposal.
(4) Scope of work and performance requirements.
(5) Evaluation criteria and method of proposal evaluation.
(6) Contractual terms and conditions.
(7) Need for a vendor conference.

b. Response and evaluation. Proposals submitted shall be sealed until the date and time of opening. All proposals received prior to the date and time of opening will be opened, and the name of the submitting vendor will be announced. The issuing purchasing officer will review proposals for compliance with requirements before the proposals are submitted for evaluation. A request for proposals shall be evaluated according to criteria that are developed prior to the issuance of the request for proposal document and that consist of factors relating to technical capability and the approach for meeting performance requirements; competitiveness and reasonableness of price or cost; and managerial, financial and staffing capability.

117.9(5) *Best and final offer option.*

a. Description of solicitation. The department reserves the right at its sole discretion to conduct a best and final offer process prior to making an award. The best and final offer process shall be conducted after the receipt of responses to a solicitation and prior to publicly releasing the responses. Any best and final offer process shall not allow material modification of the original solicitation requirements or of the evaluation criteria.

The department shall provide to affected vendors instructions that describe in specific terms how the department intends to arrive at the final order or master agreement. The instructions may include modifying the initial offer, updating pricing based on any changes the agency has made, and any added inducements that will improve the overall score in accordance with the evaluation. Other types of solicitations described in this rule may be modified to allow for a best and final offer process.

The department may enter into negotiations with the highest ranked vendor or conduct simultaneous negotiations with a number of the most highly ranked vendors whose total scores are relatively close.

b. Response and evaluation. A best and final offer shall arrive by the due date and time determined by the department and shall be sealed. Evaluation of best and final offers shall be conducted in the same manner as original cost proposals. Scores on the best and final offer shall replace the score achieved on the original proposal.

When negotiating with the highest ranked vendor, the department may accept the vendor's best and final offer or reject the offer and open negotiations with the next highest ranked vendor. The department shall proceed in the same manner in rank order. If the state is unable to negotiate an agreement with the highest ranked vendor, the state may negotiate a best and final offer agreement with another vendor. A best and final offer agreement accepted from a subsequent vendor must be more favorable to the state than the rejected offer or offers.

When negotiating with the highest ranked group of vendors, the department shall request the best and final offer from each. The department shall issue a notice of intent to award that is in the best interest of the enterprise.

117.9(6) *Reverse auction.*

a. Description of solicitation. The department may purchase goods and services through a reverse auction, a repetitive competitive bidding process that allows vendors to submit one or more bids, with each bid having a lower cost than the previous bid. Notice to vendors shall be given as described in this chapter. The notice shall include the start and ending time for the reverse auction and the method in which it will be conducted.

b. Response and evaluation. Vendors intending to participate shall provide to the department a notice of their intent to participate and of their agreement to provide goods or services equal to or exceeding specifications. The department may require vendors to prequalify to participate in a reverse auction. Prequalification may include a requirement to commit to a baseline price.

117.9(7) *Invitation to qualify (ITQ).* The department may prequalify vendors and make available to an agency a list of vendors that are capable of providing the requested service.

a. Description of solicitation. The department may prequalify vendors for certain classes of solicitations, including but not limited to:

(1) Information technology consulting,

(2) Architectural services, and

(3) Engineering services.

b. Notification of ITQ solicitation. Following institution of a prequalification process, the department may select, in a competitive manner, a prequalified vendor without public notice and without further negotiation of general terms and conditions. A solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required by subrule 117.8(2).

c. Not an award. Vendor prequalification is not an award and does not create an obligation on the part of the department.

d. Purpose. The department shall use an invitation to qualify process for the purpose of facilitating a subsequent solicitation that uses one of the other methods described in these rules. The purposes of using an invitation to qualify process include but are not limited to the following:

(1) Standardize state terms and conditions relating to the type of procurement, thereby avoiding repetition and duplication.

(2) Ensure that prequalified vendors are capable of performing work in a manner consistent with operational standards developed and adopted by the department.

(3) Implement a pay-for-performance model directly linking vendor payments to defined results as required by Iowa Code section 8.47.

(4) Consolidate records of vendor qualifications and performance in one location for reference and review.

(5) Reduce time required for solicitation of proposals from vendors for individual procurements.

e. Evaluation criteria. The department shall develop criteria for vendor qualification based upon its own expertise, the recommendations of its advisors, information and research, and the needs of agencies. The department shall develop and specify evaluation criteria for each invitation to qualify. Examples of evaluation criteria may include but are not limited to the following:

(1) Affirmative responses to a mandatory agreement questionnaire.

(2) Ratings of at least average on a professional/technical personnel questionnaire.

(3) Scores in a specified range for each client reference survey.

(4) Competitive cost data by type of service.

(5) Acceptable vendor financial information.

f. Issuance of open invitation.

(1) The department shall issue invitations to qualify on an as-needed basis.

(2) The department shall specify the period of time that the invitation to qualify will remain open and the time period for applicability.

(3) Vendors may apply for eligibility on a continuous basis during the time period that the invitation to qualify remains open.

g. Response and evaluation.

(1) Vendors seeking to qualify shall be required to meet all the criteria established by the department for a particular category or type of solicitation.

(2) The department shall continuously evaluate vendor applications for placement on a prequalified-vendor list during the period that the invitation to qualify remains open.

h. Acceptable performance levels.

(1) The department shall establish and notify prequalified vendors of minimum acceptable performance levels and institute a performance tracking mechanism on each prequalified vendor.

(2) An approved vendor remains qualified for the period specified by the department unless the vendor does not meet minimum acceptable performance levels.

(3) If a vendor's performance falls below the minimum acceptable level, the vendor shall be removed from the prequalified list.

(4) A vendor that does not prequalify or that is removed from the prequalified list due to the vendor's performance has the right to appeal in accordance with rule 11—117.20(8A).

i. Information technology purchases from a prequalified vendor. Before a participating agency may acquire an information technology device or service from a prequalified vendor, the agency must obtain all of the required approvals from the department pursuant to rule 11—117.11(8A).

117.9(8) *Other types of solicitations.* The department may use other types of competitive solicitations not outlined in these rules if the following conditions are met:

a. The solicitation method has been clearly described in public notice.

b. The solicitation method includes fair and objective criteria for determining the award.

117.9(9) *Request for information (RFI).* A request for information (RFI) is a nonbinding method an agency may use to obtain market information from interested parties for a possible upcoming solicitation. Information may include, but is not limited to, best practices, industry standards, technology issues, and qualifications and capabilities of potential suppliers. Agencies considering the use of an RFI shall contact the department for information and guidance in using this process.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.10(8A) Procurement of architectural and engineering services.

117.10(1) *Qualifications.* As part of the competitive selection process, the department shall determine whether an architect or engineer is competent and qualified. In making this determination, the department may consider the following factors:

1. Professional licensing or registration credentials,
2. Integrity and reliability,
3. Past performance relative to the quality and timeliness of service on similar projects,
4. Past experience with the state in relation to services provided,
5. Quality and timeliness of the services provided,
6. The proposed terms of delivery, and
7. The best interests of the state.

117.10(2) *Fair and reasonable price.* As part of the competitive selection process, the department may request, in addition to the architect's or engineer's qualifications, pricing information that may include a total fee for the specified services, hourly rates, or other pricing measures that will help the department establish a fair and reasonable price.

a. The department shall request a fee proposal(s) as part of the competitive selection process only when the services required are of limited scope, limited duration or otherwise clearly defined. An award shall not be made solely on the basis of the lowest price.

b. When a fee is not requested as part of the competitive selection process, other pricing factors shall be requested, and the firm deemed most qualified will be asked to negotiate a fee using the pricing factors included in the firm's proposal. If a fair and reasonable price for the work cannot be negotiated, the department shall reject the firm's proposal and begin negotiations for a fair and reasonable price with the next most qualified firm.

Examples of fair and reasonable pricing factors include:

(1) Hourly rates and anticipated hours,

(2) A lump sum fee,

(3) Any other costs the department determines to be fair and reasonable.

c. If reimbursable expenses are included in the price proposal, rates shall not exceed those in procedure 210.245, "Travel-in-state—board, commission, advisory council, and task force member expenses," of the department of administrative services state accounting enterprise's Accounting Policy and Procedures Manual.

d. The fee proposal or other pricing information shall serve as a basis for contract negotiations.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.11(8A) Procurement of information technology devices and services. This rule applies to the procurement of information technology devices and services by participating agencies.

117.11(1) *Approval of participating agency information technology procurements.*

a. All procurement of information technology devices and services must meet operational standards prescribed by the department.

b. With the exception of requests for proposals (RFPs) which are approved by the technology governance board, procurement of all information technology devices and services, projects and outsourcing of $50,000 or more or a total involvement of 750 participating agency staff hours or more must receive prior approval from the office of the chief information officer (OCIO) before a participating agency issues a competitive selection document or any other procurement document or otherwise seeks to procure information technology devices or services or both through the department or on its own purchasing authority. The participating agency's approval request shall be in a form prescribed by the department.

c. Participating agencies shall notify the technology governance board in writing on a quarterly basis that technology purchases made during the previous quarter were in compliance with the technology governance board's procurement rules and information technology operational standards.

d. Participating agencies shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements of this subrule.

117.11(2) *Review process for proposed procurements.*

a. With the exception of requests for proposals (RFPs) which are approved by the technology governance board, the department shall review a proposed information technology procurement of a participating agency regardless of funding source, method of procurement, or agency procurement authority.

b. The department shall review a proposed procurement for compliance with operational standards established by the department.

c. Once procurement is approved, ongoing approval by the department is not required provided that the procurement or scope of work remains consistent with the previously approved procurement or scope of work.

d. Participating agencies shall obtain the department's approval anytime a material modification of the procurement or the scope of work is completed. Review and approval by the department is required prior to implementation of a material modification to a previously approved proposed procurement by a participating agency or by the department on behalf of a participating agency.

e. After approval of the procurement is forwarded to the agency contact person and appropriate procurement authority contacts, the procurement may proceed.

f. When a procurement is not approved, the agency contact will be notified of available options, which include modification and resubmission of the request, cancellation of the request, or requesting a waiver from the director on the recommendation of the technology governance board pursuant to subrule 117.11(3).

g. The department may periodically audit procurements made by a participating agency for compliance with this rule and operational standards of the department. When the audit determines that inconsistencies with established operational standards or with this rule exist, the participating agency shall comply with technology governance board directives to remedy the noncompliance.

h. Information technology devices and services not complying with applicable operational standards shall not be procured by any participating agency unless a waiver is granted by the director on the recommendation of the technology governance board.

i. Upon request by a participating agency, the department may procure, as provided by these rules, any information technology devices or information technology services requested by or on behalf of an agency and accordingly bill the agency through the department's regular process for the information technology devices or information technology services or for the use of such devices or services.

j. The department may provide pertinent advice to a procurement authority or participating agency regarding the procurement of information technology devices or services, including opportunities for aggregation with other procurements.

117.11(3) *Waiver requests for operational standards.*

a. Waiver requests. In the event a participating agency is advised that its proposed procurement is disapproved and the participating agency seeks a waiver of operational standards, it must file its written waiver request with the department within five calendar days of the date of the disapproval. The waiver request shall be filed pursuant to rule 11—25.6(8A).

b. Hearing. The department may conduct a hearing with the participating agency regarding the waiver request. Additional evidence may be offered at the time of the hearing. Oral proceedings shall be recorded either by mechanized means or by a certified shorthand reporter. Parties requesting that the hearing be recorded by a certified shorthand reporter shall bear the costs. Copies of tapes of oral proceedings or transcripts recorded by certified shorthand reporters shall be paid for by the requester.

c. Burden of proof. The burden of proof is on the participating agency to show that good cause exists to grant a waiver to the participating agency to complete the proposed procurement.

d. The director shall notify the participating agency in writing of the decision to grant or deny the waiver. In the event a waiver is denied, the participating agency may appeal pursuant to Iowa Code section 679A.19.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15; **ARC 2267C**, IAB 11/25/15, effective 12/30/15]

11—117.12(8A) Specifications in solicitations. All specifications used in solicitations shall be written in a manner that encourages competition.

117.12(1) *Limitations on brands and models.* Specifications shall be written in general terms without reference to a particular brand or model unless the reference is clearly identified as intending to illustrate the general characteristics of the item and not to limit competition. A specific brand or model may be procured only when necessary to maintain a standard required or authorized by law or rule or for connectivity or compatibility with existing commodities or equipment.

117.12(2) *Recycled content and products.* When appropriate, specifications shall include requirements for the use of recovered materials and products. The specifications shall require, at a minimum, that all responses to a solicitation include a product content statement that describes the percentage of the content of the item that is reclaimed material.

The department shall revise specifications developed by agencies if the specifications restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will impede the intended use of the product.

Specifications shall support the following procurements:

a. Products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires.

b. Bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with Iowa Code section 8A.316.

117.12(3) *Life cycle cost and energy efficiency.* The department and agencies shall utilize life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

117.12(4) *All or none solicitations.* A solicitation may specify whether or not responses will be accepted on an all or none basis. Only when this statement appears on the solicitation may it be included in the response. The department may award either by item or by lot, whichever is to the advantage of the enterprise.

117.12(5) *Financial security.* The department may require bid, litigation, fidelity, and performance security as designated in the solicitation documents. When required, a security may be by certified check, cashier's check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the department.

When required, a security shall not be waived. The security provided by vendors shall be retained until all provisions of the solicitation have been met. The security will then be returned to the vendor.

117.12(6) *Vehicle procurement.*

a. Specifications for procurement of all non-law enforcement, light-duty vehicles, excluding those purchased and used for off-road maintenance work or to pull loaded trailers, shall be for flexible fuel vehicles (as defined by Iowa Code section 8A.362(5)) when an equivalent flexible fuel model is available.

b. Use of specifications for hybrid-electric or other alternative fuel vehicles (as defined by Iowa Code section 8A.362(5)) is encouraged. Procurement of hybrid-electric or other alternative fuel vehicles

may be dependent upon whether the costs of the vehicle's life cycle are equivalent to a non-alternative fuel vehicle or non-flexible fuel vehicle (a vehicle with a gasoline E10 engine) prior to the year 2010.

c. The life cycle costs of American motor vehicles shall be reduced by 5 percent in order to determine if the motor vehicle is comparable to foreign-made motor vehicles. The life cycle costs of a motor vehicle shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or 75,000 miles, whichever occurs first.

d. The average fuel efficiency for new passenger vehicles and light trucks, as defined in paragraph 117.12(6)*"a,"* that are purchased in a year shall equal or exceed the average fuel economy standard for the vehicles' model years as published by the United States Secretary of Transportation.

117.12(7) *Bulk diesel fuel procurement.* Specifications for procurement of all bulk diesel fuel shall ensure that all bulk diesel procured has at least 5 percent renewable content by 2007, 10 percent renewable content by 2008, and 20 percent renewable content by 2010, provided that fuel that meets the American Society for Testing and Materials (ASTM) D-6751 specification is available. Bulk diesel fuel that is used exclusively for emergency generation is exempt from the renewable content requirement.
[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.13(8A) Awards. The department shall select a vendor on the basis of criteria contained in the competitive selection document.

117.13(1) *Intent to award.* After evaluating responses to a solicitation using formal competition, the department shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s). Documentation of awards for solicitations using informal competition will be made available to interested parties upon request. This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s). If a vendor is not registered on the vendor on-line system and does not provide an email address or fax number, the notice will be mailed.

117.13(2) *Rejection of bids.* The department reserves the right to reject any or all responses to solicitations at any time for any reason. New bids may be requested at a time deemed convenient to the department and agency involved.

117.13(3) *Minor deficiencies and informalities.* The department reserves the right to waive minor deficiencies and informalities if, in the judgment of the department, the best interest of the state of Iowa will be served.

117.13(4) *Tied bids and preferences.* If an award is based on the highest score and there is a tied score, or if the award is based on the lowest cost and there is a tied cost, the award shall be determined by a drawing. Whenever it is practical to do so, the drawing will be held in the presence of the vendors with the tied bids. Otherwise, the drawing will be held in front of at least three noninterested parties. All drawings shall be documented.

a. Notwithstanding the foregoing, whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, first preference will be given to the Iowa vendor. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing will be held among the Iowa vendors only. Tied bids involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product. If a tied bid does not include an Iowa vendor or Iowa-produced or Iowa-manufactured product, preference will be given to a vendor based in the United States or products produced or manufactured in the United States over a vendor based or products produced or manufactured outside the United States.

b. In the event of a tied bid between Iowa vendors, the department shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the vendors have complied with ESGR standards. Preference, in the case of a tied bid, shall be given to Iowa vendors complying with ESGR standards.

117.13(5) *Consideration of life cycle costs.* When appropriate to the procurement, life cycle costs shall be considered during the award process.

117.13(6) *Trade-ins.* When applicable and in the best interest of the state, the department may trade in devices or services to offset the cost of devices or services in a manner consistent with procurement practices to ensure accountability with the state's fixed asset inventory system.
[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.14(8A) Agency purchasing authority and responsibilities.

117.14(1) *Purchase of goods.* An agency may acquire goods not otherwise available from a master agreement in accordance with the procurement threshold guidelines in 11—117.15(8A).

117.14(2) *Purchase of services.* An agency may procure services unique to the agency's program or used primarily by that agency and not by other agencies. The department will assist agencies with these procurements upon request. Procurement of services by an agency shall comply with the provisions of 11—Chapters 118 and 119.

117.14(3) *Procurement of printing.*

a. As the first step in the printing procurement process, an agency may provide its request to state printing. State printing may produce the printing internally or procure the printing for the agency.

b. An agency may procure printing. Procurement of printing by an agency shall utilize formal or informal competitive selection, pursuant to 11—117.3(8A). The agency's internal procedures and controls for competitive selection of a printing vendor shall be consistent with the requirements of the department and the state auditor.

117.14(4) *Procurements requiring additional authorization.* Except where exempted by statute, the following purchases require additional approval.

a. Information technology devices, software and services, as required in Iowa Code sections 8A.202 and 8A.206 and rule 11—117.11(8A).

b. Vehicles, as prescribed in Iowa Code sections 8A.361 and 8A.362.

c. Architectural and engineering services, except for agencies with independent authority, as prescribed in Iowa Code sections 8A.302, 8A.311, 8A.321, 218.58, and 904.315.

d. Legal counsel, as prescribed in Iowa Code section 13.7.

e. Telecommunications equipment and services, as required by Iowa Code chapter 8D and the rules of the telecommunications and technology commission.

117.14(5) *Establishment of agency internal procedures and controls.* Agencies shall establish internal controls and procedures to initiate purchases, complete solicitations, make awards, approve purchases, and receive goods. The procedures shall address adequate public recordings of the purchases under the agency's authority consistent with law and rule. Internal controls and security procedures that are consistent with the requirements of the department and state auditor, including staff authority to initiate, execute, approve, and receive purchases, shall be in place for all phases of the procurement.

117.14(6) *Agency receipt of goods.* Agencies receiving goods shall:

a. Inspect or otherwise determine that the goods received meet the specifications, terms and conditions within the order or master agreement,

b. Initiate timely payment for goods meeting specifications, and

c. Document the receipt of goods electronically in a manner prescribed by the department.

All provisions of 11—117.19(8A) shall apply to agency receipt of goods.

117.14(7) *Partial orders.* Agencies may accept partial orders and await additional final receipt or may accept a partial order as a final order. The agency shall notify the vendor of its decision. An agency may pay a vendor a prorated amount for the partial order.

117.14(8) *Items not meeting specifications.* An agency shall not approve final receipt when goods appear not to meet specifications. An agency shall approve final receipt only when satisfied that the goods meet or exceed the specifications and terms and conditions of the order or master agreement. When an agency and vendor are unable to agree as to whether the specifications, terms and conditions are met, the department shall make the decision.

Agencies shall notify the department and the vendor when apparent defects are first noticed. The department will assist the agency with negotiating a satisfactory settlement with the vendor.

117.14(9) *Payment to vendors following final receipt.* An agency shall not unreasonably delay payment on orders for which final receipt is accepted. Except in the case of latent defects in goods, payment to the vendor by the agency signifies agreement by the agency that the goods received are satisfactory. Payment to vendors may be made by any commercially acceptable method, including a state procurement card, in accordance with state financial requirements.
[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.15(8A) Thresholds for delegating procurement authority.

117.15(1) *Agency direct purchasing—basic level.* An agency may procure non-master agreement goods costing up to $1,500 without competition. An agency shall procure non-master agreement goods costing between $1,501 and $5,000 in a competitive manner, using either informal or formal competition. If an informal process is chosen, the agency shall follow the process described in the definition of "informal competition" in rule 11—117.2(8A). The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format.

117.15(2) *Agency direct purchasing—advanced level.* An agency may procure non-master agreement goods up to $50,000 per transaction in a competitive manner provided the agency personnel engaged in the purchase of goods have completed enhanced procurement training established by the director or designee.

117.15(3) *Preference to targeted small businesses.* Agencies shall search the TSB directory on the Web and purchase directly from the TSB source if it is reasonable and cost-effective to do so. Agencies shall comply with the TSB notification requirements in subrule 117.8(2).

117.15(4) *Misuse of agency authority.*

a. Purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. The agency shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements in subrules 117.15(1) and 117.15(2).

b. As a remedy, the department may recover administrative fees appropriate to the improper execution of procurement.

c. This rule is not intended to prohibit agencies from aggressively seeking competitive prices. Agencies may purchase outside of master agreements under subrule 117.4(1).

d. The department may rescind delegated authority of an agency that misuses its authority or uses the authority to procure goods or services already available on a master agreement.
[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 1485C**, IAB 6/11/14, effective 7/16/14; **ARC 2036C**, IAB 6/10/15, effective 7/15/15; **ARC 2267C**, IAB 11/25/15, effective 12/30/15]

11—117.16(8A) Printing. This rule provides guidelines for the letting of contracts for public printing by the department and by state agencies, including the enforcement by the department of contracts for printing, except as otherwise provided by law.

117.16(1) *Competitive selection for printing.* The department and state agencies shall procure printing by competitive selection according to the rules of this chapter except when the printing is produced by state printing, pursuant to rule 11—102.4(8A) or the procurement is otherwise exempt from competitive selection pursuant to rule 11—117.5(8A). When an agency elects to purchase printing by competitive selection rather than using the services of state printing or a TSB, state printing and TSBs shall be part of the bidding process.

117.16(2) *Specifications for printing.*

a. Preparation of written specifications. The department or a state agency shall procure printing by preparing a competitive selection document with written specifications and issue the same to bidders. The bid specifications shall become a part of the printing contract.

b. Inspection of specifications. All specifications shall be held on file in the department's printing division office or the office of the state agency conducting the solicitation and shall be available for inspection by prospective bidders.

117.16(3) *Notification of solicitation for printing.* The department or a state agency conducting the solicitation shall provide notification of the solicitation for printing to vendors.

117.16(4) *Bid bonds for printing.*

a. When applicable. Security in the form of a bid bond or a certified or cashier's check may be required from printing vendors.

b. Amount of bonds. If a bid bond is required, each formal bid for printing must be accompanied by a certified or cashier's check for the amount stated in the specifications. An annual bid bond in an amount set by the department may be deposited with the department by the bidder to be used in lieu of a certified or cashier's check. The amount of the bond is fixed annually and bonds are dated from July 1 to June 30 of the following year.

c. Return of bid bonds. Checks of unsuccessful bidders will be returned when the printed item is contracted. The check of the successful bidder will be returned when the performance bond is received and accepted by the department or by the state agency conducting the solicitation.

d. Performance bonds. When required by the specifications, the successful bidder must deposit with the department or with the state agency conducting the solicitation a performance bond equal to 10 percent of the contract price unless otherwise stated in the specifications. The performance bond must be deposited within 21 days of the date the contract or bond paperwork is issued to the vendor by the department or agency.

e. Forfeiture of bid bond. Failure to enter into a contract by the successful bidder within ten days of the award may result in forfeiture of 10 percent of the bid bond or the certified or cashier's check, if a check is on deposit in lieu of a bond.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.17(8A) Vendor registration and approval. Every vendor wishing to do business with the state shall register as a vendor. Every vendor shall register prior to submitting a response to a solicitation except in the case of an emergency procurement when the vendor shall register prior to filling an order or as soon as practicable. Only properly registered vendors are entitled to payment.

117.17(1) *Vendor on-line registration.* Vendors are encouraged to register electronically using the vendor on-line system. Vendors that are registered on the vendor on-line system are eligible for all services at the site, including receiving electronic notices of solicitations and submitting an electronic response to a solicitation.

Information from vendors completing registration through the vendor on-line system shall be protected through the use of uniquely identifying information known only to the department and the vendor to confirm the identity of the vendor for all subsequent actions, including responses to solicitations.

The department may take action to restrict or deny use of the vendor on-line system in response to inappropriate use of the site. The department may edit or delete a vendor's posting on the vendor bulletin board if the posting is not appropriate to the business of state purchasing.

117.17(2) *Alternate vendor registration.* A vendor may register by directly contacting the department or an agency initiating a procurement.

117.17(3) *Vendor registration information maintenance.* Vendors are responsible for maintaining current and accurate registration information. If registered on the vendor on-line system, the vendor shall update the vendor's account whenever information changes. If registered in an alternate manner, the vendor is responsible for notifying the department or agency of any change in information. This information includes, but is not limited to, company name or type, payment address, procurement address and other contact information.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2267C**, IAB 11/25/15, effective 12/30/15]

11—117.18(8A) Vendor performance.

117.18(1) *Review of vendor performance.* The department, in cooperation with agencies, shall periodically, but at least directly prior to renewal of a master agreement, review the performance of vendors. Agencies are encouraged to document vendor performance throughout the duration of the contract and report any problems to the department as they are identified. Performance reviews shall be based on the specifications of the master agreement or order, and shall include, but need not be limited to:

1. Compliance with the specifications,

2. On-time delivery, and
3. Accuracy of billing.

This review will help determine whether the vendor is a responsible bidder for future projects.

117.18(2) *Vendor suspension or debarment.* Prior performance on a state contract may cause a vendor to be disqualified or prevent the vendor from being considered a qualified bidder. In addition, a vendor may be suspended or debarred for any of the following reasons:

a. Failure to deliver within specified delivery dates without agreement of the department or the agency.

b. Failure to deliver in accordance with specifications.

c. Attempts to influence the decision of any state employee involved in the procurement process.

d. Evidence of agreements by vendors to restrain trade or impede competitive bidding. Such activities shall in addition be reported to the attorney general for appropriate action.

e. Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation and executive order.

f. Evidence that a vendor has willfully filed a false certificate with the department.

g. Debarment by the federal government.

117.18(3) *Correcting performance.* The department shall notify in writing any vendor considered for suspension or debarment and provide the vendor an opportunity to cure the alleged situation. If the vendor fails to remedy the situation after proper notice, the department director may suspend the vendor from eligibility for up to one year or debar the vendor from future business depending on the severity of the violation. The appeal provisions of this chapter shall apply to the decision of the director.

117.18(4) *Remedies for failure to deliver or for delivery of nonconforming goods or services.* If a vendor fails to remedy the situation after the opportunity to cure is provided, the department or agency may procure substitute goods or services from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The attorney general shall be requested to make collection from the defaulting vendor.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13]

11—117.19(8A) General instructions, terms and conditions for vendors. The following instructions, terms and conditions shall apply to all solicitations unless otherwise stated in the solicitation.

117.19(1) *Instructions for vendors.* The vendor must follow all instructions in the manner prescribed and furnish all information and samples as stated in the solicitation. Minor deficiencies and informalities may be waived if, in the judgment of the department, the best interests of the state will be served.

117.19(2) *Deadline for submission of bid or proposal.* It is the responsibility of the vendor to submit a response to a solicitation according to time, date, and place stated in the solicitation documents. Late responses will be rejected. Unfamiliarity with a geographical location, weather events, labor stoppages, failure of a carrier to meet promised delivery schedules, mechanical failures, and similar reasons are not sufficient justifications for the department to accept a late bid or proposal. At its sole discretion, the department may accept a late response if the delay is due to a catastrophic event and acceptance by the department does not result in an advantage to a competitor.

117.19(3) *Confidential information in a solicitation response.* Unless material submitted in response to a solicitation is identified as proprietary or confidential by the vendor in accordance with Iowa Code section 22.7, all submissions by a vendor are public information. To facilitate a fair and objective evaluation of proposals, submissions by vendors will not be released to competitors or the public prior to issuance of the notice of intent to award. If a vendor's claim of confidentiality is challenged by a competitor or through a request by a citizen to view the proposal, it is the sole responsibility of the vendor to defend the claim of confidentiality in an appropriate venue. The department will not release the subject material while the matter is being adjudicated.

117.19(4) *Recycled products.* A vendor shall be required to include for all applicable procurements a product content statement providing the percentage of the content of the item that is reclaimed material.

117.19(5) *Modifications or withdrawal of a solicitation response.* A solicitation response may be withdrawn or modified prior to the time and date set for opening. Withdrawal or modification requests

shall be in writing. With the approval of the director or designee, a bid or proposal may be withdrawn after opening only if the vendor provides prompt notification and adequately documents the commission of an honest error that might cause undue financial loss. The department may contact a vendor to determine if an error occurred in the vendor's proposal.

117.19(6) *Security.* The department may require bid or proposal security in accordance with subrule 117.12(5). When required, security shall not be waived.

117.19(7) *Assignments.* A vendor may not assign an order or a master agreement to another party without written permission from the department.

117.19(8) *Strikes, lockouts or natural disasters.* A vendor shall notify the department promptly whenever a strike, lockout or catastrophic event prevents the vendor from fulfilling the terms of an order or contract. The department and affected agency may elect to cancel an order or master agreement at their discretion.

117.19(9) *Subcontractors or secondary suppliers.* Vendors shall be responsible for the actions of and performance of their subcontractors or secondary suppliers. Vendors shall be responsible for payment to all subcontractors or secondary suppliers. Vendors awarded a state construction contract shall disclose the names of all subcontractors within 48 hours after the award of the contract and advise the department of changes in the names of subcontractors throughout the duration of the project.

117.19(10) *Material and nonmaterial compliance.* At its sole discretion, the department reserves the right to waive technical noncompliance with instructions when such noncompliance, as viewed by a reasonable and prudent person, did not result in an advantage to the vendor submitting the apparent lowest bid or best proposal or would not result in a disadvantage to other vendors submitting competing bids or proposals.

117.19(11) *Item and pricing.* Price information shall be submitted in response to a solicitation as stated in the instructions. In the case of an error, unit price shall prevail. Unless otherwise stated, all prices shall be submitted with free-on-board (FOB) destination including freight and handling costs.

Prices for one-time purchases must be firm, and preference will be given to firm prices in multiple award contracts. If the department believes it is in the best interest of the state, an economic price adjustment clause based on an acceptable economic indicator may be included in multiple delivery contracts.

a. Price during testing. Items may require testing either before or after the final award is made. In these cases, the vendor must guarantee the price through the completion of testing.

b. Unless otherwise contained in the specifications, all items for which a vendor submits a quotation shall be new, of the latest model, crop year or manufacture and shall be at least equal in quality to those specified.

c. Escalator clauses. Unless specifically provided for in the solicitation document, a response containing an escalator clause that provides for an increase in price will not be considered.

d. Discounts. Only cash discounts that apply to payment terms of 30 days or more will be considered in determining awards. Other payment terms will not be considered. The state will attempt to earn any discounts offered and will compute the period from the latest of the following:

(1) From date of invoice.

(2) From the date the complete order is received.

(3) From the date the vendor's certified invoice is received.

When additional testing of a product is required after delivery, the discount period shall not begin until testing is completed and final approval made.

117.19(12) *Notice of intent to award.* After evaluating responses to a solicitation, the department shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s). This notice does not constitute the formation of a contract(s) between the state and the vendor(s) to which the notice of intent to award has been issued.

If a vendor is not registered on the vendor on-line system and does not provide an email address or fax number, the notice will be sent by ordinary mail.

117.19(13) *Time of acceptance of award.* If a time is not stated in the competitive selection document, the vendor may state the length of time that the state has to accept the vendor's offer. This period shall not be less than 10 days for informal quotations or less than 30 days for formal bids. If the vendor states no minimum time period, the offer shall be irrevocable for 90 days. The department may require a longer evaluation period for technical equipment.

117.19(14) *Delivery.*

a. Delivery date. A vendor shall show in a response to a solicitation the earliest date on which delivery can be made. The department may include in a solicitation the acceptable delivery date for a commodity. The department may consider delivery dates as a factor in determining to which vendor the notice of intent to award shall be issued. Goods in transit remain the responsibility of the vendor.

b. Notice of rejection. The reason for any rejection of a shipment, based on apparent deficiencies that can be disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item with a copy of this notice provided to the purchasing section. Notice of latent deficiencies that would make items unsatisfactory for the intended purpose may be given at any time after acceptance.

c. Disposition of rejected item. The vendor must remove at the vendor's expense any rejected item. If the vendor fails to remove the rejected item within 30 days of notification, the department or an agency may dispose of the item by offering it for sale, deduct any accrued expense and remit the balance to the vendor.

d. Testing after delivery. Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test will be made and that payment will be withheld until completion of the testing process.

e. Risk of loss or damage. Risk of loss or damage remains with the vendor until delivery and acceptance by the agency at the destination shown on the order.

f. Vendor responsibility for removal of trade-ins. Whenever the purchase of an item of equipment has been made with the trade-in of equipment, it shall be the vendor's responsibility to remove the traded equipment within 30 days of the final acceptance of the purchased equipment by the agency, if not otherwise specified in the competitive selection document. The department or agency will not assume responsibility for equipment that is not removed within this time period and may cause the equipment to be removed by and shipped to the vendor and may bill the vendor for all packing, crating and transportation charges.

117.19(15) *Master agreement and purchase order modifications.* When consistent with the purpose and intent of the original master agreement or order, amendments or modifications may be issued. All modifications shall be documented and approved by the department or agency and the vendor before modifications take effect. Modifications shall not be used unreasonably to avoid further competition.

117.19(16) *Federal and state taxes.* The state of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity or service. A vendor shall be furnished a revenue department exemption letter upon request.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13; **ARC 2036C**, IAB 6/10/15, effective 7/15/15]

11—117.20(8A) Vendor appeals.

117.20(1) *Filing an appeal.* Any vendor that filed a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision by filing a written notice of appeal before the Director, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319, within five calendar days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays. The department must actually receive the notice of appeal within the specified time frame for it to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the department's award.

117.20(2) *Procedures for vendor appeal.* The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of the department's administrative rules governing contested case proceedings, unless the provisions of this rule provide otherwise.

a. Notice of hearing. Upon receipt of a notice of vendor appeal, the department shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors.

The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the department.

b. Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

c. Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

d. Amendments to notice of appeal. The aggrieved vendor may amend the grounds upon which the vendor challenges the department's award no later than 15 days prior to the date set for the hearing.

e. If the hearing is conducted by telephone or on the Iowa communications network, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted.

f. The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to all parties by first-class mail.

g. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6).

(1) Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that certified shorthand reporters record the hearing shall bear the costs.

(2) Transcription. A party may request that oral proceedings in connection with a hearing in a case or any portion of the oral proceedings be transcribed. A party requesting transcription shall bear the expense of the transcription.

(3) Tapes. Parties may obtain copies of tapes of oral proceedings from the presiding officer at the requester's expense.

(4) Retention time. The department shall file and retain the recording or stenographic notes of oral proceedings or the transcription for at least five years from the date of the decision.

117.20(3) *Stay of agency action for vendor appeal.*

a. When available.

(1) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

(2) Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order, and shall state the reasons justifying a stay.

b. When granted. In determining whether to grant a stay, the director shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

c. Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

117.20(4) *Review of proposed decision.*

a. The proposed decision shall become the final decision of the department 15 days after mailing the proposed decision, unless prior to that time a party submits an appeal of the proposed decision in accordance with the provisions of this subrule.

b. A party appealing the proposed decision shall mail or deliver the notices of appeal to the Director, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. Failure to request review will preclude judicial review unless the department

reviews the proposed decision on its own motion. If the department reviews the proposed decision on its own motion, it will send notice of the review to all parties participating in the appeal.

c. A party appealing the proposed decision shall mail a copy of the notice of appeal to all other parties. Any party may submit to the department exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a notice of appeal or of a request for review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The director shall notify the parties if the department deems oral arguments by the parties to be appropriate. The director will issue a final decision not less than 30 days after the notice of appeal is filed.

d. The department shall review the proposed decision based on the record and issues raised in the hearing. The department shall not take any further evidence and shall not consider issues that were not raised at the hearing. The issues for review shall be specified in the party's notice of appeal. The party appealing the proposed decision shall be responsible for transcribing any tape of the proceeding before the presiding officer and filing the transcript as part of the record for review. The party appealing the proposed decision shall bear the cost of the transcription regardless of the method used to transcribe the tape.

e. Each party shall have the opportunity to file exceptions to the proposed decision and present briefs in support of or in opposition to the proposed decision. The department may set a deadline for submission of briefs. When the department consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The department in its sole discretion may schedule oral arguments regarding the appeal. The department shall notify all parties in advance of the scheduled time and place for oral arguments.

f. The director shall issue a final decision by the department. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

[**ARC 0952C**, IAB 8/21/13, effective 9/25/13]

11—117.21(8A) Waiver procedure.

117.21(1) *Definition.* For the purpose of this chapter, a "waiver or variance" means an action by the director that suspends, in whole or in part, the requirements or provisions of a rule in this chapter as applied to a state agency when the state agency establishes good cause for a waiver or variance of the rule. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

117.21(2) *Requests for waivers.* A state agency seeking a waiver shall submit a written request for a waiver to the director. The written request shall identify the rule for which the state agency seeks a waiver or the contract or class of contracts for which the state agency seeks a waiver and the reasons that the state agency believes justify the granting of the waiver.

117.21(3) *Criteria for waiver.* In response to a request for a waiver submitted by a state agency, the director may issue an order waiving in whole or in part the requirements of a rule in this chapter if the director finds that the state agency has established good cause for the waiving of the requirements of the rule. "Good cause" includes, but is not limited to, the following: (1) the desired good or service is available from one source only, (2) the time frame required is such that an expedient purchase is in the best interest of the agency, or (3) a showing that a requirement or provision of a rule should be waived because the requirement or provision would likely result in an unintended, undesirable, or adverse consequence or outcome. An example of good cause for a waiver is when a contract duration period of longer than six years is more economically or operationally feasible than a six-year contract in light of the service being purchased by the state agency.

[**ARC 2036C**, IAB 6/10/15, effective 7/15/15]

These rules are intended to implement Iowa Code sections 8A.201 to 8A.203, 8A.206, 8A.207, 8A.301, 8A.302, 8A.311, 8A.341 to 8A.344, 73.1 and 73.2.

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CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

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CHAPTER 22
BROADBAND GRANTS PROGRAM

CHAPTER 22
BROADBAND GRANTS PROGRAM

129—22.1(8B) Definitions. The definitions in rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall also apply:

"Grantee" means a communications service provider awarded grant funds by the office pursuant to and in accordance with Iowa Code section 8B.11 and these rules.

"Project" means an installation of broadband infrastructure by a communications service provider in one or more targeted service areas. Except in limited circumstances otherwise permitted herein, a project may not be comprised of, in whole or in part, census blocks that are not targeted service areas.
[**ARC 4098C**, IAB 10/24/18, effective 11/28/18]

129—22.2(8B) Purpose and scope. This chapter applies to the broadband grants program established by Iowa Code section 8B.11 and administered by the office. As authorized by Iowa Code section 8B.11(8), this chapter establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the program, the key objective of which is to reduce or eliminate targeted service areas in the state of Iowa by incentivizing the installation of broadband infrastructure by communications service providers therein.
[**ARC 4098C**, IAB 10/24/18, effective 11/28/18]

129—22.3(8B) Notice accepting grant funds.

22.3(1) The office shall provide notice to communications service providers when grant funds become available for distribution by the office by posting a "Notice of Funding Availability" (NOFA) online at iowagrants.gov and ocio.iowa.gov/broadband.

22.3(2) Such NOFA shall:

a. Generally describe the application process.

b. State the date, time, and manner by which applications for such grant funds must be submitted to the office in order to be eligible for consideration by the office for an award of grant funds.

c. State the total amount of grant funds available for distribution under the applicable NOFA and provide an estimate of the date by which the office anticipates it will issue award(s).

d. Describe the factors the office will consider in determining whether, to which communications service providers, and in what amount(s) to award grant funds.

e. Set forth any measurement, technical, scoring, or other similar standards, formulas, or criteria the office will utilize in applying any factors considered by the office in determining whether, to which communications service providers, and in what amount(s) to award grant funds.

f. Identify allowable and not disallowed expenditures which may be included in an applicant's total project costs and set forth what constitutes sufficient and appropriate documentation for purposes of substantiating subsequent requests for reimbursement for allowable and not disallowed expenditures.

g. State any other terms, conditions, requirements, or processes applicable to communications service providers submitting applications for grant funds, including but not limited to any grant agreement the office may require a grantee to enter into as a condition of receiving grant funds pursuant to subrule 22.6(1).
[**ARC 4098C**, IAB 10/24/18, effective 11/28/18]

129—22.4(8B) Applications for grant funds.

22.4(1) *Application process.* Following the issuance of a NOFA by the office, communications service providers may apply to the office for grant funds for the installation of broadband infrastructure at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in targeted service areas. Applications shall be made and submitted in accordance with the terms of the NOFA.

22.4(2) *Contents of application.* In addition to any other questions or requirements established by the NOFA, an application shall, at a minimum, include:

a. The communications service provider's legal and business name and address;

b. The name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application;

c. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application/project (i.e., the targeted service area(s) in which the proposed installation of broadband infrastructure will occur);

d. Attestation that the broadband infrastructure installed in the targeted service area(s) will facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed;

e. An anticipated project completion date, which shall not exceed five years from the date the NOFA is issued. An applicant's anticipated project completion date shall be used to determine whether a grantee's failure to complete a project in a timely manner warrants a finding of noncompliance for purposes of subparagraph 22.6(4)*"b"*(2).

22.4(3) *Deadlines.* The office will only consider applications received on or before the applicable deadline as stated in the NOFA, unless the office, in its sole discretion, establishes a different deadline for the submission of applications. The office may establish a different deadline for all applicants, but will not change the deadline for or at the request of any individual applicant.

22.4(4) *Confidentiality of contents of applications.* The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Applicants or other persons or parties submitting information to the office are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting applications or other information to the office. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all information submitted by applicants or other persons or parties as public, nonconfidential records unless an applicant or other person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. In addition to any other administrative requirements established by the NOFA, an applicant or other person or party requesting confidential treatment of portions of an application or other information submitted to the office must:

(1) Fully complete and submit to the office Form 22 as provided by the office.

(2) Identify the request in the NOFA, or if other information is submitted to the office, identify the request in the transmittal email or cover letter for the written correspondence.

(3) Conspicuously mark the outside of any submission as containing confidential information.

(4) Mark each page upon which confidential evidence or information appears.

(5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each request for confidential treatment, the applicant or other person or party:

(1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential.

(2) Justifies why the specific information should be maintained in confidence.

(3) Explains why disclosure of the specific information would not be in the best interest of the public.

(4) Sets forth the name, address, telephone number, and email address of the individual authorized by the applicant or other person or party submitting such information to respond to inquiries from the office concerning the confidential status of such information.

c. Failure to request that information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Applicants or other persons or parties may not request confidential treatment with respect to information specifically identified by the office in the NOFA as being subject to public disclosure. Blanket requests to maintain an entire application or all information otherwise submitted to the office as confidential will be categorically rejected.

22.4(5) *Limited exception for broadband infrastructure installed outside of targeted service areas.* These rules generally limit the use of grant funds to and for broadband infrastructure installed within targeted service areas. This limitation is designed to ensure that the use of grant funds has the greatest possible impact on eliminating targeted service areas and to ensure the office's effective, efficient, and responsible management and oversight of the program. Notwithstanding this limitation, the office may, on a limited basis and in the office's sole discretion, permit communications service providers to apply for and utilize grant funds for broadband infrastructure installed outside of targeted service areas that facilitates or is essential to and inextricably intertwined with facilitating broadband infrastructure within targeted service areas forming the basis of a project, provided that a communications service provider applying for any such exception shall be required to clearly demonstrate, to the office's sole satisfaction:

a. Why and how reimbursement for such broadband infrastructure deployed outside of a targeted service area(s) facilitates or is essential to and inextricably intertwined with facilitating broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area(s) forming the basis of a project and cannot otherwise be excluded from the application; and

b. The specific methods or formulas the communications service provider will utilize in proportionally allocating the costs of and for such broadband infrastructure to targeted service area(s) forming the basis of the project to which broadband service is facilitated by such infrastructure.

[**ARC 4098C**, IAB 10/24/18, effective 11/28/18]

129—22.5(8B) Application review process and award of grant funds.

22.5(1) *Optional period for public comment.* Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office may, in its sole discretion, open a period for public comment as it relates to such applications through the state of Iowa's public comment website: comment.iowa.gov. If the office elects to solicit public comment pursuant to this rule, any member of the public will be permitted to submit comments regarding applications received by the office.

22.5(2) *Review committee.* Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office will supply all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B to a review committee established by the office comprised of representatives selected by the office from schools, communities, agriculture, industry, and other areas. The review committee will review the applications and provide input/make recommendations to the office regarding whether, to which projects, and in what amount(s) to award grant funds, in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B.

22.5(3) *Office final decision.* Following the office's receipt of the review committee's input or recommendations and the closure of the period for public comment, if any, the office will review all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B, the input/recommendations made by the review committee, and any public comment solicited/received, all in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B, and make a final agency decision regarding whether, to which projects, and in what amount(s) to award grant funds.

a. In so doing, the office will take into consideration the following factors, in accordance with and in the manner specified by the terms, conditions, and requirements of the NOFA:

(1) The relative need for broadband infrastructure in the area and the existing broadband service speeds. Existing broadband service speeds may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427).

(2) The percentage of the homes, schools, and businesses in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as a result of the project.

(3) The geographic diversity of the project areas of all applicants.

(4) The economic impact the project will have on the area.

(5) The applicant's total proposed budget for the project, including the amount or percentage of local match, if any. For purposes of this chapter, "local match" shall include any private and public sources of funding available to the applicant and to be utilized in connection with the applicant's proposed project.

(6) Any other factors deemed relevant by the office as stated in the NOFA.

b. In determining whether, to which projects, and in what amount(s) to award grant funds, the office will not:

(1) Base its decision on the office's prior knowledge of any applicant except for the information provided in the application; or

(2) Make an award that exceeds 15 percent of any communications service provider's total estimated allowable project costs for a proposed installation of broadband infrastructure.

22.5(4) *Notice to applicants of decision and right to appeal.* The office shall notify each communications service provider awarded a grant by the office of the office's decision(s) in accordance with the terms and conditions of the NOFA. The office will also post such decision(s) online at iowagrants.gov and ocio.iowa.gov/broadband. Unsuccessful applicants are solely responsible for reviewing such websites to determine their award status. Such agency decision(s) shall become final unless, within ten days of such email transmission or posting, an applicant which was adversely affected by a decision of the office files a request for a contested case proceeding pursuant to 129—Chapter 6. Failure to challenge the office's decision under this rule by filing a request for a contested case within the ten-day period shall waive any claims an applicant may have related to the office's administration of the process and otherwise be deemed a failure to exhaust administrative remedies.

[**ARC 4098C**, IAB 10/24/18, effective 11/28/18]

129—22.6(8B) Administration of award.

22.6(1) *Grant agreement required.* The office may require a grantee to enter into a grant agreement with the office in accordance with the terms, conditions, and requirements of the NOFA. Such grant agreement may include, but not be limited to, the total amount of the grant funds awarded to the grantee; a description of the project to be completed by the grantee and specifications related thereto; a description of allowable expenditures; conditions related to the disbursement of grant funds; default and termination procedures; performance, certification, and verification requirements/criteria necessary to confirm project success/completion; and repayment requirements in the event the grantee does not fulfill its obligations under the agreement, these rules, or Iowa Code chapter 8B. In addition to any terms, conditions, or requirements specifically set forth in such agreement, any and all requirements established by Iowa Code chapter 8B, these rules, other applicable law, rule, or regulation, or the NOFA shall be deemed incorporated by reference into such grant agreement as if fully set forth therein.

22.6(2) *Mapping data required.* Upon project completion, a grantee must supply the office with geographic information system (GIS) data in a form mutually acceptable to both the office and grantee demonstrating specifically where broadband infrastructure for which grant funds have been utilized, in whole or in part, has been installed, regardless of whether such infrastructure actually serves any customers in targeted service area(s) forming a basis of the application at the time such mapping data is supplied to the office. Such GIS data must enable the office to determine which specific homes, schools, and businesses within each targeted service area forming the basis of the project have access to broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as a result of the project.

22.6(3) *Reimbursements, record keeping/audits, performance/certification, and repayment.* In the absence of more specific provisions in an agreement executed between a grantee and the office in accordance with these rules establishing conflicting or inconsistent terms and conditions, the following terms and conditions shall apply by default to any award of grant funds made by the office under Iowa Code section 8B.11 and these rules:

a. Reimbursement.

(1) General. A grantee shall only be reimbursed by the office for:

1. Allowable and not disallowed expenditures actually and previously incurred by the grantee. What constitutes allowable or disallowable expenditures shall be further specified in the NOFA or grant agreement;

2. Expenditures for broadband infrastructure installed in targeted service areas; or, in the limited circumstances permitted herein, to the extent any expenditures relate to broadband infrastructure installed outside of targeted service areas but which facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed within targeted service areas underlying the application, only for the proportionate amount that such broadband infrastructure facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed within targeted service areas; and

3. Expenditures for which the grantee is able to supply sufficient and appropriate documentation. What constitutes sufficient or appropriate documentation shall be further specified in the NOFA or grant agreement.

(2) Timing. Requests for reimbursement may be submitted to the office in accordance with the terms and conditions in the NOFA or grant agreement.

b. Performance/certification. After the completion of a project utilizing, in whole or in part, grant funds, a grantee must:

(1) Certify to the office that the project was completed as proposed in the original application, including but not limited to that the final installation was installed in or otherwise facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in each of the applicable targeted service areas identified in the original application, and identify the total number of homes, schools, and businesses actually receiving broadband service in each targeted service areas identified in the original application as a result of the project.

(2) Attest that any claimed, allowable expenditures are true and accurate, were directly related to the installation of broadband infrastructure that facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in eligible targeted service areas forming the basis of the project, and were properly allocated in accordance with the terms, conditions, and requirements of the NOFA or grant agreement.

(3) Supply the office with updated GIS data in accordance with subrule 22.6(2).

c. Field testing. The office may, in its discretion, conduct field tests, on one or multiple occasions, for compliance with the requirements of Iowa Code sections 8B.1 and 8B.11, these rules, and any grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1) for up to five years after broadband service is certified as complete in accordance with paragraph 22.6(3)*"b."* The office may exercise this right both before and after reimbursing a grantee for any claimed, allowable expenditures, but if the office elects to do so before reimbursing a grantee for any claimed, allowable expenditures, it will do so within a reasonable time, not to exceed one year, after broadband service is certified as complete in accordance with paragraph 22.6(3)*"b."* Such field tests may include but not be limited to:

(1) Speed tests anywhere between a grantee's central office and the demarcation at any customer's location in a targeted service area or census block in which the project was to be deployed;

(2) In the case of wireless installations, from any location in a targeted service area or census block in which the project was to be deployed; or

(3) In the case where a grantee does not have a customer in a targeted service area being served by the installation, certification obtained by the grantee and supplied to the office from an independent third party who is a properly licensed engineer that the installation facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

d. Disbursement/repayments.

(1) A grantee shall not be entitled to the applicable portion of any grant funds or shall be obligated to repay the office the applicable portion of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds 15 percent of the grantee's estimated or final total allowable project costs, whichever is less.

(2) A grantee shall not be entitled to any grant funds or shall be obligated to repay the office the entire amount of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or does not facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area identified in the original application;

2. A grantee fails to complete the project as proposed in the original application; or

3. Any representation or warranty made by a grantee in an application for grant funds, a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

e. Notice of default. If the office determines a grantee is not entitled to or is otherwise required to repay the office in accordance with paragraph 22.6(3)*"d,"* the office may issue the grantee a "Notice of Default," which shall afford the grantee 30 days to cure the default. Whether a grantee has sufficiently cured the default shall be determined in the sole discretion of the office. If a grantee fails to cure the default within 30 days, the office may issue an order requiring the grantee to reimburse the office for the amount specified in the "Notice of Default."

22.6(4) *Remedies for noncompliance.* In addition to issuing a "Notice of Default" and subsequent order requiring the grantee to reimburse the office for failing to cure the default pursuant to paragraph 22.6(3)*"e"* and any other remedies available to the office pursuant to a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), the office may, for cause, find that a grantee is not in compliance with the requirements of Iowa Code section 8B.11, these rules, or a grant agreement entered into by the office and a grantee pursuant to subrule 22.6(1).

a. At the office's sole discretion, remedies for noncompliance may include, but are not limited to, the following:

(1) Issuing a warning letter stating that further failure to comply with program requirements within a stated period of time will result in a more serious action.

(2) Conditioning a future grant on compliance with program requirements within a stated period of time.

(3) Disallowing future reimbursements.

(4) Requiring that some or all previously issued grant funds be reimbursed to the office.

b. Reasons for a finding of noncompliance include, but are not limited to, one or more of the following:

(1) A violation of any of the terms or conditions of a grant agreement entered into between the office and a grantee pursuant to subrule 22.6(1);

(2) A grantee's failure to complete a project in a timely manner;

(3) A grantee's failure to comply with any applicable state laws, rules, or regulations;

(4) Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

(5) Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or that does not facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area identified in the original application;

(6) A grantee fails to complete the project as proposed in the original application;

(7) The total claimed expenditures or the amount previously reimbursed by the office exceeds 15 percent of the grantee's estimated or final total allowable project costs, whichever is less;

(8) Any representation or warranty made by a grantee in an application for grant funds, an agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

22.6(5) *Office's decision and right to appeal.*

a. Any decision of the office entitled "proposed decision," "final decision," or other like caption as relating to any issues described in subparagraphs 22.6(5)*"a"*(1) through (5) below shall become final unless, within 30 days of the transmission of such decision by the office by email to the email address of the individual identified in paragraph 22.4(2)*"b"* or to the email address of a person otherwise identified by the grantee in writing prior to the issuance of such decision as the person authorized by the grantee to respond to inquiries regarding the administration of the grant, a grantee which is adversely affected by the decision files a request for a contested case proceeding pursuant to 129—Chapter 6.

(1) The interpretation, construction, or application of any terms or conditions or resolution of a dispute under a grant agreement entered into between the office and a grantee or under these rules;

(2) Whether or in what amount a grantee is entitled to reimbursement pursuant to a grant agreement entered into between the office and a grantee, or under these rules;

(3) Whether or in what amount a grantee must repay the office pursuant to a grant agreement entered into between the office and a grantee or under these rules;

(4) The imposition of any remedies for noncompliance in accordance with subrule 22.6(4); or

(5) Any other decision of the office that relates to the administration of a grant awarded pursuant to Iowa Code section 8B.11, these rules, or a grant agreement entered into between the office and a grantee.

b. Failure to challenge the office's decision under this rule by filing a request for a contested case within the 30-day period shall waive any claims an applicant may have related to the administration of a grant award and otherwise be deemed a failure to exhaust administrative remedies.

[**ARC 4098C**, IAB 10/24/18, effective 11/28/18]

129—22.7(8B) Reallocation of grant funds. Subject to applicable law, including but not limited to Iowa Code section 8B.11(2)*"c,"* if grant funds that the office had previously committed to specific grantees are not ultimately issued to a grantee (e.g., because applicable expenditures are not allowed or are disallowed, applicable expenditures were improperly or incorrectly allocated, or a grantee fails to provide sufficient or appropriate documentation to support a claim for reimbursement) or are otherwise repaid to the office pursuant to a grant agreement entered into between the office and a grantee or these rules, the office may award the grant funds to other previous grantees or open additional rounds for applications. If the office awards additional grant funds to other grantees, such grantees shall submit documentation establishing how such grant funds will be expended and may, to the extent applicable, be required to execute contract amendments with the office providing for the expenditure of the additional grant funds and will otherwise be subject to Iowa Code section 8B.11 and these rules.

[**ARC 4098C**, IAB 10/24/18, effective 11/28/18]

These rules are intended to implement Iowa Code section 8B.11.

[Filed ARC 4098C (Notice ARC 3728C, IAB 4/11/18), IAB 10/24/18, effective 11/28/18]

UTILITIES DIVISION[199]

Former Commerce Commission[250] renamed Utilities Division[199]
under the "umbrella" of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

CHAPTER 8
CIVIL PENALTIES

CHAPTER 9
RESTORATION OF AGRICULTURAL LANDS
DURING AND AFTER PIPELINE CONSTRUCTION

CHAPTER 10
INTRASTATE GAS AND UNDERGROUND GAS STORAGE

CHAPTER 11
ELECTRIC LINES

CHAPTER 12
INTERSTATE NATURAL GAS PIPELINES
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CHAPTER 13
HAZARDOUS LIQUID PIPELINES AND UNDERGROUND STORAGE

CHAPTER 14
ELECTRONIC FILING

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CHAPTER 15
COGENERATION AND SMALL POWER PRODUCTION

CHAPTER 25
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CHAPTER 26
RATE CASES, TARIFFS, AND
RATE REGULATION ELECTION PRACTICE AND PROCEDURE

CHAPTERS 27 and 28
Reserved

CHAPTER 29
MANAGEMENT EFFICIENCY EVALUATION

CHAPTER 30
RENEWABLE ENERGY PERCENTAGE VERIFICATION

CHAPTER 31
ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS,
AND ASSET AND SERVICE TRANSFERS

CHAPTER 41
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CHAPTER 42
CROSSING OF RAILROAD RIGHTS-OF-WAY

CHAPTER 43
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CHAPTER 44
CERTIFICATES OF FRANCHISE AUTHORITY FOR
CABLE AND VIDEO SERVICE

CHAPTER 45
ELECTRIC INTERCONNECTION OF DISTRIBUTED GENERATION FACILITIES

CHAPTER 29
MANAGEMENT EFFICIENCY EVALUATION
[Prior to 10/8/86, Commerce Commission[250]]

199—29.1(476) Policy and purpose. It is the policy of the board that a public utility shall be operated in an efficient manner. This chapter describes the methodology by which the board may evaluate the management efficiency of a rate-regulated utility and the actions that the board may take upon a finding as to the efficiency of a utility's management.
[**ARC 4104C**, IAB 10/24/18, effective 11/28/18]

199—29.2(476) Efficiency considered in a complaint or rate case proceeding. In a complaint proceeding conducted pursuant to Iowa Code section 476.3 or in a rate proceeding conducted pursuant to Iowa Code section 476.6, the board may determine whether a public utility subject to rate regulation is being operated in an efficient or inefficient manner. In making such a determination, the board shall evaluate the management of the utility in the manner prescribed by rule 199—29.3(476). Any adjustment to a utility's level of profit (return on equity) or revenue requirement shall be made in compliance with Iowa Code section 476.52.
[**ARC 4104C**, IAB 10/24/18, effective 11/28/18]

199—29.3(476) Management efficiency evaluation. The board may evaluate a utility's management efficiency based upon the utility's particular circumstances and considering a range of factors that may differ among utilities. In evaluating a utility's management efficiency, the board may consider any of the factors listed in subrule 29.3(1) and any additional relevant factors. No single factor will be deemed conclusive evidence of efficiency or inefficiency. In performing the evaluation, the board may collect data to compare a utility to other rate-regulated utilities providing the same service within the state of Iowa. The board may consider data for time periods outside a rate case test year.

29.3(1) *Factors.*

The board may consider the following factors:

a. The price per unit of service (including amounts collected subject to refund) by customer class and type of service.

b. Operation and maintenance costs per unit of service. Low operations and maintenance costs may not support a finding of efficiency if quality of service is substandard.

c. Quality of service, as reflected in objective measures of service quality, customer complaints shown in company and board records, findings made in complaint proceedings, penalties assessed, and measures of customer satisfaction.

d. Customer mix.

e. The total compensation for each officer of the utility.

f. The company's bad debt ratio.

g. Innovative practices implemented by utility management that result in improved service or that control costs.

h. Geographic service territory.

i. Economic conditions in the areas served.

j. Weather patterns and disasters.

29.3(2) *Electric utilities.* When evaluating an electric utility, in addition to considering the factors listed in subrule 29.3(1), the board may consider factors specific to electric utilities including the following:

a. Fuel cost per kwh.

b. Availability for each generating unit with 2,000 or more service hours per year.

c. Companywide load factor.

d. Development and implementation of energy efficiency programs.

29.3(3) *Natural gas utilities.* When evaluating a natural gas utility, in addition to considering the factors listed in subrule 29.3(1), the board may consider factors specific to natural gas utilities including the following:

a. Total cost per unit of gas purchased from a pipeline (to be considered separately from operations and maintenance costs).

b. Total cost per unit of gas purchased from other sources (to be considered separately from operations and maintenance costs).

c. Residential and commercial sales volume in relation to investment in the system (rate base).

d. Unaccounted-for gas as a percentage of total sales volume.

e. Development and implementation of energy efficiency programs.

[**ARC 4104C**, IAB 10/24/18, effective 11/28/18]

199—29.4(476) Rewards and penalties. If the board makes a determination as to the efficiency of the management of a utility pursuant to rule 199—29.2(476), except for an electric cooperative that has elected rate regulation, the board may prescribe an adjustment of the utility's return on common equity or revenue requirement as allowed pursuant to Iowa Code section 476.52. Upon making a determination as to the efficiency of the management of a rural electric cooperative that has elected rate regulation, the board may prescribe an adjustment of the rates charged by the cooperative as part of an adjustment to the utility's revenue requirement.

[**ARC 4104C**, IAB 10/24/18, effective 11/28/18]

These rules are intended to implement Iowa Code sections 476.52 and 546.7.

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[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed ARC 4104C (Notice ARC 3852C, IAB 6/20/18), IAB 10/24/18, effective 11/28/18]

[1] Effective date of Ch 29 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 11
APPLICATION FOR, MODIFICATION OF, AND TERMINATION OF BENEFITS
[Prior to 11/24/04, see 581—Ch 21]

495—11.1(97B) Application for benefits.

11.1(1) *Form used.* It is the responsibility of the member to notify IPERS of the intention to retire. This should be done 60 days before the expected retirement date. The application for monthly retirement benefits is obtainable from IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. The printed application form shall be completed by each member applying for benefits and shall be mailed, sent by fax or brought in person to IPERS. An application that is incomplete or incorrectly completed will be returned to the member. To be considered complete, an application must include the following:

a. Proof of date of birth for the member.

b. Option selected, and

(1) If Option 1 is selected, the death benefit amount.

(2) If Option 4 or 6 is selected, the contingent annuitant's name, social security number, proof of date of birth, and relationship to member. The member must designate the survivor benefit percentage, which shall be limited to one of the following:

1. One hundred percent of the member's benefit amount.
2. Seventy-five percent of the member's benefit amount.
3. Fifty percent of the member's benefit amount.
4. Twenty-five percent of the member's benefit amount.

(3) If Option 1, 2, or 5 is selected, a list of beneficiaries.

c. If the member has been terminated less than one year, or is applying for disability benefits, the employer certification page must be completed by the employer unless the employer has provided the termination date and date of the last paycheck on the monthly wage reports.

d. Signature of member and spouse, both properly notarized unless witnessed by an authorized employee of the system.

e. If the member has no spouse, "NONE" must be designated.

f. If the member is applying for regular disability benefits, a copy of the award letter from the Social Security Administration or railroad retirement.

A retirement application is deemed to be valid and binding on the date the first payment is paid. Members shall not cancel their applications, change their option choice, or change an IPERS option containing contingent annuitant benefits after that date.

11.1(2) *Proof required in connection with application.* Proof of date of birth to be submitted with an application for benefits shall be in the form of a birth certificate, a U.S. passport, an infant baptismal certificate, an identification card or driver's license issued by the state of Iowa, a state identification card that is issued in compliance with the REAL ID Act of 2005, or a driver's license that is issued in compliance with the REAL ID Act of 2005. If these records do not exist, the applicant shall submit two other documents or records which will verify the day, month and year of birth. A photographic identification record may be accepted even if now expired unless the passage of time has made it impossible to determine if the photographic identification record is that of the applicant. The following records or documents are among those deemed acceptable to IPERS as proof of date of birth:

a. United States census record;

b. Military record or identification card;

c. Naturalization record;

d. A marriage license showing age of applicant in years, months and days on date of issuance;

e. A life insurance policy;

f. Records in a school's administrative office;

g. An official document from the U.S. Citizenship and Immigration Services, such as a "green card," containing such information;

h. Driver's license or Iowa nondriver identification card;

i. Adoption papers;

j. A family Bible record. A photocopy will be accepted with a notarized certification that the record appears to be genuine; or

k. Any other document or record ten or more years old, or certification from the custodian of such records which verifies the day, month, and year of birth.

If the member, the member's representative, or the member's beneficiary is unable or unwilling to provide proof of birth, or in the case of death, proof of death, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, Iowa division of records and statistics, IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access.

IPERS is required to begin making payments to a member or beneficiary who has reached the required beginning date specified by Internal Revenue Code Section 401(a)(9). In order to begin making such payments and to protect IPERS' status as a plan qualified under Internal Revenue Code Section 401(a), IPERS may rely on its internal records with regard to date of birth, if the member or beneficiary is unable or unwilling to provide the proofs required by this subrule within 30 days after written notification of IPERS' intent to begin mandatory payments.

11.1(3) *Benefits estimates.* Prior to submitting an application for benefits, a member may request IPERS to prepare estimates of projected benefits under the various options as described under Iowa Code section 97B.51. A benefit estimate shall not bind IPERS to payment of the projected benefits under the various options specified in Iowa Code chapter 97B. A member cannot rely on the benefit estimate in making any retirement-related decision or taking any action with respect to the member's account, nor shall IPERS assume any liability for such actions. An estimate will not include deductions for a QDRO or any other legal assignments or orders on a member's account, unless specifically requested by the member. A member's actual benefit can only be known and officially calculated when an eligible member applies for benefits.

11.1(4) *Revocation of application.* If IPERS determines an application for benefits is invalid for any reason, IPERS shall revoke, in whole or in pertinent part, the application for benefits and the recipient shall repay all payments made under the revoked application or all payments made pursuant to the revoked part of the application. The terms of repayment shall be subject to the provisions of 495—11.7(97B).

[**ARC 8601B**, IAB 3/10/10, effective 4/14/10; **ARC 1348C**, IAB 2/19/14, effective 3/26/14; **ARC 1887C**, IAB 2/18/15, effective 3/25/15; **ARC 2402C**, IAB 2/17/16, effective 3/23/16; **ARC 2981C**, IAB 3/15/17, effective 4/19/17]

495—11.2(97B) Retirement benefits and the age reduction factor.

11.2(1) *Normal retirement.*

a. A member shall be eligible for monthly retirement benefits with no age reduction effective with the first of the month in which the member attains the age of 65, if otherwise eligible.

b. Effective July 1, 1998, a member shall be eligible for full monthly retirement benefits with no age reduction effective with the first of the month in which the member attains the age of 62, if the member has 20 full years of service and is otherwise eligible.

c. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55 and is otherwise eligible.

11.2(2) *Early retirement.* A member shall be eligible to receive benefits for early retirement effective with the first of the month in which the member attains the age of 55 or the first of any month after attaining the age of 55 before the member's normal retirement date, provided the date is after the last day of service and the member is otherwise eligible.

11.2(3) *Aged 70 and older retirees.* A member shall be eligible to receive monthly retirement benefits with no age reduction effective with the first day of the month in which the member attains the age of 70, even if the member continues to be employed.

11.2(4) *Required beginning date.*

a. Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code sections 97B.49A to 97B.49I (under Option 2) no later than the "required beginning date" specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the application for benefits. If the lump sum actuarial equivalent could have been elected by the member, payments shall be made in such a lump sum rather than as a monthly allowance. The "required beginning date" is defined as the later of: (1) April 1 of the year following the year that the member attains the age of 70½, or (2) April 1 of the year following the year that the member actually terminates all employment with employers covered under Iowa Code chapter 97B.

b. If IPERS distributes a member's benefits without the member's consent in order to begin benefits on or before the required beginning date, the member may elect to receive benefits under an option other than the default option described above, or as a refund, if the member contacts IPERS in writing within 60 days of the first mandatory distribution. IPERS shall inform the member which adjustments or repayments are required in order to make the change.

c. If a member cannot be located to commence payment on or before the required beginning date described above, the member's benefit shall be forfeited. However, if a member later contacts IPERS and wishes to file an application for retirement benefits, the member's benefits shall be reinstated.

d. For purposes of determining benefits, the life expectancy of a member, a member's spouse, or a member's beneficiary shall not be recalculated after benefits commence.

e. If an IPERS member has a qualified domestic relations order (QDRO) on file when a mandatory distribution is required, and the QDRO requires the member to choose a specific retirement option, IPERS shall pay benefits under the option required by the order.

11.2(5) *Mandatory distribution of small inactive accounts.* As soon as practicable after July 1, 2004, IPERS shall distribute small inactive accounts to members and beneficiaries as authorized in Iowa Code section 97B.48(5).

11.2(6) *Federal tax code limitation for selection of survivor percentages for same gender spouses.* Rescinded IAB 2/19/14, effective 3/26/14.

[**ARC 8601B**, IAB 3/10/10, effective 4/14/10; **ARC 1348C**, IAB 2/19/14, effective 3/26/14; **ARC 1887C**, IAB 2/18/15, effective 3/25/15]

495—11.3(97B) First month of entitlement (FME).

11.3(1) *General.* A member shall submit a written application to IPERS setting forth the retirement date, provided the member has attained at least age 55 by the retirement date and the retirement date is after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's last day of service or, if later, the month provided for under subrule 11.3(2). No payment shall be made for any month prior to the month the completed application for benefits is received by IPERS.

If a member files a retirement application but fails to select a valid first month of entitlement, IPERS will select by default the earliest month possible. A member may appeal this default selection by sending written notice of the appeal postmarked on or before 30 days after a notice of the default selection was mailed to the member. Notice of the default selection is deemed sufficient if sent to the member at the member's address.

11.3(2) *Additional FME provisions.*

a. Effective through December 31, 1992, the first month of entitlement of a member who qualifies for retirement benefits is the first month following the member's date of termination or last day of leave, with or without pay, whichever is later.

b. Effective January 1, 1993, the first month of entitlement of an employee who qualifies for retirement benefits shall be the first month after the employee is paid the last paycheck, if paid more than one calendar month after termination. If the final paycheck is paid within the month after termination, the first month of entitlement shall be the month following termination.

c. Effective January 1, 2001, employees of a school corporation who are permitted by the terms of their employment contracts to receive their annual salaries in monthly installments over periods ranging from 9 to 12 months may retire at the end of a school year and receive trailing wages through the end of

the contract year if they have completely fulfilled their contract obligations at the time of retirement. For purposes of this paragraph, "school corporation" means body politic described in Iowa Code sections 260C.16 (community colleges), 273.2 (area education agencies) and 273.1 (K-12 public schools). For purposes of this paragraph, "trailing wages" means previously earned wage payments made to such employees of a school corporation after the first month of entitlement. This exception does not apply to hourly employees, including those who make arrangements with their employers to hold back hourly wages for payment at a later date, to employees who are placed on sick or disability leave or leave of absence, or to employees who receive lump sum leave, vacation leave, early retirement incentive pay or any other lump sum payments in installments.

For all employees of all IPERS-covered employers who terminate employment in January 2003, or later, if the final paycheck is paid within the same quarter or within one quarter after termination and wages are reported under the normal pay schedule, the first month of entitlement shall be the month following termination. However, if the last paycheck is paid more than one quarter after the termination, the first month of entitlement shall be the first month after the employee is paid the last paycheck. Under no circumstances shall such trailing wages result in more than one quarter of service credit being added to retiring members' earning records.

11.3(3) *Survival into designated FME.* To be eligible for a monthly retirement benefit, the member must survive into the designated first month of entitlement. If the member dies prior to the first month of entitlement, the member's application for monthly benefits is canceled and the distribution of the member's account is made pursuant to Iowa Code section 97B.52. Cancellation of the application shall not invalidate a beneficiary designation. If the application is dated later in time than any other designations, IPERS will accept the designation in a canceled application as binding until a subsequent designation is filed.

11.3(4) *Members retiring under the rule of 88.* The first month of entitlement of a member qualifying under the rule of 88 shall be the first of the month when the member's age as of the last birthday and years of service equal 88. The fact that a member's birthday allowing a member to qualify for the rule of 88 is the same month as the first month of entitlement does not affect the retirement date.

495—11.4(97B) Termination of monthly retirement allowance. A member's retirement benefit shall terminate after payment is made to the member for the entire month during which the member's death occurs. Death benefits shall begin with the month following the month in which the member's death occurs.

Upon the death of the retired member, IPERS will reconcile the decedent's account to determine if an overpayment was made to the retired member and if further payment(s) is due to the retired member's named beneficiary, contingent annuitant, heirs at law or estate. If an overpayment has been made to the retired member, IPERS will determine if steps should be taken to seek collection of the overpayment from the named beneficiary, contingent annuitant, estate, heirs at law, or other interested parties.

495—11.5(97B) Bona fide retirement and bona fide refund.

11.5(1) *Bona fide retirement—general.* To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS-covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not

constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to or during the member's first month of entitlement, entered into verbal or written arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

The bona fide retirement period shall be waived for an elected official covered under Iowa Code section 97B.1A(8)*"a"*(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8)*"a"*(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the retirement benefit. Such an elected official or legislator may remain in the elective office and receive an IPERS retirement without violating IPERS' bona fide retirement rules. If such elected official or legislator terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a retirement as of the date of hire, the retirement shall not be made. Furthermore, if such elected official or legislator is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the elected official or legislator shall not be eligible for new IPERS coverage for such elected position. The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official or legislator is reelected to the same position without an intervening term out of office.

The bona fide retirement period will be waived if the member has been elected to public office which term begins during the normal four-month bona fide retirement period. This includes elected officials who shall be covered under this chapter as defined in Iowa Code section 97B.1A. This waiver does not apply if the member was an elected official who was reelected to the same position for another term.

Effective July 1, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered under this chapter, is terminated for at least one month, and the member does not return to covered employment for an additional three months. In order to receive retirement benefits, the member must file a completed application for benefits before returning to any employment with a covered employer.

Effective July 1, 2018, a member will not have a bona fide retirement if the member enters into a verbal or written arrangement to perform duties for the member's former employer(s) as an independent contractor prior to or during the member's first month of entitlement or performs any duties for the member's former employer(s) as an independent contractor prior to receiving four months of retirement benefits.

11.5(2) *Bona fide retirement—licensed health care professionals.* For retirees whose first month of entitlement is no earlier than July 2004 and no later than June 2014, a retiree who is reemployed as a "licensed health care professional" by a "public hospital" does not have a bona fide retirement until all employment with covered employers is terminated for at least one calendar month. In order to receive retirement benefits, the member must file a completed application for benefits form before returning to any employment with a covered employer.

"Licensed health care professional" means a public employee who is a physician, surgeon, podiatrist, osteopath, psychologist, physical therapist, physical therapist assistant, nurse, speech pathologist, audiologist, occupational therapist, respiratory therapist, pharmacist, social worker, dietitian, mental health counselor, or physician assistant who is required to be licensed under Iowa Code chapter 147.

"Public hospital" means a governmental entity of a political subdivision of the state of Iowa that is authorized by legislative authority. For purposes of this subrule, a "public hospital" must also meet the requirements of Iowa Code section 249J.3. Under Iowa Code section 249J.3, a "public hospital" must be licensed pursuant to Iowa Code chapter 135B and governed pursuant to Iowa Code chapter 145A (merged hospitals), Iowa Code chapter 347 (county hospitals), Iowa Code chapter 347A (county hospitals payable from revenue), or Iowa Code chapter 392 (creation by city of a hospital or health care

facility). For the purposes of this definition, "public hospital" does not include a hospital or medical care facility that is funded, operated, or administered by the Iowa department of human services, Iowa department of corrections, or board of regents, or the Iowa Veterans Home.

A "public hospital" possesses the powers conferred upon it by statute, the Iowa Constitution, and regulatory provisions that are unique to governmental entities and hospitals. For example, a "public hospital" may finance its activities by tax levies or the issuance of bonds, condemn property, hold elections, and join forces with other governmental entities in cooperative ventures that are authorized under Iowa Code chapter 28D and Iowa Code chapter 28E. "Public hospitals" are subject to scrutiny by the public by complying with Iowa Code chapter 21 (open meetings Act) and Iowa Code chapter 22 (open records Act). Public employees of a "public hospital" are covered by Iowa Code chapter 20 (public employment relations Act). A "public hospital" can be distinguished from a profit or not-for-profit hospital by examining whether the focus of the hospital is community service with profits being applied not to rates of return to investors, but to enhance community services, facility upgrading, or subsidized care for persons unable to pay the full cost of service.

This subrule only applies to reemployments that meet all the foregoing requirements and in addition occur following a "complete termination of employment." A "complete termination of employment" means: (1) the employer must post the opening and conduct a job search; (2) the retired member must receive all termination payouts that are mandatory for other terminated employees of that employer; (3) the retired member must give up all perquisites of seniority, to the extent applicable to all other terminated employees of that employer; and (4) the retired member must not enter into a reemployment agreement with the prior employer or another public hospital as defined in this subrule prior to or during the first month of entitlement.

11.5(3) *Bona fide refund.* The 30-day bona fide refund period shall be waived for an elected official covered under Iowa Code section 97B.1A(8)*"a"*(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8)*"a"*(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the refund. Such an official may remain in the elective office and receive an IPERS refund without violating IPERS' bona fide refund rules. If such elected official terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a refund as of the date of hire, the refund shall not be made. Furthermore, if such elected official is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the public official shall not be eligible for new IPERS coverage for such elected position.

The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official is reelected to the same position without an intervening term out of office. The waiver granted in this subrule shall be applicable to such elected officials who were in violation of the prior bona fide refund rules on and after November 1, 2002, when such individuals have not repaid the previously invalid refund.

If a member takes a refund in violation of the bona fide refund requirements of Iowa Code section 97B.53(4), the member shall have 30 days from the date of written notice by IPERS to repay the refund in full without interest. Thereafter, in order to receive service credit for the period covered by the refund, the member shall be required to buy back the period of service at its full actuarial cost.

11.5(4) *Part-time appointed members of boards or commissions receiving minimal noncovered wages.* Solely for purposes of determining whether a member has severed all employment with all covered employers and has remained out of employment as required under Iowa Code section 97B.52A, persons who have been appointed as part-time members of boards or commissions prior to or during their first month of entitlement and who receive only per diem and reimbursements for reasonable business expenses for such positions will be deemed not to be in employment prohibited under Iowa Code section 97B.52A.

For purposes of this subrule, per diem shall not exceed the amount authorized under Iowa Code section 7E.6(1)*"a"* for members of boards, committees, commissions, and councils within the executive

branch of state government. This limit shall apply regardless of whether or not the position in question is within the executive branch of state government.

Members of boards and commissions not exempted under this subrule include: (a) those who are entitled to the payment of per diem regardless of attendance at board or commission meetings, and (b) those who would have received per diem in excess of the amount authorized under Iowa Code section 7E.6(1)*"a"* were it not for an agreement by the member to waive such compensation.

Persons appointed as part-time board or commission members who receive only per diem as set forth above and reimbursements of reasonable business expenses may continue in or accept appointments to such positions without violating the bona fide retirement rules under Iowa Code section 97B.52A.

11.5(5) *Members of the national guard who are called into state active duty.* Effective May 25, 2008, members of the national guard who are called into state active duty as defined in Iowa Code section 29A.1 in noncovered positions during the required period of complete severance will not be in violation of the bona fide retirement requirements of Iowa Code section 97B.52A as amended by 2010 Iowa Acts, House File 2518, section 33.

[**ARC 8929B**, IAB 7/14/10, effective 6/21/10; **ARC 9068B**, IAB 9/8/10, effective 10/13/10; **ARC 0662C**, IAB 4/3/13, effective 5/8/13; **ARC 3684C**, IAB 3/14/18, effective 4/18/18; **ARC 4100C**, IAB 10/24/18, effective 11/28/18]

495—11.6(97B) Payment processing and administration.

11.6(1) *Monthly paper warrants processing fee.* Effective July 1, 2005, IPERS shall charge a per-warrant processing fee to members who choose to receive paper warrants in lieu of electronic deposits of their monthly retirement allowance. The fee may be waived if the person establishes that it would be an undue hardship for the person to do what is necessary to receive payment of the person's IPERS monthly retirement allowance by electronic deposit. The processing fee will be deducted from the member's retirement allowance on a posttax basis.

For purposes of this subrule, a member claiming undue hardship must establish that the cost normally assessed for the processing of paper warrants would be unduly burdensome because of the member's limited income, or is otherwise financially burdensome or physically impracticable.

11.6(2) *Repeated requests for replacement warrants.* Effective July 1, 2002, for a member or beneficiary who, due to the member's or beneficiary's own actions or inactions, has benefits warrants replaced twice in a six-month period, except when the need for a replacement warrant is caused by IPERS' failure to mail to the address specified by the recipient, payment shall be suspended until such time as the recipient establishes a direct deposit account in a bank, credit union or similar financial institution and provides IPERS with the information necessary to make electronic transfer of said monthly payments. Persons subject to said cases may be required to provide a face-to-face interview and additional documentation to prove that such a suspension would result in an undue hardship.

11.6(3) *Forgery claims.* When a forgery of a warrant issued in payment of an IPERS refund or benefit is alleged, the claimant must complete and sign an affidavit before a notary public that the endorsement is a forgery. A supplementary statement must be attached to the affidavit setting forth the details and circumstances of the alleged forgery.

11.6(4) *Rollover fees.* Effective January 1, 2007, if the recipient of a lump-sum distribution which qualifies to be rolled over requests that a rollover be made to more than one IRA or other qualified plan, IPERS may assess a $5 administrative fee for each additional rollover beyond the first one. The fee will be deducted from the gross amount of each distribution, less federal and state income tax.

11.6(5) *Offsets against amounts payable.* IPERS may, with or without consent and upon reasonable proof thereof, offset amounts currently payable to a member or the member's designated beneficiaries, heirs, assigns or other successors in interest by the amount of IPERS benefits paid in error to or on behalf of such member or the member's designated beneficiaries, heirs, assigns or other successors in interest.

11.6(6) *Lump sum paper warrants processing fee.* Effective April 1, 2012, and thereafter, IPERS shall charge $1 for paper warrants issued in payment of all nonrecurring lump sum distributions. If a nonrecurring lump sum distribution is followed by a supplemental lump sum distribution due to the reporting of additional covered wages, the $1 processing fee shall also be charged. This $1 processing fee shall not apply to a direct rollover described under Iowa Code section 97B.53B (however, processing

fees may be charged for multiple rollover requests), lump sum mandatory account distributions required under Iowa Code section 97B.48(5), mandatory lump sum distributions required under Internal Revenue Code Section 401(9), or warrants reissued in forged endorsement or other fraudulent payment situations.
[**ARC 0017C**, IAB 2/22/12, effective 3/28/12]

495—11.7(97B) Overpayment of IPERS benefits.

11.7(1) *Overpayments—general.*

a. An "overpayment" means a payment of money by IPERS that results in a recipient receiving a higher payment than the recipient is entitled to under the provisions of Iowa Code chapter 97B.

b. A "recipient" is a person or beneficiary, heir, assign, or other successor in interest who receives an overpayment from an IPERS benefit and is liable to repay the amount(s) upon receipt of a written explanation and request for the amounts to be repaid.

c. If IPERS determines that the cost of recovering the amount of an overpayment is estimated to exceed the overpayment, the repayment may be deemed to be unrecoverable.

d. If the overpayment is equal to or less than $50 and cannot be recovered from other IPERS payments, IPERS may limit its recovery efforts to written requests for repayment and other nonjudicial remedies.

11.7(2) *Overpayment made to a retired member.* A retired member shall receive written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and a limited opportunity to repay the overpayment in full without interest. If a retired member repays an overpayment in full within 30 days after the date of the notice, there will be no interest charge. A retired member may repay an overpayment out of pocket or direct IPERS to recover the overpayment from future retirement benefit payments, or a combination of both. If the retired member cannot repay an overpayment in full, either out of pocket or from the next monthly installment of retirement benefits, or both, interest shall be charged. A retired member who cannot repay the full amount of the overpayment within 30 days after the date of the notice must enter into an agreement with IPERS to make monthly installment payments, or to have the overpayment offset against future monthly benefit payments or death benefits, if any, and authorize any unpaid balance as a first priority claim in the recipient's estate.

11.7(3) *Overpayment made to a person other than a retired member.* A recipient other than a retired member, except a recipient listed in subrule 11.7(4), shall receive written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. If such a recipient repays an overpayment in full within 30 days after the date of the notice, there will be no interest charge. If such a recipient cannot repay an overpayment in full within 30 days after the date of the notice, interest shall be charged. If repayment in full cannot be made within 30 days, such a recipient shall make repayment arrangements subject to IPERS' approval within 30 days of the written notice and request for repayment.

If the overpayment recipient cannot be located to receive notice of the overpayment at the recipient's last-known address, IPERS shall, after trying to locate the person, consider the recipient to have waived entitlement to the quarters covered by the refund.

11.7(4) *Overpayment made to a person who violates a bona fide severance period.* If a recipient takes a refund and does not complete the required period of severance, the recipient shall receive a written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. The recipient shall have 30 days after the date of notice to repay the full amount of the refund without interest. If the repayment is not made within 30 days after the date of notice, the person shall receive no credit for the period of employment covered by the refund and shall be required to buy back the refund at its actuarial cost if the member later decides that the member wants service credit for any portion of the period of employment covered by the refund.

11.7(5) *Interest charges.*

a. Overpayment not fraudulent. If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was not the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate

of 5 percent, or the rate IPERS determines, on the outstanding balance, beginning 30 days after the date of notice of the overpayment(s) is provided by IPERS.

b. Overpayments in violation of Iowa Code section 97B.40 or 715A.8. If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of 7 percent on the outstanding balance, beginning on the date of the overpayment(s).

c. Overpayments that result in a judgment. In addition to other remedies, IPERS may file a civil action to recover overpayments, and the interest rate may be set by the court.

11.7(6) *Recovery of overpayment from a deceased recipient.* If a recipient dies prior to the full repayment of an erroneous overpayment of benefits, IPERS shall be entitled to apply to the estate of the deceased to recover the remaining balance.

11.7(7) *Offsets against amounts payable.* IPERS may, in addition to other remedies and after notice to the recipient, request an offset against amounts owing to the recipient by the state according to the offset procedures pursuant to Iowa Code sections 8A.504 and 421.17.

11.7(8) *Rights of appeal.* A recipient who is notified of an overpayment and required to make repayments under this rule may appeal IPERS' determination in writing to the CEO or CEO's designee. The written request must explain the basis of the appeal and must be received by IPERS' office within 30 days of overpayment notice pursuant to 495—Chapter 26.

11.7(9) *Release of overpayment.* IPERS may release a recipient from liability to repay an overpayment, in whole or in part, if IPERS determines that the receipt of overpayment is not the fault of the recipient, and that it would be contrary to equity and good conscience to collect the overpayment. No release of an individual recipient's obligation to repay an overpayment shall stand as precedent for release of another recipient's obligation to repay an overpayment.

[**ARC 8601B**, IAB 3/10/10, effective 4/14/10; **ARC 1887C**, IAB 2/18/15, effective 3/25/15; **ARC 2981C**, IAB 3/15/17, effective 4/19/17; **ARC 3684C**, IAB 3/14/18, effective 4/18/18]

These rules are intended to implement Iowa Code sections 97B.4, 97B.9A, 97B.15, 97B.25, 97B.38, 97B.40, 97B.45, 97B.47, 97B.48, 97B.48A, 97B.49A to 97B.49I, 97B.50, 97B.51, 97B.52, 97B.52A, 97B.53, and 97B.53B.

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CHAPTER 1
ORGANIZATION AND GENERAL ADMINISTRATION

497—1.1(23) Board description.

1.1(1) The Iowa public information board is established by Iowa Code chapter 23 and consists of nine members, including a chairperson.

1.1(2) The term "board" shall mean the Iowa public information board.

1.1(3) Board members are appointed by the governor for staggered terms of four years and are subject to confirmation by the senate. No more than three members appointed shall be representatives from the media, including newspapers, and no more than three members appointed shall be representatives of cities, counties, and other political subdivisions of the state.

1.1(4) On an annual basis at the board's first meeting on or after July 1, the members shall elect a chairperson and vice chair. The board shall also employ a person who shall be an attorney admitted to practice law before the courts of Iowa to serve as the executive director of the board. The chairperson and vice chair may be reelected or elected to a different office. If the chairperson is absent, the vice chair shall act as chairperson.

1.1(5) Vacancies on the board are filled in the same manner as regular appointments. Appointees who fill vacancies serve for the balance of the term.

1.1(6) The board shall meet at least quarterly and at the call of the chairperson.

1.1(7) Five board members constitute a quorum for conducting board business.

1.1(8) The board is available to assist in achieving compliance with open meetings and public records laws in alternative ways. Information is available on the board's website at ipib.iowa.gov. The members of governmental bodies and the public may call the board for informal answers to questions during office hours from 8 a.m. to 4:30 p.m. on Monday through Friday at (515)725-1781. Written guidance about compliance with the open meetings and public records laws may be provided by advisory opinions (see rules 497—1.2(23) and 497—1.3(23)) or by declaratory orders (see rules 497—3.1(17A) to 497—3.8(17A)). In addition, complaints may be filed alleging violations of open meetings or public records laws under rule 497—2.1(23).

This rule is intended to implement Iowa Code chapter 23.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13; **ARC 2271C**, IAB 12/9/15, effective 1/13/16]

497—1.2(23) Requirements for requesting board advisory opinions.

1.2(1) *Jurisdiction.* The board will only accept requests for and issue advisory opinions pertaining to Iowa Code chapters 21 and 22, or rules adopted thereunder. The board shall not have jurisdiction over the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or over the governor or the office of the governor.

1.2(2) *Who may request an advisory opinion.* Any person may request a board advisory opinion construing or applying Iowa Code chapters 21, 22, and 23. An authorized agent may seek an opinion on behalf of any person. The board will not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request. The board may issue declaratory orders with the force of law pursuant to Iowa Code section 17A.9.

1.2(3) *Form of request.* The request for an advisory opinion shall pose specific legal questions and should describe any specific facts relating to the questions posed. Requests shall be sent to the board as provided in subrule 1.3(1).

This rule is intended to implement Iowa Code section 23.6.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 2088C**, IAB 8/5/15, effective 9/9/15; **ARC 4101C**, IAB 10/24/18, effective 11/28/18]

497—1.3(23) Processing of advisory opinion requests.

1.3(1) Requests for board advisory opinions may be mailed to the Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Requests may also be submitted by fax to (515)725-1789 or by email to ipib@iowa.gov.

1.3(2) After receiving an opinion request, the board's executive director shall prepare a draft opinion for board review. If the same or similar issue has been addressed in an opinion of a court, or in an attorney general's opinion, or in another prior advisory opinion, the executive director may respond to the requester by sending a copy of the prior opinion. Upon an affirmative vote of at least five members, the executive director shall issue a board advisory opinion on behalf of the board. Advice contained in a board opinion rendered to a government official or a lawful custodian of a public record, if followed, constitutes a defense for the government official or lawful custodian before the board to a subsequent complaint that is based on the same facts and circumstances. Board staff may also provide written advice on routine matters. However, such advice is not an advisory opinion of the board.

1.3(3) A person who receives a board advisory opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The board may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion. The board aspires to issue an opinion within 30 days after a formal request is made.

1.3(4) Board advisory opinions are open records and shall be made available at the board office and via the board's website at ipib.iowa.gov.

1.3(5) Nothing in this rule precludes a person who has received a board opinion or advice from petitioning for a declaratory order pursuant to Iowa Code section 17A.9. The board may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requester demonstrates a significant change in circumstances from those in the board opinion.

1.3(6) On an annual basis, the board shall review the advisory opinions issued for that year and determine which opinions should be adopted into rule pursuant to the procedures in Iowa Code chapter 17A.

This rule is intended to implement Iowa Code section 23.6.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13; **ARC 2088C**, IAB 8/5/15, effective 9/9/15]

497—1.4(23) Conflict of interest.

1.4(1) *Definition.* "Conflict of interest" means that a board member, an employee of the board, a board member's immediate family, or an immediate family member of an employee of the board has a significant personal, financial, or employment relationship with: a person who has requested an advisory opinion; a person who has petitioned for a declaratory order; a complainant; or a government employee or official or a governmental body that would be directly impacted by an advisory opinion, a declaratory order, or a complaint. For purposes of this rule, "immediate family" means the same as "immediate family members" in Iowa Code section 68B.2(11).

1.4(2) *Procedures.* As soon as a member of the board or an employee of the board becomes aware of a conflict of interest, the member or employee of the board shall follow these procedures:

a. If the conflict is known before a meeting, the member or employee of the board shall fully disclose the interest to the board at the board's next meeting.

b. If the conflict is discovered during a meeting, the member or employee of the board shall orally inform the board of the nature of the conflict as soon as the conflict is discovered.

c. The board member or employee of the board who has the conflict shall not participate in discussion or vote on any advisory opinion, declaratory order, or complaint. An announced conflict shall be reported in the board's minutes and the minutes shall reflect the matters on which the board member or employee of the board abstained from participating.

1.4(3) *State code of ethics.* Board members and employees of the board shall comply with the state code of ethics found in Iowa Code chapter 68B and in the corresponding administrative rules adopted by the Iowa ethics and campaign disclosure board.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 2090C**, IAB 8/5/15, effective 9/9/15; **ARC 2536C**, IAB 5/11/16, effective 6/15/16]

This rule is intended to implement Iowa Code sections 23.6 and 68B.2A.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]
[Filed Without Notice ARC 1091C, IAB 10/16/13, effective 11/20/13]

[Filed ARC 2090C (Notice ARC 2013C, IAB 5/27/15), IAB 8/5/15, effective 9/9/15]
[Filed ARC 2088C (Notice ARC 2012C, IAB 5/27/15), IAB 8/5/15, effective 9/9/15]
[Filed ARC 2271C (Notice ARC 2093C, IAB 8/5/15), IAB 12/9/15, effective 1/13/16]
[Filed ARC 2536C (Notice ARC 2364C, IAB 1/20/16), IAB 5/11/16, effective 6/15/16]
[Filed ARC 4101C (Notice ARC 3808C, IAB 5/23/18), IAB 10/24/18, effective 11/28/18]

CHAPTER 3
DECLARATORY ORDERS

497—3.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board, at Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Petitions may also be filed by fax at (515)725-1789 or by email at ipib@iowa.gov. A petition is deemed filed when it is received by that office. The board shall 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:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. 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 questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 497—3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address, and telephone number of the petitioner and the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13; **ARC 4101C**, IAB 10/24/18, effective 11/28/18]

497—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 497—3.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

497—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

3.3(3) A petition for intervention shall be filed at Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Petitions may also be filed by fax at (515)725-1789 or by email at ipib@iowa.gov. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, email address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13; **ARC 4101C**, IAB 10/24/18, effective 11/28/18]

497—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

497—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the board's executive director at Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13]

497—3.6(17A) Service and filing of petitions and other papers.

3.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

3.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

3.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 497—4.11(17A).
[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13]

497—3.7(17A) Consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.
[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

497—3.8(17A) Action on petition.

3.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board's executive director or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.
[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

497—3.9(17A) Refusal to issue order.

3.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

3.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.
[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

497—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.
[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

497—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.
[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

497—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.
[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement Iowa Code section 17A.9.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]
[Filed Without Notice ARC 1091C, IAB 10/16/13, effective 11/20/13]
[Filed ARC 4101C (Notice ARC 3808C, IAB 5/23/18), IAB 10/24/18, effective 11/28/18]

CHAPTER 5
PETITIONS FOR RULE MAKING

497—5.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the board at Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Petitions may also be filed by fax at (515)725-1789 or by email at ipib@iowa.gov. A petition is deemed filed when it is received by the board. 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:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject of matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendments to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of the data supporting the action urged in the petition.
5. 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.
6. Any request by petitioner for a meeting provided for by rule 497—5.4(17A).

5.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

5.1(2) The board may deny a petition because it does not substantially conform to the required form.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13; **ARC 4101C**, IAB 10/24/18, effective 11/28/18]

497—5.2(17A) 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 concerning the substance of the petition.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

497—5.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the board at Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13]

497—5.4(17A) Board consideration.

5.4(1) Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the

board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

5.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

5.4(3) 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 board's rejection of the petition.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement Iowa Code section 17A.7 and 2012 Iowa Acts, chapter 1115, section 6.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]
[Filed Without Notice ARC 1091C, IAB 10/16/13, effective 11/20/13]
[Filed ARC 4101C (Notice ARC 3808C, IAB 5/23/18), IAB 10/24/18, effective 11/28/18]

PROFESSIONAL LICENSURE DIVISION[645]

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

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PHYSICAL AND OCCUPATIONAL THERAPISTS

CHAPTER 200
LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

[Prior to 3/6/02, see 645—200.3(147) to 645—200.8(147), 645—200.11(272C), and 645—202.3(147) to 645—202.7(147)]
[Prior to 12/24/03, see 645—ch 201]

645—200.1(147) Definitions. For purposes of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Assistive personnel" means any person who carries out physical therapy and is not licensed as a physical therapist or physical therapist assistant. This definition does not include students as defined in Iowa Code section 148A.3(2).

"Board" means the board of physical and occupational therapy.

"Department" means the department of public health.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Impairment" means a mechanical, physiological or developmental loss or abnormality, a functional limitation, or a disability or other health- or movement-related condition.

"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 physical therapist or physical therapist assistant in the state of Iowa.

"License expiration date" means the fifteenth day of the birth month every two years after initial licensure.

"Licensure by endorsement" means the issuance of an Iowa license to practice physical therapy to an applicant who is or has been licensed in another state.

"Mandatory training" means training on identifying and reporting child abuse or dependent adult abuse required of physical therapists or physical therapist assistants 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.

"On site" means:

1. To be continuously on site and present in the department or facility where assistive personnel are performing services;

2. To be immediately available to assist the person being supervised in the services being performed; and

3. To provide continued direction of appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

"Physical therapist" means a person licensed under this chapter to practice physical therapy.

"Physical therapist assistant" means a person licensed under this chapter to assist in the practice of physical therapy.

"Physical therapy" means that branch of science that deals with the evaluation and treatment of human capabilities and impairments, including:

1. Evaluation of individuals with impairments in order to determine a diagnosis, prognosis, and plan of therapeutic treatment and intervention, and to assess the ongoing effects of intervention;

2. Use of the effective properties of physical agents and modalities, including but not limited to mechanical and electrotherapeutic devices, heat, cold, air, light, water, electricity, and sound, to prevent, correct, minimize, or alleviate an impairment;

3. Use of therapeutic exercises to prevent, correct, minimize, or alleviate an impairment;

4. Use of rehabilitative procedures to prevent, correct, minimize, or alleviate an impairment, including but not limited to the following procedures:

- Manual therapy, including soft-tissue and joint mobilization and manipulation;
- Therapeutic massage;
- Prescription, application, and fabrication of assistive, adaptive, orthotic, prosthetic, and supportive devices and equipment;
- Airway clearance techniques;
- Integumentary protection and repair techniques; and
- Debridement and wound care;

5. Interpretation of performances, tests, and measurements;

6. The establishment and modification of physical therapy programs;

7. The establishment and modification of treatment planning;

8. The establishment and modification of consultive services;

9. The establishment and modification of instructions to the patient, including but not limited to functional training relating to movement and mobility;

10. Participation, administration and supervision attendant to physical therapy and educational programs and facilities.

"PT" means physical therapist.

"PTA" means physical therapist assistant.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—200.15(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice physical therapy to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of physical and occupational therapy to license persons who have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

645—200.2(147) Requirements for licensure. The following criteria shall apply to licensure:

200.2(1) The applicant shall complete a board-approved application. Application forms may be obtained from the board's website (www.idph.iowa.gov/licensure) or directly from the board office, or the applicant may complete the application online at ibplicense.iowa.gov. All paper applications shall be sent to the Board of Physical and Occupational Therapy, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

200.2(2) The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

200.2(3) Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Physical and Occupational Therapy. The fees are nonrefundable.

200.2(4) No application will be considered by the board until official copies of academic transcripts sent directly from the school to the board of physical and occupational therapy have been received by the board. An applicant shall have successfully completed a physical therapy education program accredited by a national accreditation agency approved by the board.

200.2(5) The applicant shall submit two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). The cost of the criminal history background check by the DCI and the FBI shall be assessed to the applicant.

200.2(6) Notification of eligibility for the examination shall be sent to the applicant by the board.

200.2(7) The candidate shall have the examination score sent directly from the testing service to the board.

200.2(8) Licensees who were issued their initial licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

200.2(9) Submitting complete application materials. An application for a physical therapist or physical therapist assistant license will be considered active for two years from the date the application is received. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license, the application shall be considered incomplete. An applicant whose application is filed incomplete must submit a new application, supporting materials, and the application fee. The board shall destroy incomplete applications after two years.

[**ARC 3445C**, IAB 11/8/17, effective 12/13/17; **ARC 4102C**, IAB 10/24/18, effective 1/1/19]

645—200.3(147) Physical therapy compact. The rules of the physical therapy compact commission are incorporated by reference. A physical therapist or physical therapist assistant may engage in the practice of physical therapy in Iowa without a license issued by the board if the individual has a current compact privilege to practice in Iowa issued by the physical therapy compact commission. The state fee for issuance of a compact privilege to practice in Iowa shall be $60, which will be collected by the physical therapy compact commission. The state fee for issuance of a compact privilege to practice in Iowa shall be waived for an active duty military member or spouse of an individual who is an active duty military member. A physical therapist or physical therapist assistant who practices physical therapy in Iowa using a compact privilege is subject to the rules governing licensees in rule 645—200.6(147) and in 645—Chapters 201 and 202. Complaints, investigations, and disciplinary proceedings involving a compact privilege shall be handled in accordance with Iowa Code chapters 17A and 272C; 2018 Iowa Acts, House File 2425; and the rules in 645—Chapters 9, 11, 12, and 13.

[**ARC 4102C**, IAB 10/24/18, effective 1/1/19]

645—200.4(147) Examination requirements for physical therapists and physical therapist assistants. The following criteria shall apply to the written examination(s):

200.4(1) The applicant shall take and pass the National Physical Therapy Examination (NPTE) or other nationally recognized equivalent examination as defined by the board.

200.4(2) The applicant shall abide by the following criteria:

a. For examinations taken prior to July 1, 1994, satisfactory completion shall be defined as receiving an overall examination score exceeding 1.5 standard deviations below the national average.

b. For examinations completed after July 1, 1994, satisfactory completion shall be defined as receiving an overall examination score equal to or greater than the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

200.4(3) Before the board may approve an applicant for testing beyond three attempts, an applicant shall demonstrate evidence satisfactory to the board of having successfully completed additional coursework. The Federation of State Boards of Physical Therapy (FSBPT) determines the total number

of times an applicant may take the examination in a lifetime. The board will not approve an applicant for testing when the applicant has exhausted the applicant's lifetime opportunities for taking the examination, as determined by FSBPT.

200.4(4) The applicant shall be notified by the board in writing of examination results.

200.4(5) Special accommodations. To eliminate discrimination and guarantee fairness under Title II of the Americans with Disabilities Act (ADA), an individual who has a qualifying disability may request an examination accommodation.

a. Disability requirements. An applicant is an individual who has a physical or mental impairment that substantially limits that individual in one or more major life activities, who has a record of such a physical or mental disability, or who is regarded as having such a physical or mental impairment.

(1) Physical impairment, as defined by the ADA, means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(2) Mental impairment, as defined by the ADA, means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

b. To be considered an impairment that limits a major life activity, the disability shall impair an activity that an average person can perform with little or no difficulty, for example, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks, caring for oneself, working, sitting, standing, lifting, or reading.

c. To verify the accommodation, the applicant must submit appropriate documentation that uses professionally recognized criteria; that details how the disability leads to functional limitations; and that illustrates how the limitation or limitations inhibit the individual from performing one or more major life activities.

d. An evaluator shall on the documentation provide a signature, verify the diagnosis, verify the professionally recognized test/assessment, and recommend the accommodation. The evaluator shall be a licensed health care professional, including but not limited to a physician who practices in a field that includes, but may not be limited to, neurology, family practice, orthopedics, physical medical medicine and rehabilitation, and psychiatry; or a psychologist who performs evaluations to assess individuals for mental disorders that might impact those individuals' academic or testing performance.

e. An accommodation shall not give the individual an unfair advantage over others taking the examination, shall not change the purpose of the examination, and shall not guarantee that the individual will pass the examination.

f. The board and staff shall maintain confidentiality of all medical and diagnostic information and records.

[**ARC 0094C**, IAB 4/18/12, effective 5/23/12; **ARC 1659C**, IAB 10/15/14, effective 11/19/14; **ARC 2481C**, IAB 4/13/16, effective 5/18/16]

645—200.5(147) Educational qualifications.

200.5(1) The applicant must present proof of meeting the following requirements for licensure as a physical therapist or physical therapist assistant:

a. Educational requirements—physical therapists. Physical therapists shall graduate from a physical therapy program accredited by a national accreditation agency approved by the board.

b. Educational requirements—physical therapist assistants. Physical therapist assistants shall graduate from a PTA program accredited by a national accreditation agency approved by the board.

200.5(2) Foreign-trained applicants shall:

a. Submit an English translation and an equivalency evaluation of their educational credentials through the following organization: Foreign Credentialing Commission on Physical Therapy, Inc., 124 West Street South, Third Floor, Alexandria, VA 22314; telephone (703)684-8406; website www.fccpt.org. The credentials of a foreign-educated physical therapist or foreign-educated physical therapist assistant licensure applicant who does not hold a license in another state or territory of the

United States and is applying for licensure by taking the examination should be evaluated using the most current version of the Federation of State Boards of Physical Therapy (FSBPT) Coursework Tool (CWT). The credentials of a foreign-educated physical therapist or physical therapist assistant who has been a licensed PT or PTA under the laws of another jurisdiction should be evaluated using the version of the FSBPT CWT that covers the date the applicant graduated from the applicant's respective physical therapist or physical therapist assistant education program. The professional curriculum must be equivalent to the Commission on Accreditation in Physical Therapy Education standards. An applicant shall bear the expense of the curriculum evaluation.

b. Submit certified proof of proficiency in the English language by achieving on the Test of English as a Foreign Language (IBT-TOEFL) a total score of at least 89 on the Internet-based TOEFL as well as accompanying minimum scores in the four test components as follows: 24 in writing; 26 in speaking; 21 in reading comprehension; and 18 in listening comprehension. This examination is administered by Educational Testing Services, Inc., P.O. Box 6157, Princeton, NJ 08541-6157. An applicant shall bear the expense of the TOEFL examination. Applicants may be exempt from the TOEFL examination when the native language is English, physical therapy education was completed in a school approved by the Commission on Accreditation in Physical Therapy Education (CAPTE), language of instruction in physical therapy was English, language of the textbooks was English, and the applicant's transcript was in English.

c. Submit an official statement from each country's or territory's board of examiners or other regulatory authority regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicants shall request such statements from all entities in which they are currently or formerly licensed.

d. Receive a final determination from the board regarding the application for licensure.

[**ARC 9328B**, IAB 1/12/11, effective 2/16/11; **ARC 0094C**, IAB 4/18/12, effective 5/23/12; **ARC 3445C**, IAB 11/8/17, effective 12/13/17]

645—200.6(147) Delegation by a supervising physical therapist. A supervising physical therapist may delegate the performance of physical therapy services to a physical therapist assistant only if done in accordance with the statutes and rules governing the practice of physical therapy. A physical therapist assistant may assist in the practice of physical therapy only to the extent allowed by the supervising physical therapist. The supervisory requirements stated in this rule are minimal. It is the professional responsibility and duty of the supervising physical therapist to provide the physical therapist assistant with more supervision if deemed necessary in the supervising physical therapist's professional judgment.

200.6(1) *Supervision requirements.* A supervising physical therapist who delegates the performance of physical therapy services to a physical therapist assistant shall provide supervision to the physical therapist assistant at all times when the physical therapist assistant is providing delegated physical therapy services. Supervision means that the physical therapist shall be readily available on site or telephonically anytime the physical therapist assistant is providing physical therapy services so that the physical therapist assistant may contact the physical therapist for advice, assistance, or instruction.

200.6(2) *Functions that cannot be delegated.* The following are functions that only a physical therapist may provide and that cannot be delegated to a physical therapist assistant:

a. Interpretation of referrals;

b. Initial physical therapy evaluation and reevaluations;

c. Identification, determination, or modification of patient problems, goals, and plans of care;

d. Final discharge evaluation and establishment of a discharge plan;

e. Delegation of and instruction in the physical therapy services to be rendered by a physical therapist assistant or unlicensed assistive personnel including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures; and

f. Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated.

200.6(3) *Physical therapist responsibilities.* At all times, the supervising physical therapist shall be responsible for the physical therapy plan of care and for all physical therapy services provided, including

all physical therapy services delegated to a physical therapist assistant. In addition, the supervising physical therapist shall:

a. Be responsible for the evaluation and development of a plan of care for use by the physical therapist assistant; and

b. Not delegate a physical therapy service that exceeds the competency or skill set of the physical therapist assistant; and

c. Ensure that a physical therapist assistant holds an active physical therapist assistant license issued by the board; and

d. Ensure that a physical therapist assistant is aware of how the supervising physical therapist can be contacted telephonically when the physical therapist is not providing on-site supervision; and

e. Arrange for an alternate physical therapist to provide supervision when the physical therapist has scheduled or unscheduled absences during time periods in which a physical therapist assistant will be providing delegated physical therapy services; and

f. Ensure that a physical therapist assistant is informed when a patient's plan of care is transferred to a different supervising physical therapist; and

g. Directly participate in physical therapy services upon the physical therapist assistant's request for a reexamination, when a change in the plan of care is needed, prior to any planned discharge, and in response to a change in the patient's medical status; and

h. Hold regularly scheduled meetings with the physical therapist assistant to evaluate the physical therapist assistant's performance, assess the progress of a patient, and make changes to the plan of care as needed. The frequency of meetings should be determined by the supervising physical therapist based on the needs of the patient, the supervisory needs of the physical therapist assistant, and any planned discharge. The supervising physical therapist shall provide direction and instruction to the physical therapist assistant that are adequate to ensure the safety and welfare of the patient.

200.6(4) *Physical therapist assistant responsibilities.* A physical therapist assistant shall only provide physical therapy services under the supervision of a physical therapist. In addition, the physical therapist assistant shall:

a. Only provide physical therapy services that have been delegated by the supervising physical therapist; and

b. Only provide physical therapy services that are within the competency and skill set of the physical therapist assistant; and

c. Consult the supervising physical therapist if the physical therapist assistant believes that any procedure is not in the best interest of the patient; and

d. Contact the supervising physical therapist regarding any change or lack of change in a patient's condition that may require assessment by the supervising physical therapist; and

e. Refer inquiries that require interpretation to the supervising physical therapist; and

f. Ensure that the identification of the supervising physical therapist is included in the documentation for any visit when physical therapy services were provided by the physical therapist assistant; and

g. Only sign a treatment record if the provision of physical therapy services was done in accordance with the statutes and rules governing the practice of a physical therapist assistant.

200.6(5) *Ratio.* A physical therapist shall determine the number of physical therapist assistants who can be supervised safely and competently and shall not exceed that number; but in no case shall a physical therapist supervise more than four physical therapist assistants per calendar day. A physical therapist assistant who performs any delegated physical therapy services on behalf of the supervising physical therapist on a particular day shall be counted in determining the maximum ratio, regardless of the location of the physical therapist assistant or the number of patients treated.

200.6(6) *Minimum frequency of direct participation by a supervising physical therapist.* A supervising physical therapist shall use professional judgment to determine how frequently the physical therapist needs to directly participate in physical therapy services when delegating to a physical therapist assistant, the frequency of which shall be based on the needs of the patient. Direct participation can occur through an in-person or telehealth visit. The supervising physical therapist shall ensure that the

patient record clearly indicates which visits included direct participation by the supervising physical therapist. The following are the minimum standards, which are expected to be exceeded when dictated by the supervising physical therapist's professional judgment, for the required frequency of direct participation by the supervising physical therapist when physical therapy services involve delegation to a physical therapist assistant:

a. Hospital inpatient and skilled nursing. For hospital inpatients and skilled nursing patients, a supervising physical therapist must directly participate in physical therapy services a minimum of once per calendar week. A calendar week is defined as Sunday through Saturday.

b. All other settings. In all other settings, a supervising physical therapist must directly participate in the provision of physical therapy services at least every eighth visit or every 30 calendar days, whichever comes first.

200.6(7) *Unlicensed assistive personnel.* A physical therapist is responsible for patient care provided by unlicensed assistive personnel under the physical therapist's supervision. A physical therapist is responsible for ensuring the qualifications of any unlicensed assistive personnel and shall maintain written documentation of their education or training. Unlicensed assistive personnel may assist a physical therapist assistant in the delivery of physical therapy services only if the physical therapist assistant maintains in-sight supervision of the unlicensed assistive personnel and the physical therapist assistant is primarily and significantly involved in the patient's care. Unlicensed assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

a. The physical therapist has direct participation in the patient's treatment or evaluation, or both, each treatment day;

b. Unlicensed assistive personnel may provide independent patient care only while under the on-site supervision of the physical therapist;

c. Documentation made in a physical therapy record by unlicensed assistive personnel shall be cosigned by the physical therapist; and

d. The physical therapist provides periodic reevaluation of any unlicensed assistive personnel's performance in relation to the patient.

[**ARC 3876C**, IAB 7/4/18, effective 8/8/18]

645—200.7(147) Licensure by endorsement.

200.7(1) An applicant who has been a licensed PT or PTA under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

a. Submits to the board a completed application;

b. Pays the licensure fee;

c. Shows evidence of licensure requirements that are similar to those required in Iowa;

d. Submits a copy of the scores from the appropriate professional examination to be sent directly from the examination service to the board;

e. Submits two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). The cost of the criminal history background check by the DCI and the FBI shall be assessed to the applicant;

f. Provides official copies of the academic transcripts sent directly from the school to the board; and

g. 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:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license.

200.7(2) In addition to the requirements of 200.7(1), a physical therapist applicant shall:

a. Have completed 40 hours of board-approved continuing education during the immediately preceding two-year period; or

b. Have practiced as a licensed physical therapist for a minimum of 2,080 hours during the immediately preceding two-year period; or

c. Have served the equivalent of one year as a full-time faculty member teaching physical therapy in an accredited school of physical therapy for at least one of the immediately preceding two years; or

d. Have successfully passed the examination within a period of two years from the date of examination to the time application is completed for licensure.

200.7(3) In addition to the requirements of 200.7(1), a physical therapist assistant applicant shall:

a. Have completed 20 hours of board-approved continuing education during the immediately preceding two-year period; or

b. Have practiced as a licensed physical therapist assistant for a minimum of 2,080 hours during the immediately preceding two-year period; or

c. Have successfully passed the examination for physical therapist assistants within a period of one year from the date of examination to the time application for licensure is completed.

200.7(4) Individuals who were issued their licenses by endorsement within six months of the license renewal date will not be required to renew their licenses until the next renewal two years later.

200.7(5) An applicant for licensure under subrule 200.7(1) must include with this application a sworn statement of previous physical therapy practice from an employer or professional associate, detailing places and dates of employment and verifying that the applicant has practiced physical therapy at least 2,080 hours or taught as the equivalent of a full-time faculty member for at least one of the immediately preceding years during the last two-year time period.

200.7(6) Foreign-trained applicants applying for licensure by endorsement shall also meet the requirements outlined in subrule 200.5(2).

[**ARC 3445C**, IAB 11/8/17, effective 12/13/17; **ARC 4102C**, IAB 10/24/18, effective 1/1/19]

645—200.8(147) Licensure by reciprocal agreement. Rescinded IAB 12/17/08, effective 1/21/09.

645—200.9(147) License renewal.

200.9(1) The biennial license renewal period for a license to practice as a physical therapist or physical therapist assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later. 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.

200.9(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 two years later.

200.9(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—203.2(148A) and the mandatory reporting requirements of subrule 200.9(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.

200.9(4) Mandatory reporter training requirements.

a. A licensee who in the scope of professional practice regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years of condition(s) for waiver of this requirement as identified in paragraph *"e."*

b. A licensee who in the scope of professional practice regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

c. A licensee who in the scope of professional practice regularly examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirements as identified in paragraph *"e."*

Training may be completed through separate courses as identified in paragraphs *"a"* and *"b"* or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs *"a"* to *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

f. The board may select licensees for audit of compliance with the requirements in paragraphs *"a"* to *"e."*

200.9(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.

200.9(6) Persons licensed to practice as physical therapists or physical therapist assistants shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

200.9(7) Late renewal. The license shall become a late license 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 5.13(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

200.9(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 physical therapist or a physical therapist assistant in Iowa until the license is reactivated. A licensee who practices as a physical therapist or a physical therapist assistant 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 0094C**, IAB 4/18/12, effective 5/23/12]

645—200.10(272C) Exemptions for inactive practitioners. Rescinded IAB 9/14/05, effective 10/19/05.

645—200.11(272C) Lapsed licenses. Rescinded IAB 9/14/05, effective 10/19/05.

645—200.12(147) Duplicate certificate or wallet card. Rescinded IAB 12/17/08, effective 1/21/09.

645—200.13(147) Reissued certificate or wallet card. Rescinded IAB 12/17/08, effective 1/21/09.

645—200.14(17A,147,272C) License denial. Rescinded IAB 12/17/08, effective 1/21/09.

645—200.15(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

200.15(1) Submit a reactivation application on a form provided by the board.

200.15(2) Pay the reactivation fee that is due as specified in 645—subrule 5.13(5).

200.15(3) Provide verification of current competence to practice physical therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 20 hours of continuing education for a physical therapy assistant and 40 hours of continuing education for a physical therapist 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 40 hours of continuing education for a physical therapy assistant and 80 hours of continuing education for a physical therapist within two years of application for reactivation; or evidence of successful completion of the professional examination required for initial licensure completed within one year prior to the submission of an application for reactivation.

645—200.16(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 200.15(17A,147,272C) prior to practicing physical therapy in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148A and 272C.

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◊ Two or more ARCs

DENTAL BOARD[650]

[Prior to 5/18/88, Dental Examiners, Board of[320]]

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CHAPTER 26
ADVERTISING
[Prior to 5/18/88, Dental Examiners, Board of [320]]

650—26.1(153) General. Communications by inclusion or omission to the public must be accurate. They must not convey false, untrue, deceptive, or misleading information through statements, testimonials, photographs, graphics or other means. Communications must not appeal to an individual's anxiety in an excessive or unfair way; and they must not create unjustified expectations of results. If communications refer to benefits or other attributes of dental procedures or products that involve significant risks, realistic assessments of the safety and efficacy of those procedures or products must also be included, as well as the availability of alternatives and, where necessary to avoid deception, descriptions or assessments of the benefits or other attributes of those alternatives. Communications must not misrepresent a dentist's credentials, training, experience or ability, and must not contain material claims of superiority that cannot be substantiated.

There are several areas that the board believes to be susceptible to deceptive or misleading statements. While the board does not intend to discourage dentists from engaging in any form of truthful, nondeceptive advertising, dentists engaging in the type of advertising listed below shall take special care to ensure that their ads are consistent with these rules.

26.1(1) Claims that the service performed or the materials used are professionally superior to that which is ordinarily performed or used or that convey the message that one licensee is better than another when superiority of service or materials cannot be substantiated.

26.1(2) The use of an unearned or nonhealth degree in general announcements to the public.

26.1(3) The use of attainment of an honorary fellowship in an advertisement. An honorary fellowship does not include an award based on merit, study or research. However, the attainment of the fellowship status may be indicated in scientific papers, curriculum vitae, third party payment forms, and letterhead and stationery which is not used for the direct solicitation of patients.

26.1(4) Promotion of a professional service which the dentist knows or should know is beyond the dentist's ability to perform.

26.1(5) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective patient.

26.1(6) The use of any personal testimonial attesting to a quality of competence of a service or treatment offered by a licensee that is not reasonably verifiable.

26.1(7) Utilizing any statistical data or other information based on past performance or predication of future success, which creates an unjustified expectation about results that the dentist can achieve.

26.1(8) The communication of personally identifiable facts, data, or information about a patient without first obtaining patient consent.

26.1(9) Any misrepresentation of a material fact.

26.1(10) The knowing suppression, omission or concealment of any material fact or law without which the communication would be deceptive.

26.1(11) Any communication which creates an unjustified expectation concerning the potential result of any dental treatment.

26.1(12) Where the circumstances indicate "bait and switch" advertising, the board may require the advertiser to furnish to the board data or other evidence pertaining to those sales at the advertised price as well as other sales. Where the circumstances indicate deceptive advertising, the board will initiate an investigation or disciplinary action as warranted.

650—26.2(153) Requirements. The board may require a dentist to substantiate the truthfulness of any assertion or representation of material fact set forth in an advertisement.

26.2(1) At the time an advertisement is placed, the dentist must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission, or representation of material fact set forth in the advertisement.

26.2(2) The failure to possess and rely upon the information required in subrule 26.2(1) at the time the advertisement is placed shall be deemed professional misconduct.

26.2(3) The failure or refusal to provide the factual substantiation to support a representation or assertion when requested by the board shall be deemed professional misconduct.

650—26.3(153) Fees. Advertising that states a fee must clearly define the professional service being offered in the advertisement. Advertised offers shall be presumed to include everything ordinarily required for such a service.

650—26.4(153) Public representation. All advertisements and public representations shall contain the name and address or telephone number of the practitioner who placed the ad.

26.4(1) If one's practice is referred to in the advertisement, the ad may state either "general/family practice" or "specialist," "specializes," or "specializing." A dentist advertising or representing oneself as a specialist must comply with the other provisions of this rule.

26.4(2) A dentist may advertise as a specialist if the dentist meets the standards set forth in this rule.

a. The dentist wishing to advertise as a specialist must be a diplomate of, or board-eligible for, a national certifying board of a specialty recognized by the American Dental Association (ADA), or a diplomate of a board recognized by the American Board of Dental Specialties (ABDS); and

b. The indicated area of specialty must be board-approved. Board-approved ADA specialties are as follows: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics and oral and maxillofacial radiology. Board-approved ABDS specialties are as follows: oral implantology/implant dentistry, oral medicine, orofacial pain, and anesthesiology.

26.4(3) A certifying board may apply for a new area of specialty to become board-approved by submitting information regarding the area of specialty, including an explanation of how the proposed specialty is within the scope of practice of dentistry in Iowa, and proof of the following:

a. The proposed specialty is separate and distinct from any preexisting specialty recognized by the board or combination of board-recognized dental specialties;

b. The proposed specialty is a distinct and well-defined field which requires unique knowledge and skills beyond those commonly possessed by dental school graduates;

c. The certifying board is an independent entity that is comprised of licensed dentists, whose membership is reflective of the proposed specialty, and that is incorporated and governed solely by the licensed dentists/board members;

d. The certifying board has a permanent headquarters and staff;

e. The certifying board has issued diplomate certificates to licensed dentists for at least five years;

f. The certifying board requires passing an oral and written examination based on psychometric principles that tests the applicant's knowledge and skill in the proposed specialty;

g. The certifying board requires all dentists who seek certification in the proposed specialty to have successfully completed a specified, objectively verifiable amount of post-DDS or -DMD education and experience that is appropriate for the proposed specialty area, as determined by the board; and

h. The certifying board's website that includes online resources for the consumer to verify the certifying board's certification requirements and a list of the names and addresses of the dentists who have been awarded certification by the board shall be made available for public access.

26.4(4) The use of the terms "specialist," "specializes," "orthodontist," "oral and maxillofacial surgeon," "oral and maxillofacial radiologist," "periodontist," "pediatric dentist," "prosthodontist," "endodontist," "oral pathologist," "public health dentist," "dental anesthesiologist," or other similar terms which imply that the dentist is a specialist may only be used by a licensed dentist meeting the requirements of this rule. A dentist who advertises as a specialist must avoid any implication that other dentists associated with the same practice are specialists unless the dentists also meet all of the requirements of this rule.

26.4(5) The term "diplomate" or "board-certified" may only be used by a dentist who has successfully completed the qualifying examination of the appropriate certifying board of one or more of the specialties recognized by the ADA or the ABDS, or as otherwise permitted pursuant to these rules.

26.4(6) A dentist advertising as a specialist pursuant to these rules shall include the name of the national certifying board and the name of the entity which recognizes the board in the advertisement.

26.4(7) A dentist may advertise the areas in which the dentist practices, including, but not limited to, specialty services, using other descriptive terms such as "emphasis on _____" or other similar terms, as long as all other provisions of these rules regarding advertising are met.

[**ARC 4099C**, IAB 10/24/18, effective 11/28/18]

650—26.5(153) Responsibility. Each professional who is a principal partner, officer, or licensed professional employee, acting as an agent of the firm or entity identified in the advertisement, is jointly and severally responsible for the form and content of any advertisement offering services or materials.

650—26.6(153) Advertisement records. A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media indicating the date and place of the advertisement shall be retained by the dentist for a period of two years and be made available for review upon request by the board or its designee.

These rules are intended to implement Iowa Code sections 153.33 and 153.34.

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CHAPTER 28
DESIGNATION OF SPECIALTY

[Prior to 5/18/88, Dental Examiners, Board of[320]]

Rescinded **ARC 4099C**, IAB 10/24/18, effective 11/28/18

CHAPTER 11
CONTINUING EDUCATION AND TRAINING REQUIREMENTS

[Prior to 5/4/88, see 470—135.101 to 470—135.110 and 135.501 to 135.512]

653—11.1(272C) Definitions.

"ABMS" means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

"Accredited provider" means an organization approved as a provider of category 1 credit by one of the following board-approved accrediting bodies: Accreditation Council for Continuing Medical Education, Iowa Medical Society, or the Council on Continuing Medical Education of the AOA.

"Active duty" means full-time training or active service in the U.S. armed forces, reserves or national guard.

"Active licensee" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in Iowa who has met all conditions of licensure and maintains a current license to practice in Iowa.

"AMA" means the American Medical Association, a professional organization of physicians and surgeons.

"AOA" means the American Osteopathic Association, which is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

"Approved abuse education training program" means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by a hospital, a professional organization for physicians, or the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

"Approved program or credit" means any category 1 credit offered by an accredited provider or any other program or credit meeting the standards set forth in these rules.

"Board" means the Iowa board of medicine.

"Carryover" means hours of category 1 credit earned in excess of the required hours in a license period that may be applied to the continuing education requirement in the subsequent license period; carryover may not exceed 20 hours of category 1 credit per renewal cycle.

"Category 1 credit" means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of the AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credits by the American Academy of Family Physicians are accepted as equivalent to category 1 credits.

"Committee" means the licensure committee of the board.

"COMVEX-USA" means the Comprehensive Osteopathic Medical Variable-Purpose Examination for the United States of America. The National Board of Osteopathic Medical Examiners prepares the examination and determines its passing score. A licensing authority in any jurisdiction administers the examination. COMVEX-USA is the current evaluative instrument offered to osteopathic physicians who need to demonstrate current osteopathic medical knowledge.

"Continuing education" means education that is acquired by a licensee in order to maintain, improve, or expand skills and knowledge present at initial licensure or to develop new and relevant skills and knowledge.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at or completion of an approved category 1 credit.

"Inactive license" means any license that is not a current, active license. Inactive license may include licenses formerly known as delinquent, lapsed, or retired. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated.

"Licensee" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in the state of Iowa.

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

"SPEX" means Special Licensure Examination prepared by the Federation of State Medical Boards and administered by a licensing authority in any jurisdiction. The passing score on SPEX is 75.

"Training for chronic pain management" means required training on chronic pain management identified in 653—Chapter 11.

"Training for end-of-life care" means required training on end-of-life care identified in 653—Chapter 11.

"Training for identifying and reporting abuse" means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on reporting of child abuse and the training requirements are in Iowa Code section 232.69; the full requirements on reporting of dependent adult abuse and the training requirements are in Iowa Code section 235B.16.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11; **ARC 0217C**, IAB 7/25/12, effective 8/29/12; **ARC 0871C**, IAB 7/24/13, effective 8/28/13]

653—11.2(272C) Continuing education credit and alternatives.

11.2(1) Continuing education credit may be obtained by attending category 1 credits as defined in this chapter.

11.2(2) The board shall accept the following as equivalent to 50 hours of category 1 credit: participation in an approved resident training program or board certification or recertification by an ABMS or AOA specialty board within the licensing period.

11.2(3) The board shall in January of each year recognize the equivalent of up to 10 hours of category 1 credits for physicians who actively served as members or alternate members of the Iowa board of medicine during the previous year; for physicians who actively served as members of the Iowa physician health committee during the previous year; and for physicians who performed peer reviews for the board during the previous year. The physicians receiving recognition of category 1 credit equivalents will be notified by U.S. mail in January by the executive director of the board.

[**ARC 0217C**, IAB 7/25/12, effective 8/29/12]

653—11.3(272C) Accreditation of providers. The board approves the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, and the Council on Continuing Medical Education of the AOA as organizations acceptable to accredit providers of category 1 credits.

[**ARC 0217C**, IAB 7/25/12, effective 8/29/12]

653—11.4(272C) Continuing education and training requirements for renewal or reinstatement. A licensee shall meet the requirements in this rule to qualify for renewal of a permanent license, an administrative medicine license, or special license or to qualify for reinstatement of a permanent license or an administrative medicine license.

11.4(1) *Continuing education and training requirements.*

a. Continuing education for permanent license or administrative medicine license renewal. Except as provided in these rules, a total of 40 hours of category 1 credit or board-approved equivalent shall be required for biennial renewal of a permanent license or an administrative medicine license. This may include up to 20 hours of credit carried over from the previous license period and category 1 credit acquired within the current license period.

(1) To facilitate license renewal according to birth month, a licensee's first license may be issued for less than 24 months. The number of hours of category 1 credit required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 credit, on the renewal application.

b. Continuing education for special license renewal. A total of 20 hours of category 1 credit shall be required for annual renewal of a special license. No carryover hours are allowed.

c. Training for identifying and reporting child and dependent adult abuse for permanent or special license renewal. The licensee in Iowa shall complete the training for identifying and reporting child and dependent adult abuse as part of a category 1 credit or an approved training program. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)*"a."*

(1) Training to identify child abuse. A licensee who regularly provides primary health care to children in Iowa must complete at least two hours of training in child abuse identification and reporting every five years. "A licensee who regularly provides primary health care to children" means all emergency physicians, family physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who regularly provides primary health care to adults in Iowa must complete at least two hours of training in dependent adult abuse identification and reporting every five years. "A licensee who regularly provides primary health care to adults" means all emergency physicians, family physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

(3) Combined training to identify child and dependent adult abuse. A licensee who regularly provides primary health care to adults and children in Iowa must complete at least two hours of training in the identification and reporting of abuse in dependent adults and children every five years. The training may be completed through separate courses as identified in subparagraphs 11.4(1)*"c"*(1) and (2) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. "A licensee who regularly provides primary health care to children and adults" means all emergency physicians, family physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.

d. Training for chronic pain management for permanent or special license renewal. Rescinded by 2018 Iowa Acts, House File 2377, section 23, effective 7/1/18.

e. Training for end-of-life care for permanent or special license renewal. The licensee shall complete the training for end-of-life care as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)*"a."*

(1) A licensee who regularly provides primary health care to patients in Iowa must complete at least two hours of category 1 credit for end-of-life care every five years. "A licensee who regularly provides primary health care to patients" means all emergency physicians, family physicians, general practice physicians, internists, neurologists, pain medicine specialists, psychiatrists, and any other physician who regularly provides primary health care to patients.

(2) A licensee who had a permanent license on August 17, 2011, has until August 17, 2016, to complete the end-of-life care training, and shall then complete the training once every five years thereafter.

11.4(2) *Exemptions from renewal requirements.*

a. A licensee shall be exempt from the continuing education requirements in subrule 11.4(1) when, upon license renewal, the licensee provides evidence for:

(1) Periods that the licensee served honorably on active duty in the U.S. armed forces, reserves or national guard;

(2) Periods that the licensee practiced in another state or district and did not provide medical care, including telemedicine services, to patients located in Iowa, if the other state or district had continuing education requirements for the profession and the licensee met all requirements of that state or district for practice therein;

(3) Periods that the licensee was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

(4) Other periods of active practice and absence from the state approved by the board.

b. The requirements for training on identifying and reporting abuse, chronic pain management and end-of-life care for license renewal shall be suspended for a licensee who provides evidence for:

(1) Periods described in subparagraph 11.4(2)*"a"*(1), (2), (3), or (4); or

(2) Periods that the licensee resided outside of Iowa and did not practice in Iowa.

11.4(3) *Extension for completion of or exemption from renewal requirements.* The board may, in individual cases involving physical disability or illness, grant an extension of time for completion of, or an exemption from, the renewal requirements in subrule 11.4(1).

a. A licensee requesting an extension or exemption shall complete and submit a request form to the board that sets forth the reasons for the request and has been signed by the licensee and attending physician.

b. The board may grant an extension of time to fulfill the requirements in subrule 11.4(1).

c. The board may grant an exemption from the educational requirements for any period of time not to exceed one calendar year.

d. If the physical disability or illness for which an extension or exemption was granted continues beyond the period of waiver, the licensee must reapply for a continuance of the extension or exemption.

e. The board may, as a condition of any extension or exemption granted, require the applicant to make up a portion of the continuing education requirement by methods it prescribes.

11.4(4) *Reinstatement requirement.* An applicant for license reinstatement whose license has been inactive for one year or more shall provide proof of successful completion of 40 hours of category 1 credit completed within 24 months prior to submission of the application for reinstatement or proof of successful completion of SPEX or COMVEX-USA within one year immediately prior to the submission of the application for reinstatement.

11.4(5) *Cost of continuing education and training for renewal or reinstatement.* Each licensee is responsible for all costs of continuing education and training required in 653—Chapter 11.

11.4(6) *Documentation.* A licensee shall maintain documentation of the continuing education and training requirements in 653—Chapter 11, including dates, subjects, duration of programs, and proof of participation, for five years after the date of the continuing education and training.

11.4(7) *Audits.* The board may audit continuing education and training documentation at any time within the five-year period. If the board conducts an audit of continuing education and training, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one has been granted.

11.4(8) *Grounds for discipline.* A licensee may be subject to disciplinary action for failure to comply with continuing education and training requirements in 653—Chapter 11.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11; **ARC 0217C**, IAB 7/25/12, effective 8/29/12; **ARC 0871C**, IAB 7/24/13, effective 8/28/13; **ARC 2523C**, IAB 5/11/16, effective 6/15/16; see Rescission note at end of chapter]

653—11.5(272C) Failure to fulfill requirements for continuing education and training for identifying and reporting abuse.

11.5(1) Disagreement over whether material submitted fulfills the requirements specified in rule 653—11.4(272C).

a. Staff will attempt to work with a licensee or applicant to resolve any discrepancy concerning credit for renewal or reinstatement.

b. When resolution is not possible, staff shall refer the matter to the committee.

(1) In the matter of a licensee seeking license renewal, staff shall renew the license if all other matters are in order and inform the licensee that the matter is being referred to the committee.

(2) In the matter of an applicant seeking reinstatement, staff shall reinstate the license if all other matters are in order and inform the applicant that the matter is being referred to the committee.

c. The committee shall consider the staff's recommendation for denial of credit for continuing education or training for identifying and reporting abuse, chronic pain management, and end-of-life care.

(1) If the committee approves the credit, it shall authorize the staff to inform the licensee or applicant that the matter is resolved.

(2) If the committee disapproves the credit, it shall refer the matter to the board with a recommendation for resolution.

d. The board shall consider the committee's recommendations.

(1) If the board approves the credit, it shall authorize the staff to notify the licensee or applicant for reinstatement if all other matters are in order.

(2) If the board denies the credit, it shall:

1. Close the case;

2. Send the licensee or applicant an informal, nonpublic letter of warning, which may include recommended terms for complying with the requirements for continuing education or training; or

3. File a statement of charges for noncompliance with the board's rules on continuing education or training and for any other violations which may exist.

11.5(2) Informal appearance for failure to complete requirements for continuing education or training.

a. The licensee or applicant may, within ten days after the date that the notification of the denial was sent by certified mail, request an informal appearance before the board.

b. At the informal appearance, the licensee or applicant will have the opportunity to present information, and the board will issue a written decision.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11; **ARC 0217C**, IAB 7/25/12, effective 8/29/12]

653—11.6(17A,147,148E,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

These rules are intended to implement Iowa Code chapters 147 and 272C and sections 232.69 and 235B.16.

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[1] Paragraph 11.4(1)“d” rescinded by 2018 Iowa Acts, House File 2377, section 23, effective 7/1/18.

CHAPTER 10
CONTROLLED SUBSTANCES
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 8]

657—10.1(124) Purpose and scope. This chapter establishes the minimum standards for any activity that involves controlled substances. Any person or business that manufactures; distributes; dispenses; prescribes; conducts instructional activities, research, or chemical analysis with; or imports or exports controlled substances listed in Schedules I through V of Iowa Code chapter 124 in or into the state of Iowa, or that proposes to engage in such activities, shall obtain and maintain a registration issued by the board unless exempt from registration pursuant to rule 657—10.8(124). A person or business required to be registered shall not engage in any activity for which registration is required until the application for registration is granted and the board has issued a certificate of registration to such person or business. A registration is not transferable to any person or business.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.2(124) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Authorized collection program" means a program administered by a registrant that has modified its registration with DEA to collect controlled substances for the purpose of disposal. Federal regulations for such programs can be found at www.deadiversion.usdoj.gov/drug_disposal/. Modification to the registrant's Iowa controlled substances Act registration shall not be required.

"Board" means the Iowa board of pharmacy.

"CSA" means the Iowa uniform controlled substances Act.

"CSA registration" or *"registration"* means the registration issued by the board pursuant to the CSA that signifies the registrant's authorization to engage in registered activities with controlled substances.

"DEA" means the United States Department of Justice, Drug Enforcement Administration.

"Individual practitioner" means a physician or surgeon (M.D.), osteopathic physician or surgeon (D.O.), dentist (D.D.S. or D.M.D.), doctor of veterinary medicine (D.V.M.), podiatric physician (D.P.M.), optometrist (O.D.), physician assistant (P.A.), resident physician, advanced registered nurse practitioner (A.R.N.P.), or prescribing psychologist.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.3(124) Who shall register. The following persons or businesses shall register on forms provided by the board:

1. Manufacturers, distributors, importers, and exporters located in Iowa. Effective January 1, 2018, nonresident manufacturers, distributors, importers, and exporters distributing controlled substances into Iowa.
2. Reverse distributors located in Iowa. Effective January 1, 2018, nonresident reverse distributors engaging in the transfer of controlled substances with registrants located in Iowa.
3. Individual practitioners located in Iowa who are administering, dispensing, or prescribing controlled substances and individual practitioners located outside of Iowa who are dispensing or prescribing controlled substances via telehealth services to patients located in Iowa.
4. Pharmacies located in Iowa that are dispensing controlled substances. Effective January 1, 2018, pharmacies located outside of Iowa that are delivering controlled substances to patients located in Iowa.
5. Hospitals located in Iowa that are administering or dispensing controlled substances. Effective January 1, 2018, hospitals located outside of Iowa that are administering or dispensing controlled substances to patients located in Iowa.
6. Emergency medical service programs that are administering controlled substances to patients located in Iowa.
7. Care facilities that are located in Iowa.
8. Researchers, analytical laboratories, and teaching institutions that are located in Iowa.
9. Animal shelters and dog training facilities that are located in Iowa.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.4 Reserved.

657—10.5(124) Application. Applicants for initial registration, registration renewal pursuant to rule 657—10.6(124), or modifications pursuant to rule 657—10.9(124) shall complete the appropriate application and shall include all required information and attachments. Each registration application shall require submission of a $90 registration fee except as provided in subrule 10.5(3).

10.5(1) *Signature requirements.* Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

a. If the applicant is an individual practitioner, the practitioner shall sign the application and supporting documents.

b. If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location.

10.5(2) *Submission of multiple applications.* Any person or business required to obtain more than one registration pursuant to rule 657—10.7(124) or 657—10.8(124) may submit all applications in one package. Each application shall be complete and shall not refer to any accompanying application or any attachment to an accompanying application for required information.

10.5(3) *Registration fee exemptions.* The registration fee is waived for federal, state, and local law enforcement agencies and for the following federal and state institutions: hospitals, health care or teaching institutions, and analytical laboratories authorized to possess, manufacture, distribute, and dispense controlled substances in the course of official duties. In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall maintain a registration to conduct chemical analysis (analytical laboratory). Such laboratories shall be exempt from any registration fee. Exemption from payment of any fees as provided in this subrule does not relieve the entity of registration or of any other requirements or duties prescribed by law.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.6(124) Registration renewal. Each registration shall be renewed prior to its biennial expiration. A registrant may renew its registration up to 60 days prior to the registration expiration. The fee for registration renewal shall be $90.

10.6(1) *Delinquent registration grace period.* A registration that is not renewed prior to the first day of the month following expiration shall be delinquent. A registrant may continue operations within the first 30 days following expiration while the license is delinquent if the registrant is in the process of renewing the registration. Failure to renew a registration prior to the first day of the month following expiration, but when submitting a completed renewal application within the 30 days following expiration, shall require payment of the renewal fee and a penalty fee of $90.

10.6(2) *Delinquent registration reactivation beyond grace period.* If a registration renewal application is not postmarked or hand-delivered to the board office within 30 days following its expiration date, the registrant may not conduct operations that involve controlled substances until the registrant reactivates the registration. A registrant may apply for reactivation by submitting a registration application for reactivation and a $360 fee. As part of the reactivation application, the registrant shall disclose the activities conducted with respect to controlled substances while the registration was expired. A registrant that continues to conduct activities with respect to controlled substances without an active registration may be subject to disciplinary sanctions.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.7(124) Separate registration for independent activities; coincident activities. The following activities are deemed to be independent of each other and shall require separate registration. Any person or business engaged in more than one of these activities shall be required to separately register for each independent activity, provided, however, that registration in an independent activity shall authorize the registrant to engage in activities identified coincident with that independent activity.

10.7(1) *Manufacturing controlled substances.* A person or business registered to manufacture controlled substances in Schedules I through V may distribute any substances for which registration to manufacture was issued. A person or business registered to manufacture controlled substances in Schedules II through V may conduct chemical analysis and preclinical research, including quality control analysis, with any substances listed in those schedules for which the person or business is registered to manufacture.

10.7(2) *Distributing controlled substances.* This independent activity includes the delivery, other than by administering or dispensing, of controlled substances listed in Schedules I through V. No coincident activities are authorized.

10.7(3) *Dispensing, administering, prescribing, or instructing with controlled substances.* These independent activities include, but are not limited to, prescribing, administering, and dispensing by individual practitioners; dispensing by pharmacies and hospitals; and conducting instructional activities with controlled substances listed in Schedules II through V. A person or business registered for these independent activities may conduct research and instructional activities with those substances for which the person or business is registered to the extent authorized under state law. If an entity that engages in the distribution, administration, dispensing, or storing of controlled substances maintains multiple licenses, such as a hospital that has both inpatient and outpatient pharmacies, a separate registration shall be maintained for each license.

10.7(4) *Conducting research with controlled substances listed in Schedule I.* A researcher may manufacture or import the substances for which registration was issued provided that such manufacture or import is permitted under the federal DEA registration. A researcher may distribute the substances for which registration was issued to persons or businesses registered or authorized to conduct research with that class of substances or registered or authorized to conduct chemical analysis with controlled substances.

10.7(5) *Conducting research with controlled substances listed in Schedules II through V.* A researcher may conduct chemical analysis with controlled substances in those schedules for which registration was issued, may manufacture such substances if and to the extent such manufacture is permitted under the federal DEA registration, and may import such substances for research purposes. A researcher may distribute controlled substances in those schedules for which registration was issued to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempt from registration pursuant to Iowa Code section 124.302(3), and may conduct instructional activities with controlled substances.

10.7(6) *Conducting chemical analysis with controlled substances.* A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code section 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

10.7(7) *Importing or exporting controlled substances.* A person or business registered to import controlled substances listed in Schedules I through V may distribute any substances for which such registration was issued.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.8(124) Separate registrations for separate locations; exemption from registration. A separate registration is required for each principal place of business or professional practice location where controlled substances are manufactured, distributed, imported, exported, dispensed, stored, or collected for the purpose of disposal unless the person or business is exempt from registration pursuant to Iowa Code section 124.302(3), this rule, or federal regulations.

10.8(1) *Warehouse.* A warehouse where controlled substances are stored by or on behalf of a registered person or business shall be exempt from registration except as follows:

a. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to registered locations other than the registered location from which the substances were delivered to the warehouse.

b. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to persons exempt from registration pursuant to Iowa Code section 124.302(3).

10.8(2) *Sales office.* An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised shall be exempt from registration. Such office shall not contain controlled substances, except substances used for display purposes or for lawful distribution as samples, and shall not serve as a distribution point for filling sales orders.

10.8(3) *Prescriber's office.* An office used by a prescriber who is registered at another location and where controlled substances are prescribed but where no supplies of controlled substances are maintained shall be exempt from registration. However, a prescriber who practices at more than one office location where controlled substances are administered or otherwise dispensed as a regular part of the prescriber's practice shall register at each location wherein the prescriber maintains supplies of controlled substances.

10.8(4) *Prescriber in hospital.* A prescriber who is registered at another location and who treats patients and may order the administration of controlled substances in a hospital other than the prescriber's registered practice location shall not be required to obtain a separate registration at the location of the hospital.

10.8(5) *Affiliated interns, residents, or foreign physicians.* An individual practitioner who is an intern, resident, or foreign physician may dispense and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom the practitioner is employed provided that:

a. The hospital or other institution by which the individual practitioner is employed has determined that the practitioner is permitted to dispense or prescribe drugs by the appropriate licensing board.

b. Such individual practitioner is acting only in the scope of employment or practice in the hospital, institution, internship program, or residency program.

c. The hospital or other institution authorizes the intern, resident, or foreign physician to dispense or prescribe under the hospital registration and designates a specific internal code number, letters, or combination thereof which shall be appended to the institution's DEA registration number, preceded by a hyphen (e.g., AP1234567-10 or AP1234567-12).

d. The hospital or institution maintains a current list of internal code numbers identifying the corresponding individual practitioner, available for the purpose of verifying the authority of the prescribing individual practitioner.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.9(124) Modification or termination of registration. A registered individual or business shall apply to modify a current registration as provided by this rule.

10.9(1) *Change of substances authorized.* Any registrant shall apply to modify the substances authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, registration number, and the substances or schedules to be added to or removed from the registration and shall be signed by the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

10.9(2) *Change of address of registered location.*

a. Individual practitioner or researcher. An entity registered as an individual practitioner or researcher shall apply to change the address of the registered location by submitting a written request to the board. The request shall include the registrant's name, current address, new address, telephone number, effective date of the address change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter. An entity registered as a pharmacy, hospital, care

facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the address of the registered location by submitting a completed application and fee for registration as provided in rule 657—10.5(124).

10.9(3) *Change of registrant's name.*

a. Individual practitioner or researcher. An entity registered as an individual practitioner or researcher shall apply to change the registrant's name by submitting a written request to the board. The request shall include the registrant's current name, new name, address, telephone number, effective date of the name change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification. Change of name, as used in this paragraph, refers to a change of the legal name of the registrant and does not authorize the transfer of a registration issued to an individual practitioner or researcher to another individual practitioner or researcher.

b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter. An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the registrant name by submitting a completed application and fee for registration as provided in rule 657—10.5(124).

10.9(4) *Change of ownership of registered business entity.* A change of immediate ownership of a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the submission of a completed application and fee for registration as provided in rule 657—10.5(124).

10.9(5) *Change of responsible individual.* Any registrant, except an individual practitioner or researcher or a pharmacy or hospital, shall apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, and telephone number; the name and title of the current responsible individual and of the new responsible individual; the effective date of the change; and the registration number and shall be signed by the new responsible individual. No fee shall be required for the modification.

a. Individual practitioners and researchers. Responsibility under a registration issued to an individual practitioner or researcher shall remain with the named individual practitioner or researcher. The responsible individual under such registration may not be changed or transferred.

b. Pharmacies and hospitals. The responsible pharmacist may execute a power of attorney for DEA order forms to change responsibility under the registration issued to the pharmacy or hospital. The power of attorney shall include the name, address, DEA registration number, and CSA registration number of the registrant. The power of attorney shall identify the current and new responsible individuals and shall authorize the new responsible individual to execute applications and official DEA order forms to requisition Schedule II controlled substances. The power of attorney shall be signed by both individuals, shall be witnessed by two adults, and shall be maintained by the registrant and available for inspection or copying by representatives of the board or other state or federal authorities. The responsible individual may be changed on the CSA registration by submission of a completed application and fee for registration as provided in rule 657—10.5(124).

10.9(6) *Termination of registration.* A registration issued to an individual or business shall terminate when the registered individual or business ceases legal existence, discontinues business, or discontinues professional practice. A registration issued to an individual shall terminate upon the death of the individual.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.10(124) Denial, modification, suspension, or revocation of registration.

10.10(1) *Grounds for suspension or revocation.* The board may suspend or revoke any registration upon a finding that the registrant:

a. Has furnished false or fraudulent material information in any application filed under this chapter.

b. Has had the registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended or revoked.

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though entry of the judgment or sentence has been withheld and the individual has been placed on probation.

d. Has committed such acts as would render the registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section.

e. Has been subject to discipline by the registrant's respective professional licensing board and the discipline revokes or suspends the registrant's professional license or otherwise disciplines the registrant's professional license in a way that restricts the registrant's authority to handle or prescribe controlled substances. A copy of the record of licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.

10.10(2) *Limited suspension or revocation.* If the board finds grounds to suspend or revoke a registration, the board may limit revocation or suspension of the registration to the particular controlled substance, substances, or schedules with respect to which the grounds for revocation or suspension exist. If the revocation or suspension is limited to a particular controlled substance, substances, or schedules, the registrant shall be given a new certificate of registration reflecting the restrictions imposed by the revocation or suspension; no fee shall be required for the new certificate of registration. The registrant shall deliver the old certificate of registration to the board.

10.10(3) *Denial of registration or registration renewal.* If, upon examination of an application for registration or registration renewal, including any other information the board has or receives regarding the applicant, the board determines that the issuance of the registration would be inconsistent with the public interest, the board shall serve upon the applicant an order to show cause why the registration should not be denied.

10.10(4) *Considerations in denial of registration.* In determining the public interest, the board shall consider all of the following factors:

a. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

b. Compliance with applicable state and local law.

c. Any convictions of the applicant under any federal and state laws relating to any controlled substance.

d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.

e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.

f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.

g. Any other factors relevant to and consistent with the public health and safety.

10.10(5) *Order to show cause.* Before denying, modifying, suspending, or revoking a registration, the board shall serve upon the applicant or registrant an order to show cause why the registration should not be denied, modified, revoked, or suspended. The order to show cause shall contain a statement of the basis therefore and shall call upon the applicant or registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, suspension, or modification of registration and a summary of the matters of fact and law asserted. If the order to show cause involves the possible denial of registration renewal, the order shall be served not later than 30 days before the expiration of the registration. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension pursuant to subrule 10.10(9).

10.10(6) *Hearing requested.* If an applicant or registrant that has received an order to show cause desires a hearing on the matter, the applicant or registrant shall file a request for a hearing within 30

days after the date of service of the order to show cause. If a hearing is requested, the board shall hold a hearing pursuant to 657—Chapter 35 at the time and place stated in the order and without regard to any criminal prosecution or other proceeding. Unless otherwise ordered by the board, an administrative law judge employed by the department of inspections and appeals shall be assigned to preside over the case and to draft a proposed decision for the board's consideration.

10.10(7) *Waiver of hearing.* If an applicant or registrant entitled to a hearing on an order to show cause fails to file a request for hearing, or if the applicant or registrant requests a hearing but fails to appear at the hearing, the applicant or registrant shall be deemed to have waived the opportunity for a hearing unless the applicant or registrant shows good cause for such failure.

10.10(8) *Final board order when hearing waived.* If an applicant or registrant entitled to a hearing waives or is deemed to have waived the opportunity for a hearing, the executive director of the board may cancel the hearing and issue, on behalf of the board, the board's final order on the order to show cause.

10.10(9) *Order of immediate suspension.* The board may suspend any registration simultaneously with the service upon the registrant of an order to show cause why such registration should not be revoked or suspended if the board finds there is an imminent danger to the public health or safety that warrants such action. If the board suspends a registration simultaneously with the service of the order to show cause upon the registrant, it shall serve upon the registrant with the order to show cause an order of immediate suspension containing a statement of its findings regarding the danger to public health or safety. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, unless sooner withdrawn by the board or dissolved by the order of the district court or an appellate court.

10.10(10) *Disposition of controlled substances.* If the board suspends or revokes a registration, the registrant shall promptly return the certificate of registration to the board. Also, upon service of the order of the board suspending or revoking the registration, the registrant shall deliver all affected controlled substances in the registrant's possession to the board or authorized agent of the board. Upon receiving the affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

10.10(11) *Notifications.* The board shall promptly notify the DEA and the Iowa department of public safety of all orders suspending or revoking registration and all forfeitures of controlled substances.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.11 Reserved.

657—10.12(124) Inspection. The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.13(124) Security requirements. All registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the board shall use the security requirements set forth in these rules as standards for the physical security controls and operating procedures necessary to prevent diversion.

10.13(1) *Physical security.* Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operation. A

registrant shall periodically review and adjust security measures based on rescheduling of substances or changes in the quantity of substances in the possession of the registrant.

a. Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet or safe.

b. Controlled substances listed in Schedules II through V may be stored in a securely locked, substantially constructed cabinet or safe. However, pharmacies and hospitals may disperse these substances throughout the stock of noncontrolled substances in a manner so as to obstruct the theft or diversion of the controlled substances.

c. Controlled substances collected via an authorized collection program for the purpose of disposal shall be stored pursuant to federal regulations, which can be found at www.deadiversion.usdoj.gov/drug_disposal/.

10.13(2) *Factors in evaluating physical security systems.* In evaluating the overall security system of a registrant or applicant necessary to maintain effective controls against theft or diversion of controlled substances, the board may consider any of the following factors it deems relevant to the need for strict compliance with the requirements of this rule:

a. The type of activity conducted.

b. The type, form, and quantity of controlled substances handled.

c. The location of the premises and the relationship such location bears to security needs.

d. The type of building construction comprising the facility and the general characteristics of the building or buildings.

e. The type of vault, safe, and secure enclosures available.

f. The type of closures on vaults, safes, and secure enclosures.

g. The adequacy of key control systems or combination lock control systems.

h. The adequacy of electronic detection and alarm systems, if any.

i. The adequacy of supervision over employees having access to controlled substances, to storage areas, or to manufacturing areas.

j. The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any.

k. The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel.

l. The availability of local police protection or of the registrant's or applicant's security personnel.

m. The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances.

10.13(3) *Manufacturing and compounding storage areas.* Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.14(124) Accountability of controlled substances. The registrant shall maintain ultimate accountability of controlled substances and records maintained at the registered location.

10.14(1) *Records.* Pursuant to rule 657—10.36(124,155A), records shall be available for inspection and copying by the board or its authorized agents for two years from the date of the record.

10.14(2) *Policies and procedures.* The registrant shall have policies and procedures that identify, at a minimum:

a. Adequate storage for all controlled substances to ensure security and proper conditions with respect to temperature and humidity.

b. Access to controlled substances and records of controlled substances by employees of the registrant.

c. Proper disposition of controlled substances.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.15 Reserved.

657—10.16(124) Receipt and disbursement of controlled substances. Each transfer of a controlled substance between two registrants, to include a transfer between two separately registered locations regardless of any common ownership, except as provided in subrule 10.16(2), shall require a record of the transaction. Each registrant shall maintain a copy of the record for at least two years from the date of the transfer. Records of the transfer of Schedule II controlled substances shall be created and maintained separately from records of the transfer of Schedules III through V controlled substances pursuant to rule 657—10.36(124,155A). Upon receipt of a controlled substance, the individual responsible for receiving the controlled substance shall date and sign the receipt record.

10.16(1) *Record.* The record, unless otherwise provided in these rules or pursuant to federal law, shall include the following:

a. The name of the substance.

b. The strength and dosage form of the substance.

c. The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from which the substances were acquired.

d. The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to which the substances were distributed.

e. The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to which the substances were distributed for disposal, if appropriate.

10.16(2) *Distribution of samples and other complimentary packages.* Complimentary packages and samples of controlled substances may be distributed to practitioners pursuant to federal and state law only if the person distributing the items provides to the practitioner a record that contains the information found in this subrule. The individual responsible for receiving the controlled substances shall sign and date the record.

a. The name, address, and DEA registration number of the supplier.

b. The name, address, and DEA registration number of the practitioner.

c. The name, strength, dosage form, and quantity of the specific controlled substances delivered.

d. The date of delivery.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.17(124) Ordering or distributing Schedule I or II controlled substances.

10.17(1) *DEA Form 222.* Except as otherwise provided by subrule 10.17(2) and under federal law, a DEA Form 222 is required for each distribution of a Schedule I or II controlled substance. An order form may be executed only on behalf of the registrant named on the order form and only if the registrant's DEA and Iowa registrations for the substances being purchased have not expired or been revoked or suspended by the issuing agency.

a. Order forms shall be obtained, executed, and filled pursuant to DEA requirements. Each form shall be complete, legible, and properly prepared, executed, and endorsed and shall contain no alteration, erasure, or change of any kind.

b. The purchaser shall submit Copy 1 and Copy 2 of the order form to the supplier.

c. The purchaser shall maintain Copy 3 of the order form in the files of the registrant. Upon receipt of the substances from the supplier, the purchaser shall record on Copy 3 of the order form the quantity of each substance received and the date of receipt.

d. The supplier shall record on Copy 1 and Copy 2 of the order form the quantity of each substance distributed to the purchaser and the date on which the shipment is made. The supplier shall maintain Copy 1 of the order form in the files of the supplier and shall forward Copy 2 of the order form to the DEA district office.

e. Order forms shall be maintained separately from all other records of the registrant.

f. Each unaccepted, defective, or otherwise void order form and any attached statement or other documents relating to any order form shall be maintained in the files of the registrant.

g. If the registration of any purchaser of Schedule I or II controlled substances is terminated for any reason, or if the name or address of the registrant as shown on the registration is changed, the registrant shall return all unused order forms to the DEA district office.

10.17(2) *Electronic ordering system.* A registrant authorized to order or distribute Schedule I or II controlled substances via the DEA Controlled Substances Ordering System (CSOS) shall comply with the requirements of the DEA relating to that system, including the maintenance and security of digital certificates, signatures, and passwords and all record-keeping and reporting requirements.

a. For an electronic order to be valid, the purchaser shall sign the electronic order with a digital signature issued to the purchaser or the purchaser's agent by the DEA.

b. An electronic order may include controlled substances that are not in Schedule I or II and may also include noncontrolled substances.

c. A purchaser shall submit an order to a specific wholesale distributor appropriately licensed to distribute in Iowa.

d. Prior to filling an order, a supplier shall verify the integrity of the signature and the order, verify that the digital certificate has not expired, check the validity of the certificate, and verify the registrant's authority to order the controlled substances.

e. The supplier shall retain an electronic record of every order, including a record of the number of commercial or bulk containers furnished for each item and the date on which the supplier shipped the containers to the purchaser. The shipping record shall be linked to the electronic record of the order. Unless otherwise provided under federal law, a supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

f. If an order cannot be filled for any reason, the supplier shall notify the purchaser and provide a statement as to the reason the order cannot be filled. When a purchaser receives such a statement from a supplier, the purchaser shall electronically link the statement of nonacceptance to the original electronic order. Neither a purchaser nor a supplier may correct a defective order; the purchaser must issue a new order for the order to be filled.

g. When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and shall identify the individual reconciling the order. A purchaser shall, for each order filled, retain the original signed order and all linked records for that order for two years. The purchaser shall also retain all copies of each unfilled or defective order and each linked statement.

h. A supplier shall retain each original order filled and all linked records for two years. A supplier shall, for each electronic order filled, forward to the DEA within two business days either a copy of the electronic order or an electronic report of the order in a format specified by the DEA.

i. Records of CSOS electronic orders and all linked records shall be maintained by a supplier and a purchaser for two years following the date of shipment or receipt, respectively. Records may be maintained electronically or in hard-copy format. Records that are maintained electronically shall be readily retrievable from all other records, shall be easily readable or easily rendered into a readable format, shall be readily retrievable at the registered location, and shall be made available to the board, to the board's agents, or to the DEA upon request. Records maintained in hard-copy format shall be maintained in the same manner as DEA Form 222.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.18(124) Schedule II perpetual inventory. Each registrant located in Iowa that maintains Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to this rule. All records relating to the perpetual inventory shall be maintained at the registered location and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

10.18(1) *Record format.* The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

10.18(2) *Information included.* The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each receipt, disbursement, and current balance of each individual drug or NDC number. The record shall also include incident reports and reconciliation records pursuant to subrules 10.18(3) and 10.18(4).

10.18(3) *Changes to a record.* If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

10.18(4) *Reconciliation.* The registrant shall be responsible for reconciling or ensuring the completion of a reconciliation of the perpetual inventory balance with the physical inventory of all Schedule II controlled substances at least annually. In case of any discrepancies between the physical inventory and the perpetual inventory, the registrant shall be notified immediately. The registrant shall determine the need for further investigation, and significant discrepancies shall be reported to the board pursuant to rule 657—10.21(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and available for review and copying by the board or its authorized agents for a period of two years from the date of the record. The reconciliation process may be completed using either of the following procedures or a combination thereof:

a. The individual responsible for a disbursement verifies that the physical inventory matches the perpetual inventory following each disbursement and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If any Schedule II controlled substances in the registrant's current inventory have been disbursed and verified in this manner within the year and there are no discrepancies noted, no additional reconciliation action is required. A perpetual inventory record for a drug that has had no activity within the year shall be reconciled pursuant to paragraph 10.18(4)*"b."*

b. A physical count of each Schedule II controlled substance stocked by the registrant shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.19(124) Physical count and record of inventory. Each registrant shall be responsible for taking a complete and accurate inventory of all stocks of controlled substances under the control of the registrant pursuant to this rule. The responsible individual may delegate the actual taking of any inventory.

10.19(1) *Record and procedure.* Each inventory record, except the periodic count and reconciliation required pursuant to subrule 10.18(4), shall comply with the requirements of this subrule and shall be maintained for a minimum of two years from the date of the inventory.

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

b. Each inventory shall be maintained in a handwritten, typewritten, or electronically printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

c. Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. Controlled substances on hand shall include prescriptions prepared for

dispensing to a patient but not yet delivered to the patient, substances maintained in emergency medical service programs, care facility or hospice emergency supplies, outdated or adulterated substances pending destruction, and substances stored in a warehouse on behalf of the registrant. Controlled substances obtained through an authorized collection program for the purpose of disposal shall not be examined, inspected, counted, sorted, inventoried, or otherwise handled.

d. A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

e. The inventory shall be taken either prior to opening or following the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

f. The inventory record, unless otherwise provided under federal law, shall include the following information:

(1) The name of the substance.

(2) The strength and dosage form of the substance.

(3) The quantity of the substance.

(4) Information required of authorized collection programs pursuant to federal regulations for such collection programs.

(5) The signature of the person or persons responsible for taking the inventory.

(6) The date and time (opening or closing) of the inventory.

g. For all substances listed in Schedule I or II, the quantity shall be an exact count or measure of the substance.

h. For all substances listed in Schedule III, IV, or V, the quantity may be an estimated count or measure of the substance unless the container has been opened and originally held more than 100 dosage units. If the opened commercial container originally held more than 100 dosage units, an exact count of the contents shall be made. Products packaged in nonincremented containers may be estimated to the nearest one-fourth container.

10.19(2) *Initial inventory.* A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, storage, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

10.19(3) *Annual inventory.* After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least annually. The annual inventory may be taken on any date that is within 372 days after the date of the previous annual inventory.

10.19(4) *Change of ownership, pharmacist in charge, or registered location.* When there is a change in ownership, pharmacist in charge, or location for a registration, an inventory shall be taken of all controlled substances in compliance with subrule 10.19(1). The inventory shall be taken following the close of business the last day under terminating ownership, terminating pharmacist in charge's employment, or at the location being vacated. The inventory shall serve as the ending inventory for the terminating owner, terminating pharmacist in charge, or location being vacated, as well as a record of the beginning inventory for the new owner, pharmacist in charge, or location.

10.19(5) *Discontinuing registered activity.* A registrant shall take an inventory of controlled substances at the close of business the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to which the substances are transferred.

10.19(6) *New or rescheduled controlled substances.* On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances or the rescheduling of a previously controlled substance to another schedule, any registrant who possesses the newly scheduled or rescheduled controlled substance shall take an inventory of all stocks of the substance on hand. That inventory record shall be maintained with the most recent controlled substances inventory record. Thereafter, the controlled substance shall be included in the appropriate schedule of each inventory made by the registrant.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.20 Reserved.

657—10.21(124) Report of theft or loss. A registrant shall report to the board and the DEA any theft or significant loss of controlled substances when the loss is attributable to other than inadvertent error. Thefts or other losses of controlled substances shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them.

10.21(1) *Immediate notice to board.* If the theft was committed by a registrant or licensee of the board, or if there is reason to believe that the theft was committed by a registrant or licensee of the board, the registrant from which the controlled substances were stolen shall notify the board immediately upon discovery of the theft and shall identify to the board the registrant or licensee suspected of the theft.

10.21(2) *Immediate notice to DEA.* A registrant shall deliver notice, immediately upon discovery of a reportable theft or loss of controlled substances, to the Des Moines DEA field office via telephone, facsimile, or a brief written message explaining the circumstances of the theft or loss.

10.21(3) *Timely report submission.* Within 14 calendar days of discovery of the theft or loss, a registrant shall submit directly to the DEA a Form 106 or alternate required form via the DEA website at www.deadiversion.usdoj.gov/. A copy of the report that was completed and submitted to the DEA shall be immediately submitted to the board via facsimile, email attachment, or personal or commercial delivery.

10.21(4) *Record maintained.* A copy of the report shall be maintained in the registrant's files for a minimum of two years following the date the report was completed.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.22(124) Disposal of registrant stock. A registrant shall dispose of controlled substances pursuant to the requirements of this rule. Disposal records shall be maintained by the registrant for at least two years from the date of the record.

10.22(1) *Registrant stock supply.* Controlled substances shall be removed from current inventory and disposed of by one of the following procedures.

a. The registrant shall utilize the services of a DEA-registered and Iowa-licensed reverse distributor.

b. The board may authorize and instruct the registrant to dispose of the controlled substances in one of the following manners:

(1) By delivery to an agent of the board or to the board office.

(2) By destruction of the drugs in the presence of a board officer, agent, inspector, or other authorized individual.

(3) By such other means as the board may determine to ensure that drugs do not become available to unauthorized persons.

10.22(2) *Waste resulting from administration or compounding.* Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage shall be made and maintained by the registrant for a minimum of two years following the wastage. The record shall include the following:

a. The controlled substance wasted.

b. The date of wastage.

c. The quantity or estimated quantity of the wasted controlled substance.

d. The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance.

e. The reason for the waste.

f. The signatures of both individuals involved in the wastage.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.23(124) Disposal of previously dispensed controlled substances. Except as provided in 657—Chapter 23 for care facilities, a registrant may not dispose of previously dispensed controlled substances unless the registrant has modified its registration with DEA to administer an authorized collection program. A registrant shall not take possession of a previously dispensed controlled substance except for reuse for the same patient.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.24(124,126,155A) Prescription requirements. All prescriptions for controlled substances shall be dated as of, and signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue. A prescription for a Schedule III, IV, or V controlled substance may include authorization to refill the prescription no more than five times within the six months following date of issue. A prescription for a Schedule II controlled substance shall not be refilled.

10.24(1) *Form of prescription.* All prescriptions for controlled substances shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions for controlled substances issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber's written or electronic signature.

a. When an oral order is not permitted, or when a prescriber is unable to prepare and transmit an electronic prescription in compliance with DEA requirements for electronic prescriptions, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. If the prescriber utilizes an electronic prescription application that meets DEA requirements for electronic prescriptions, the prescriber may electronically prepare and transmit a prescription for a controlled substance to a pharmacy that utilizes a pharmacy prescription application that meets DEA requirements for electronic prescriptions.

b. A prescriber's agent may prepare a prescription for the review, authorization, and manual or electronic signature of the prescriber, but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription.

c. An electronic prescription for a controlled substance shall not be transmitted to a pharmacy except by the prescriber in compliance with DEA regulations.

d. A prescriber shall securely maintain the unique authentication credentials issued to the prescriber for utilization of the electronic prescription application and authentication of the prescriber's electronic signature. Unique authentication credentials issued to any individual shall not be shared with or disclosed to any other prescriber, agent, or individual.

e. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

10.24(2) *Verification by pharmacist.* The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in each case when a written or oral prescription for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in any case when the pharmacist questions the validity of, including the legitimate medical purpose for, the prescription. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

10.24(3) *Intern, resident, foreign physician.* An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.8(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or legibly printed name of the prescribing intern, resident, or foreign physician as well as the prescriber's signature.

10.24(4) *Valid prescriber/patient relationship.* Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken

when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

10.24(5) *Facsimile transmission of a controlled substance prescription.* With the exception of an authorization for emergency dispensing as provided in rule 657—10.26(124), a prescription for a controlled substance in Schedules II, III, IV and V may be transmitted via facsimile from a prescriber to a pharmacy only as provided in rule 657—21.9(124,155A).

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.25(124) Dispensing records. Each registrant shall create a record of controlled substances dispensed to a patient or research subject.

10.25(1) *Record maintained and available.* The record shall be maintained for two years from the date of dispensing and be available for inspection and copying by the board or its authorized agents.

10.25(2) *Record contents.* The record shall include the following information:

a. The name and address of the person to whom dispensed.

b. The date of dispensing.

c. The name or NDC number, strength, dosage form, and quantity of the substance dispensed.

d. The name of the prescriber, unless dispensed by the prescriber.

e. The unique identification of each technician, pharmacist, pharmacist-intern, prescriber, or prescriber's agent involved in dispensing.

f. The serial number or unique identification number of the prescription.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.26(124) Schedule II emergency prescriptions.

10.26(1) *Emergency situation defined.* For the purposes of authorizing an oral or facsimile transmission of a prescription for a Schedule II controlled substance listed in Iowa Code section 124.206, the term "emergency situation" means those situations in which the prescribing practitioner determines that all of the following apply:

a. Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.

b. No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.

c. It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the pharmacy before the pharmacy dispenses the controlled substance, or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

10.26(2) *Requirements of emergency prescription.* In the case of an emergency situation as defined in subrule 10.26(1), a pharmacist may dispense a controlled substance listed in Schedule II pursuant to a facsimile transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.

b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The pharmacist shall record the manner by which the authorization was verified and include the pharmacist's name or unique identification.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the facsimile transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner's agent, the record shall include the first and last names and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via facsimile transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the facsimile transmission shall not be obscured or rendered illegible due to such security features.

e. Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of rule 657—10.24(124,126,155A), the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph 10.26(2)*"c."*

f. The pharmacist shall notify the board and the DEA if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board and the DEA, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

g. Pursuant to federal law and subrule 10.27(3), the pharmacist may fill a partial quantity of an emergency prescription so long as the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed and that the remaining portions are filled no later than 72 hours after the prescription is issued.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.27(124) Schedule II prescriptions—partial filling. The partial filling of a prescription for a controlled substance listed in Schedule II is permitted as provided in this rule and federal regulations.

10.27(1) *Insufficient supply on hand.* If the pharmacist is unable to supply the full quantity authorized in a prescription and makes a notation of the quantity supplied on the prescription record, a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling. If the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

10.27(2) *Long-term care or terminally ill patient.* A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

a. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.

b. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient." For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate uniformly maintained and readily retrievable record, the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

c. The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in an LTCF or for patients

with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

d. Information pertaining to current Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.4(124,155A).

10.27(3) *Patient or prescriber request.* At the request of the patient or prescriber, a prescription for a Schedule II controlled substance may be partially filled pursuant to this subrule and federal law. The total quantity dispensed in all partial fillings shall not exceed the total quantity prescribed. Except as provided in paragraph 10.26(2)*"g,"* the remaining portion of a prescription partially filled pursuant to this subrule may be filled within 30 days of the date the prescription was issued.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.28(124) Schedule II medication order. Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3859C**, IAB 6/20/18, effective 7/25/18]

657—10.29(124) Schedule II—issuing multiple prescriptions. An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

10.29(1) *Refills prohibited.* The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

10.29(2) *Legitimate medical purpose.* Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber's professional practice.

10.29(3) *Dates and instructions.* Each prescription issued pursuant to this rule shall be dated as of and manually signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

10.29(4) *Authorized fill date unalterable.* Regardless of the provisions of rule 657—10.30(124), when a prescription contains instructions from the prescriber indicating that the prescription shall not be filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

10.29(5) *Number of prescriptions and authorized quantity.* An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

10.29(6) *Prescriber's discretion.* Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.30(124) Schedule II—changes to a prescription. With appropriate verification, a pharmacist may add information provided by the patient or patient's agent, such as the patient's address, to a Schedule II controlled substance prescription.

10.30(1) *Changes prohibited.* A pharmacist shall never change the patient's name, the controlled substance prescribed except for generic substitution, or the name or signature of the prescriber.

10.30(2) *Changes authorized.* After consultation with the prescriber or the prescriber's agent and documentation of such consultation, a pharmacist may change or add the following information on a Schedule II controlled substance prescription:

a. The drug strength.

b. The dosage form.

c. The drug quantity.

d. The directions for use.

e. The date the prescription was issued.

f. The prescriber's address or DEA registration number.

g. The name of the supervising prescriber if the prescription was issued by a physician assistant.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.31 Reserved.

657—10.32(124) Schedule III, IV, or V prescription. No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which it was issued nor be refilled more than five times.

10.32(1) *Record.* Each filling and refilling of a prescription shall be entered in a uniformly maintained and readily retrievable record in accordance with rule 657—10.25(124). If the pharmacist merely initials or affixes the pharmacist's unique identifier and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

10.32(2) *Oral refill authorization.* The prescribing practitioner may authorize additional refills of Schedule III, IV, or V controlled substances on the original prescription through an oral refill authorization transmitted to an authorized individual at the pharmacy provided the following conditions are met:

a. The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.

b. The pharmacist, pharmacist-intern, or technician who obtains the oral authorization from the prescriber who issued the original prescription documents, on or with the original prescription, the date authorized, the quantity of each refill, the number of additional refills authorized, and the unique identification of the authorized individual.

c. The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.

d. The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

10.32(3) *Partial fills.* The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible provided that each partial fill is recorded in the same manner as a refill pursuant to subrule 10.32(1). The total quantity dispensed in all partial fills shall not exceed the total quantity prescribed.

10.32(4) *Medication order.* A Schedule III, IV, or V controlled substance may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.33(124,155A) Dispensing Schedule V controlled substances without a prescription. A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug, and Cosmetic Act, and excepting products containing ephedrine, pseudoephedrine, or phenylpropanolamine, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.33(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit,

after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.33(2) *Frequency and quantity.* Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V controlled substance:

a. 240 cc (8 ounces) of any controlled substance containing opium.

b. 120 cc (4 ounces) of any other controlled substance.

c. 48 dosage units of any controlled substance containing opium.

d. 24 dosage units of any other controlled substance.

10.33(3) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.33(4) *Identification.* The pharmacist shall require every purchaser under this rule who is not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

10.33(5) *Record.* A bound record book (i.e., with pages sewn or glued to the spine) for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the substance to the purchaser.

10.33(6) *Prescription not required under other laws.* No other federal or state law or regulation requires a prescription prior to distributing or dispensing the Schedule V controlled substance.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.34(124) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription. A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by a pharmacist, pharmacist-intern, or certified pharmacy technician to a purchaser at retail pursuant to the conditions of this rule.

10.34(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist, by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor, or by a registered certified pharmacy technician under the direct supervision of a pharmacist, except as authorized in 657—Chapter 100. This subrule does not prohibit, after the pharmacist, pharmacist-intern, or certified pharmacy technician has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by another pharmacy employee.

10.34(2) *Packaging of nonliquid forms.* A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

10.34(3) *Frequency and quantity.* Dispensing without a prescription to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing without a prescription to the same purchaser within a single calendar day shall not exceed 3,600 mg.

10.34(4) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.34(5) *Identification.* The pharmacist, pharmacist-intern, or certified pharmacy technician shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The pharmacist, pharmacist-intern, or certified pharmacy technician shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.34(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor's office of drug control policy

pursuant to 657—Chapter 100. If the PTS is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

a. Alternate record contents. The alternate record shall contain the following:

(1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the pharmacist, pharmacist-intern, or certified pharmacy technician who approved the dispensing of the product.

b. Alternate record format. The record shall be maintained using one of the following options:

(1) A hard-copy record.

(2) A record in the pharmacy's electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.

(3) A record in an electronic data collection system that captures each of the data elements required by this subrule and that is capable of producing a hard-copy printout of a record.

c. PTS records retrieval. Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

10.34(7) *Notice required.* The pharmacy shall ensure that the following notice is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and visible to the public:

"Warning: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an individual or $500,000 if an organization, imprisoned not more than five years, or both."

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.35 Reserved.

657—10.36(124,155A) Records. Every record required to be kept under this chapter or under Iowa Code chapter 124 shall be kept by the registrant and be available for inspection and copying by the board or its representative for at least two years from the date of such record except as otherwise required in these rules. Controlled substances records shall be maintained in a readily retrievable manner that establishes the receipt and distribution of all controlled substances. Original records more than 12 months old may be maintained in a secure remote storage area unless such remote storage is prohibited under federal law. If the secure storage area is not located within the same physical structure as the registrant, the records must be retrievable within 48 hours of a request by the board or its authorized agent.

10.36(1) *Schedule I and II records.* Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the registrant.

10.36(2) *Schedule III, IV, and V records.* Records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the required information is readily retrievable from the ordinary business records of the registrant.

10.36(3) *Date of record.* The date on which a controlled substance is actually received, imported, distributed, exported, disposed of, or otherwise transferred shall be used as the date of receipt, importation, distribution, exportation, disposal, or transfer.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.37 Reserved.

657—10.38(124) Revision of controlled substances schedules.

10.38(1) *Designation of new controlled substance.* The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than 30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201(4).

10.38(2) *Objection to designation of a new controlled substance.* The board may object to the designation of any new substance as a controlled substance within 30 days following publication in the Federal Register of a final order so designating the substance under federal law. The board shall file objection to the designation of a substance as controlled, shall afford all interested parties an opportunity to be heard, and shall issue the board's decision on the new designation as provided in Iowa Code section 124.201(4).

10.38(3) *Cannabidiol investigational product.* If a cannabidiol investigational product approved as a prescription drug medication by the United States Food and Drug Administration is eliminated from or revised in the federal schedule of controlled substances by the DEA and notice of the elimination or revision is given to the board, the board shall similarly eliminate or revise the prescription drug medication in the schedule of controlled substances. Such action by the board shall be immediately effective upon the date of publication of the final regulation containing the elimination or revision in the Federal Register.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3743C**, IAB 4/11/18, effective 5/16/18]

657—10.39(124) Temporary designation of controlled substances.

10.39(1) Amend Iowa Code section 124.206(7) by adding the following new paragraph *"c"*:

c. Dronabinol [(-)-delta-9-trans-tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration.

10.39(2) Amend Iowa Code section 124.204(9) by adding the following new paragraphs:

t. Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5F-ADB; 5F-MDMB-PINACA.

u. Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: 5F-AMB.

v. N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5F-APINACA, 5F-AKB48.

w. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: ADB-FUBINACA.

x. Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: MDMB-CHMICA, MMB-CHMINACA.

y. Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: MDMB-FUBINACA.

z. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other names: 4-fluoroisobutyryl fentanyl, para-fluoroisobutyryl fentanyl.

aa. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide. Other names: ortho-fluorofentanyl or 2-fluorofentanyl.

ab. N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide. Other name: tetrahydrofuranyl fentanyl.

ac. 2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide. Other name: methoxyacetyl fentanyl.

ad. N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide. Other names: acryl fentanyl or acryloylfentanyl.

ae. Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA.

af. N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters, and ethers. Other name: cyclopropyl fentanyl.

ag. N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: valeryl fentanyl.

ah. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: para-fluorobutyryl fentanyl.

ai. N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: para-methoxybutyryl fentanyl.

aj. N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: para-chloroisobutyryl fentanyl.

ak. N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: isobutyryl fentanyl.

al. N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: cyclopentyl fentanyl.

am. N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: ocfentanil.

an. Any fentanyl-related substance that is not currently listed in any schedule of the Controlled Substances Act (CSA) and its isomers, esters, ethers, salts and salts of isomers, esters, and ethers.

10.39(3) Amend Iowa Code section 124.204(2) by adding the following new paragraph:

be. MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine).

10.39(4) Amend Iowa Code section 124.212 by adding the following new subsection "6":

6. *Approved cannabidiol drugs.* A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3860C**, IAB 6/20/18, effective 7/25/18; **ARC 3984C**, IAB 8/29/18, effective 10/3/18; **ARC 4085C**, IAB 10/24/18, effective 10/3/18]

657—10.40(124) Excluded and exempt substances. The Iowa board of pharmacy hereby excludes from all schedules the current list of "Excluded Nonnarcotic Products" identified in Title 21, CFR Part 1308, Section 22, and the list of "Exempted Prescription Products" described in Title 21, CFR Part 1308, Section 32. Copies of such lists may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.41(124) Anabolic steroid defined. Anabolic steroid, as defined in Iowa Code section 126.2(2), includes any substance identified as such in Iowa Code section 124.208(6) or 126.2(2).

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.42(124B) Additional precursor substances. Pursuant to Iowa Code section 124B.2(2), the list of precursor substances identified in Iowa Code section 124B.2(1) is amended by adding the following new paragraph:

ab. Alpha-phenylacetoacetonitrile and its salts, optical isomers, and salts of optical isomers. Other name: APAAN.

[**ARC 3860C**, IAB 6/20/18, effective 7/25/18]

657—10.43(124) Reporting discipline and criminal convictions. A registrant shall provide written notice to the board of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the registrant no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. A registrant shall provide written notice to the

board of any criminal conviction of the registrant or of any owner that is related to the operation of the registered location no later than 30 days after the conviction. The term criminal conviction includes instances when the judgment of conviction or sentence is deferred.
[**ARC 3345C**, IAB 9/27/17, effective 11/1/17]

657—10.44(124) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a registration for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act.
2. Any conviction of a crime related to controlled substances committed by the registrant, or if the registrant is an association, joint stock company, partnership, or corporation, by any managing officer.
3. Refusing access to the registered location or registrant records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain registration pursuant to 657—Chapter 10.
5. Any violation of Iowa Code chapter 124, 124B, 126, 155A, or 205, or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

[**ARC 3345C**, IAB 9/27/17, effective 11/1/17; **ARC 3857C**, IAB 6/20/18, effective 7/25/18]

These rules are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

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◊ Two or more ARCs

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SECRETARY OF STATE[721]

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721—29.1(47) Definitions. The following definitions are adopted.

"Breach" means a compromise of security processes that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to protected information.

"Commissioner" means the county commissioner of elections as defined in Iowa Code chapter 47.

"Cybersecurity" means the prevention of damage to, protection of, and restoration of computers, electronic communications systems, electronic communications services, wire communication, and electronic communication, including information contained therein, to ensure their availability, integrity, authentication, confidentiality, and nonrepudiation.

"Elections technology" means the statewide voter registration database, voting system, electronic poll books, and other technologies used to register, maintain, or process voters or conduct any election. For purposes of this rule, these terms shall have the definitions as described in the administrative rules of the secretary of state.

"Encryption" means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key.

"Incident" means an occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.

"I-Voters" means the statewide voter registration database.

"Office of the chief information officer" or *"OCIO"* means the state chief information officer.

"Registrar" means the county commissioner of registration as defined in Iowa Code section 48A.3.

"State commissioner" means the state commissioner of elections as described in Iowa Code chapter 47.

"State registrar" means the state registrar of voters as defined in Iowa Code chapter 48A.

"User" means anyone from the state registrar or county registrar or approved third-party vendor who accesses I-Voters.

[**ARC 4103C**, IAB 10/24/18, effective 11/28/18]

721—29.2(47) Cybersecurity training.

29.2(1) All users who access the I-Voters database must complete annual training programs on principles of cybersecurity. Upon completion of the training, a user shall transmit proof of completion to the state registrar. The state registrar shall maintain a list of approved training programs on the secretary of state's website. The state registrar shall consult with the OCIO or the federal Election Assistance Commission before adding trainings to the list of approved programs. If requested by the office of the chief information officer, the federal Election Assistance Commission, or a county registrar, the state registrar may review and add recommended cybersecurity training programs to the approved list.

29.2(2) The state registrar may disable any user account if the user does not complete the training within 30 days of access granted, or on the anniversary date set by the state registrar.

29.2(3) The state registrar may temporarily waive this requirement for any user if the state registrar believes it is necessary to the execution of the election.

[**ARC 4103C**, IAB 10/24/18, effective 11/28/18]

721—29.3(47) Cybersecurity incident or breach.

29.3(1) A commissioner who identifies or suspects an actual or possible cybersecurity incident or breach shall immediately report the incident to the state commissioner. Upon receiving the report, the state commissioner shall alert the appropriate state or federal law enforcement agencies, the federal Department of Homeland Security, the OCIO, and the vendor responsible for maintaining the affected technology. The state commissioner may disseminate the information to other agencies as the state commissioner deems necessary.

29.3(2) Information reported to the state commissioner under this rule shall be exempt from public records requests pursuant to Iowa Code section 22.7(50).

29.3(3) Nothing in this rule prohibits a commissioner from alerting local law enforcement prior to contacting the state commissioner in the event of an incident or breach.

[**ARC 4103C**, IAB 10/24/18, effective 11/28/18]

These rules are intended to implement Iowa Code section 47.7(2).

[Filed ARC 4103C (Notice ARC 3914C, IAB 8/1/18), IAB 10/24/18, effective 11/28/18]

CHAPTER 14
VETERANS TRUST FUND

801—14.1(35A) Purpose. These rules establish the requirements for veterans or their spouses or dependents to receive benefits from the veterans trust fund.

801—14.2(35A) Definition. For purposes of this chapter, "veteran" means the same as defined in Iowa Code section 35.1, or a resident of Iowa who served in the armed forces of the United States, completed a minimum aggregate of 90 days of active federal service, other than training, and was discharged under honorable conditions, or a former member of the national guard, reserve, or regular component of the armed forces of the United States who was honorably discharged due to injuries incurred while on active federal service that precluded completion of a minimum aggregate of 90 days of active federal service, other than training.
[**ARC 7823B**, IAB 6/3/09, effective 7/8/09]

801—14.3(35A) Eligibility. Veterans, their spouses, and their dependents applying for benefits available under subrules 14.4(1) through 14.4(9) must meet the following threshold requirements.

14.3(1) *Income.* For the purposes of this chapter, an applicant's household income, including VA pension benefits, service-connected disability income, and social security income, shall not exceed 200 percent of the federal poverty guidelines for the number of family members living in the primary residence in effect on the date the application is received by the county director of veterans affairs. Federal poverty guidelines shall be those guidelines established by the Iowa department of human services for the veteran's family size. The commission shall adjust the guidelines on July 1 of each year to reflect the most recent federal poverty guidelines. The commission may waive the income threshold if all income is from a fixed source and all other sources of assistance have been exhausted.

14.3(2) *Resources.* The department may not pay benefits under this chapter if the available liquid assets of the veteran are in excess of $15,000. For the purposes of this chapter, "available liquid assets" means cash on hand, cash in a checking or savings account, stocks, bonds, certificates of deposit, treasury bills, money market funds and other liquid investments owned individually or jointly by the applicant and the applicant's spouse, unless the applicant and spouse are separated or are in the process of obtaining a divorce, but does not include funds deposited in IRAs, Keogh plans or deferred compensation plans, unless the veteran is eligible to withdraw such funds without incurring a penalty. Cash surrender value of life insurance policies, real property, established burial account, or a personal vehicle shall not be included as available liquid assets.

14.3(3) *Funding from other sources.* Applications shall not be approved if the applicant is eligible to receive aid from other sources to meet the purposes authorized in this chapter.

14.3(4) *Additional requirements and limitations.* Applicants must meet any additional requirements and are subject to any limitations which may be set out in this chapter or which may be established for a particular benefit.
[**ARC 7823B**, IAB 6/3/09, effective 7/8/09; **ARC 0057C**, IAB 4/4/12, effective 5/9/12]

801—14.4(35A) Benefits available. Applications may be approved for any of the following purposes. By a majority vote, the commission may suspend some or all of these benefits for payment.

14.4(1) *Travel expenses for wounded veterans, and their spouses, directly related to follow-up medical care.* Travel expenses under this subrule include the unreimbursed cost of airfare, lodging, and a per diem of $25 per day for required out-of-state medical travel that exceeds 125 miles from the veteran's home. Spouses may be reimbursed for in-state lodging and a per diem of $25 per day when visiting a veteran who is in a hospital for medical care related to a service-connected disability. The distance from the veteran's home to the hospital must exceed 100 miles. The veteran or the veteran's spouse shall provide such evidence as the commission may require, which includes but is not limited to evidence the injury or disability is service-connected, the necessity of treatment in a particular facility, and documentation of expenses. The maximum amount for lodging reimbursement shall be $90. The

maximum amount of aid payable in a consecutive 12-month period under this subrule is $1,000. The commission may waive the income threshold for this benefit.

14.4(2) *Job training or college tuition assistance for job retraining.*

a. The commission may pay a veteran not more than $3,000 for retraining or postsecondary education to enable the veteran to obtain gainful employment. The commission may provide aid under this subrule if all of the following apply:

(1) The veteran is enrolled in a training course in a technical college or school, is enrolled in an accredited postsecondary institution, or is engaged in a structured on-the-job training program.

(2) The veteran is unemployed, underemployed, or has received a notice of termination of employment.

(3) The commission determines that the veteran's proposed program, or current program, will provide retraining or initial training that could enable the veteran to find gainful employment. In making its determination, the commission shall consider whether the proposed program, or current program, provides adequate employment skills and is in an occupation for which favorable employment opportunities are anticipated.

(4) The veteran requesting aid has not received full reimbursement or payment from any other retraining or education scholarship programs and the veteran does not have other assets or income available to meet retraining or initial training expenses. Applicants requesting aid under this subrule will only be granted the unpaid portion of their tuition statement, and the payment will be made directly to the institution.

b. The veteran shall provide such evidence as the commission may require to satisfy the requirements of this subrule.

14.4(3) *Unemployment or underemployment assistance during a period of unemployment or underemployment due to prolonged physical or mental illness resulting from military service or disability resulting from military service (must be physically and mentally able to return to work).* The commission may provide subsistence payments only to a veteran who has suffered a loss of income due to prolonged physical or mental illness resulting from military service or disability resulting from military service. The commission may provide subsistence payments of up to $500 per month of unemployment or underemployment to a veteran. A veteran must provide documentation of assistance from Iowa workforce development and vocational rehabilitation, if eligible. No payment may be made under this subrule if the veteran has other assets or income available to meet basic subsistence needs. A period of unemployment implies that it is possible for the veteran to be employed in the future. A rating from the VA of 100 percent due to individual unemployability (IU) rated permanent and total indicates that a veteran is unemployable and will not qualify for assistance under this subrule. The veteran shall provide such evidence as the commission may require, which includes but is not limited to evidence that the mental illness or disability is service-connected and evidence that the veteran is unemployed or underemployed for the period of payments. To qualify as underemployed, the applicant must be currently working at an income that is below 150 percent of federal poverty guidelines due to limitations caused by the applicant's service-connected disability or illness. The maximum amount of aid payable in a consecutive 12-month period under this subrule is $3,000 and a lifetime maximum of $6,000.

14.4(4) *Expenses related to hearing care, dental care, vision care, or prescription drugs.*

a. The commission may provide health care aid to a veteran, to the veteran's spouse or dependents, or to the unremarried spouse of a deceased veteran for dental care, including dentures; vision care, including eyeglass frames and lenses; hearing care, including hearing aids; and prescription drugs that are not covered by the veterans affairs medical center.

b. The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed $2,500 for dental care, $500 for vision care, $1,500 per ear for hearing care, and $1,500 for prescription drugs. Lifetime maximum benefit: $10,000.

c. The commission shall not provide health care aid under this subrule unless the aid recipient's health care provider agrees to accept, as full payment for the health care provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the commission determines the veteran is capable of paying. Payment under this subrule

will be provided directly to the health care provider. The commission shall not pay health care aid under this subrule if the available liquid assets of the veteran are in excess of $15,000.

d. Applicants for assistance under this subrule will be required to provide the commission with an unpaid bill for service or an estimated cost of service from the health care provider and documentation of the need for the service. For prescription drugs, the applicant must produce documentation of the need for the prescribed drug and documentation stating whether a generic drug is available or appropriate. The commission payment will not exceed an estimated cost of service by a health care provider.

14.4(5) *Expenses relating to the purchase of durable equipment or services to allow a veteran, the veteran's spouse or dependents, or the unremarried spouse of a deceased veteran to remain in their home.*

a. The commission may make reimbursement payments to a veteran or to the unremarried spouse of a deceased veteran for the purchase of durable equipment that allows the veteran, the veteran's spouse or dependents, or the unremarried spouse of a deceased veteran to remain in their home or allows them the ability to utilize more of their home.

b. Individuals requesting reimbursement under this subrule will be required to provide verification of the purchase and installation of the equipment and information relating to the need for the equipment. Individuals may also provide a product and installation cost estimate to the commission for approval, with the understanding that the commission will pay no more than the cost estimate to the supplier or installer. Applicants needing durable equipment as a medical necessity should provide information from a physician.

c. Assistance under this subrule cannot duplicate assistance from other entities, and the maximum amount that may be paid may not exceed $2,500.

d. The commission shall not pay a reimbursement under this subrule if the available liquid assets of the veteran are in excess of $15,000.

14.4(6) *Individual counseling or family counseling programs.*

a. The commission may make mental health, substance abuse, and family counseling available to veterans and their families. Individual family members are eligible for counseling.

b. The assistance may include appropriate counseling and treatment programs for veterans and their families in need of services.

c. Any assistance provided under this subrule shall not duplicate other services readily available to veterans and their families. Veterans who are eligible for VA mental health services must initially visit their nearest VA medical facility for initial consultation and continued psychiatric treatment. Payment under this subrule will be made for additional services for the veteran in a location closer to the veteran's home and at a greater frequency than the VA medical center can accommodate.

d. The commission may provide up to $150 per hour and $75 per half-hour for outpatient counseling visits to providers who will accept as full payment for the counseling services the amount provided. Counseling and substance abuse services provided in a group setting may be paid up to $40 per hour. Counseling and substance abuse services may also be provided in an inpatient setting, subject to the maximum amount eligible under 14.4(6)*"f."*

e. The maximum amount that may be paid under this subrule for any consecutive 12-month period shall not exceed $5,000. Individuals seeking counseling services are eligible for up to $2,500, individuals seeking substance abuse treatment and counseling combined are eligible for up to $3,500, and families seeking counseling services that may also include individual counseling and substance abuse services are eligible for up to $5,000.

f. The commission may not provide counseling under this subrule unless the aid recipient's counseling service provider agrees to accept, as full payment for the counseling services provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the commission determines the veteran is capable of paying. The commission will make payment directly to the entity providing counseling and substance abuse services. The commission shall not pay for counseling under this subrule if the available liquid assets of the veteran are in excess of $15,000.

14.4(7) *Expenses relating to ambulance and emergency room services for veterans and emergency lodging for immediate family members.*

a. The commission may provide assistance to veterans for expenses related to ambulance trips, including air ambulance transportation, and emergency room visits for emergency care patients or VA health care patients who cannot indicate to emergency personnel that they are to be presented to a VA medical center.

b. Funding through this subrule shall be paid directly to the entity providing the emergency service or transportation after the commission is provided with an unpaid bill. All efforts should be made to utilize all other methods of payment prior to accessing assistance under this subrule.

c. The maximum amount that may be paid under this subrule may not exceed $7,500.

14.4(8) *Emergency expenses related to vehicle repair, housing repair, or temporary housing assistance.*

a. The commission may provide assistance to a veteran or to the unremarried spouse of a deceased veteran for emergency vehicle repair, emergency housing repair, and temporary housing.

b. Assistance for vehicle repair is limited to expenses that are required for continued use of the vehicle. This assistance will only be granted in cases where the vehicle is needed for travel to and from work-related activities, the applicant is over the age of 65, or substantial hardship will occur if the vehicle is not repaired. Assistance may be provided in situations where the applicant does not have sufficient means to pay an insurance deductible. Assistance may be paid directly to the entity performing the maintenance or the insurance company owed the deductible. In certain circumstances, reimbursement may be made to the veteran or to the unremarried spouse of a deceased veteran in order for the vehicle to be released from the entity providing the service. Assistance will not be provided for damage caused during the commission of a crime, for cosmetic needs, for damage resulting in an auto accident when automobile insurance has not been purchased, or for routine maintenance.

c. Assistance for home repair is limited to repairs that are required to improve the conditions and integrity of the home and are necessary for the safety and security of the residents. Applicants with homeowners insurance may request assistance for payment of a deductible. Assistance may be provided for applicants in disaster situations, home accidents, vandalism, or other situations as determined by the commission. In situations where a home is damaged beyond repair, assistance under this subrule is available to assist the applicant in purchasing a new home.

d. Assistance for transitional housing may be provided to applicants who are displaced from their home during a period of repairs related to a disaster, vandalism, home accident, or other reason that makes staying in the home hazardous to the health of the residents. Any refunded security deposits paid for under this subrule shall be returned to the Iowa veterans trust fund.

e. The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed $2,500 for vehicle repair, $3,000 for housing repair, and $1,000 for transitional housing. Lifetime maximum benefit for housing repair and vehicle repair: $10,000 each.

f. The commission shall not pay a reimbursement under this subrule if the available liquid assets of the veteran are in excess of $15,000.

14.4(9) *Expenses related to establishing whether a minor child is a dependent of a deceased veteran.*

a. The commission may provide assistance to the family of veterans who are killed while serving on active federal service, for expenses related to paternity or maternity tests or the cost of procuring additional DNA samples from the deceased veteran. This assistance is available to determine whether a child is eligible for United States Department of Veterans Affairs war orphan benefits.

b. Applicants are required to provide the results of the paternity or maternity examinations to the commission upon completion of the tests. Where the deceased veteran is not the parent of the child, the applicant will be required to repay the assistance received as provided in 801—14.6(35A).

c. The maximum amount that may be paid under this subrule is $2,500.

d. The commission may waive the income threshold for this benefit.

14.4(10) *Family support group programs or programs for children of members of the military.*

a. The commission may award grants to unit family readiness/support groups, family support offices, and other such organizations providing support and programs to families and children of family members.

b. The grant shall be only for projects or programs which are not funded from any other source. The commission shall determine if the applicant's proposed project or program will provide the intended support. In making its determination, the commission shall consider whether the proposed program will provide anticipated favorable results.

c. The maximum amount of aid payable in a consecutive 12-month period under this subrule to a family readiness/support group is $500.

14.4(11) *Honor guard services.*

a. The commission may reimburse veterans organizations for providing military funeral honors as follows:

(1) If a single veterans organization provides basic honors, $25.

(2) If a single veterans organization provides full honors, $50.

(3) If two or more veterans organizations participate in providing full honors and one of the organizations provides a firing detail, $50. The organizations may request that the commission split the reimbursement.

(4) If two or more veterans organizations participate in providing basic honors, $25. Payment shall be to one veterans organization, as determined by the commission.

b. Notwithstanding paragraph 14.4(11)*"a,"* the commission shall not reimburse a veterans organization if federal funding is available to reimburse the veterans organization for providing military funeral honors. The veterans organization shall request reimbursement from federal sources. If a veterans organization receives federal funding for providing military funeral honors at the reimbursement rate of one funeral per day, the department shall reimburse the organization for the provision of military funeral honors at any additional funerals on that day.

c. The maximum amount of aid payable in a calendar year under this subrule to a veterans organization is $1,000.

d. Veterans service organizations that are not currently providing honor guard services may apply for a $500 up-front grant for the use of creating a new honor guard within their organization. Applicants must present the commission with an estimated cost for purchasing uniforms and firearms for providing military honors and an estimated number of members who will be available to perform honor guard services. Organizations should also provide information regarding how they plan to pay for additional expenses that may occur outside of trust fund assistance. Applicants will be eligible for reimbursements under paragraphs 14.4(11)*"a"* to *"c"* 12 months after the receipt of their original $500 grant.

14.4(12) *Matching funds to veterans service organizations to provide for accredited veteran service officers.*

a. The commission may provide matching funds to veterans service organizations for maintaining accredited veteran service officers located at the Des Moines Veterans Affairs Regional Office.

b. Funding for all service organizations combined is available in an amount of up to 20 percent of the interest and earnings on the trust fund balance during the fiscal year or $150,000, whichever is less.

c. Service organizations requesting funding from the trust fund must provide financial data on the level of organizational funding for the staffing and operation of an office in the Des Moines Veterans Affairs Regional Office. Of the available amount outlined in this subrule, assistance will be split evenly among the service organizations eligible for the trust fund assistance. If the service organization's expenditures are less than its share of the grant, the grant amount will be reduced to the amount of the organization's previous fiscal year's expenditures.

d. Service organizations will be required to maintain the same level of expenditures in the year they receive funding as in the previous year. Funding will be recaptured by the treasurer of the state of Iowa if this funding is used to supplant funding from an individual veterans service organization. Trust fund assistance will not be included in future fiscal year maintenance of effort requirements. A report on the previous fiscal year's expenditures will be required to determine the maintenance of effort for the organization.

[**ARC 7823B**, IAB 6/3/09, effective 7/8/09; **ARC 0057C**, IAB 4/4/12, effective 5/9/12; **ARC 2491C**, IAB 4/13/16, effective 5/18/16; **ARC 4105C**, IAB 10/24/18, effective 11/28/18]

801—14.5(35A) Application procedure. Applications for benefits from the veterans trust fund may be obtained at any county veterans affairs office. The county director of veterans affairs shall date-stamp the application and submit it to the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. 3465, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824.

14.5(1) *Application process.* A person who wishes to apply shall complete an Application for Veterans Trust Fund form and provide such documentation or other evidence as the commission may require in order to determine the awarding or denial of the benefits available under this chapter.

14.5(2) *Date of application.* The date of the application shall be the date the signed application and written verification are received by the Iowa department of veterans affairs.

14.5(3) *Eligibility determination.*

a. The county director of veterans affairs or members of the county commission shall make a recommendation to the Iowa commission of veterans affairs as to whether to approve or deny the application. The Iowa commission of veterans affairs or a subcommittee appointed by the chair shall approve or deny all applications. Applications submitted to the Iowa commission of veterans affairs will be processed at its quarterly meetings as set forth in 801—paragraph 1.2(2)*"a"* or during a conference call for the purpose of voting on a trust fund expenditure. Applications must be approved by a majority vote of the commission membership or appointed subcommittee. The director of the Iowa department of veterans affairs shall notify an applicant within 15 days of the commission's decision. An explanation of the reasons for rejection of an application will accompany denials.

b. Applications for honor guard reimbursements under subrule 14.4(11) shall be processed solely by the Iowa department of veterans affairs and do not need commission approval for expenditure of trust fund interest balance funds for this purpose.

14.5(4) *Waiting list.* After all veterans trust fund moneys have been obligated, the commission shall approve or deny pending applications based on eligibility. Applicants who meet the eligibility requirements and are approved for payment by the commission shall be placed on a waiting list based on the date of approval and then according to the order in which the completed applications and verification were received by the Iowa commission of veterans affairs. In the event that more than one application is received at one time, the applicant shall be entered on the waiting list on the basis of the applicant's birthday, the oldest applicant being first on the waiting list.

[**ARC 7823B**, IAB 6/3/09, effective 7/8/09; **ARC 3341C**, IAB 9/27/17, effective 11/1/17]

801—14.6(35A) Recovery of erroneous payments.

14.6(1) *Erroneous payments.* The commission may recover payments made as a grant under this chapter if any of the following apply:

a. The information provided by the applicant is inaccurate.

b. The commission incorrectly calculated the grant amount.

c. The applicant is not entitled to a grant or is entitled to a lower grant amount as a result of a change in circumstances that affects the applicant's eligibility to receive the grant.

14.6(2) *Amount of recovery.* The commission may recover only the portion of the grant to which the applicant would not have been entitled if the correct information had been provided or if the grant had been properly calculated or as a change in circumstances warrants.

14.6(3) *Remedies.* The commission may request repayment of the amount due under subrule 14.6(2). In lieu of a lump sum payment, the commission may enter into an agreement under which the applicant may repay the amount due within a 12-month period. If the applicant fails to repay the amount due within 30 days of a request for repayment or fails to comply with the terms of a repayment agreement, the commission may offset future grants that the applicant may be entitled to under this chapter until the amount due has been recovered. The commission may also suspend other benefits available to the applicant until the amount due has been recovered.

14.6(4) *Waiver.* The commission may temporarily or permanently waive its authority to recover payments under subrule 14.6(1) or suspend benefits under subrule 14.6(3) if the applicant's household income is totally exempt from Iowa garnishment law.

14.6(5) *Appeal.* Any commission decision under this chapter is subject to appeal under rule 801—14.7(35A).

801—14.7(35A) Appeal rights.

14.7(1) *Subcommittee action.* An applicant may appeal the decision of the subcommittee to the full Iowa commission of veterans affairs. The applicant shall appeal the decision of the subcommittee to the commission in writing within 30 days of receiving the written denial and shall provide relevant new information to substantiate the appeal.

14.7(2) *Final agency action.* The approval or denial of an application by the commission or by the department shall be the final decision of the agency.

14.7(3) *Judicial review.* Judicial review of the commission's or department's final decisions may be sought in accordance with Iowa Code section 17A.19.

[**ARC 7823B**, IAB 6/3/09, effective 7/8/09]

These rules are intended to implement Iowa Code section 35A.13 as amended by 2007 Iowa Acts, House File 817, section 7.

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