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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 50

Accountancy Examining Board[193A]

Replace Chapters 6 and 7

Replace Chapter 13

Replace Chapters 20 and 21

Real Estate Commission[193E]

Replace Chapter 13

Real Estate Appraiser Examining Board[193F]

Replace Analysis

Replace Chapter 8

Replace Chapter 11

Parole Board[205]

Replace Chapter 8

Iowa Finance Authority[265]

Replace Analysis

Replace Chapter 12

Replace Chapter 15

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Human Services Department[441]

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Replace Chapters 109 and 110

Replace Chapter 156

Replace Chapter 202

Revenue Department[701]

Replace Analysis

Replace Chapter 12

Replace Chapter 240

Labor Services Division[875]

Replace Analysis

Replace Chapters 90 and 91

TITLE IV
HUMAN RESOURCES
CHAPTER 50
HUMAN RESOURCES DEFINITIONS
[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1/21/04, see 581—Ch 1]

11—50.1(8A) Definitions.

“*Absence without leave*” means any absence of an employee from duty without specific authorization.

“*Agency*” means a department, independent agency, or statutory office.

“*Appointing authority*” means the appointed or elected chief administrative head of a department, commission, board, independent agency, or statutory office or that person’s designee.

“*Base pay*” means a fixed rate of pay for an employee that is exclusive of shift or educational differential, special or extraordinary duty pay, leadworker pay, or any other additional special pay.

“*Call back pay*” means extra pay for eligible employees who are directed by the appointing authority to report back to work outside of their regular scheduled work hours that are not contiguous to the beginning or the end of their scheduled work hours.

“*Certification*” means the referral of qualified names from an eligible list to an agency for the purpose of making a selection in accordance with these rules.

“*Certified disability program*” means that program covering persons with disabilities who have been certified by the vocational rehabilitation division of the department of education or the department for the blind as being able to perform the duties of a job class without participation in examinations used for the purpose of ranking qualified applicants on nonpromotional eligible lists.

“*Class*” or “*job classification*” or “*job class*” means one or more positions so similar in duties, responsibilities, and qualifications that each may be assigned to the same job title and pay plan.

“*Classification plan*” means the published list of job classifications and the related elements assigned to each. The classification plan is published annually by the department and revised as necessary.

“*Compensatory leave*” means leave accrued as a result of overtime, call back, holidays, or holiday work.

“*Confidential employee*” means, for purposes of merit system coverage, the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director of a state agency; as well as the nonprofessional staff in the office of the auditor of state, and the nonprofessional staff in the department of justice except those reporting to the administrator of the consumer advocate division.

“*Confidential employee*” means for purposes of collective bargaining coverage, a representative of the employer who, as a major function of the job, determines and effectuates employment relations policy for the appointing authority, exercises independent discretion in establishing such policies, or is so closely related to or aligned with management as to potentially place the employee in a position of conflict of interest between the employer and coworkers. It also means any employee who works for the department, who has access to information subject to use in collective bargaining negotiations, or who works in a close continuing relationship with representatives associated with negotiating collective bargaining agreements on behalf of the state, as well as the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director, deputy director, or division administrator of a state agency.

“*Demotion*” means the change of a nontemporary employee from one class to another having a lower pay grade. Demotions of permanent employees may be disciplinary, in lieu of layoff, or voluntary. Demotions of probationary employees may be disciplinary or voluntary.

“*Department*” means the Iowa department of administrative services.

“*Director*” means the director of the Iowa department of administrative services or the director’s designee.

“*Examination*” means the screening of persons who meet the qualifications for job classifications.

“*Grievance*” means a written complaint alleging a specific violation of these rules or of Iowa Code chapter 8A, subchapter IV.

“*In loco parentis*” means in the place of a parent and charged with the same rights, duties, and responsibilities as a parent.

“*IRC*” means Internal Revenue Code.

“*Lead work*” means a responsibility assigned to an employee by management to direct (instruct, answer questions, distribute and balance work load, accept, modify or reject completed work, maintain attendance records, report infractions and provide input on staffing decisions) the work of two or more employees (federal, state, county, municipal and private employment organization, volunteers, inmates or residents).

“*Long-term disability*” means a condition of an employee who is determined by the state of Iowa’s long-term disability insurance carrier to be unable to work because of illness or injury.

“*Merit system*” means the system of human resource administration based on merit principles and scientific methods to govern the appointment, compensation, promotion, welfare, development, transfer, layoff, removal, and discipline of its civil employees and other instances of state employment established pursuant to Iowa Code chapter 8A.

“*Minimum qualifications*” means the minimum education, experience, or other background required to be considered eligible to apply for, or otherwise perform the duties of a particular job classification.

“*Nonpay status*” means that period of time when an employee does not work during scheduled work hours and the work absence is not covered by any kind of paid leave. This includes employees who do not supplement workers’ compensation payments with paid leave.

“*Overtime*” means those hours that exceed 40 in a workweek for which an eligible employee is entitled to be compensated unless otherwise specified in a collective bargaining agreement.

“*Overtime covered class, employee, or position*” means a class, employee, or position determined to be eligible for premium overtime compensation.

“*Overtime exempt class, employee, or position*” means a class, employee, or position determined to be ineligible for premium overtime compensation.

“*Pay increase*” means an increase in pay within the pay range.

“*Pay plan*” means one of the various schedules of pay grades and salaries established by the director to which classes in the classification plan are assigned.

“*Permanent employee*” means any executive branch employee (except board of regents employees) who has completed at least six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in Iowa Code section 8A.411, “permanent employee” further means those employees who have completed the period of probationary status provided for in Iowa Code section 8A.413. For peace officers employed by the department of public safety, “permanent employee” means a peace officer who has completed a 12-month probationary period after appointment.

“*Permanent employment*” means any period of full-time or part-time executive branch service (except board of regents employment) in a nontemporary position for which the person is eligible to accrue leave and participate in the health and dental insurance programs administered by the department pursuant to 11—64.1(8A) or 11—64.2(8A).

“*Position*” means the grouping of specific duties and responsibilities assigned by an appointing authority that comprise a job to be performed by one employee. A position may be part-time or full-time, temporary or permanent, occupied or vacant, eligible or not eligible to be covered by a collective bargaining agreement, or covered or not covered by merit system provisions. Each position in the executive branch of state government shall be assigned one of the job classifications published in the classification plan.

“*Position classification review*” means the process of studying the kind and level of duties and responsibilities assigned to a position by comparing those duties and responsibilities to classification descriptions, classification guidelines, or other pertinent documents in order to determine the proper job classification to which a position will be assigned.

“Premium overtime rate of compensation” means compensation equal to one and one-half hours for each hour of overtime.

“Probationary employee” means any executive branch employee (except board of regents employees) who has completed less than six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in Iowa Code section 8A.411, “probationary employee” further means those employees who have not completed the period of probationary status provided for in Iowa Code section 8A.413. For peace officers employed by the department of public safety, “probationary employee” means a peace officer who has completed less than 12 months of continuous nontemporary employment following appointment to a peace officer classification.

“Promotion” means the acceptance by a nontemporary employee of an offer by an appointing authority to move to a position in a class with a higher pay grade and may involve movement between positions covered by merit system provisions and positions not covered by merit system provisions.

“Reassignment” means the movement of an employee within the same organizational unit or to another organizational unit at the discretion of the appointing authority. A reassignment may include a change in duties, work location, days of work or hours of work and may be temporary or permanent. A reassignment may result in a change from the employee’s previous job classification.

“Reclassification” means the change of a position from one job classification to another based upon changes in the kind or level of the duties and responsibilities assigned by an appointing authority.

“Red-circled salary” means an employee’s salary that exceeds the maximum for the pay grade in the pay plan to which the employee’s class is assigned.

“Regular rate of pay” means the total compensation an employee receives including base pay, shift or educational differential, special or extraordinary duty pay, leadworker pay, or any other additional special pay.

“Same pay grade” means those pay grades in the various pay plans having the same pay grade number.

“Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, or examination to determine the fitness of the person to perform such duty.

“Shift” means one segment of a 24-hour period in the work schedule of an appointing authority (e.g., day, evening, night shift).

“Shift differential” means extra pay for eligible employees who work shifts other than the day shift.

“Special duty assignment” means the temporary assignment of a permanent employee to a position in another class.

“Standby” means those times when eligible employees are required by the appointing authority to restrict their activities during off-duty hours so as to be immediately available for duty.

“Supervision” means a responsibility assigned to an employee by management to direct the work of two or more employees and to hire, evaluate, reward, promote, transfer, lay off, recall, respond to grievances and discipline those employees.

“Temporary” means nonpermanent employment for a limited period of time.

“Temporary services” means staffing provided by an outside vendor under an authorized contract, such as a temporary employment service, for a limited period of time.

“Transfer” means the movement of an employee from a position in a job class to a vacant position for which the employee qualifies in the same or different job class in the same pay grade. A transfer may include a change in duties, work location, days of work or hours of work. A transfer may be voluntary at the request of the employee, or involuntary at the discretion of the appointing authority.

“Uniformed services” means service as defined in 29 CFR Part 1002.

“Veteran” means any person honorably separated from active duty with the armed forces of the United States who served in any war, campaign, or expedition during the dates specified in Iowa Code section 35C.1.

“*Work time*” means all hours spent performing the duties of an assigned job; travel between job sites during or after the employee’s regular hours of work (where no overnight expenses are involved); rest periods allowed during the employee’s regular hours of work; and meal periods when less than 30 consecutive minutes is provided.

“*Workweek*” means a regularly recurring period of time within a 168-hour period of seven consecutive 24-hour days.

This rule is intended to implement Iowa Code sections 8A.401 to 8A.439.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 0401C, IAB 10/17/12, effective 11/21/12; see Objection note at end of chapter]

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¹ Effective date of 1.1(13), 1.1(31), 1.1(32), 1.1(35), and 1.1(54) delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

² See IAB Personnel Department.

³ Objection to Personnel Department rule 581—1.1(19A), definition of “confidential employee,” was imposed by the Administrative Rules Review Committee and was filed on December 2, 1986. This definition was amended in ARC 7009A, IAB 1/15/97, effective 2/19/97. The objection was lifted by the Committee at its meeting held October 9, 2012.

CHAPTER 6
ATTEST AND COMPILATION SERVICES

193A—6.1(542) Who may perform attest services.

6.1(1) Only a CPA may perform audit, review, or other attest services, as defined in Iowa Code section 542.3(1).

6.1(2) CPAs who perform attest services in Iowa or for a client with a home office in Iowa must hold an active Iowa CPA certificate or exercise a practice privilege under Iowa Code section 542.20. CPAs are cautioned, however, that the auditor of state, the department of agriculture and land stewardship, another governmental official or body, or a client may require that an individual be licensed in Iowa as a condition of performing attest services in Iowa or for a client with a home office in Iowa, whether or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is required, for example, to perform certain audit services described in Iowa Code chapter 11.

6.1(3) CPAs performing attest services, whether certified in Iowa or exercising a practice privilege, must do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7. However, a CPA exercising a practice privilege who works for an out-of-state CPA firm that does not hold a permit to practice under Iowa Code section 542.7 may provide review services in Iowa or for a client with a home office in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

6.1(4) CPAs who are responsible for supervising attest services for a CPA firm or who sign or authorize someone to sign the accountant's report on the financial statements on behalf of a CPA firm shall satisfy the experience or competency requirements established by nationally recognized professional standards that are applicable to the attest services performed and shall, at a minimum, satisfy the experience requirements of rule 193A—6.2(542).

[ARC 7715B, IAB 4/22/09, effective 7/1/09; ARC 0413C, IAB 10/31/12, effective 12/5/12]

193A—6.2(542) Attest experience required.

6.2(1) A CPA who is responsible for supervising attest services or who signs or authorizes someone to sign the accountant's report on financial statements on behalf of a firm shall have two years of full-time or part-time equivalent experience that extends over a period of no less than two years and includes no fewer than 4,000 hours, at least 2,000 of which shall be in providing attest services under the supervision of one or more CPAs responsible for supervising attest services on behalf of a CPA firm that holds a permit to practice in Iowa or an equivalent form of CPA firm licensure in another jurisdiction.

6.2(2) Experience shall include all of the following:

a. Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records.

b. Experience in the preparation of audit working papers covering the examination of the accounts usually found in accounting records.

c. Experience in the planning of the program of audit work including the selection of the procedures to be followed.

d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the content of the accounting records.

e. Experience in the preparation and analysis of financial statements together with explanations and notes thereon.

6.2(3) Verification of attest experience shall be provided by the applicant and by a CPA who supervised the applicant or, if a supervising CPA is unavailable, by a CPA or CPA firm with sufficient factual documentation to verify the applicant's attest qualification.

6.2(4) Any applicant or CPA who has been requested to submit to the board evidence of an applicant's attest experience and has refused to do so shall, upon request by the board, explain in writing or in person the basis for the refusal. The board may require any applicant or CPA who furnished the evidence of an applicant's experience to substantiate the information provided. An applicant may be

required to appear before the board to supplement or verify evidence of experience. The board may inspect documentation relating to an applicant's claimed experience.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—6.3(542) Attest qualification.

6.3(1) Attest qualification is required before a CPA may perform attest services in Iowa or for a client with a home office in Iowa. "Attest qualification" or "attest qualified" means that the CPA has satisfied the experience requirements of rule 193A—6.2(542).

6.3(2) All CPAs who held an individual permit to practice in Iowa at any point prior to July 1, 2002, are deemed to be attest qualified. Under Iowa law prior to July 1, 2002, CPAs were only issued an individual permit to practice if they verified qualification to perform attest services. Individual permits to practice were discontinued under Iowa law effective July 1, 2002.

6.3(3) From July 1, 2002, through June 30, 2009, applicants and Iowa CPAs have attained attest qualification from the board by verifying the required experience when applying for an initial CPA certificate or reciprocal certification, or by separately applying for attest qualification.

6.3(4) Beginning July 1, 2009, when the practice privilege provisions of Iowa Code chapter 542 become effective, attest qualification may be attained or established as follows:

a. Applicants may apply for attest qualification when initially applying for a certificate as an Iowa CPA under Iowa Code section 542.6, or when applying for reciprocal Iowa certification under Iowa Code section 542.19.

b. Iowa CPA certificate holders may apply for attest qualification at any time at which they are qualified to do so.

c. Out-of-state CPAs performing attest services while exercising a practice privilege under Iowa Code section 542.20 are not required to individually apply to the board for attest qualification, but the Iowa CPA firm in which such attest services are performed shall affirm when applying for an initial or renewal firm permit to practice that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant's report on the financial statements on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—6.4(542) Compilation services.

6.4(1) Only a CPA licensed under Iowa Code section 542.6 or 542.19, an LPA licensed under Iowa Code section 542.8, or a person exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa.

6.4(2) An individual described in subrule 6.4(1) may perform compilation services through a CPA firm which holds a permit to practice under Iowa Code section 542.7, an LPA firm which holds a permit to practice under Iowa Code section 542.8, a CPA firm exercising a practice privilege under Iowa Code section 542.20, or, if both the individual and business comply with the requirements of Iowa Code section 542.13(13), through any other form of business.

6.4(3) All individuals described in subrule 6.4(1) who are responsible for supervising compilation services or who will sign or authorize someone to sign the accountant's compilation report on financial statements, as such compilation services will be performed in Iowa or for a client with a home office in Iowa, shall comply with the nationally recognized professional standards that are applicable to compilation services, including SSARS.

6.4(4) All individuals described in subrule 6.4(1) shall satisfy peer review requirements, individually or through the peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

These rules are intended to implement Iowa Code chapter 542.

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[Filed ARC 0413C (Notice ARC 0254C, IAB 8/8/12), IAB 10/31/12, effective 12/5/12]

CHAPTER 7
CERTIFIED PUBLIC ACCOUNTING FIRMS
[Prior to 5/1/02, see 193A—Chapter 8]

193A—7.1(542) When licensure is required.

7.1(1) Except as provided in subrule 7.1(6), a sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice as a firm of certified public accountants prior to:

- a. Performing or offering to perform audit, review or other attest services in Iowa or for a client with a home office in Iowa; or
- b. Establishing an office in Iowa at which the firm uses the title “CPAs,” “CPA firm,” “certified public accountants,” or “certified public accounting firm.”

7.1(2) A firm which is not subject to subrule 7.1(1) may practice public accounting in Iowa or for a client with a home office in Iowa without a permit issued by the board in conformance with Iowa Code section 542.20 and 193A—Chapter 21.

7.1(3) Unless individual Iowa licensure is required by the auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client, the public accounting services provided by a CPA firm holding an Iowa permit to practice may be performed in Iowa or for a client with a home office in Iowa by Iowa CPAs or wholly by persons exercising a practice privilege under Iowa Code section 542.20.

7.1(4) If a CPA firm that is issued a permit to practice by the board has one or more offices in Iowa, the public accounting services performed at each such office must be supervised by an Iowa CPA with an unexpired certificate issued under Iowa Code section 542.6 or 542.19.

7.1(5) A CPA firm issued a permit to practice by the board is accountable to the board and subject to discipline by the board for the acts of its owners or other agents, pursuant to 193A—subrule 14.2(4), whether or not such persons are individually licensed by the board. In order to ensure public accountability, all CPA firms issued a permit to practice under Iowa Code section 542.7 shall:

- a. Designate an Iowa CPA or a person with a practice privilege under Iowa Code section 542.20 who is responsible for the proper licensure of the firm and the firm’s compliance with all applicable laws and rules of the state;
- b. Designate an Iowa CPA or Iowa CPAs who are responsible for the proper registration of each Iowa office and each office’s compliance with all applicable laws and rules of this state;
- c. Designate an Iowa CPA or person with a practice privilege under Iowa Code section 542.20 who is responsible for supervising attest services or who will sign or authorize someone to sign the accountant’s report on financial statements, as such attest services will be performed in Iowa or for a client with a home office in Iowa; and
- d. Designate an Iowa CPA or LPA or person with a practice privilege under Iowa Code section 542.20 who is responsible for supervising compilation services or who will sign or authorize someone to sign the accountant’s compilation report on financial statements, as such compilation services will be performed in Iowa or for a client with a home office in Iowa.

7.1(6) An out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

[ARC 7715B, IAB 4/22/09, effective 7/1/09; ARC 0413C, IAB 10/31/12, effective 12/5/12]

193A—7.2(542) Application process.

7.2(1) Application forms may be obtained from the board office or on the board’s Web site. The board shall only process fully completed applications accompanied by the proper fee. A nonrefundable application fee shall be charged.

7.2(2) Fraud or deceit, by commission or omission, in obtaining a firm permit to practice is a ground for discipline, including permanent revocation of the firm’s permit to practice, the individual certificate of an Iowa CPA, or an individual’s practice privilege, as applicable to the entity or persons responsible.

7.2(3) An initial or renewal application for a firm permit to practice may be denied:

a. Upon any ground that would form a basis for discipline against the firm pursuant to Iowa Code section 542.10 or 193A—Chapter 14; or

b. Based on the firm's failure to comply with the requirements of Iowa Code section 542.7 including, but not limited to, a failure to make the designations described in subrule 7.1(5) or a failure to sustain the simple majority of ownership required by Iowa Code section 542.7(3).

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—7.3(542) Application contents. Applicants for a firm permit to practice shall provide such information as the board may require, including:

7.3(1) The lawful name of the firm and any trade or assumed names, or aliases the firm will use in Iowa or when communicating with Iowans.

7.3(2) The legal form and jurisdiction of the firm's organization.

7.3(3) Contact information for the principal place of business of the firm and each Iowa office, including name, physical address, mailing address, telephone number, facsimile number, E-mail address, and Web-site address.

7.3(4) All jurisdictions in which the firm is licensed or has applied for licensure, all unexpired firm license numbers, and the expiration date of each license.

7.3(5) The names and contact information for all persons described in subrule 7.1(5), including name, title, physical address, mailing address, telephone number, facsimile number, E-mail address, jurisdiction of the person's principal place of business, and the certificate number and expiration date of the certificate held in the person's principal place of business.

7.3(6) The highest level of public accounting services offered by the firm, such as compilation or attest.

7.3(7) Evidence of satisfactory completion of the last firm peer review, when applicable.

7.3(8) The identity of all owners (e.g., partners, shareholders, or members) of the firm who perform professional services in Iowa or for a client with a home office in Iowa, including sufficient information from which the board can determine that a simple majority of owners hold a CPA certificate under Iowa Code section 542.6 or 542.19 or hold a CPA certificate in another state and are eligible to exercise a practice privilege under Iowa Code section 542.20. The board may modify this requirement on the application form as warranted to secure only the information the board deems reasonably needed and may accept an affirmation, subject to audit. The board reserves the right to require at any time a full list, or a targeted sublist, such as a list of those persons who perform services from an Iowa office or those who perform attest or compilation services in Iowa or for a client with a home office in Iowa.

7.3(9) The affirmation described in 193A—paragraph 6.3(4) "c."

7.3(10) Affirmation that all CPAs who are responsible for supervising attest services for the CPA firm or who sign or authorize someone to sign the accountant's report on the financial statements on behalf of the CPA firm satisfy the experience or competency requirements established by nationally recognized professional standards that are applicable to the attest services performed in Iowa or for clients with a home office in Iowa.

7.3(11) Affirmation that all CPAs or LPAs who are responsible for supervising compilation services or who sign or authorize someone to sign the accountant's compilation report on the financial statements on behalf of the firm comply with nationally recognized professional standards that are applicable to the compilation services performed in Iowa or for a client with a home office in Iowa.

7.3(12) Affirmation that all nonlicensee owners are active participants in the firm or affiliated entity.

7.3(13) Affirmation that the firm and its licensed or unlicensed owners will comply with all applicable Iowa laws and rules, including rules of professional conduct, when practicing in Iowa or for a client with a home office in Iowa.

7.3(14) Details of any past denial, cancellation, revocation, suspension, refusal to renew, or voluntary surrender of a professional license of any kind, authority to practice, or practice privilege by the board or another state agency in any jurisdiction, a federal agency, or the PCAOB, regarding the firm and the firm's current owners (e.g., partners, shareholders, or members).

7.3(15) Details of any past felony conviction or the conviction of any crime, any element of which is dishonesty or fraud, as provided in Iowa Code section 542.5(2), under the laws of any state or the United States, regarding the firm and the firm's current owners (e.g., partners, shareholders, or members).
[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—7.4(542) Annual renewal of permit. Permits to practice must be renewed annually and shall expire on June 30 of each year. Applications to renew a permit to practice may be obtained from the board office or on the board's Web site or through electronic on-line renewal. While the board generally mails a renewal notice in the May preceding permit expiration, neither the board's failure to mail a notice nor a permit holder's failure to receive a notice shall excuse the requirement to timely renew and pay the renewal fee.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—7.5(542) Renewal procedures.

7.5(1) The permit holder shall submit an electronic on-line renewal or file a timely and sufficient renewal application with the board by the June 30 deadline each year. Applications shall be deemed filed on the date of electronic renewal or when received by the board or, if mailed, on the date postmarked, but not the date metered.

7.5(2) The permit holder shall list on the renewal application all states in which the applicant has applied for or holds a permit as a certified public accounting firm and list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a permit to practice or practice privilege. Renewal applications may request such additional information as the board requires, including all of the information described in rule 193A—7.3(542).

7.5(3) Within the meaning of Iowa Code chapters 17A, 272C and 542, a timely and sufficient renewal application shall be:

- a. Received by the board in person or electronic form or postmarked with a nonmetered United States Postal Service postmark on or before the date the permit is set to expire or lapse;
- b. Signed by the licensee in charge of the firm's practice if submitted in person or mailed, or certified as accurate if submitted electronically;
- c. Fully completed and accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—7.6(542) Failure to renew permit.

7.6(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, shall be assessed a penalty as provided in rule 193A—12.1(542).

7.6(2) If the firm fails to renew the permit within the 30-day grace period outlined in subrule 7.6(1), the permit will lapse and the firm shall be required to reinstate in accordance with subrule 7.6(3). The firm is not authorized to practice during the period of time that the permit is lapsed, including the 30-day grace period.

7.6(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). The board shall also require a written statement outlining the firm's professional activities during the period of lapsed licensure, including a list of Iowa clients and the services performed.

7.6(4) The board may find probable cause to file charges for unlicensed practice if the firm engaged in any activity that required licensure pursuant to subrule 7.1(1) during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), firms found to have practiced public accounting in violation of subrule 7.1(1) on a lapsed license will be required to notify clients upon such terms as the board shall order.

[ARC 7715B, IAB 4/22/09, effective 7/1/09; ARC 9482B, IAB 5/4/11, effective 6/8/11]

193A—7.7(542) Notices required. A holder of or applicant for a permit shall notify the board in writing within 30 days after an occurrence of any of the following:

7.7(1) A change in the identity of an owner (e.g., partner, shareholder, or member) who performs professional services in this state or for clients with a home office in this state. This is a statutory requirement the board will enforce consistent with the disclosures and affirmations required on initial and renewal application forms.

7.7(2) A change in the number or location of offices within this state.

7.7(3) A change in the identity of a person in charge of such offices.

7.7(4) The denial, revocation, suspension, refusal to renew, or voluntary surrender of a permit to practice, other professional license of any kind, authority to practice, or practice privilege by another state, a state agency in any jurisdiction, a federal agency, or the PCAOB, regarding the firm or any of the firm's owners (e.g., partners, shareholders, or members).

7.7(5) A change of physical or mailing address of the primary office of the firm or of any office located in Iowa, or of any person designated by the firm pursuant to subrule 7.1(5).

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—7.8(542) Firms not in compliance with requirements. A firm that, after receiving or renewing a permit, is not in compliance with Iowa Code section 542.7 as a result of a change in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm permit.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—7.9(542) Peer review required. As a condition of renewal of a permit to practice as a certified public accounting firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

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CHAPTER 13
RULES OF PROFESSIONAL ETHICS AND CONDUCT
[Prior to 5/1/02, see 193A—Chapter 11]

193A—13.1(542) Guiding interpretative principles. The public places trust and confidence in CPAs and LPAs and the services they provide; consequently, licensees have a duty to conduct themselves in a manner that will be beneficial to the public and that fosters such trust and confidence. The rules of professional ethics and conduct identify seven fundamental principles of conduct that are intended to govern licensees' professional performance whether they are practicing in a CPA firm, LPA firm, industry, not-for-profit organization, or a government, education or other setting. These principles, with the exception of independence, apply to all services and activities performed by licensees in all aspects of their professional conduct. Independence is a unique principle that applies only to those professional services where it is required in accordance with professional standards. Users of the licensee's services draw confidence from the knowledge that the licensee is bound to a framework which requires continued dedication to professional excellence and commitment to ethical behavior that will not be subordinated to personal gain.

13.1(1) Public interest.

a. The grant of a license indicates that an individual has met the criteria established by Iowa Code chapter 542 and the board to perform services in a manner that protects the public interest. The licensee must, therefore, have a keen consciousness of the public interest. The public consists of clients, credit grantors, governments, employers, investors, the business and financial community, and others who use the services of licensees.

b. Because the licensee is seen as a representative of the profession by those who retain or use the licensee's services, the licensee shall avoid conduct that might conflict with the public interest or erode public respect for, and confidence in, the profession.

13.1(2) Integrity.

a. Integrity is a character trait demonstrated by acting honestly and candidly and by not knowingly misrepresenting facts, accommodating deceit, or subordinating ethical principles. Acting with integrity is essential to maintaining credibility and public trust.

b. A licensee shall act with integrity in the performance of all professional activities in whatever capacity performed.

13.1(3) Objectivity.

a. Objectivity is a distinguishing feature of the accounting profession and is critical to maintaining the public's trust and confidence. It is a state of mind that imposes the obligation to be impartial and free of bias that may result from conflicts of interest or subordination of judgment. Objectivity requires a licensee to exercise an appropriate level of professional skepticism in carrying out all professional activities.

b. A licensee shall maintain objectivity in the performance of all professional activities in whatever capacity performed.

13.1(4) Due care.

a. Due care imposes the obligation to perform professional activities with concern for the best interest of those for whom the activities are performed and consistent with the profession's responsibility to the public. It is essential to preserving the public's trust and confidence. Due care requires the licensee to discharge professional responsibilities with reasonable care and diligence and to adequately plan and supervise all professional activities for which the licensee is responsible.

b. A licensee shall act with due care in the performance of all professional activities in whatever capacity performed.

13.1(5) Competence.

a. Competence is derived from a combination of education and experience. It begins with a mastery of the common body of knowledge, skills, and abilities and requires a commitment to lifelong learning and professional improvement. A licensee shall possess a level of competence, sound

professional judgment, and proficiency to ensure that the quality of the licensee's activities meets the high level of professionalism required by these principles.

b. A licensee shall be competent in the performance of all professional activities, in whatever capacity performed, and comply with applicable professional standards.

13.1(6) Confidentiality.

a. A licensee has an obligation to maintain and respect the confidentiality of information obtained in the performance of all professional activities. Maintaining such confidentiality is vital to the proper performance of the licensee's professional activities.

b. This obligation continues after the termination of the relationship between the licensee and the client or employer and extends to information obtained by the licensee in professional relationships with prospective clients and employers.

c. This principle shall not be construed to prohibit a licensee from disclosing information as required to meet professional, regulatory or other legal obligations.

13.1(7) Independence.

a. Independence, where required by professional standards, is essential to establishing and maintaining the public's faith and confidence in, and reliance on, information on which the licensee reported.

b. A licensee in the practice of public accounting shall be independent in fact and appearance when engaged to provide services where independence is required by professional standards. Independence in fact is the state of mind that permits a licensee to perform an attest service without being affected by influences that compromise professional judgment, thereby allowing the licensee to act with integrity and exercise objectivity and professional skepticism. Independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third party, having knowledge of all relevant information, to conclude that the integrity, objectivity or professional skepticism of a licensee had been compromised.

[ARC 9003B, IAB 8/11/10, effective 1/1/11]

193A—13.2(542) Scope.

13.2(1) The following rules of professional ethics and conduct have been adopted by the board as authorized by Iowa Code chapter 542, in particular, sections 542.4(9) "e" through "p" and "t." These rules complement the grounds for discipline set out in 193A—Chapter 14. These rules cover a broad range of behavior and do not enumerate every possible unethical act or act of misconduct.

13.2(2) In the interpretation and enforcement of the rules of professional ethics and conduct, the board may give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by other state boards of accountancy and by appropriately authorized committees on ethics of professional organizations.

[ARC 9003B, IAB 8/11/10, effective 1/1/11]

193A—13.3(542) Applicability.

13.3(1) The rules of professional ethics and conduct which follow rest upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting and on the implication of professional competence inherent in the authorized use of a legally restricted title relating to the practice of public accountancy imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of professional ethics and conduct are intended to enforce where necessary, include the obligation to maintain independence of thought and action and a continued commitment to learning and professional improvement, to observe applicable generally accepted accounting principles and generally accepted auditing standards, to promote public interest through sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all professional activities in whatever capacity performed.

13.3(2) Acceptance of a certificate as a CPA or a license as an LPA to practice public accounting involves acceptance by the CPA or LPA of the obligations set forth in subrule 13.3(1) and accordingly a duty to abide by the rules of professional ethics and conduct.

13.3(3) The rules of professional ethics and conduct have application to all professional services performed by all CPAs and LPAs whether or not they are engaged in the practice of public accountancy, except where the wording of a rule clearly indicates that the applicability is more limited.

13.3(4) A CPA or LPA who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the rules, so long as the CPA's or LPA's conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which the CPA or LPA is practicing. However, even in such a case, if a CPA's or LPA's name is associated with financial statements in such manner as to imply that the CPA or LPA is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices are followed, the CPA or LPA will be expected to comply with subrules 13.4(3) (engagement standards) and 13.4(16) (accounting principles).

13.3(5) A CPA or LPA may be held responsible for compliance with the rules of professional ethics and conduct by all persons associated with the accountant in the practice of public accounting who are either under the accountant's supervision or are licensees, partners or shareholders in the accountant's practice.

13.3(6) CPAs and CPA firms exercising a practice privilege in Iowa or for a client with a home office in Iowa are subject to the professional standards set forth in this chapter.

[ARC 9003B, IAB 8/11/10, effective 1/1/11]

193A—13.4(542) Rules applicable to all CPAs and LPAs.

13.4(1) *Integrity, objectivity and conflicts of interest.*

a. A CPA or LPA shall not knowingly misrepresent facts and, when engaged in the performance of professional services, shall not subordinate judgment to others or allow professional judgment and objectivity to be impaired by self-interest or by a conflict of interest between the licensee and a client or between clients. In tax practice, a licensee may resolve doubt in favor of the client as long as there is reasonable support for that position.

b. When offering or rendering accounting or related financial, tax, or management advice, a CPA or LPA shall be objective and shall not place the CPA's or LPA's own financial interests or the financial interests of a third party ahead of the legitimate financial interests of the client or the public in any context in which a client or the public can reasonably expect objectivity from one using the CPA or LPA title.

c. When faced with a conflict of interest that may impair professional judgment and objectivity, the licensee shall decline or cease the engagement, take steps to remove the conflict or, when reasonably feasible and appropriate under the circumstances and consistent with independence requirements, disclose the conflict or potential conflict and secure from all clients informed consent to proceed with the engagement. In no event, however, shall a licensee proceed with an engagement through informed consent when the nature of the conflict impairs the licensee's objectivity whether or not the client consents.

d. A conflict of interest may arise, for instance, when a licensee represents multiple clients whose interests are adverse to each other. Whether a licensee can provide competent, diligent, and objective representation to clients whose interests are or may be adverse to each other's interests or the interests of the licensee, with informed consent, will depend on the factual circumstances of the engagement. Licensees are cautioned that, when in doubt as to whether informed consent will effectively address an actual or potential conflict of interest, the most prudent course is to decline or cease the engagement and to advise one or more of the multiple clients to seek alternative professional representation.

13.4(2) *Professional competencies and compliance with applicable technical standards.* A CPA or LPA who accepts a professional engagement implies that the CPA or LPA has the necessary competence to complete the engagement according to professional standards. All CPAs and LPAs shall comply with the following general standards as interpreted by bodies designated by the American Institute of Certified Public Accountants and must justify any departure.

a. *Professional competence.* A CPA or LPA shall undertake only those engagements which the CPA, LPA or firm can reasonably expect to complete with professional competence. Competence relates

both to knowledge of the profession's standards, techniques and the technical subject matter involved and to the capability to exercise sound judgment in applying such knowledge to each engagement.

b. Due professional care. A CPA or LPA shall exercise due professional care in the performance of an engagement.

c. Planning and supervision. A CPA or LPA shall adequately plan and supervise an engagement.

d. Sufficient relevant data. A CPA or LPA shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement.

13.4(3) Engagement standards. Unless they have complied with applicable generally accepted engagement standards, CPAs and LPAs shall not permit their names to be associated with financial statements. The board will consider the American Institute of Certified Public Accountants Professional Standards, Public Company Accounting Oversight Board, International Accounting Standards Board, Statements on Auditing Standards, and Statements on Standards for Accounting and Review Services as sources of interpretations of generally accepted engagement standards.

13.4(4) Discreditable conduct. A CPA or LPA shall not commit any act that reflects adversely on the CPA's or LPA's fitness to engage in the practice of public accountancy. The board may consider discipline by any other agency or jurisdiction when determining probable cause to take action against a CPA or LPA for acts discreditable. Conduct discreditable to the public accounting profession is further defined in 193A—subrule 14.3(12).

13.4(5) Requirements of governmental bodies, commissions, or other regulatory agencies.

a. Many governmental bodies, commissions, or other regulatory agencies have established requirements, such as audit standards, guides, rules and regulations, that CPAs are required to follow in preparation of financial statements or related information, such as management's discussion or analysis, and in performing attest or similar services for entities subject to the jurisdiction of the governmental bodies, commissions, or regulatory agencies. For example, the Securities and Exchange Commission, Government Accountability Office, office of auditor of state, state insurance division and other regulatory agencies have established such requirements.

b. A CPA shall not prepare financial statements or related information for the purposes of reporting to such bodies, commissions, or regulatory agencies, unless the CPA agrees to follow the requirements of such organizations in addition to generally accepted auditing standards, where applicable, unless the CPA discloses in the financial statements or the accountant's report that such requirements were not followed.

13.4(6) Confidentiality. A CPA or LPA shall not, without the consent of the client, disclose any confidential information pertaining to the client obtained in the course of performing professional services. This rule does not:

a. Relieve a CPA or LPA of any obligations under subrules 13.4(3) (engagement standards) and 13.4(16) (accounting principles); or

b. Affect in any way a CPA's or LPA's obligation to comply with a validly issued subpoena or summons enforceable by order of a court; or

c. Prohibit disclosures in the course of a peer review of a CPA's or LPA's professional services; or

d. Preclude a CPA or LPA from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board. Members of the board and its peer reviewers, staff and other agents shall not disclose any confidential information which comes to their attention from a CPA or LPA in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to an investigative or disciplinary body.

13.4(7) Records.

a. Definitions.

"Client-provided records" means all documents or written or electronic material provided to the licensee, or obtained by the licensee in the course of the licensee's representation of the client, that preexisted the retention of the licensee by the client.

"Client records prepared by the licensee" means accounting or other records (tax returns, general ledgers, subsidiary journals, and supporting schedules such as detailed employee payroll records and depreciation schedules) that the licensee was engaged to prepare for the client.

“*Licensee’s working papers*” means, but is not limited to, supporting records, audit programs, analytical review schedules, and statistical sampling results, analyses, and schedules prepared by the client at the request of the licensee.

“*Supporting records*” means information not reflected in the client’s books and records that are otherwise not available to the client with the result that the client’s financial information is incomplete. For example, supporting records include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) that are produced by the licensee during an engagement (for example, an audit).

b. Furnishing client records.

(1) A CPA or LPA shall furnish within a reasonable time of a client’s or former client’s request:

1. All client-provided records, including any accounting or other records belonging to, or obtained from or on behalf of, the client which the CPA or LPA removed from the client’s premises or received for the client’s account, including a copy of all disclosures required by subrule 13.4(19). The CPA or LPA may make and retain copies of such documents when they form the basis for work done by the CPA or LPA.

2. All client records prepared by the CPA or LPA and supporting records to the extent that such records would ordinarily constitute part of the client’s books and records and are not otherwise available to the client or easily reconstructed by the client or successor CPA or LPA. Examples of such records include depreciation schedules and LIFO inventory work papers. Whether a particular record falls into this category is a mixed question of law and fact. When requested by a client or former client, the CPA or LPA has the burden to demonstrate that a particular record does not fall within this category.

(2) A “reasonable time” for furnishing clients or former clients the records described in paragraph 13.4(7) “a” is dependent upon the facts and circumstances. A CPA or LPA shall strive to be as responsive as the situation requires in light of the possible adverse consequence of delay to the client or former client. As a general rule, the CPA or LPA shall provide such records within 30 days of a written request.

13.4(8) *Records retention.* A CPA or LPA shall comply with all professional standards on records retention applicable to particular engagements including, but not limited to, standards adopted by recognized standards-setting bodies such as the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Comptroller General of the United States, the Auditing Standards Board, the Internal Revenue Service, or other applicable regulatory body.

13.4(9) *Nonpayment of fees.*

a. General rule. A CPA or LPA shall not withhold the records described in paragraph 13.4(7) “b” from a client or former client based on nonpayment of fees. However, if a CPA or LPA has already issued a tax return, report or other record to a client or former client, the CPA or LPA may, but is not required to, request payment of outstanding fees prior to providing a second copy of such records.

b. Copy expenses. A licensee may, but is not required to, charge the actual cost of furnishing electronic or paper copies of records if consistent with the engagement arrangements with the client.

c. Incomplete engagement. Nothing in this subrule requires a licensee to complete an engagement if, under the engagement arrangement, completion is contingent upon payment of fees. For example, if a client engages a licensee to complete a tax return and the completion of the engagement is contingent upon payment of fees, the licensee is not required to complete the engagement and furnish the client records prepared by the licensee or associated supporting records if the client does not pay as agreed. In that event, the licensee is only required to return to the client those records constituting client-provided records. If, however, the licensee completes the engagement and furnishes the client a tax return to file or files the tax return with taxing authorities, the licensee is required to comply with paragraph 13.4(9) “a” whether or not fully paid.

13.4(10) *Cooperation with board inquiry.* A CPA or LPA shall, when requested, respond to communications from the board within 30 days of the mailing of such communications by certified mail.

13.4(11) *Violation of tax laws.* A CPA or LPA shall not violate any tax laws in handling the CPA’s or LPA’s personal business affairs, or the business affairs of an employer or client, or the business affairs of any company owned by the CPA or LPA.

13.4(12) Reporting convictions, judgments, and disciplinary actions. In addition to any other reporting requirement in Iowa Code chapter 542 or these rules, a CPA or LPA shall notify the board within 30 days of:

a. Imposition upon the CPA or LPA of discipline including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, or suspension, revocation or modification of a license, certificate, permit or practice rights by:

(1) The SEC, Public Company Accounting Oversight Board, or IRS (by the Director of Practice);
or

(2) Another state board of accountancy for cause other than failure to pay a professional fee by the due date or failure to meet the continuing education requirements of another state board of accountancy;
or

(3) Any other federal or state agency regarding the CPA's or LPA's conduct while rendering professional services; or

(4) Any foreign authority or credentialing body that regulates the practice of accountancy;

b. Occurrence of any matter that must be reported by the CPA or LPA to the Public Company Accounting Oversight Board pursuant to Sarbanes-Oxley Section 102(b)(2)(f) and Public Company Accounting Oversight Board rules and forms adopted pursuant thereto;

c. Any judgment, award or settlement of a civil action or arbitration proceeding in which the CPA or LPA was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall notify the board regarding civil judgments, settlements or arbitration awards directly involving the firm's practice of public accounting in this state; or

d. Criminal charges, deferred prosecution or conviction or plea of no contest to which the CPA or LPA is a defendant if the crime is:

(1) Any felony under the laws of the United States or any state of the United States or any foreign jurisdiction; or

(2) Any crime, including a misdemeanor, if an essential element of the offense is dishonesty, deceit or fraud, as more fully described in Iowa Code section 542.5, subsection 2.

13.4(13) Firm's duty to report. The CPA or LPA designated by each firm as responsible for the proper licensure of the firm or registration of an office of the firm shall report any matter reportable under this rule to which a nonlicensee owner with a principal place of business in this state is a party.

13.4(14) Advertising. A CPA or LPA shall not use or participate in the use of any form of public communication having reference to professional services that contains a false, fraudulent, misleading, deceptive or unfair statement or claim. A false, fraudulent, misleading, deceptive or unfair statement or claim includes, but is not limited to, a statement or claim which:

a. Contains a misrepresentation of fact; or

b. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or

c. Contains any testimonial or laudatory statement, or other statement or implication that the CPA's or LPA's professional services are of exceptional quality; or

d. Is intended to likely create false or unjustified expectations of favorable results; or

e. Implies educational or professional attainments or licensing recognition not supported in fact;
or

f. States or implies that the CPA or LPA has received formal recognition as a specialist in any aspect of the practice of public accountancy, if this is not the case; or

g. Represents that professional services can or will be competently performed for a stated fee when this is not the case or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

h. Contains other representations or applications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

13.4(15) Misleading firm names.

a. A firm name is misleading within the meaning of Iowa Code section 542.13 if, among other things:

- (1) The firm name implies the existence of a corporation when the firm is not a corporation.
- (2) The firm name implies the existence of a partnership when there is not a partnership (e.g., “Smith & Jones, CPAs” or “Smith and Jones, LPAs”).
- (3) The CPA firm name includes the name of a person who is not a CPA if the title “CPAs” or “Certified Public Accountants” is included in the firm name.
- (4) The LPA firm name includes the name of a person who is not an LPA if the title “LPAs” or “Licensed Public Accountants” is included in the firm name.
- (5) The firm name contains any wording that would be a violation of subrule 13.4(14) (advertising).
 - b. Names of one or more past partners or shareholders may be included in the firm name of a partnership or corporation or its successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

13.4(16) *Accounting principles.* A CPA or LPA shall not state in the CPA’s or LPA’s report on financial statements that the financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the CPA or LPA can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such cases, the accountant’s report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle(s) would result in a misleading statement. The board will consider the pronouncements issued by the Financial Accounting Standards Board and its predecessor entities as sources of interpretations of generally accepted accounting principles.

13.4(17) *Forecasts.* A CPA or LPA shall not in the performance of professional services permit the CPA’s or LPA’s name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that the CPA or LPA vouches for the achievability of the forecast.

13.4(18) *Competence.* A CPA or LPA shall not undertake any engagement for the performance of professional services which the CPA or LPA or the CPA’s or LPA’s firm cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with subrules 13.4(3) (engagement) and 13.4(16) (accounting principles). A CPA or LPA who accepts a professional engagement implies that the CPA or LPA has the necessary competence to complete the engagement according to professional standards, applying the CPA’s or LPA’s knowledge and skill with reasonable care and diligence, but the CPA or LPA does not assume a responsibility for infallibility of knowledge or judgment.

13.4(19) *Commissions.* A CPA or LPA may accept a commission subject to the prohibitions set forth in Iowa Code section 542.13(15) and the restrictions set forth in these rules.

a. A CPA or LPA engaged in the practice of public accounting must act in the best interests of the client and shall not allow integrity, objectivity or professional judgment to be impaired by the self-interest a commission-based fee may create.

b. A CPA or LPA who anticipates receiving a commission in connection with the recommendation, referral or sale of a product or service must establish such procedures as are reasonably necessary to avoid the prohibitions set forth in Iowa Code section 542.13(15).

c. A CPA or LPA engaged in the practice of public accounting who is paid or expects to be paid a commission shall disclose that fact to any person or entity to which the CPA or LPA recommends, refers or sells a product or service to which the commission relates.

d. To ensure full and effective disclosure, a CPA or LPA shall substantially adhere to the following guidelines when recommending, referring or selling a product or service to which a commission relates:

- (1) The disclosure shall be in writing, signed and dated by the person to whom a product or service is recommended, referred or sold, and a copy shall be provided to the client.
- (2) The disclosure shall be made at or prior to the time the product or service is recommended, referred or sold.
- (3) The disclosure shall be legible, clear and conspicuous, and on a separate form.

(4) A copy of the disclosure shall be retained by the CPA or LPA for as long as the CPA or LPA deems appropriate to the transaction; however, the board recommends a minimum of three years.

(5) In the event of a continuing engagement or series of related transactions involving similar products or services, one written disclosure may cover more than one recommendation, referral or sale as long as the disclosure is provided at least annually and is not misleading.

e. This rule does not prohibit payments for the purchase of all, or a material part, of an accounting practice, or retirement payments to persons formerly engaged in the practice of public accountancy, or payments to heirs or estates of such persons.

13.4(20) *Contingent fees.* A CPA or LPA may accept contingent fees as defined in Iowa Code section 542.3(9) subject to the prohibitions set forth in Iowa Code section 542.13(15) and restrictions set forth in these rules.

13.4(21) *Solicitation.* A CPA or LPA shall not by any direct personal communication solicit an engagement to perform professional services:

a. If the communication would violate subrule 13.4(14) (advertising) if it were a public communication; or

b. By the use of coercion, duress, compulsion, intimidation, threats, overreaching, or harassing conduct; or

c. If the solicitation communication contains proposals which would improperly disclose confidential information or violate a professional standard established in this chapter.

13.4(22) *Discrimination and harassment in employment practices.* Whenever a CPA or LPA is determined by a court of competent jurisdiction to have violated any of the antidiscrimination laws of the United States or any state or municipality thereof, including those related to sexual and other forms of harassment, or has waived or lost the CPA's or LPA's right of appeal after a hearing by an administrative agency, the CPA or LPA will be presumed to have committed an act discreditable to the profession.

13.4(23) *Preparation of financial statements or records.* A CPA or LPA shall not:

a. Make, or permit or direct another to make, materially false or misleading entries in the financial statements or records of an entity;

b. Fail to correct an entity's financial statements that are materially false or misleading when the CPA or LPA has the authority to record an entry; or

c. Sign, or permit or direct another to sign, a document containing materially false or misleading information.

13.4(24) *Solicitation or disclosure of CPA examination questions and answers.* A CPA or LPA who solicits or knowingly discloses a Uniform CPA Examination question(s) or answer(s) without the written authorization of the American Institute of Certified Public Accountants shall be considered to have committed an act discreditable to the profession.

13.4(25) *Falsely reporting continuing professional education (CPE).* A CPA or LPA shall be considered to have committed an act discreditable to the profession when the CPA or LPA falsely reports CPE credits during the CPA's or LPA's required reporting renewal or board CPE audit.

13.4(26) *Mandatory ethics continuing professional education.* Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing professional education devoted to ethics and rules of professional conduct during the three-year period ending December 31, prior to the July 1 annual renewal date. This requirement is more fully described in 193A—subrule 10.7(2).

[ARC 9003B, IAB 8/11/10, effective 1/1/11]

193A—13.5(542) Rules applicable to CPAs and LPAs who use the titles in offering or rendering products or services to clients.

13.5(1) *Use of title.*

a. Certified public accountant. Only a person who holds an active, unexpired certificate and who complies with the requirements of 193A—Chapter 5, Licensure Status and Renewal of Certificates and Licenses, and Chapter 10, Continuing Education, or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title “certified public accountant” or the

abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a certified public accountant.

b. Licensed public accountant. Only a person holding a license as a licensed public accountant shall use or assume the title “licensed public accountant” or the abbreviation “LPA” or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that such person is a licensed public accountant.

13.5(2) Forms of practice.

a. Certified public accountant firms. A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.7 and these rules as a firm of certified public accountants in order to use the title “CPAs” or “CPA firm,” as more fully described in 193A—Chapter 7.

b. Licensed public accounting firms. A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.8 and these rules as a firm of licensed public accountants in order to use the title “LPAs” or “LPA firm,” as more fully described in 193A—Chapter 8.

13.5(3) Acting through others. A CPA or LPA shall not permit others to carry out on the CPA’s or LPA’s behalf, either with or without compensation, acts which, if carried out by the CPA or LPA, would violate the rules of professional ethics and conduct.

[ARC 9003B, IAB 8/11/10, effective 1/1/11]

193A—13.6(542) Audit, review and other attest services.

13.6(1) Definitions.

“Attest” or “attest service” means providing any of the following services:

1. An audit or other engagement to be performed in accordance with the statements on auditing standards.
2. A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.
3. Any engagement to be performed in accordance with the statements on standards for attestation engagements.
4. Any engagement to be performed in accordance with the auditing standards of the Public Company Accounting Oversight Board.

The standards specified in the definition of “attest” are those standards adopted by the board, by rule, by reference to the standards developed for general application by the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, or other recognized national accountancy organization.

“Attest engagement team” means the team of individuals participating in attest service, including those who perform concurring or second partner reviews. The “attest engagement team” includes all employees and contractors retained by the firm who participate in attest service, irrespective of their functional classification.

“Audit” means an examination of financial statements by a CPA, conducted in accordance with generally accepted auditing standards accompanied by the CPA’s opinion as to whether the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

“Review” means to perform inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

13.6(2) Practice privilege. All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa must be performed through a CPA firm that holds an active Iowa firm permit to practice; provided that, an out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit

to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules. Unless Iowa certification is specifically required by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. LPAs and LPA firms are not authorized to perform attest services.

13.6(3) Professional skepticism. A CPA shall not subordinate the CPA's professional judgment to a non-CPA. Professional judgment requires auditors to exercise professional skepticism, which is an attitude that includes a questioning mind and a critical assessment of evidence. Auditors use the knowledge, skills, and experience called for by their profession to diligently perform, in good faith and with integrity, the gathering of evidence and the objective evaluation of the sufficiency, competency, and relevancy of evidence. Since evidence is gathered and evaluated throughout the assignment, professional skepticism shall be exercised throughout the assignment.

13.6(4) Independence. A CPA or CPA firm shall not issue a report on financial statements of a client in such a manner as to imply that the CPA is acting as an independent public accountant with respect thereto unless the CPA is independent with respect to such client. Independence will be considered to be impaired if, for example:

a. During the period of the professional engagement, or at the time of expressing an opinion, a CPA:

(1) Had, or was committed to acquire, any direct or material indirect financial interest in the client; or was a trustee of any trust or executor or administrator of any estate if such trust or estate had, or was committed to acquire, any direct or material indirect financial interest in the client; or

(2) Had any joint, closely held business investment with the client or any officer, director or principal stockholder which was material to the CPA; or

(3) Had any loan to or from the client or any officer, director or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms and requirements: loans which are not material in relation to the net worth of the CPA; home mortgages; and other secured loans, except those secured solely by a guarantee of the CPA.

b. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee:

(1) Was connected with the client as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

(2) Was a trustee for any pension or profit-sharing trust of the client.

The foregoing examples are not intended to be all-inclusive.

13.6(5) Professional judgment. A CPA shall not, in the performance of audit, review or other attest services, knowingly misrepresent facts, subordinate judgment to others, or allow professional judgment and objectivity to be impaired by self-interest or by a conflict of interest between the licensee and a client or between clients.

13.6(6) Retention period of attest documentation and working papers. Unless otherwise required by applicable law, a CPA or CPA firm shall retain attest documentation and attest working papers for seven years, measured by the report date. If the CPA or CPA firm is notified within the seven-year period of a board investigation or disciplinary proceeding, criminal investigation or proceeding, or other governmental investigation or proceeding, which stems from or relates to the documents at issue, such attest documentation and attest working papers shall not be destroyed until the firm has been notified in writing that the investigation or proceeding has been closed or otherwise fully resolved or until seven years from the report date, whichever period is longer.

13.6(7) Peer review required. As a condition of renewal of a permit to practice as a CPA firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11 and Iowa Code section 542.7.

13.6(8) Failure to follow standards, procedures or other requirements in governmental audits. Engagements for audits of governmental grants, governmental units or other recipients of governmental moneys typically require that such audits be in compliance with government audit

standards, guides, procedures, statutes, rules, and regulations, in addition to generally accepted auditing standards. If a CPA has accepted such an engagement and undertakes an obligation to follow specified government audit standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards, the CPA is obligated to follow such requirements.

[ARC 9003B, IAB 8/11/10, effective 1/1/11; ARC 0174C, IAB 6/13/12, effective 7/18/12; ARC 0413C, IAB 10/31/12, effective 12/5/12]

193A—13.7(542) Compilation.

13.7(1) *Who can perform.* Only a CPA licensed under Iowa Code section 542.6 or 542.19, an LPA licensed under Iowa Code section 542.8, or a CPA exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa. (Refer to rule 193A—6.4(542).)

13.7(2) *Peer review.* All individuals described in 193A—subrule 6.4(1) shall satisfy peer review requirements, individually or through a peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

13.7(3) *Mandatory financial statement presentation continuing professional education.* In each renewal period in which compilation reports are issued, every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing education devoted to financial statement presentation every three years, such as courses covering the Statements on Standards for Accounting and Review Services (SSARS) and accounting and auditing updates. This requirement is more fully described in 193A—subrule 10.7(1).

13.7(4) *Compilation standards.*

a. A compilation shall be performed by a person or persons having adequate technical training and proficiency to compile prospective financial statements.

b. Due professional care shall be exercised in the performance of the compilation and the preparation of the report.

c. The work shall be adequately planned, and assistants, if any, shall be properly supervised.

d. Applicable compilation procedures shall be performed as a basis for reporting on the compiled financial statements.

e. The report based on the licensee's compilation shall include the following:

(1) An identification of the financial statements presented by the responsible party;

(2) A statement that the licensee has compiled the financial statements in accordance with standards established by the American Institute of Certified Public Accountants;

(3) The manual or printed signature of the licensee's firm;

(4) The date of the compilation report.

13.7(5) *Compilation standards for prospective financial statements.*

a. Applicable compilation procedures shall be performed as a basis for reporting on the compiled prospective financial statements.

b. In addition to the four items included in paragraph 13.7(4) "e," the report based on the licensee's compilation shall include the following:

(1) A statement that a compilation is limited in scope and does not enable the licensee to express an opinion or any other form of assurance on the prospective financial statements or the assumptions;

(2) A caveat that the prospective results may not be achieved;

(3) A statement that the licensee assumes no responsibility to update the report for events and circumstances occurring after the date of the report.

[ARC 9003B, IAB 8/11/10, effective 1/1/11]

193A—13.8(542) Rules applicable to tax practice.

13.8(1) CPAs, LPAs, and persons who are not CPAs or LPAs may perform tax services in Iowa. The rules of professional ethics and conduct in this chapter and, more specifically, with respect to tax services, this rule shall apply to CPAs and LPAs who are licensed in Iowa and to CPAs exercising a practice privilege in Iowa whenever such persons inform the client or prospective client that they are a CPA or LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards or E-mail. Clients and prospective clients who select a tax professional holding oneself out as a CPA or LPA have the right to expect compliance with these rules. A licensee shall not render services in the area of taxation unless the licensee has complied with Statements on Responsibilities in Tax Practice (SRTP), Internal Revenue Service Treasury Department Circular 230, Iowa department of revenue rules, and the Iowa Code.

13.8(2) Professional judgment—tax position. The licensee may resolve doubt in favor of the licensee's client as long as there is reasonable support for the client's tax return position. The licensee shall in good faith believe that the client's tax return position is warranted in existing law or can be supported by a good-faith argument for an extension, modification, or reversal of existing law. The licensees shall in good faith believe that:

a. The position has a realistic possibility of being sustained administratively or judicially on its merits if challenged.

b. The position is appropriately disclosed.

c. The taxpayer is advised regarding potential penalty consequences of the tax return position.

d. In addition to a duty to the taxpayer, the licensee has a duty to the tax system.

13.8(3) Licensees shall provide the following form and content of advice to taxpayers:

a. Establish the relevant background facts.

b. Consider the reasonableness of the assumptions and representations.

c. Apply the pertinent authorities to the relevant facts.

d. Consider the business purpose and economic substance of the transaction, if relevant to the tax consequences of the transaction.

e. Arrive at a conclusion supported by the authorities.

13.8(4) Before signing as preparer, a licensee shall make a reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a tax return.

a. The licensee must exercise due diligence in preparing, or assisting in the preparation of, approving, and filing tax returns.

b. A licensee shall perform due diligence in determining the correctness of oral or written representations made by the client.

13.8(5) Contingent fee.

a. A licensee may charge a contingent fee for services rendered in connection with the examination of, or challenge to:

(1) An original tax return, or

(2) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer's receiving a written notice of the examination of, or a written challenge to, the original tax return.

b. A licensee may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service or other governmental agency, or in a judicial proceeding.

c. A licensee may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Service.

13.8(6) Return of client's records.

a. At the request of a client, a licensee must promptly return any and all records of the client that are necessary for the client to comply with the client's tax obligations.

b. Records of the client include all documents, written or electronic, provided to the licensee, or obtained by the licensee in the course of the licensee's representation of the client, that preexisted the retention of the licensee by the client.

13.8(7) Conflict of interest.

a. A licensee shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client, or

(2) There is significant risk that the representation of one or more clients will be materially limited by the licensee's responsibilities to another client, a former client, or a third person, or by a personal interest of the licensee.

b. Notwithstanding the existence of a conflict of interest under paragraph "*a*" of this subrule, the licensee may represent a client if:

(1) The licensee reasonably believes that the licensee will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law; and

(3) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the licensee. Copies of consents must be retained for at least 36 months from the date of the conclusion of the representation of the affected clients.

[ARC 9003B, IAB 8/11/10, effective 1/1/11]

193A—13.9(542) Consulting, advisory and other accounting services.

13.9(1) Introduction.

a. Consulting services that licensees provide to their clients have evolved from advice on accounting-related matters to a wide range of services involving diverse technical disciplines, industry knowledge, and consulting skills. Most licensees, including those who provide audit and tax services, also provide business and management consulting services to their clients.

b. Consulting services differ fundamentally from the licensee's function of attesting to the assertions of other parties. In a consulting service, the licensee develops the findings, conclusions, and recommendations presented. The nature and scope of work are determined solely by the agreement between the licensee and the client. Generally, the work is performed only for the use and benefit of the client.

13.9(2) Definitions.

"*Advisory services*" means the development and presentation of findings, conclusions, and recommendations for client consideration and decision making.

"*Business valuation*" means the act or process of determining the value of a business enterprise or ownership interest therein.

"*Consulting services*" means professional services that employ the practitioner's technical skills, education, observations, experience, and knowledge of the consulting process.

13.9(3) CPAs, LPAs, and persons who are not CPAs or LPAs may perform management or financial advisory services, financial investment or planning services, business valuation, and financial consulting services in Iowa. Some advisory or consulting services require licensure by bodies other than the board, such as insurance or securities licenses issued by the division of insurance. The rules of professional ethics and conduct in this chapter and, more specifically, with respect to advisory and consulting services, this rule shall apply to CPAs and LPAs who are licensed in Iowa and to CPAs exercising a practice privilege in Iowa whenever such persons inform the client or prospective client that they are a CPA or LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards, or E-mail. Clients and prospective clients who select an advisory or consulting professional holding oneself out as a CPA or LPA have the right to expect compliance with these rules. A licensee shall comply with the applicable standards for the consulting, advisory and other accounting services to be provided to the licensee's client(s), such as Statements

on Standards for Valuation Services, Statements on Standards for Consulting Services, Statements on Responsibilities in Personal Financial Planning Practice, the Iowa uniform securities Act, the Iowa securities and regulated industries bureau, and the Iowa Code.

13.9(4) The consulting process requires the licensee to develop the findings, determine the conclusions, and present the recommendations. The nature and scope of work are determined by the agreement between the licensee and client.

13.9(5) Licensees shall follow these additional general standards for consulting services:

a. Client interest. The licensee shall serve the client interest by seeking to accomplish the objectives established by the understanding with the client while maintaining integrity and objectivity.

b. Understanding with client. The licensee shall establish with the client an oral or written understanding about the responsibilities of the parties and the nature, scope, and limitations of services to be performed and shall modify the understanding when circumstances require a significant change during the engagement.

c. Communication with client. The licensee shall inform the client of (1) conflicts of interest that may occur pursuant to interpretations of Rule 102 of the American Institute of Certified Public Accountants Code of Professional Conduct, (2) significant reservations concerning the scope or benefits of the engagement, and (3) significant engagement findings or events.

13.9(6) Performance of consulting services for an attest client does not, in and of itself, impair independence. Licensees and their firms performing attest services for a client shall comply with applicable independence standards, rules and regulations issued by the American Institute of Certified Public Accountants, the board, and other applicable regulatory agencies.

13.9(7) Licensees providing client service involving financial planning or the recommendation or sale of financial products or services may need to be licensed by applicable federal, state or local regulatory bodies.

[ARC 9003B, IAB 8/11/10, effective 1/1/11]

These rules are intended to implement Iowa Code chapters 272C and 542.

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CHAPTER 20
PRACTICE PRIVILEGE FOR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS

193A—20.1(542) Overview and timing. Beginning July 1, 2009, out-of-state certified public accountants who maintain their principal place of business in a jurisdiction other than Iowa may practice public accounting in Iowa or for clients with a home office in Iowa without Iowa licensure if all of the conditions of Iowa Code section 542.20 and this chapter are satisfied.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—20.2(542) Out-of-state licensure status. The practice privilege described in Iowa Code section 542.20 applies to individuals who are licensed to practice as certified public accountants in the jurisdiction in which their principal place of business is located for those periods of time in which all of the following conditions are satisfied:

20.2(1) The out-of-state license is valid, in good standing, and active. The practice privilege shall cease if the out-of-state license expires in the jurisdiction of the individual's principal place of business.

20.2(2) The individual meets the criteria for substantial equivalency reciprocity, as provided in Iowa Code section 542.19, subsection 1, paragraph "a," "b," or "c," and 193A—9.5(542).

20.2(3) The license authorizes in the individual's principal place of business all of the public accounting services the individual performs or offers to perform in Iowa or for clients with a home office in Iowa.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—20.3(542) When Iowa licensure may be required.

20.3(1) The auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client may require that an individual be licensed in Iowa as a condition of performing public accounting services in Iowa or for a client with a home office in Iowa, whether or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is required, for example, to perform certain audit services described in Iowa Code chapter 11.

20.3(2) Iowa licensure is required if an individual has an office in Iowa at which the individual uses the title "CPA," unless the individual satisfies the conditions for a practice privilege and one of the following is true:

a. The Iowa office is the office of an Iowa CPA or LPA firm that holds a permit to practice under Iowa Code section 542.7 or 542.8, and the individual provides public accounting services through that firm.

b. The Iowa office is the office of a business entity that is not required to hold a firm permit to practice under Iowa Code section 542.7 or 542.8, and the individual provides public accounting services through that business entity.

20.3(3) Iowa licensure is required if an individual moves the individual's principal place of business to Iowa and is otherwise required to be licensed under Iowa Code chapter 542. The board's streamlined application process for reciprocal licensure is described in Iowa Code section 542.19 and 193A—Chapter 9.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—20.4(542) Individuals ineligible for a practice privilege.

20.4(1) The practice privilege described in Iowa Code section 542.20 shall not be applicable if:

a. The individual has been convicted of a felony under the laws of any jurisdiction.

b. The individual has been convicted of any crime under the laws of any jurisdiction if an element of the crime involves dishonesty or fraud, such as forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or similar offense, as more fully described in Iowa Code section 542.5(2).

c. The individual's license to practice public accounting has been suspended, revoked, or otherwise disciplined by a licensing authority in this or another state, territory, or country, for any cause

other than failure to pay appropriate fees. “Disciplined” shall include the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding in Iowa or another jurisdiction.

d. The individual’s right to practice public accounting before any state or federal agency, or the PCAOB, has been suspended or revoked.

e. The individual has applied for licensure as a certified public accountant in Iowa or another jurisdiction and the application has been denied.

f. Civil penalties have been imposed against the individual pursuant to Iowa Code section 542.14.

g. The individual’s authority to exercise a practice privilege has been revoked in Iowa or another jurisdiction.

20.4(2) Individuals precluded from exercising a practice privilege under this rule may apply for licensure in Iowa if otherwise qualified. The board will determine when an application is submitted whether the criminal or disciplinary history or other regulatory action provides a ground to deny licensure.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—20.5(542) Attest and compilation services.

20.5(1) Individuals providing audit, review or other attest services in Iowa or for a client with a home office in Iowa must practice through a CPA firm that holds an active permit to practice pursuant to Iowa Code section 542.7; provided that, an out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

20.5(2) Individuals providing compilation services in Iowa or for a client with a home office in Iowa must comply with the peer review provisions of Iowa Code section 542.6(6), or provide such services through a CPA or LPA firm, or a substantially equivalent firm that holds a valid license in the firm’s principal place of business and that complies with the peer review and ownership provisions of Iowa Code section 542.7 or 542.8.

20.5(3) Individuals who provide reviews of financial statements, as provided in Iowa Code section 542.3, subsection 1, in Iowa or for a client with a home office in Iowa must provide such services through a certified public accounting firm that is validly licensed in the state of its principal place of business and that complies with the peer review and ownership provisions of Iowa Code section 542.7.

[ARC 7715B, IAB 4/22/09, effective 7/1/09; ARC 0413C, IAB 10/31/12, effective 12/5/12]

193A—20.6(542) Rights and duties.

20.6(1) Individuals who satisfy the conditions for a practice privilege may practice public accounting in Iowa or for a client with a home office in Iowa in person, or by telephone, mail, or electronic means without licensure under Iowa Code chapter 542 or notice to the board.

20.6(2) Individuals lawfully practicing public accounting under a practice privilege may use the title “CPA” as long as they do not have an office in Iowa, except as provided in subrule 20.3(2).

20.6(3) Individuals practicing public accounting in Iowa or for a client with a home office in Iowa while exercising a practice privilege are subject to all of the following provisions:

a. Practice privilege practitioners shall not make any representation tending to falsely indicate that the individuals are licensed under Iowa Code chapter 542. Such individuals may truthfully identify themselves as licensed in any jurisdiction in which they hold a valid, active, unexpired license to practice as a certified public accountant. For example, a practice privilege practitioner could not use the title “Iowa CPA” or otherwise state or imply licensure in Iowa, but, if true, the individual could use a title such as “CPA, licensed in Texas” or “Florida CPA.” Such individuals could also truthfully state that they are CPAs practicing under a practice privilege.

b. Practice privilege practitioners shall provide, upon a client’s or prospective client’s request, accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

c. Practice privilege practitioners shall comply with all professional standards, laws, and rules that apply to licensees performing the same professional services.

20.6(4) As a condition of exercising the practice privilege provided in Iowa Code section 542.20, the individual:

a. Consents to the personal and subject matter jurisdiction and regulatory authority of the board including, but not limited to, the board's jurisdiction to revoke the practice privilege or otherwise take action under Iowa Code section 542.14 for any violation of Iowa Code chapter 542 or board rules;

b. Appoints the regulatory body of the state that issued the license in the individual's principal place of business as the agent upon whom process may be served in any action or proceeding by the board against the individual;

c. Agrees to supply the board, upon the board's request and without subpoena, such information or records licensees are similarly required to provide the board under Iowa Code chapter 542, including but not limited to the information described in Iowa Code section 542.20, subsection 7, paragraph "c"; and

d. Agrees to promptly cease offering or providing public accounting services in Iowa or for a client with a home office in Iowa if the license in the individual's principal place of business expires or is otherwise no longer in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—20.7(542) Penalties.

20.7(1) Individuals purporting to practice public accounting under a practice privilege who are ineligible to exercise a practice privilege or who fail to satisfy the conditions for exercising a practice privilege are subject to all of the penalties that apply to unlicensed persons, including the criminal, administrative, and civil penalties described in Iowa Code sections 542.14 and 542.15.

20.7(2) If an individual acting or purporting to act under a practice privilege engages in any act or practice that does or may in the future violate Iowa Code chapter 542 or board rules, the board may take any or all of the following actions, as applicable:

a. Apply to the district court for an injunction, restraining order, or other order, pursuant to Iowa Code section 542.14(1);

b. Issue an order to require compliance with Iowa Code chapter 542 or board rules, impose a civil penalty up to \$1,000 per offense, which may be imposed per day for a continuing violation, and revoke the practice privilege, pursuant to the procedures outlined in Iowa Code section 542.14, subsections 2 to 5, and 193A—Chapter 17;

c. Deny the subsequent license application of the violator or the violator's firm, pursuant to Iowa Code section 542.20, subsection 4, paragraphs "a" and "b";

d. Refer the complaint or other relevant information to the jurisdiction that issued a license to the alleged violator; and

e. Take disciplinary action against the individual pursuant to Iowa Code section 542.10 if the individual holds an inactive or lapsed Iowa license.

20.7(3) Complaints filed with the board alleging violations by individuals who are not licensed by the board, including those acting or purporting to act under a practice privilege, are not confidential under Iowa Code section 272C.6(4) and shall not be treated as confidential unless otherwise provided in Iowa Code chapter 22 or other applicable law.

20.7(4) Persons filing complaints with the board against individuals acting or purporting to act under a practice privilege should provide as much information as possible to assist the board in locating the individual and in determining whether the individual is licensed in any jurisdiction.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—20.8(542) Relationship between Iowa licensure and the exercise of a practice privilege.

20.8(1) *Active Iowa licensees.* An Iowa licensee holding an active CPA certificate shall be treated for all purposes as an Iowa licensee and shall not be subject to the provisions of Iowa Code section 542.20.

20.8(2) *Inactive Iowa licensees.* An Iowa licensee holding an inactive CPA certificate is precluded by Iowa Code section 542.6(3) and rule 193A—5.9(272C,542) from performing attest or compilation services or using the title "CPA" while performing public accounting services in Iowa or for a client

with a home office in Iowa. The practice of an inactive CPA is restricted because the continuing education required to renew in active status does not apply to those renewing in inactive status. Some individuals holding an inactive Iowa CPA certificate may, however, hold an active CPA certificate in another jurisdiction in which they maintain their principal place of business and satisfy continuing education requirements. Such individuals may have maintained an inactive Iowa CPA certificate solely to facilitate reinstatement to active status when active Iowa licensure is required in their practice. The following provisions shall apply to inactive Iowa licensees who may wish to exercise a practice privilege:

a. In a disciplinary investigation or proceeding in which an inactive Iowa licensee is alleged to have improperly used the title “CPA” or otherwise practiced public accounting on an inactive license, the board shall take into consideration whether the inactive licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The individual shall take care to avoid public confusion about licensure status as provided in 193A—subrule 5.1(6).

c. Violations of Iowa laws or rules by an individual holding an inactive Iowa CPA certificate shall be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be enforced under the provisions of Iowa Code sections 542.14 and 542.15.

20.8(3) *Lapsed Iowa licensees.* An Iowa licensee holding a lapsed Iowa CPA certificate is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title “CPA” in Iowa or for a client with a home office in Iowa. A lapsed licensee is subject to discipline for practicing on a lapsed license and may not represent oneself as a “CPA” in any context unless the licensee truthfully discloses that the certificate has lapsed. Some individuals holding lapsed Iowa CPA certificates may, however, hold active CPA certificates in another jurisdiction in which the individuals maintain their principal place of business. Such individuals may have intentionally allowed their Iowa CPA certificates to lapse because the individuals no longer need an active Iowa license in their practice. The following provisions shall apply to lapsed Iowa licensees who may wish to exercise a practice privilege:

a. In a disciplinary investigation or proceeding in which a lapsed Iowa licensee is alleged to have improperly used the title “CPA” or otherwise practiced public accounting on a lapsed license, the board shall take into consideration whether the lapsed licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The individual shall take care to avoid public confusion about licensure status as provided in 193A—subrule 5.1(6).

c. Violations of Iowa laws or rules by an individual holding a lapsed Iowa CPA certificate shall be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be prosecuted under the provisions of Iowa Code sections 542.14 and 542.15.

20.8(4) *Former Iowa licensees.* An individual who held an Iowa CPA certificate at one time whose Iowa CPA certificate has been revoked or surrendered in connection with a disciplinary investigation or proceeding is prohibited from performing attest or compilation services or using the title “CPA” whether or not such individual may otherwise qualify for a practice privilege.

a. The former Iowa licensees described in this subrule are ineligible to exercise the practice privilege described in Iowa Code section 542.20.

b. Violations of Iowa Code chapter 542 or board rules by former Iowa licensees are subject to the criminal, civil and administrative remedies described in Iowa Code sections 542.14 and 542.15, and may also be prosecuted as disciplinary proceedings under Iowa Code section 542.10 if the license remains subject to reinstatement under Iowa Code section 542.12.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

These rules are intended to implement Iowa Code section 542.20.

[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
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CHAPTER 21

PRACTICE PRIVILEGE FOR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTING FIRMS

193A—21.1(542) Overview and timing. Beginning July 1, 2009, out-of-state certified public accounting firms that maintain their principal place of business in a jurisdiction other than Iowa may practice public accounting in Iowa or for clients with a home office in Iowa without Iowa licensure if all of the conditions of Iowa Code section 542.20 and this chapter are satisfied.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—21.2(542) Out-of-state licensure status. The practice privilege described in Iowa Code section 542.20 applies to certified public accounting firms that are licensed to practice as certified public accounting firms in the jurisdiction in which their principal place of business is located for those periods of time in which all of the following conditions are satisfied:

21.2(1) The out-of-state license is valid, in good standing, and active. The practice privilege shall cease if the out-of-state license expires in the jurisdiction of the firm's principal place of business.

21.2(2) The out-of-state license is substantially equivalent to a permit to practice issued under Iowa Code section 542.7.

21.2(3) The license authorizes in the firm's principal place of business all of the public accounting services the firm performs or offers to perform in Iowa or for clients with a home office in Iowa.

21.2(4) The public accounting services offered in Iowa or for clients with a home office in Iowa that are required under Iowa law to be performed by a CPA are performed by a person holding a certificate issued under Iowa Code section 542.6 or 542.19, or by a person exercising a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—21.3(542) When Iowa licensure may be required.

21.3(1) The auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client may require that a firm be licensed in Iowa as a condition of performing public accounting services in Iowa or for a client with a home office in Iowa, whether or not the firm may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accounting firm is required, for example, to perform certain audit services described in Iowa Code chapter 11.

21.3(2) Iowa licensure is required if:

a. The firm performs or offers to perform attest services, other than review services, in Iowa or for a client with a home office in Iowa; or

b. The firm has one or more offices in Iowa at which the firm uses the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

[ARC 7715B, IAB 4/22/09, effective 7/1/09; ARC 0413C, IAB 10/31/12, effective 12/5/12]

193A—21.4(542) CPA firms ineligible for a practice privilege.

21.4(1) The practice privilege described in Iowa Code section 542.20 shall not be applicable if:

a. The firm or any of the firm's owners (e.g., partners, shareholders, or members) has been convicted of a felony under the laws of any jurisdiction.

b. The firm or any of the firm's owners (e.g., partners, shareholders, or members) has been convicted of any crime under the laws of any jurisdiction if an element of the crime involves dishonesty or fraud, such as forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or similar offense, as more fully described in Iowa Code section 542.5(2).

c. The license to practice public accounting of the firm or any of the firm's owners (e.g., partners, shareholders, or members) has been suspended, revoked, or otherwise disciplined by a licensing authority in this or another state, territory, or country, for any cause other than failure to pay appropriate fees. "Disciplined" shall include the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding in Iowa or any other jurisdiction.

d. The right of the firm or any of the firm's owners (e.g., partners, shareholders, or members) to practice public accounting before any state or federal agency or the PCAOB has been suspended or revoked.

e. The firm or any of the firm's owners (e.g., partners, shareholders, or members) has applied for licensure as a certified public accounting firm or a certified public accountant in Iowa or any other jurisdiction and the application has been denied.

f. Civil penalties have been imposed against the firm or any of the firm's owners (e.g., partners, shareholders, or members) pursuant to Iowa Code section 542.14.

g. The authority of the firm or any of the firm's owners (e.g., partners, shareholders, or members) to exercise a practice privilege has been revoked in Iowa or any other jurisdiction.

21.4(2) Firms precluded from exercising a practice privilege under this rule may apply for licensure in Iowa if otherwise qualified. The board will determine when an application is submitted whether the criminal or disciplinary history or other regulatory action against the firm or against any of the firm's owners (e.g., partners, shareholders, or members) provides a ground to deny licensure.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—21.5(542) Attest and compilation services.

21.5(1) Attest services, other than review services, must be performed in Iowa or for a client with a home office in Iowa by a CPA firm that holds an active permit to practice under Iowa Code section 542.7.

21.5(2) CPA firms providing compilation services in Iowa or for a client with a home office in Iowa must comply with the peer review and ownership provisions of Iowa Code section 542.7 but, unless required under rule 193A—21.3(542), compilation services may be performed by a CPA firm exercising a practice privilege under Iowa Code section 542.20.

21.5(3) CPA firms providing review services in Iowa or for a client with a home office in Iowa must comply with the peer review and ownership provisions of Iowa Code section 542.7.

[ARC 7715B, IAB 4/22/09, effective 7/1/09; ARC 0413C, IAB 10/31/12, effective 12/5/12]

193A—21.6(542) Rights and duties.

21.6(1) CPA firms that satisfy the conditions for a practice privilege may practice public accounting in Iowa or for a client with a home office in Iowa in person, or by telephone, mail, or electronic means without licensure under Iowa Code chapter 542 or notice to the board.

21.6(2) CPA firms lawfully practicing public accounting under a practice privilege may use the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

21.6(3) CPA firms practicing public accounting in Iowa or for a client with a home office in Iowa while exercising a practice privilege are subject to all of the following provisions:

a. Practice privilege firms shall not make any representation tending to falsely indicate that the firm is licensed under Iowa Code chapter 542. Such firms may truthfully identify themselves as licensed in any jurisdiction in which the firm holds a valid, active, unexpired license to practice as a certified public accounting firm. For example, a practice privilege firm could not use the title "Iowa CPAs" or "Iowa CPA firm" or otherwise state or imply licensure in Iowa, but, if true, the firm could use a title such as "CPA firm, licensed in Texas" or "Florida CPAs." Such firm could also truthfully state that the firm is practicing in Iowa under a practice privilege.

b. Practice privilege firms shall provide, upon a client's or prospective client's request, accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

c. Practice privilege firms shall comply with all professional standards, laws, and rules that apply to licensed firms performing the same professional services.

21.6(4) As a condition of exercising the practice privilege provided in Iowa Code section 542.20, the firm:

a. Consents to the personal and subject matter jurisdiction and regulatory authority of the board including, but not limited to, the board's jurisdiction to revoke the practice privilege or otherwise take action under Iowa Code section 542.14 for any violation of Iowa Code chapter 542 or board rules;

b. Appoints the regulatory body of the state that issued the license in the firm's principal place of business as the agent upon whom process may be served in any action or proceeding by the board against the firm;

c. Agrees to supply the board, upon the board's request and without subpoena, such information or records that licensed firms are similarly required to provide the board under Iowa Code chapter 542, including but not limited to the information described in Iowa Code section 542.20, subsection 7, paragraph "c," and rule 193A—7.3(542); and

d. Agrees to promptly cease offering or providing public accounting services in Iowa or for a client with a home office in Iowa if the license in the firm's principal place of business expires or is otherwise no longer in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—21.7(542) Penalties.

21.7(1) Firms purporting to practice public accounting under a practice privilege which are ineligible to exercise a practice privilege or which fail to satisfy the conditions for exercising a practice privilege are subject to all of the penalties that apply to unlicensed firms, including the criminal, administrative, and civil penalties described in Iowa Code sections 542.14 and 542.15.

21.7(2) If a firm acting or purporting to act under a practice privilege engages in any act or practice that does or may in the future violate Iowa Code chapter 542 or board rules, the board may take any or all of the following actions, as applicable:

a. Apply to the district court for an injunction, restraining order, or other order, pursuant to Iowa Code section 542.14(1);

b. Issue an order to require compliance with Iowa Code chapter 542 or board rules, impose a civil penalty up to \$10,000 per offense, which may be imposed at a rate up to \$1,000 per day for a continuing violation, and revoke the practice privilege, pursuant to the procedures outlined in Iowa Code section 542.14, subsections 2 to 5, and 193A—Chapter 17;

c. Deny the subsequent license application of the violator or, to the extent responsible for the violation, any of the firm's owners (e.g., partners, shareholders, or members), pursuant to Iowa Code section 542.20, subsection 4, paragraphs "a" and "b";

d. Refer the complaint or other relevant information to a jurisdiction that issued a license to the alleged violator; and

e. Take disciplinary action against the firm or, to the extent responsible for the violation, any of the firm's owners (e.g., partners, shareholders, or members), pursuant to Iowa Code section 542.10 if the firm or individual holds an inactive or lapsed Iowa license.

21.7(3) Complaints filed with the board alleging violations by firms that are not licensed by the board, including those acting or purporting to act under a practice privilege, are not confidential under Iowa Code section 272C.6(4) and shall not be treated as confidential unless otherwise provided in Iowa Code chapter 22 or other applicable law.

21.7(4) Persons filing complaints with the board against firms acting or purporting to act under a practice privilege should provide as much information as possible to assist the board in locating the firm and the individuals allegedly responsible for the acts or omissions causing the complaint, and in determining whether the firm or any responsible individual is licensed in any jurisdiction.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—21.8(542) Relationship between Iowa licensure and the exercise of a practice privilege.

21.8(1) *Active Iowa licensees.* An Iowa CPA firm holding an active permit to practice under Iowa Code section 542.7 shall be treated for all purposes as an Iowa licensee and shall not be subject to the provisions of Iowa Code section 542.20.

21.8(2) *Lapsed Iowa licensees.* An Iowa CPA firm holding a lapsed permit to practice under Iowa Code section 542.7 is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm" unless the firm is eligible to exercise a practice privilege under Iowa Code section

542.20. The following provisions shall apply to firms holding a lapsed Iowa permit to practice when exercising a practice privilege:

a. In a disciplinary investigation or proceeding alleging unlicensed practice or improper use of title, the board shall take into consideration whether the lapsed licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The firm shall take reasonable steps to avoid public confusion over licensure status.

c. Violations of Iowa laws or rules by a firm holding a lapsed permit to practice shall be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be prosecuted under the provisions of Iowa Code sections 542.14 and 542.15.

21.8(3) Former Iowa licensees. A CPA firm that held an Iowa permit to practice at one time which has been revoked or surrendered in connection with a disciplinary investigation or proceeding is prohibited from performing any act or practice for which Iowa firm licensure is required and is further ineligible to exercise the practice privilege described in Iowa Code section 542.20. Violations of Iowa Code chapter 542 or board rules by such a firm are subject to the criminal, civil and administrative remedies described in Iowa Code sections 542.14 and 542.15, and may also be prosecuted as disciplinary proceedings under Iowa Code section 542.10 if the license remains subject to reinstatement under 193A—subrule 7.6(3).

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

These rules are intended to implement Iowa Code section 542.20.

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CHAPTER 13
TRUST ACCOUNTS AND CLOSINGS

[Prior to 9/4/02, see 193E—Ch 1]

193E—13.1(543B) Trust account. All earnest payments, all rents collected, property management funds, and other trust funds received by the broker in such capacity or broker associate or salesperson on behalf of the broker's client shall be deposited in a trust account maintained by the broker in an identified trust account, with the word "trust" in the name of the account, in a federally insured bank, savings and loan association, savings bank, or credit union located in Iowa and, for the purposes of this rule, may be referred to as the "depository."

13.1(1) All money belonging to others received by the broker, broker associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa are trust funds and must be deposited in a trust account. This shall include, but not be limited to, receipts from property management contracts; rental or lease contracts; advance fee contracts; escrow contracts; collection contracts; earnest money contracts; or money received by a broker for future investment or other purpose, except a nonrefundable retainer need not be placed in an escrow account if specifically provided for in the written agreement between the broker and the broker's principal.

a. All trust funds must be deposited into the broker's trust account by no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained.

b. Money belonging to others shall not be invested in any type of fixed-term maturity account, security or certificate without the written consent of the party or parties to whom the money belongs.

c. A broker shall not commingle personal funds in a trust account; provided, however, that not more than \$500 of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.

The broker shall ensure that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46, and that at no time are trust moneys used to cover any charges. Upon notification that the broker's personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker shall deposit personal funds to correct the deficiency within 15 calendar days of the closing date of that bank statement.

d. Money held in the trust account, which becomes due and payable to the broker, shall be promptly withdrawn by the broker.

e. The broker shall not use the trust account as a business operating account or for personal use. Commissions, salaries, related items and normal business expenses shall not be disbursed directly from the trust account.

13.1(2) Unless there is a written agreement between all parties to the transaction to the contrary, or the provisions of paragraph 13.1(2) "g" apply, all interest earned on the trust account shall be transferred on a calendar quarter basis to the state. The amount to be remitted to the state will be the amount of interest earned less any service charges directly attributable to the requirement of maintaining an interest-bearing account and of remitting the interest to the state. The broker may have the depository remit the interest directly or the broker may remit the interest but, in either case, it shall be the responsibility of the broker to see that the interest is remitted.

a. If the interest is remitted by the broker, the broker should use the commission-approved Real Estate Interest Remittance Form and include a copy of the applicable bank statement(s) showing the interest paid and the service charges attributable to maintaining the account.

b. If the interest is remitted by the broker, the broker shall mail the interest remittance check and required documentation to:

The State of Iowa
c/o Bankers Trust Company
P.O. Box 4686
Des Moines, Iowa 50306

c. The depository should use the name “Iowa Finance Authority” and the federal tax identification number (TIN) 52-1699886 on the 1099 reporting form when reporting interest to the IRS.

d. The depository should send the 1099 reporting form to:

Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312

e. If the property management or rental account is interest-bearing, the interest shall be transferred on a calendar quarter basis to the state unless there is a written agreement paying the interest to the property owner.

f. In no event shall the broker be paid interest earned on moneys held in trust for others by the broker.

g. A broker shall enter into a written agreement to pay interest to a buyer or seller in a transaction, or to a third party if requested by the parties to the contract and agreed to by the broker, if the client’s trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the broker shall take into consideration all relevant factors including the following:

(1) The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited;

(2) The cost of establishing and administering an individual interest-bearing trust account in which the interest would be transmitted to the client, including any needed tax forms; and

(3) The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

13.1(3) With disclosure to and the written agreement of all parties, a trust account may bear interest to be disbursed to (1) the buyer or seller involved in a real estate purchase, sale or exchange transaction, or (2) the property owner, if the property management or rental contract contains this specific provision, or (3) as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), or (4) a third party if requested by the parties to the contract and agreed to by the broker. Disbursements of interest on trust funds are subject to all provisions of law that require a broker to safeguard and account for the handling of funds of others.

13.1(4) Receipts from property management and rental account transactions may be deposited in a trust account separate from real estate transaction funds. If separately maintained, this account shall not be required to be an interest-bearing account.

a. The broker shall provide to the broker’s client a complete accounting of all moneys received and disbursed from the trust account(s) not less often than annually.

b. A broker may only utilize a separate property management or rents trust account for those moneys received by a broker pursuant to a written property management or rental agreement.

13.1(5) A broker shall be required to open and maintain one or more trust accounts if the broker receives or expects to receive trust funds. For each separate trust account opened, the broker shall file with the commission a written Consent to Examine and Audit Trust Account form which irrevocably authorizes the commission to examine and audit the trust account. The form of consent shall be prescribed by and available from the commission, and shall include the account names and number, and the name and address of the depository.

a. If the broker does not expect to receive trust funds, the broker shall file an affidavit with the commission on a form prescribed by and available from the commission.

b. If trust funds are received by the broker after filing an affidavit, the broker must immediately open a trust account and file the appropriate Consent to Examine and Audit Trust Account form with the commission.

c. As provided by Iowa Code section 543B.46(3), a consent to examine is not required for a separate farm business operating account in the name of the owner or owners and used by either the farm owner or farm manager or agent to conduct business as a part of a written farm management agreement.

d. As provided by Iowa Code section 543B.46(3), a consent to examine is not required for a separate property management account in the name of the owner or owners and used by either the

property owner or property manager or agent to conduct property management as a part of a written property management agreement.

13.1(6) Each broker required to maintain a trust account shall maintain at all times a record of each account, as required by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

(1) For receipts, the journal for each trust account must include the date, name of depositor, the check number and the amount deposited, and the name of principal or identify the property.

(2) For disbursements, the journal for each trust account must include the date, name of payee, name of principal or identify the property, the check number and the amount disbursed.

(3) The journal must provide a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

b. Real estate sales transactions shall additionally require an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transaction and clearly separates the transaction from all others. The individual ledger account shall include the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

c. Property management trust account records shall additionally include an individual ledger account for each tenant, identifying the tenant's rental unit and security deposit and including all receipts and disbursements together with check number and date. The journal for each account shall be maintained as an owner's ledger account for all properties owned by each owner showing receipts and disbursements applicable to each property managed.

(1) All disbursements must be documented by bids, contracts, invoices or other appropriate written documentation.

(2) The running balance may be determined at the time of monthly reconciliation.

d. Trust account supporting documents shall include, but not be limited to, the following:

(1) Bank statements;

(2) Canceled checks;

(3) Copies of contracts, listing, sales, rental and leasing;

(4) Closing statements;

(5) Pertinent correspondence; and

(6) Any additional items necessary to verify or explain an entry.

13.1(7) Funds, including interest on trust funds, shall only be disbursed from the trust account as provided in Iowa Code section 543B.46(1) and by the terms and conditions of the contract or escrow agreement. No funds shall be disbursed from the trust account prior to the closing, or other than as provided by the terms of the escrow agreement, without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of an earnest money deposit or the disbursement of an escrow deposit held by a broker, the broker shall continue to hold the deposit in the trust account until one of the following conditions is met:

a. The broker is in receipt of a written release from all parties to the transaction consenting to the disposition of the deposit or escrow funds; or

b. The broker is in receipt of a final judgment of the court directing the disposition of the deposit or escrow funds; or

c. There is a final decision of a binding alternative dispute resolution process, or mediation directing the disposition of the deposit or escrow funds; or

d. A civil court action is filed by one or more of the parties to determine the disposition of the deposit or escrow funds, at which time the broker may seek court authorization to pay the deposit or escrow funds into court.

13.1(8) No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties to the transaction as provided in 13.1(7), except in accordance with this rule. Nothing in this rule requires a broker to remove money from the broker's trust account when the disposition of such money is disputed by the parties to the transaction. The commission will not take

disciplinary action against a broker who in good faith disburses trust account moneys pursuant to this rule.

a. In the absence of a pending civil court action or written agreement, it shall not be grounds for disciplinary action when, upon passage of 30 days from the date of the dispute, a broker disburses the earnest money deposit to a buyer, renter, or lessee in a transaction based upon a good faith decision that a contingency has not been met, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and the grounds for the decision.

b. In the absence of a pending civil action or written agreement, it shall not be grounds for disciplinary action when, upon passage of six months from the date of the dispute, a broker disburses the earnest money deposit to a seller or landlord in a transaction based upon a good faith decision that the buyer, renter, or lessee has failed to perform as agreed, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known addresses, setting forth the broker's proposed action and grounds for the decision.

c. The dispute must be legitimate. If a buyer or seller, or a landlord or lessee, or a renter demands the return of the earnest money deposit, the broker shall consult with the other party who may agree or disagree with the return.

13.1(9) Under no circumstances is the broker entitled to withhold any portion of the earnest money when a transaction fails to consummate even if a commission is earned. The earnest money must be disposed of as provided in 13.1(7), 13.1(8), or 13.1(10), and the broker shall pursue any claim for commission or compensation against the broker's client.

13.1(10) Interpleader. Anytime the broker in good faith believes that the parties disputing the return of the deposit will not agree on the disposition of the deposit or file a civil court action to determine the disposition of the deposit, then the broker may elect to file an interpleader action with the appropriate court pursuant to Iowa Rules of Civil Procedure and pay the deposit into court. The broker may, in filing such an interpleader court action:

a. Attempt to claim a part of the deposit pursuant to the listing contract with the seller, if the seller is successful in the suit.

b. Disclaim any part of the deposit and request the court to restrain the buyer and the seller from naming the broker in the civil suit and order them to litigate their claims to the deposit.

13.1(11) A trust account may bear interest to be disbursed to the buyers or sellers or to a third party if requested by the parties to the contract and agreed to by the broker with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account shall be a separate account from the account(s) which is to accrue interest to the state. The broker shall not benefit from interest received on funds of others in the broker's possession. Interest shall be disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed to in the management contract and shall be properly accounted for on closing statements. A broker shall not disburse interest on trust funds except as provided in 13.1(3) and 13.1(7). Service charges for the account are a business expense of the broker and shall not be deducted from the proceeds.

13.1(12) Property management account funds may be withdrawn at any time for the purpose of returning the funds to the payee in accordance with the terms of the contract or receipt.

13.1(13) Property management funds may be withdrawn when and if the broker reasonably believes, from evidence available, that the tenant has obtained a rental or lease through information supplied by or on behalf of the broker.

13.1(14) Trust funds that are not traceable to any individual for disbursement from the trust account are unclaimed property. Unclaimed trust funds must be entered on a separate individual ledger for accounting purposes. In accordance with Iowa Code chapter 556, after three years, unclaimed trust funds shall be paid to:

Treasurer, State of Iowa
Unclaimed Property
P.O. Box 10430
Des Moines, Iowa 50306
[ARC 7559B, IAB 2/11/09, effective 3/18/09; ARC 0410C, IAB 10/31/12, effective 12/5/12]

193E—13.2(543B) Closing transactions. It shall be mandatory for every broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. Also, the broker shall at the same time deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the same were disbursed.

13.2(1) In the event all funds being held by the broker for a transaction cannot be disbursed at the time of closing, the broker shall obtain an escrow agreement signed by both parties to the transaction which shall direct the broker regarding the future disbursement of the funds.

13.2(2) The broker shall retain all trust account records and a complete file, which shall include but not be limited to the records required by 13.5(543B), on each transaction for a period of at least five years after the date of the closing. Records required by this rule may be retained as an electronic record as provided by 13.5(543B).

13.2(3) The listing broker shall be responsible for the closing even though the closing may be completed by another licensee.

13.2(4) If the closing transaction is handled through an unlicensed escrow agent and the escrow agent renders a closing statement, the listing broker shall ensure that funds which the broker has received or paid as part of the transaction are accounted for properly.

13.2(5) In the case of a cooperative sale between brokers, the listing broker may elect to close the transaction or, by prior agreement, authorize the selling broker to close.

a. If the listing broker so elects, the selling broker shall have the buyer make the earnest money check or money order payable to the listing broker and shall immediately deliver the earnest money check or money order along with the offer to purchase to the listing broker or listing agent.

b. Unless by prior agreement the listing broker has authorized the selling broker to close, the offer to purchase shall designate that the earnest money is to be held in trust by the listing broker.

c. Unless by prior agreement the listing broker has authorized the selling broker to close, when cash is accepted as earnest money by the selling agent, the selling agent must deposit the money in the selling broker's trust account in accordance with commission rules, and then immediately transfer the earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust account.

13.2(6) Any means other than cash or an immediately cashable check shall not be accepted as earnest money unless that fact is communicated to the seller prior to the acceptance of the offer to purchase, and is stated in the offer to purchase.

13.2(7) Brokers acting as agents for the buyer in a specific real estate transaction shall have the same requirements for retention of copies as stated in this rule, except that a buyer's agent who is not a party to the listing contract is not required to retain a copy of the listing contract or the seller's settlement statement.

13.2(8) Iowa Ct. R. 37.5, limited real estate practice. All Iowa real estate licensees should be aware that Iowa Ct. R. 37.5 authorizes nonlawyers to select, prepare, and complete certain legal documents incident to residential real estate transactions of four units or less. The preparation of documents beyond that authorized by this court rule may constitute the unauthorized practice of law.

a. Except to the extent authorized by the court rule, the selection, preparation, and completion of legal documents in connection with real estate transactions by nonlawyers constitutes the unauthorized practice of law unless the nonlawyer is acting on the person's own behalf as a buyer or seller.

b. Upon written request of a buyer or seller, a nonlawyer may select, prepare, and complete form documents for use incident to a residential real estate transaction of four units or less. Such documents shall be limited to:

(1) Offers to purchase or purchase agreements, provided the parties are given written notice that these are binding legal documents and competent legal advice should be sought before signing;

(2) Groundwater hazard statements; and

(3) Declaration of value forms.

c. Nonlawyers may not charge for preparation of the legal documents authorized by the court rule. Nonlawyers shall not select, prepare or complete:

(1) Deeds;

(2) Real estate installment sales contracts;

(3) Affidavits of identity or nonidentity;

(4) Affidavits of payment of spousal or child support; or

(5) Any other documents necessary to correct title problems or deficiencies.

193E—13.3(543B) Salesperson shall not handle closing. A salesperson shall not handle the closing of any real estate transaction except under the direct supervision or with the consent of the employing broker.

193E—13.4(543B) Consent to return earnest money not required. When an offer to purchase is withdrawn or the acceptance is revoked without liability pursuant to Iowa Code chapter 558A, any earnest money deposit shall be promptly returned to the buyer without delay. The seller's consent and agreement to release the funds is not required. A copy of the written revocation or withdrawal shall be retained with the trust account supporting documents.

193E—13.5(543B) File record keeping. Every broker shall retain for a period of at least five years true copies of all business books; accounts, including voided checks; records; contracts; closing statements; disclosures; signed documents; the listing; any offers to purchase; and all correspondence relating to each real estate transaction that the broker has handled and each property managed. The records shall be made available for reproduction and inspection by the commission, staff, and commission-authorized representatives at all times during usual business hours at the broker's regular place of business. If the brokerage closes, the records shall be made available for reproduction and inspection by the commission, staff, and commission-authorized representatives upon request.

13.5(1) Contracts and other documents that have been changed or altered to the point where the language is unreadable and faxed contracts and documents in which the language is unreadable are not acceptable records and must be redrafted and signed by the parties.

13.5(2) Copies of unreadable documents are not acceptable as true copies of the originals regardless of the medium.

13.5(3) Electronic records. The files, records, and other documents required by this chapter may be stored in electronic format for convenience and efficiency in a system for electronic record storage, analysis, and retrieval.

a. A record required by this chapter may be retained as an electronic record only if the record storage medium can be easily accessed and the records can be readily retrieved and transferred to a legible printed form upon request.

b. The scanning or electronic generation of a record must be monitored to ensure that the copy is clear, legible and true before the original is shredded.

c. Once the original record is transferred to the appropriate electronic storage medium consistent with this rule, the commission will no longer require the retention of the record in its original medium. For the purposes of this chapter, electronic records shall be considered the same as originals.

193E—13.6(543B) Licensee acting as a principal. When a licensee is acting in the capacity of a real estate broker, broker associate or salesperson and is also a principal in the sale, lease, rental or exchange of property owned by the licensee, all payments, rent, or security deposits received from the lessee, renter or buyer must be deposited into the broker's trust account. The use of the broker's trust account is not required if all of the following exist:

1. The sale, rental, or exchange is strictly, clearly and completely a “by owner” transaction and there is not a listing or brokerage agreement;
2. No commission or other compensation is paid to or received by the licensee; and
3. The licensee does not function throughout the transaction in any capacity requiring a real estate license.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543B.

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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

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CHAPTER 8
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193F—8.1(272C,543D) Disciplinary action. The real estate appraiser examining board has authority pursuant to Iowa Code chapters 543D, 17A and 272C to impose discipline for violations of these Iowa Code chapters and the rules promulgated thereunder.

193F—8.2(17A,272C,543D) Initiation of disciplinary investigations. The board may initiate a licensee disciplinary investigation upon the board's receipt of information suggesting that a licensee may have violated a law or rule enforced by the board which, if true, would constitute grounds for licensee discipline.

193F—8.3(272C,543D) Sources of information. Without limitation, the following nonexclusive list of information sources may form the basis for the initiation of a disciplinary investigation or proceeding:

1. News articles or other media sources.
2. General or random review of publicly available work product.
3. Reports filed with the board by the commissioner of insurance pursuant to Iowa Code subsection 272C.4(9).
4. Complaints filed with the board by any member of the public.
5. License applications or other documents submitted to the board, including appraisal logs and appraisal reports.
6. Reports to the board from any regulatory or law enforcement agency from any jurisdiction.
7. Board audits of licensee compliance with conditions for licensure, such as continuing education or qualifying experience.

193F—8.4(17A,272C,543D) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member shall abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193F—8.5(272C,543D) Complaints. Written complaints may be submitted to the board office by mail, E-mail, facsimile or personal delivery by members of the public, including clients, business organizations, lenders, governmental bodies, licensees, or other individuals or entities with knowledge of possible law or rule violations by licensees.

8.5(1) Contents of a written complaint. Written complaints may be submitted on forms provided by the board that are available from the board office and on the board's Web site. Written complaints, whether submitted on a board complaint form or in other written media, shall contain the following information:

- a. The full name, address, and telephone number of the complainant (person complaining).
- b. The full name, address, and telephone number of the respondent (licensee against whom the complaint is filed).
- c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions that the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.
- d. If known, citations to the laws or rules allegedly violated by the respondent.
- e. Evidentiary supporting documentation.
- f. Steps, if any, taken by the complainant to resolve the dispute with the respondent prior to filing a complaint.

8.5(2) Immunity. As provided by Iowa Code section 272C.8, a person shall not be civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor shall an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

8.5(3) *Role of complainant.* The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding which may be initiated by the board based in whole or in part on information provided by the complainant.

8.5(4) *Role of the board.* The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

8.5(5) *Initial complaint screening.* All written complaints received by the board shall be initially screened by the board's executive officer to determine whether the allegations of the complaint fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a licensee. Complaints which are clearly outside the board's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous shall be referred by the board's executive officer to the board for closure at the next scheduled board meeting. All other complaints shall be referred by the board's executive officer to the board's disciplinary committee for committee review as described in subrule 8.8(1).

193F—8.6(272C,543D) Case numbers. Whether based on written complaint received by the board or complaint initiated by the board, all complaint files shall be tracked by a case numbering system. Complaints are assigned case numbers in chronological order with the first two digits representing the year in which the complaint was received or initiated, and the second two digits representing the order in which the case file was opened (e.g., 01-01, 01-02, 01-03, etc.). The board's executive officer shall maintain a case file log noting the date each case file was opened, whether disciplinary proceedings were initiated in the case, and the final disposition of the case. Once a case file number is assigned to a complaint, all persons communicating with the board regarding that complaint are encouraged to include the case file number to facilitate accurate records and prompt response.

193F—8.7(272C,543D,546) Confidentiality of complaint and investigative information.

8.7(1) All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code subsection 272C.6(4). Such information shall not be released to any person except as provided in that section and in this rule.

8.7(2) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 546.10(9), the board may, prior to the initiation of a disciplinary proceeding, supply to a licensee who is the subject of a disciplinary complaint or investigation all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board shall not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release to a licensee information that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee but prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review report or investigative report or with expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including investigations initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may disclose information from a peer review report or consultant's report when soliciting the licensee's position will aid in making the probable cause determination or when providing the information would be educational to the licensee, and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.
[ARC 0412C, IAB 10/31/12, effective 12/5/12]

193F—8.8(17A,272C,543D) Investigation procedures.

8.8(1) *Disciplinary committee.* The board chairperson shall annually appoint two to three members of the board to serve on the board's disciplinary committee. The disciplinary committee is a purely advisory body which shall review complaint files referred by the board's executive officer, generally supervise the investigation of complaints, and make recommendations to the full board on the disposition of complaints. Members of the committee shall not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the board.

8.8(2) *Committee screening of complaints.* Upon the referral of a complaint from the board's executive officer or from the full board, the committee shall determine whether the complaint presents facts which, if true, suggest that a licensee may have violated a law or rule enforced by the board. If the committee concludes that the complaint does not present facts which suggest such a violation or that the complaint does not otherwise constitute an appropriate basis for disciplinary action, the committee shall refer the complaint to the full board with the recommendation that the complaint be closed with no further action. If the committee determines that the complaint does present a credible basis for disciplinary action, the committee may either immediately refer the complaint to the full board recommending that a disciplinary proceeding be commenced or initiate a disciplinary investigation.

8.8(3) *Committee procedures.* If the committee determines that additional information is necessary or desirable to evaluate the merits of a complaint, the committee may assign an investigator or expert consultant, appoint a peer review committee, provide the licensee an opportunity to appear before the disciplinary committee for an informal discussion as described in rule 193F—8.9(17A,272C,543D) or request board staff to conduct further investigation. Upon completion of an investigation, the investigator, expert consultant, peer review committee or board staff shall present a report to the committee. The committee shall review the report and determine what further action is necessary. The committee may:

- a. Request further investigation.
- b. Determine there is not probable cause to believe a disciplinary violation has occurred, and refer the case to the full board with the recommendation of closure.
- c. Determine there is probable cause to believe that a law or rule enforced by the board has been violated, but that disciplinary action is unwarranted on other grounds, and refer the case to the full board with the recommendation of closure. The committee may also recommend that the licensee be informally cautioned or educated about matters which could form the basis for disciplinary action in the future.
- d. Determine there is probable cause to believe a disciplinary violation has occurred, and refer the case to the full board with the recommendation that the board initiate a disciplinary proceeding (contested case).

8.8(4) *Subpoena authority.* Pursuant to Iowa Code subsections 17A.13(1) and 272C.6(3), the board is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision about whether to initiate a disciplinary proceeding. Board procedures concerning investigative subpoenas are set forth in 193—Chapter 6.

193F—8.9(17A,272C,543D) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected licensee, the committee may grant the licensee any opportunity to appear

before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

8.9(1) An informal discussion is intended to provide a licensee an opportunity to share in an informal setting the licensee's side of a complaint before the board determines whether probable cause exists to initiate a disciplinary proceeding. Licensees are not required to attend an informal discussion. Because disciplinary investigations are confidential, licensees may not bring other persons with them to an informal discussion, but licensees may be represented by legal counsel.

8.9(2) Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, licensees who desire to attend an informal discussion must therefore waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

8.9(3) Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

8.9(4) The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges shall be filed simultaneously with the consent order, as provided in rule 193—7.4(17A,272C).

193F—8.10(272C,543D) Peer review committee (PRC). A peer review committee may be appointed by the board to investigate a complaint. The committee may consist of one or more certified general or certified residential real property appraisers registered to practice in Iowa. The board may appoint a single peer review consultant to perform the functions of a PRC when, in the board's opinion, appointing a committee with more members would be impractical, unnecessary or undesirable given the nature of the expertise required, the need for prompt action or the circumstances of the complaint. An individual shall be ineligible as a PRC member in accordance with the standard for disqualification found in 193—7.14(17A).

8.10(1) Authority. The PRC investigation may include activities such as interviewing the complainant, the respondent, and individuals with knowledge of the respondent's practice in the community; gathering documents; and performing independent analyses as deemed necessary. The board may give specific instructions to the PRC regarding the scope of the investigation. In the course of the investigation, PRC members shall refrain from advising the complainant or respondent on actions that the board might take.

8.10(2) Term of service. The PRC serves at the pleasure of the board. The board may dismiss any or all members of a PRC or add new members at any time.

8.10(3) Compensation. PRC members may receive compensation as the board may provide by contract. Within established budget limitations, PRC members may be reimbursed for reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties. The PRC shall not hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

8.10(4) Reports. Each PRC shall submit a written report to the board within a reasonable period of time.

8.10(5) Components of the report. The report shall include:

- a. Statement of the charge to the PRC;

b. Description of the actions taken by the PRC in its investigation, including but not limited to appraisal review(s) and interviews with the respondent or complainant;

c. Summary of the PRC's findings, including the PRC's opinion as to whether a violation occurred, citation of the specific USPAP violation(s), citation of the Iowa Code section(s) and Iowa Administrative Code rule(s) violated, and the PRC's opinion of the seriousness of the violation;

d. Recommendation.

8.10(6) Recommended action. The PRC report shall recommend one of the following:

a. Dismissal of the complaint;

b. Further investigation;

c. Disciplinary proceedings;

d. Allowing the appraiser who is the subject of the complaint an opportunity to appear before the board for an informal discussion regarding the circumstances of the alleged violation.

If the PRC recommends further investigation or disciplinary proceedings, supporting information must be submitted to the board including citation of the specific USPAP violation(s), Iowa Code section(s) and Iowa Administrative Code rule(s) violated.

8.10(7) Disciplinary recommendations. When recommending disciplinary proceedings, a PRC shall refrain from suggesting a particular form of discipline, but may provide guidance on the severity of the violations that prompted the recommendation and may identify professional areas in which the appraiser needs additional education or supervision in order to safely practice.

8.10(8) Confidentiality. The PRC shall not discuss its findings and conclusions with any party to the complaint other than the board (through its report to the board) or board staff. PRC findings including the name of the complainant shall be kept confidential at all times. PRC findings shall be used only for the purposes of the board's possible disciplinary action and not for any other court case, lawsuit, or investigation.

8.10(9) Testimony. In the event of formal disciplinary proceedings, PRC members may be required to testify.

193F—8.11(17A,272C,543D) Closing complaint files.

8.11(1) Grounds for closing. Upon the recommendation of the executive officer, the recommendation of the disciplinary committee, or on its own motion, the board may close a complaint file, with or without prior investigation. Given the broad scope of matters about which members of the public may complain, it is not possible to catalog all possible reasons why the board may close a complaint file. The following nonexclusive list is, however, illustrative of the grounds upon which the board may close a complaint file:

a. The complaint alleges matters outside the board's jurisdiction.

b. The complaint does not allege a reasonable or credible basis to believe that the subject of the complaint violated a law or rule enforced by the board.

c. The complaint is frivolous or trivial.

d. The complaint alleges matters more appropriately resolved in a different forum, such as civil litigation to resolve a contract dispute, or more appropriately addressed by alternative procedures, such as outreach education or rule making.

e. The matters raised in the complaint are situational, isolated, or unrepresentative of a licensee's typical practice, and the licensee has taken appropriate steps to ensure future compliance and prevent public injury.

f. Resources are unavailable or better directed to other complaints or board initiatives in light of the board's overall budget and mission.

g. While the evidence may reveal one or more appraisal standards about which the appraiser should be more vigilant in the future, the issues appear correctable, are not likely to recur with proper diligence in the development and reporting of future appraisals, and do not reveal impediments to competent practice in the future.

h. Other extenuating factors exist which weigh against the imposition of public discipline when considered in the context of the board's purpose and mission.

8.11(2) Closing orders. The board's executive officer may enter an order stating the basis for the board's decision to close a complaint file. If entered, the order shall not contain the identity of the complainant or the respondent and shall not disclose confidential complaint or investigative information.

If entered, a closing order will be indexed by case number and shall be a public record pursuant to Iowa Code subsection 17.3(1) "d." A copy of the order may be mailed to the complainant, if any, and to the respondent. The board's decision whether or not to pursue an investigation, to institute disciplinary proceedings, or to close a file is not subject to judicial review.

8.11(3) Cautionary letters. The board may issue a confidential letter of caution to a licensee when a complaint file is closed which informally cautions or educates the licensee about matters which could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

8.11(4) Reopening closed complaint files. The board may reopen a closed complaint file if additional information arises after closure which provides a basis to reassess the merits of the initial complaint.

193F—8.12(17A,272C,543D) Initiation of disciplinary proceedings. Disciplinary proceedings may only be initiated by the affirmative vote of a majority of a quorum of the board at a public meeting. Board members who are disqualified shall not be included in determining whether a quorum exists. If, for example, two members of the board are disqualified, three members of the board shall constitute a quorum of the remaining five board members for purposes of voting on the case in which the two members are disqualified. When three or more members of the board are disqualified or otherwise unavailable for any reason, the executive officer may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11, subsection 5. Discipline may only be imposed against a licensee by the affirmative vote of a majority of the members of the board who are not disqualified.

193F—8.13(17A,272C,543D) Disciplinary contested case procedures. Unless in conflict with a provision of board rules in this chapter, all of the procedures set forth in 193—Chapter 7 shall apply to disciplinary contested cases initiated by the board.

193F—8.14(543D) Decisions. The board shall make findings of fact and conclusions of law, and may take one or more of the following actions:

1. Dismiss the charges;
2. Suspend or revoke the appraiser's certification or associate's registration as authorized by law;
3. Impose civil penalties, the amount which shall be set at the discretion of the board, but which shall not exceed \$1000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 and chapter 272C or for any repeat offenses;
4. Impose a period of probation, either with or without conditions;
5. Require reexamination;
6. Require additional professional education, reeducation, or continuing education;
7. Issue a citation and a warning;
8. Require desk review of the appraiser's work product;
9. Issue a consent order;
10. Impose any other form of discipline authorized by a provision of law that the board, in its discretion, believes is warranted under the circumstances of the case.

193F—8.15(272C,543D) Mitigating and aggravating factors. Factors the board may consider when determining whether to impose discipline and what type of discipline to impose include:

8.15(1) History and background of respondent.

a. Whether the respondent was a registered associate appraiser or a certified appraiser at the time of the violation.

b. Prior disciplinary history or cautionary letters.

- c. Length of certification or registration at the time of the violation.
- d. Disciplinary history of current or prior supervisor.
- e. Degree of cooperation with investigation.
- f. Extent of self-initiated reform or remedial action after the date of the violation.
- g. Whether the volume or geographic range of the respondent's practice is, or was at the time of the violation, reasonable under the circumstances.
- h. Whether the respondent practiced with a lapsed, inactive, suspended, revoked, or surrendered certificate or registration.

8.15(2) Nature of violation.

- a. Length of time since the date of the violation.
- b. Whether the violation is isolated or recurring.
- c. Whether there are multiple violations or appraisals involved.
- d. Whether the violation is in the nature of an error or situational carelessness or neglect, or reflects a more fundamental lack of familiarity with applicable appraisal methodology or standards.
- e. Indicia of bad faith, false statements, deceptive practices, or willful and intentional acts, whether within the circumstances of the violation or in the course of the board's investigation or disciplinary proceeding.
- f. Evidence of improper advocacy or other violation of the USPAP ethics rule or of Iowa Code section 543D.18 or 543D.18A(1).
- g. The clarity of the issue or standard involved.
- h. Whether the respondent practiced outside the scope of practice authorized by respondent's certification or registration.
- i. Whether the violation relates to the respondent's supervisory role, the respondent's individual appraisal practice, or both.

8.15(3) Interest of the public.

- a. Degree of financial or other harm to a client, consumer, lending institution, or others.
- b. Risk of harm, whether or not the violation caused actual harm.
- c. Economic or other benefit gained by respondent or by others as a result of the violation.
- d. Deterrent impact of discipline.
- e. Whether the respondent issued a corrected appraisal report when warranted.

[ARC 0412C, IAB 10/31/12, effective 12/5/12]

193F—8.16(272C,543D) Voluntary surrender. The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board shall not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such voluntary surrender is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

193F—8.17(272C,543D) Reinstatement. In addition to the provisions of rule 193—7.38(17A,272C), the following provisions shall apply to license reinstatement proceedings:

8.17(1) The board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on an application to reinstate if the applicant requests an informal appearance in the application and agrees not to seek to disqualify, on the ground of personal investigation, board members or staff before whom the applicant appears.

8.17(2) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193F—8.14(543D).

8.17(3) The board shall not grant an application for reinstatement when the initial order which revoked, suspended or restricted the license, denied license renewal, or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

- a. All terms of the sentencing or other criminal order have been fully satisfied;

- b.* The applicant has been released from confinement and any applicable probation or parole; and
- c.* Restitution has been made or is reasonably in the process of being made to any victims of the crime.

These rules are intended to implement Iowa Code sections 543D.5, 543D.17 and 543D.18 and chapters 17A and 272C.

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CHAPTER 11
CONTINUING EDUCATION
[Prior to 2/20/02, see 193F—Chapter 6]

193F—11.1(272C,543D) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Approved program*” means a continuing education program, course, or activity that satisfies the standards set forth in these rules and has received advance approval of the board pursuant to these rules.

“*Approved provider*” means a person or an organization that has been approved by the board to conduct continuing education programs pursuant to these rules.

“*Board*” means the Iowa real estate appraiser examining board.

“*Continuing education*” means education which is obtained by a person certified to practice real estate appraising in order to maintain, improve, or expand skills and knowledge obtained prior to initial certification or registration, or to develop new and relevant skills and knowledge, all as a condition of renewal.

“*Credit hour*” means the value assigned by the board to a continuing education program.

“*Distance education*” means any education process based on the geographical separation of student and instructor. “Distance education” includes computer-generated programs, webinars, and home-study/correspondence programs.

“*Guest speaker*” means an individual who teaches an appraisal education program on a one-time-only or very limited basis and who possesses a unique depth of knowledge and experience in the subject matter.

“*Home-study/correspondence program,*” as that term relates to Iowa Code section 543D.16(2), refers to self-study programs which are not generally approved by the Appraisal Qualifications Board for continuing education credit because such courses do not usually provide a reciprocal environment where the student has verbal or written communication with the instructor. The statutory limitation on correspondence and home study courses does not apply to interactive programs that are approved by the Appraisal Qualifications Board and AQB-approved delivery mechanisms.

“*Hour*” means 50 minutes of instruction.

“*Live instruction*” means an educational program delivered in a classroom setting where both the student and the instructor are present in the same room.

[ARC 9865B, IAB 11/30/11, effective 1/4/12]

193F—11.2(272C,543D) Continuing education requirements.

11.2(1) Certified residential, certified general and associate appraisers must demonstrate compliance with the following continuing education requirements as a condition of biennial renewal:

a. A minimum of 28 credit hours in approved continuing education programs must be acquired during the two-year renewal period. Carryover hours from a previous renewal period are not allowed.

b. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases the appraiser’s skill, knowledge and competency in real estate appraising. Credit may be granted for educational offerings that are consistent with the purpose of continuing education. A minimum of 21 of the required 28 credit hours must involve courses that address one or more of the following subject areas: real estate appraisal law and rules, report writing, cost approach, sales approach, income approach, economic principles, legal considerations in appraisal, real estate markets and analysis, highest and best use analysis, appraisal math and statistics, site value, valuation of partial interests or appraisal ethics.

c. Appraisers must successfully complete the seven-hour National USPAP Update Course, or its equivalent, each two-year renewal cycle. Equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP continuing education credit shall be awarded only when the class is instructed by an AQB-certified instructor(s) and when the class is instructed by at least one state-certified residential or state-certified general appraiser. Individuals who are credentialed in more than one jurisdiction shall not have to take more than one seven-hour

National USPAP Update Course within a two-calendar-year period for the purposes of meeting AQB criteria.

11.2(2) A maximum of 14 of the required 28 credit hours may be acquired in approved distance education programs.

11.2(3) A maximum of 14 of the required 28 credit hours may be claimed by an instructor for teaching one or more approved continuing education programs in an amount equal to the credit hours approved for attendees. Instructors claiming such credit must teach the appraisal course during the renewal cycle in which credit is claimed and may not claim the course more than once in the renewal cycle. The board may request supportive documentation to ascertain course content and to verify the date(s), time, place and hours taught.

11.2(4) An applicant seeking to renew an initial certificate or registration issued less than 185 days prior to renewal is not required to report any continuing education. An applicant seeking to renew an initial certificate or registration issued for 185 days to 365 days prior to renewal must demonstrate completion of at least 14 credit hours, including 7 credit hours of the most recent National USPAP Update. An applicant seeking to renew an initial certificate or registration issued 365 days prior to renewal or more must demonstrate completion of at least 28 credit hours, including 7 credit hours of the most recent National USPAP Update.

11.2(5) Prior to reactivation of a certified general registration or a certified residential registration, a certified credential holder in inactive or lapsed status must complete all required continuing education hours that would have been required if the certified credential holder was in active status. The required hours must also include the most recent edition of a 7-hour National USPAP Update Course. Waivers may not be granted to credential holders who have failed to meet the continuing education requirements.

11.2(6) During each two-year renewal period, a continuing education program may be taken for credit only once, except USPAP courses.

11.2(7) Successful completion of a continuing education program requires 90 percent attendance. Continuing education credits shall not be granted to attendees who are present for less than 90 percent of the scheduled class meeting.

11.2(8) An applicant may claim continuing education credits earned in a state that has a continuing education requirement for renewal of a real estate appraisal certificate if the program is approved by the appraisal certification board of that state or the Appraiser Qualifications Board for continuing education purposes. All other programs must be approved upon application to the board pursuant to rules 193F—11.4(272C,543D), 193F—11.5(272C,543D) and 193F—11.6(272C,543D).

11.2(9) A person certified or registered to practice real estate appraising in Iowa shall be deemed to have complied with Iowa's continuing education requirements for periods in which the person is a resident of another state or district having continuing education requirements for real estate appraising and meets all requirements of that state or district. Waivers may not be granted to credential holders who have failed to meet the continuing education requirements. Deferrals may not be granted to credential holders, except in the case of persons returning from active military duty. Credential holders returning from active military duty may be placed in active status for a period of up to 90 days pending completion of all continuing education requirements. To qualify, the credential holder must submit a request in writing and provide a copy of the military orders.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 0412C, IAB 10/31/12, effective 12/5/12]

193F—11.3(272C,543D) Hardship and disability provisions. Rescinded IAB 5/20/09, effective 6/24/09.

193F—11.4(272C,543D) Minimum program qualifications.

11.4(1) Continuing education programs, as a condition of board approval, must provide a formal program of learning that contributes to the growth in the professional knowledge and professional competence of real estate appraisers.

11.4(2) Continuing education programs dealing with the following subject areas that are integrally related to appraisal topics will generally be acceptable:

- a. Ad valorem taxation;
- b. Agriculture production and economics;
- c. Agronomy/soil;
- d. Arbitrations;
- e. Business courses related to the practice of real estate appraisal;
- f. Construction estimating;
- g. Cost approach;
- h. Ethics and standards of professional practice;
- i. Income approach;
- j. Land use planning, zoning and taxation;
- k. Litigation;
- l. Management, leasing, brokerage time sharing;
- m. Property development;
- n. Real estate appraisal law and rules;
- o. Real estate appraisal (valuations/evaluations);
- p. Real estate law, easements, and legal interests;
- q. Real estate financing and investment;
- r. Real estate appraisal-related computer applications;
- s. Real estate securities and syndication;
- t. Real property exchange;
- u. Production economics;
- v. Sales approach;
- w. USPAP.

11.4(3) The following programs will not be acceptable:

- a. Sales promotion or other meetings held in conjunction with the appraiser's general business;
- b. Time devoted to breakfast, lunch or dinner;
- c. A program certified by the use of a challenge examination. The required number of hours must be completed to receive credit hours;
- d. Meetings that are a normal part of the in-house staff or employee training;
- e. Distance education programs which are not tested and successfully completed;
- f. Programs that do not provide at least three credit hours.

11.4(4) Continuing education credit will be granted only for whole hours, with a minimum of 50 minutes constituting one hour. For example, 100 minutes of continuous instruction would count as two credit hours; however, more than 50 minutes but less than 100 minutes of continuous instruction would only count as one hour.

11.4(5) Continuing education credit may be approved for university or college courses in qualifying topics according to the following formula: Each semester hour of credit shall equal 15 credit hours and each quarter hour of credit shall equal 10 credit hours.

[ARC 9865B, IAB 11/30/11, effective 1/4/12]

193F—11.5(272C,543D) Standards for provider and program approval. Providers and programs must satisfy the following minimum standards in order to be preapproved in accordance with the procedures established in rule 193F—11.4(272C,543D) and in order to maintain approved status.

11.5(1) The program must be taught or developed by individuals who have the education, training and experience to be considered experts in the subject matter of the program and competent in the use of teaching methods appropriate to the program.

11.5(2) Live instruction programs must be taught by instructors who have successfully completed an instructor development workshop within 24 months preceding board approval of the program.

11.5(3) In determining whether an instructor is qualified to teach a particular program, the board will consider whether the instructor has an ability to teach and an in-depth knowledge of the subject matter.

11.5(4) An instructor may demonstrate the ability to teach by meeting one or more of the following criteria:

- a. Hold a bachelor's degree or higher in education from an accredited college (attach a copy of transcripts);
- b. Hold a current teaching credential or certificate in any real estate or real estate-related fields (attach copy);
- c. Hold a certificate of completion in the area of instruction from an instructor institute, workshop or school that is sponsored by a member of the Appraisal Foundation (detail specific teaching experiences);
- d. Hold a full-time current appointment to the faculty of an accredited college;
- e. Other, as the board may determine.

11.5(5) An instructor may demonstrate in-depth knowledge of the program's subject matter by meeting one or more of the following criteria:

- a. Hold a bachelor's degree or higher from an accredited college with a major in a field of study directly related to the subject matter of the course the instructor proposes to teach, such as business, economics, accounting, real estate or finance (attach copy of transcript);
- b. Hold a bachelor's degree or higher from an accredited college and have five years of appraisal experience related to the subject matter of the course the instructor proposes to teach (attach copy of transcript and document how the instructor's experience is related to the subject matter the instructor proposes to teach);
- c. Hold a generally recognized professional real property appraisal designation or be a sponsor member of the Appraisal Foundation;
- d. Other, as the board may determine.

11.5(6) As of January 1, 2004, only AQB-certified USPAP instructors, listed on the Web site of the Appraisal Foundation may teach the national USPAP courses including the 15-hour tested prelicense course and the 7-hour continuing education course.

11.5(7) Course content and materials must be accurate, consistent with currently accepted standards relating to the program's subject matter and updated no later than 30 days after the effective date of a change in standards, laws or rules.

11.5(8) Programs must have an appropriate means of written evaluation by participants. Evaluations shall include the relevance of the materials, effectiveness of presentation, content, facilities, and such additional features as are appropriate to the nature of the program.

11.5(9) No part of any course shall be used to solicit memberships in organizations, recruit appraisers for affiliation with any organization or advertise the merits of any organization or sell any product or service.

11.5(10) Providers must clearly inform prospective participants of the number of credit hours preapproved by the board for each program and all applicable policies concerning registration, payment, refunds, attendance requirements and examination grading.

11.5(11) Procedures must be in place to monitor whether the person receiving credit hours is the person who attended or completed the program.

11.5(12) Providers must be accessible to students during normal business hours to answer questions and provide assistance as necessary.

11.5(13) Providers must comply with or demonstrate exemption from the provisions of Iowa Code sections 714.14 to 714.25.

11.5(14) Providers must designate a coordinator in charge of each program who will act as the board's contact on all compliance issues.

11.5(15) Programs shall not offer more than eight credit hours in a single day.

11.5(16) Providers shall not provide any information to the board, the public or prospective students which is misleading in nature. For example, providers may not refer to themselves as a "college" or "university" unless qualified as such under Iowa law.

11.5(17) Providers must establish and maintain for a period of five years complete and detailed records on the programs successfully attended by each Iowa participant.

11.5(18) Providers must issue an individual certificate of attendance to each participant upon successful completion of the program. The certificate must be no larger than 8½" × 11" and must

include the provider name and number, program name and number, name of attendee, date program was completed, number of approved credit hours, and the signature of the coordinator or other person authorized by the board.

11.5(19) Program providers and instructors are solely responsible for the accuracy of all program materials, instruction and examinations. Board approval of a provider or program is not an assurance or warranty of accuracy and shall not be explicitly or implicitly marketed or advertised as such.

193F—11.6(272C,543D) Acceptable distance education courses. Distance education is an education process based on the geographical separation of student and instructor. A distance education course is acceptable to meet class hour requirements if:

11.6(1) The course provides interaction. Interaction is a reciprocal environment in which the student has verbal or written communication with the instructor; and

11.6(2) Content approval is obtained from the AQB, a state licensing jurisdiction, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. Nonacademic credit college courses provided by a college shall be approved by the AQB or the state licensing jurisdiction; and

11.6(3) Course delivery mechanism approval is obtained from one of the following sources:

- a. AQB-approved organizations providing approval of course design and delivery; or
- b. A college that qualifies for content approval pursuant to subrule 11.6(2) that awards academic credit for the distance education course; or
- c. A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

193F—11.7(272C,543D) Applications for approval of providers and programs. Applications for approval of providers and programs must be submitted on forms prescribed by the board. Board approval is effective for 24 months, including the month of approval.

11.7(1) Approval must be obtained for each program separately.

11.7(2) A nonrefundable fee of \$50 must be submitted for each program except for programs that have been approved by the Appraiser Qualifications Board.

11.7(3) All required forms and attachments must be submitted for approval at least 30 days prior to the first offering of each program. The board will approve or deny each program, in whole or part, within 15 days of the date the board receives the fee and fully completed application.

11.7(4) Application forms will request information including, but not limited to, the following:

- a. Program description;
- b. Program purpose;
- c. Difficulty level;
- d. Learning objectives for each major topic that specify the level of knowledge or competency the student should demonstrate upon completing the program;
- e. Description of the instructional methods utilized to accomplish the learning objective;
- f. Identifying information for all guest speakers or instructors and such documentation as is necessary to verify compliance with the instructor qualifications described in subrule 11.5(5);
- g. Copies of all instructor and student program materials;
- h. Copies of all examinations and a description of all grading procedures;
- i. A description of the diagnostic assessment method(s) used when examinations are not given;
- j. Copies of prospective brochures or narrative descriptions of the program as will be advertised to prospective students;
- k. Such information as needed to verify compliance with board rules;
- l. The name, address, telephone number, fax number and E-mail address for the program's coordinator;
- m. Such other information as the board deems reasonably needed for informed decision making.

11.7(5) The board shall assign each provider and program a number. This number shall be placed on all correspondence with the board, all subsequent applications by the same provider, and all certificates of attendance issued to participants.

193F—11.8(272C,543D) Waiver of application fees. Application fees may be waived for approved programs sponsored by a federal, state, or local governmental agency when the program is offered at no cost or at a nominal cost to participants. A request for waiver of application fees should be made by the provider or certificate holder at the time the application is filed with the board.

193F—11.9(272C,543D) Continuing education committee. Upon majority vote of the board, the board chairperson may appoint, on an annual basis, a continuing education committee to approve or deny, in whole or part, applications for provider and program approval and hardship and disability waivers pursuant to rule 193F—11.3(272C,543D), and credits claimed by appraisers on certification renewal forms. The committee shall be comprised of three members of the board, at least two of whom are appraisers. Alternatively, the board chairperson may delegate to the executive secretary authority to approve or deny course applications subject to the applicant's right to a hearing as provided for in rule 193F—11.12(272C,543D).

193F—11.10(272C,543D) Appraiser request for preapproval of continuing education programs. An appraiser seeking credit for attendance and participation in a program which is to be conducted by a provider not accredited or otherwise approved by the board shall apply for approval to the board at least 15 days in advance of the commencement of the activity. The board shall approve or deny the application in writing. Application for prior approval of a continuing education activity shall include the following fee and information:

1. Application fee of \$25;
2. School, firm, organization or person conducting the program;
3. Location of the program;
4. Title and hour-by-hour outline of the program, course or activity;
5. Credit hours requested for approval;
6. Date of program; and
7. Principal instructor(s).

193F—11.11(272C,543D) Appraiser request for postapproval of continuing education program. An appraiser seeking credit for attendance and participation in a program that was not conducted by an approved provider or approved by the licensing authority in another state or otherwise approved by the board shall submit to the board a request for credit for the program. Within 15 days after receipt of the request, the board shall advise the requester in writing whether the program is approved and the number of hours allowed. Appraisers not complying with the requirement of this rule may be denied credit for the program. Application for postapproval of a continuing education program shall include the following fee and information:

1. Application fee of \$25;
2. School, firm, organization or person conducting the program;
3. Location of the program;
4. Title of program and description of program;
5. Credit hours requested for approval;
6. Dates of program;
7. Principal instructor(s); and
8. Verification of attendance.

193F—11.12(272C,543D) Review of provider or program. The board on its own motion or upon receipt of a complaint or negative evaluation may monitor or review any approved program or provider and, upon evidence of significant variation in the program presented from the program approved, a violation of board rules, or material misstatement or omission in the application form, may withdraw

approval of the provider or program and disallow all or any part of the approved hours granted to the provider. The provider, as a condition of approval, agrees to allow the board or its authorized representatives to monitor ongoing compliance with board rules through means including, but not limited to, unannounced attendance at programs.

193F—11.13(272C,543D) Hearings. In the event of denial, in whole or in part, of any application for approval of a continuing education program or provider, or credit for a continuing education program, or withdrawal of approval of a continuing education program or provider, the provider or appraiser shall have the right, within 20 days after the sending of the notification of the denial or withdrawal by ordinary mail, to request, in writing, a hearing which shall be held within 60 days after receipt of the written request for hearing. The hearing shall be conducted by the board, a panel of the board, or a qualified administrative law judge designated by the board. If the hearing is conducted by a panel of the board or an administrative law judge, a transcript of the hearing shall be presented to the board with the proposed decision. The decision of the board, or the decision of the panel of the board or an administrative law judge after adoption or amendment by the board, shall be final.

These rules are intended to implement Iowa Code sections 543D.5, 543D.9 and 543D.16 and chapter 272C.

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CHAPTER 8
PAROLE AND WORK RELEASE CONSIDERATIONS

205—8.1(906) Purpose of parole and work release considerations. The board shall determine whether there is reasonable probability that an inmate committed to the custody of the department of corrections who is eligible for parole or work release can be released without detriment to the community or the inmate. The board shall consider the best interests of society and shall not grant parole or work release as an award of clemency.

205—8.2(906) Parole and work release eligibility.

8.2(1) Mandatory sentences. The board shall not grant parole to an inmate serving a mandatory minimum sentence. The board shall not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule shall be rescinded. Mandatory sentences are as follows:

- a. A life sentence imposed for conviction of a Class “A” felony pursuant to Iowa Code section 902.1;
- b. A mandatory minimum sentence imposed for use of a firearm pursuant to Iowa Code section 902.7;
- c. A mandatory minimum sentence imposed for violation of uniform controlled substance provisions pursuant to Iowa Code section 124.406 or 124.413;
- d. A mandatory minimum sentence imposed for being an habitual offender pursuant to Iowa Code section 902.8;
- e. A mandatory minimum sentence imposed for a prior forcible felony pursuant to Iowa Code section 902.11.

8.2(2) Parole and work release while on patient status. Generally, the board will not grant parole or work release to an inmate on patient status.

8.2(3) Parole to detainer. The board may grant parole to an inmate against whom a detainer has been placed by another state. Generally, the board will not parole an inmate to a detainer that is solely for prosecution.

8.2(4) Parole to other states. The board may grant parole to another state pursuant to the provisions of the interstate parole and probation compact set forth in Iowa Code chapter 907A.

205—8.3 Reserved.

205—8.4(906) Prior forcible felony mandatory minimum sentence. The board shall deny parole or work release to an inmate who is serving a mandatory minimum sentence pursuant to Iowa Code section 902.11.

205—8.5(904A) Risk assessment. The board shall assess the risk of an inmate committed to the custody of the department of corrections. The board shall utilize a risk assessment instrument approved by the board by resolution.

205—8.6(906) Parole and work release considerations.

8.6(1) Case reviews. The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate’s prospects for parole or work release at any time. The board shall notify an inmate only if the inmate is granted parole or work release, except as provided in 8.16(3).

8.6(2) Interviews. The board may interview an inmate committed to the custody of the department of corrections at any time.

8.6(3) The board shall review the status of each inmate as directed by the Iowa Code, and shall provide the inmate with notice of its parole or work release decision. After an inmate has been granted

work release, the board shall review the inmate's status at least annually from the date of the decision to grant work release.

8.6(4) Class "A" felons, and Class "B" felons serving a sentence of more than 25 years, are excepted from the annual review requirement of 8.6(3).

8.6(5) Inmates serving a mandatory minimum sentence are excepted from the annual review requirements of 8.6(3) until such time as the mandatory minimum has expired.

8.6(6) Department initiated review. The department of corrections may recommend an inmate for parole or work release consideration at any time. The board shall discuss such a recommendation with department staff during the next regularly scheduled board session involving the institution where the inmate in question is incarcerated. The board may, at its discretion, interview the inmate prior to acting upon the recommendation of the department of corrections staff.

205—8.7(906) Parole and work release information. The board shall notify the department of corrections or a district department when an inmate is to be considered for parole or work release. The receipt of notice by the department of corrections or the district department shall constitute a request for updated information on the inmate. The board shall request information required for parole or work release decision making. The department of corrections or the district department shall furnish updated information to the board.

205—8.8(906) Interview notice. The board or the board's designee shall notify an inmate to be interviewed for parole or work release consideration of the time and purpose of the interview. Notice given to the department of corrections shall be considered notice to the inmate. Not less than 20 days prior to the interview, the board shall also notify the department of corrections of the scheduling of the interview, and the department shall make the inmate available to the board at the inmate's institutional residence as scheduled in the notice. However, if health, safety, or security conditions require moving the inmate to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

205—8.9(906) Continuance. The board may reschedule or continue a parole or work release interview upon its own motion or upon a showing of good cause, as determined by the board.

205—8.10(906) Factors considered in parole and work release decisions.

8.10(1) The board may consider the following factors and others deemed relevant to the parole and work release decisions:

- a. Previous criminal record;
- b. Nature and circumstances of the offense;
- c. Recidivism record;
- d. Convictions or behavior indicating a propensity for violence;
- e. Participation in institutional programs, including academic and vocational training;
- f. Psychiatric and psychological evaluations;
- g. Length of time served;
- h. Evidence of serious or habitual institutional misconduct;
- i. Success or failure while on probation;
- j. Prior parole or work release history;
- k. Prior refusal to accept parole or work release;
- l. History of drug or alcohol use;
- m. A parole plan formulated by the inmate;
- n. General attitude and behavior while incarcerated;
- o. Risk assessment.

8.10(2) Psychological and psychiatric evaluations. The board may request a complete psychiatric or psychological evaluation of an inmate whenever, in the opinion of the board, it would be beneficial to the board's decision. The board shall routinely request an evaluation of an inmate convicted of a crime

involving sexual abuse or personal violence, or of an inmate who has committed assaults or violent acts while incarcerated.

205—8.11(906) Information disclosure to inmate. The board shall normally consider only information that has been reviewed by the inmate, except when the board deems such review not feasible. The information shall be considered only if the following safeguards are followed:

8.11(1) The staff of the department of corrections shall discuss the information with the inmate and disclose to the inmate any factual allegations if the disclosure can be done in a manner that protects confidential sources.

Factual allegations shall include but not be limited to:

- a. Any statements attributed to the inmate;
- b. Any allegations of criminal or antisocial behavior with or without court conviction from within or without the institution;
- c. Any allegations of threats made by the inmate;
- d. Any allegations of drug addiction or alcoholism;
- e. Any allegations regarding family history, employment or education;
- f. Disciplinary record at the institution.

8.11(2) If any information from outside institutions under the supervision of the department of corrections is to be considered by the board, and it is necessary to protect the source, the inmate shall be informed of at least the following:

- a. The general substance of the information;
- b. The number of communications;
- c. The type of communications.

The inmate shall be given the opportunity to respond to information.

8.11(3) The inmate's reports from institutions under the supervision of the department of corrections, including reception reports, progress reports, medical reports, and social information or reports, should, to the extent possible, be structured so as to separate opinion from factual information. The factual information shall be made available for review by the inmate; opinion information shall be confidential. Psychiatric or psychological test results or diagnoses shall be deemed confidential.

205—8.12(906) Interview procedure. The board or board panel shall interview the inmate and consider the inmate's records with respect to history, current situation, parole and work release prospects, and other pertinent matters. The board or board panel shall give the inmate ample opportunity to express views and present materials.

205—8.13(906) Case review procedure. The board or board panel may consider the inmate's records and other information with respect to history, current situation, parole and work release prospects, and other pertinent matters. A case review may take place at any time and is in addition to any other required review.

205—8.14(906) Conduct at parole proceedings.

8.14(1) Parole proceedings shall be open to the public except as otherwise necessary or proper.

8.14(2) Conduct of inmate.

- a. Conduct of the inmate shall be in a manner consistent with decorum appropriate for a participant in a public meeting of a governmental body.
- b. An inmate may not orally or otherwise communicate with spectators or others present at the parole proceeding except as permitted by the panel or board.
- c. The inmate shall speak to the panel or board or counselor only when asked a question or directed otherwise to do so.
- d. Each inmate will be given an opportunity to make an independent statement to the panel or board at some point during the parole proceeding. The panel or board may limit this statement in any manner as to topic or time. Specifically subject to this limitation will be persons who have no realistic

grounds to believe a parole will be granted, i.e., those with mandatory minimum sentences, those serving life terms, or those having served short times relative to the severity of their crimes and length of their sentences.

e. Failure to comply with the direction of the panel or board in limiting statements, in communicating with persons present at the parole proceeding, or any absence of decorum which could disrupt or delay the proceeding may, at the discretion of the board, result in a forfeiture of the right to an interview and a request by the board to have the institutional staff remove the inmate.

f. An inmate who forfeits the right to an interview for reasons under 8.14(2)“*e*” or for any other reason shall not be interviewed again until the inmate’s next annual review, or until such earlier time as determined by the board, except that the inmate may request an earlier interview. The request is to be made through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

8.14(3) Conduct of spectators.

a. Spectators may not participate in the parole proceedings. The number of spectators will be limited by the number of seats provided. Only board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel or board. An exception will be made for television camera operators.

b. Spectators may not enter or leave the room during interviews or between interviews, except that the board or panel will designate times when persons may enter and leave. This will be done at reasonable intervals, and may be between interviews even though the board or panel does not take a break.

c. Entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by the staff of the institution at which the session is being held.

d. Spectators shall make no utterances which are intended to be or can be heard by the inmate or the panel. This includes any conversation among spectators.

e. Spectators shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body.

f. Any activity deemed inappropriate by the panel or institutional staff under the guidelines in the rules may result in a request by the panel or institutional staff for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request will result in a request by the panel to have the person or persons removed by the institutional staff.

All spectator places shall be on a first-come, first-served basis in accordance with the rules of the institution or the department of corrections.

g. A spectator who leaves during a time designated for entering or leaving or during a short break by the panel may retain a place if the person returns at the next time designated for that purpose. A person does not retain a place at the hearing over breaks taken for lunch or dinner or overnight.

8.14(4) Conduct of the media.

a. General. Broadcasting, televising, recording and photographing will be permitted in the interview room during open sessions of the board or panel, including recesses between sessions, under the following conditions:

(1) Permission first shall have been granted by the institution or department of corrections, which may prescribe conditions and restrictions for bringing equipment into areas of the institution.

(2) Media coverage of any proceeding which is held in closed session under Iowa law is prohibited.

(3) The quantity and types of equipment permitted in the interview room shall be subject to the discretion of the panel or board within the guidelines in these rules, and subject to the permission of the institution or department of corrections.

(4) Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of other equipment provided the application for variance is made in advance. Ruling

upon the variance application shall be in the discretion of the panel or board, subject to permission of the institution or department of corrections to bring in or move equipment.

(5) The panel or board may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the panel or board finds that rules in this chapter or additional rules imposed by the institution or department of corrections have been violated.

(6) The rights of motion picture and electronic coverage provided herein may be exercised only by persons or organizations which are part of the news media, except that individuals may use sound tape recorders.

b. Advance notice of coverage. All requests by representatives of the news media to use television cameras or electronic sound recording equipment in the interview room shall be made to the institution in advance in accordance with department of corrections rules.

c. Equipment specifications. Equipment to be used by the media or public in interview rooms or meeting rooms during interview proceedings or board meetings held at the institutions must be unobtrusive and must not produce distracting sound. In addition, the equipment must satisfy the following criteria, where applicable:

(1) Still cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

(2) Television cameras and related equipment. Television cameras are to be electronic and, together with any related equipment to be located in the interview room, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

(3) Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding being covered. Any changes in existing audio systems must be approved by the panel or board. No modifications of existing systems shall be made at public expense.

(4) Advance approval. It shall be the duty of media personnel to demonstrate to the panel or board reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance panel or board approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least 15 minutes prior to the scheduled time of commencement of the proceeding.

d. Lighting. Other than light sources already existing in the interview room, no flashbulbs or other artificial light device of any kind shall be employed in the interview room. With the concurrence of the panel and institutional staff, however, modifications may be made in light sources existing in the interview room (e.g., higher wattage light bulbs), provided the modifications are installed and maintained without public expense.

e. Equipment and pooling. The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the interview room shall apply:

(1) Still photography. Not more than two still photographers, each using not more than two camera bodies and two lenses, shall be permitted in the interview room at any one time during a parole proceeding.

(2) Television. Not more than two television cameras, each operated by not more than one camera person, shall be permitted in the interview room during a parole proceeding. All components must be contained within the area designated for the camera. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the interview room.

(3) Audio. Not more than one audio system shall be set up in the interview room for broadcast coverage of a parole proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the interview room, if the pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside the interview room.

(4) Pooling. Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility

of the media, and the panel or board shall not be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular parole proceeding.

f. Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the interview room designated by the panel or institutional staff. The area or areas designated shall provide reasonable access to the proceeding to be covered.

g. Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, the equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the interview room while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

h. Decorum. All still photographers and broadcast media personnel shall be properly attired and shall maintain decorum appropriate for a public meeting of a governmental body at all times while covering a parole proceeding.

205—8.15(906) Parole and work release decisions.

8.15(1) The board shall grant parole to an inmate on work release status if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board shall deny parole.

8.15(2) The board shall grant parole or work release to an inmate if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board shall deny parole or work release.

8.15(3) and **8.15(4)** Rescinded IAB 10/31/12, effective 12/5/12.

8.15(5) The board may determine if an inmate shall be required to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release. The board shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the offender, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds have been provided by other public or private sources, the board shall order DNA profiling, if appropriate. [ARC 0421C, IAB 10/31/12, effective 12/5/12]

205—8.16(906) Notice of parole and work release decisions.

8.16(1) The board shall give notice of a decision to grant parole by issuing an order for parole to the facility where the inmate in question is incarcerated.

8.16(2) The board shall give notice of a decision to grant work release by issuing an order for work release to the facility where the inmate in question is incarcerated.

8.16(3) The board shall give notice of a decision to deny parole or work release by issuing a notice of parole or work release denial to the facility where the inmate in question is incarcerated.

8.16(4) The board need not disclose a decision to grant or deny parole or work release to anyone other than the inmate in question and the facility where the inmate is incarcerated until at least two working days have elapsed from the date of the decision.

205—8.17(906) Parole authorized following work release.

8.17(1) The board may, at the time of granting work release, grant an offender parole contingent upon successful completion of work release. Whenever the board grants parole contingent upon successful completion of work release, it shall indicate in the offender's file any special conditions for parole and that parole is contingent upon successful completion of work release.

8.17(2) The residential manager shall make a determination whether the offender has successfully completed the work release. For the purpose of this rule, successful completion of work release shall mean, at a minimum, the absence of any violent acts or threats of violence by the offender from the time the work release was authorized and either (1) the offender has completed all board of parole recommended programs or (2) the offender has enrolled in all recommended programs not completed

and is making satisfactory progress toward completion and the facility is able to arrange for continued program participation while the offender is on parole. When an offender successfully completes the work release program, the residential manager shall certify that fact to the board in a written or electronic certification. Upon receipt of the certification, the chairperson or the chairperson's designee shall cause a parole order to be issued and forwarded to the residential facility where a parole agreement will be executed by the offender with such parole conditions as the board may require in its original release decision. Parole shall be effective only upon execution of the parole order and agreement by the parole officer and the parolee. No further action is required by the parole board for said parole. Before the parole becomes effective, the chairperson or the chairperson's designee may refer the case back to the board for further consideration. Nothing in this rule shall prevent the parole board from considering revocations of work release or parole for violations of the parole order, agreement, or any other provision of law, as otherwise provided in the board's administrative rules.

8.17(3) If the residential manager does not certify that an offender has successfully completed work release within the six-month limit established in Iowa Code section 904.904, and if the offender's work release has not otherwise been revoked, the offender's case shall be reviewed by the board of parole. The board may grant parole, extend work release, refer the offender back to prison, or take any other action authorized by law.

8.17(4) The grant of parole contingent upon successful completion of work release shall comply with subrules 8.15(1) through 8.15(4).

8.17(5) An offender who has been granted parole contingent upon successful completion of work release and who fails to successfully complete work release for whatever reason shall be reviewed for further release consideration according to the board's administrative rules.

8.17(6) Parole granted under this rule shall be administered and supervised according to the board's administrative rules, 205—Chapters 10 and 11.

These rules are intended to implement Iowa Code chapters 904A and 906.

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265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2013 Qualified Allocation Plan shall be the qualified allocation plan for the allocation of 2013 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to October 10, 2012.

[ARC 8266B, IAB 11/4/09, effective 12/9/09; ARC 8947B, IAB 7/28/10, effective 7/6/10; ARC 9279B, IAB 12/15/10, effective 1/19/11; ARC 9950B, IAB 12/28/11, effective 2/1/12; ARC 0427C, IAB 10/31/12, effective 12/5/12]

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's Web site. The plan incorporates by reference IRC Section 42 and the regulations in effect as of October 10, 2012. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site.

[ARC 8266B, IAB 11/4/09, effective 12/9/09; ARC 8947B, IAB 7/28/10, effective 7/6/10; ARC 9279B, IAB 12/15/10, effective 1/19/11; ARC 9950B, IAB 12/28/11, effective 2/1/12; ARC 0427C, IAB 10/31/12, effective 12/5/12]

265—12.3(16) Compliance manual. The Low Income Housing Tax Credit Program Compliance Monitoring Manual, dated January 1, 2010, is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

[ARC 7700B, IAB 4/8/09, effective 3/19/09; ARC 7891B, IAB 7/1/09, effective 8/5/09; ARC 8723B, IAB 5/5/10, effective 6/9/10]

265—12.4(16) Location of copies of the manual. The compliance manual can be reviewed and copied in its entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of October 31, 2009. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and links to these statutes, regulations and rules are on the authority's Web site. Copies are available from the authority upon request at no charge.

[ARC 7700B, IAB 4/8/09, effective 3/19/09; ARC 7891B, IAB 7/1/09, effective 8/5/09; ARC 8723B, IAB 5/5/10, effective 6/9/10]

These rules are intended to implement Iowa Code section 16.52.

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[Filed ARC 8723B (Notice ARC 8508B, IAB 2/10/10), IAB 5/5/10, effective 6/9/10]

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[Filed ARC 9279B (Notice ARC 9160B, IAB 10/20/10), IAB 12/15/10, effective 1/19/11]

[Filed ARC 9950B (Notice ARC 9837B, IAB 11/2/11), IAB 12/28/11, effective 2/1/12]

[Filed ARC 0427C (Notice ARC 0284C, IAB 8/22/12), IAB 10/31/12, effective 12/5/12]

CHAPTER 15
PURCHASING

265—15.1(16) Applicability of competitive bidding. Items, including goods or services, that are expected to cost in the aggregate in excess of \$50,000 will be obtained as a result of a formal or informal competitive bidding process conducted by the authority, or through the department of administrative services whenever such procurement is in the best interests of the authority, as determined by the authority. Items, including goods or services, expected to cost \$50,000 or less in the aggregate may be obtained in any manner deemed appropriate by the authority.

Notwithstanding the foregoing, the authority may exempt any item from competitive bidding if the item is noncompetitive or is purchased in quantities too small to be effectively purchased through competitive bidding; if there is an immediate or emergency need for the item; if the purchase of the item facilitates compliance with set-aside procurement provisions; or if the executive director of the authority determines, in the executive director's sole discretion, that the authority's best interests will be served by exemption from the bidding process.

265—15.2(16) Methods of obtaining bids or proposals used by the authority. Formal or informal bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the authority shall choose the method of bidding to be utilized.

15.2(1) Formal bids.

a. To solicit formal bids, the authority shall prepare a written invitation-to-bid document and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of providing the goods or services sought by the authority. Goods or services may also be obtained by the authority using reverse auction methods via the authority's Internet Web site.

b. The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

c. Formal bids received prior to the submission deadline set in the bidding document shall be made available to any interested party on the date and hour designated on the bid form. As the bids are opened, they shall be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations shall be maintained at the authority for one year following the date on which the bids were opened.

d. An award shall be made within 60 calendar days from the date of the bid opening, unless a different time frame is stated by the authority in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

15.2(2) Informal bids.

a. Informal bids may be obtained by the authority through use of a written bid form, over the telephone, via facsimile transmission, or in electronic format, including over the Internet or through electronic mail. When requesting informal bids, the authority shall contact selected vendors supplying the goods or services sought by the authority and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid. Goods or services may also be obtained by the authority using reverse auction methods via the authority's Internet Web site.

b. Written informal bids shall be opened as received, and informal telephone, facsimile, or electronic bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If an electronic bid is received, a printout shall be used to record the bid received. Following the submission deadline, the authority shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the submission deadline and shall be maintained by the authority for one year following the submission deadline.

c. If an award is not made within the time frame indicated by the authority when requesting bids, all bids shall be deemed rejected.

15.2(3) Request for proposals. Whenever a requirement exists for an item and cost may not be the sole criterion for selection, the authority may issue a request for proposals. The purpose of a request for proposals is to provide the vendor with sufficient information about the authority's requirements and goals to allow the vendor to propose a solution to the authority's requirements.

a. The authority shall prepare a written request for proposals and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of supplying the goods or services sought by the authority.

b. An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the authority in the request for proposals or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

c. At a minimum, a request for proposals shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process, including the submission deadline; administrative requirements for submitting the proposal and the format required by the authority; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the authority anticipates may affect the terms of the vendor's proposal.

265—15.3(16) Items purchased through the department of administrative services. Goods and services may be obtained by the authority through the department of administrative services (DAS) whenever procurement through DAS is in the best interests of the authority. Items procured through DAS may be obtained by DAS in any manner it deems appropriate.

265—15.4(16) Posting solicitations. Formal bids and requests for proposals issued by the authority shall be posted to the authority's Internet Web site. The posting shall indicate that it is a notice to prospective bidders, contain the due date and time of opening of the bid or proposal, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

[ARC 0430C, IAB 10/31/12, effective 12/5/12]

265—15.5(16) Contract purchases. The authority may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined, where applicable.

265—15.6(16) Blanket purchase agreements. If the authority foresees a requirement for frequent purchases of off-the-shelf items, the authority may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined, where applicable.

265—15.7(16) Bids and proposals to conform to specifications. All bids and proposals must conform to the specifications indicated by the authority. Bids and proposals that do not conform to the specifications stated may be rejected. The authority reserves the right to waive deficiencies in the bids or proposals if in the judgment of the authority its best interests would be served by the waiver.

265—15.8(16) Time of delivery. When evaluating bids or proposals, the authority may consider the time of delivery when determining the successful vendor.

265—15.9(16) Cash discounts. When evaluating bids or proposals, the authority may consider cash discounts.

265—15.10(16) Ties. The authority shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses. If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the authority shall document the drawing.

265—15.11(16) Time of submission. All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the authority prior to the submission deadline specified in the bid document. All informal bids shall be submitted by the vendor in time to reach the authority prior to the submission deadline indicated by the authority. Formal bids and proposals shall be marked by the authority with the date and time received by the authority. Formal bids and proposals received after the submission deadline shall be returned to the vendor unopened. All vendors to whom invitations to bid or requests for proposals are sent shall be notified of any changes in submission deadline.

If a formal bid or request for proposals is canceled prior to the submission deadline, any responses already received shall be returned unopened. If an informal bid is canceled prior to the submission deadline, any bids already received shall be destroyed.

265—15.12(16) Modification or withdrawal of bids. Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope that properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the authority if the authority finds that an honest error was made by the vendor that will cause undue financial hardship to the vendor and that will not cause undue financial hardship or inconvenience to the authority.

265—15.13(16) Financial security. The authority may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the authority, or any other form specified by the authority.

265—15.14(16) Rejection of bids and proposals. The authority reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the authority's requirements, or for any other reason if the authority determines that its best interests will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the authority at any time deemed convenient by the authority.

265—15.15(16) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the authority may appeal the decision by filing a written notice of appeal before the Iowa Finance Authority Board, 2015 Grand Avenue, Des Moines, Iowa 50312, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the authority's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

These rules are intended to implement Iowa Code section 16.5 as amended by 2007 Iowa Acts, Senate File 431, section 19.

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CHAPTER 26
WATER POLLUTION CONTROL WORKS AND
DRINKING WATER FACILITIES FINANCING

265—26.1(16) Statutory authority. The authority to provide loans to eligible applicants to assist in financing drinking water and wastewater treatment facilities and water pollution control projects is provided by Iowa Code sections 16.131 through 16.133.

265—26.2(16) Purpose. The Iowa finance authority provides financing to carry out the functions of the state revolving fund (SRF) loan programs. Under an agreement with the United States Environmental Protection Agency, the Iowa SRF is administered by the Iowa department of natural resources in partnership with the Iowa finance authority.

[ARC 8457B, IAB 1/13/10, effective 2/17/10]

265—26.3(16) Definitions.

“*Authority*” or “*IFA*” means the Iowa finance authority.

“*Clean Water Act*” or “*CWA*” means the federal Water Pollution Control Act of 1972, as amended by the Water Quality Act of 1987.

“*Commission*” means the environmental protection commission of the Iowa department of natural resources.

“*Common ownership*” means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

“*Department*” or “*DNR*” means the Iowa department of natural resources.

“*Director*” means the director of the authority.

“*DWSRF*” means the drinking water state revolving fund.

“*Eligible costs*” means all costs related to the completion of a project as defined in the CWA and SDWA and 567—Chapters 40 and 90.

“*EPA*” means the United States Environmental Protection Agency.

“*Intended use plan*” or “*IUP*” means the program document identifying the intended uses of funds available for loans pursuant to the WPCSRF and the DWSRF.

“*Nonpoint source*” means any project described in Section 319 of the Clean Water Act.

“*Recipient*” means the entity receiving funds from the SRF.

“*Safe Drinking Water Act*” or “*SDWA*” means Title XIV of the federal Public Health Service Act, commonly known as the “Safe Drinking Water Act,” as amended by the Safe Drinking Water Amendments of 1996.

“*SRF*” means the state revolving fund.

“*WPCSRF*” means the water pollution control state revolving fund.

[ARC 8457B, IAB 1/13/10, effective 2/17/10]

265—26.4(16) Project funding.

26.4(1) *Intended use plans/state project priority lists.* The state project priority lists shall include projects eligible for SRF loans as provided in 567—Chapters 44 and 92. The authority will consider the following when determining whether to provide a loan to an eligible recipient:

- a. Recipient’s financial capability to repay the loan and to provide operation and maintenance, replacement reserves, and, if required, debt service reserves;
- b. Recipient’s statement of willingness to accept all loan terms and conditions;
- c. The priority of the project;
- d. Funds available; and
- e. The technical review and approval of the project by the department.

26.4(2) *Phased or segmented projects.* Loan funds for future portions of phased or segmented projects cannot be ensured, although subsequent segments of a project which has been awarded financial assistance will receive priority over other new projects. Loans made for separate phases or segments of a project will be administered separately.

26.4(3) *Loan adjustments.* Loan amounts may be adjusted to reflect eligible costs.

26.4(4) *Recipient record keeping.* The recipient shall maintain records that document all costs associated with the project. Moneys from the SRF and those contributed by the recipient shall be accounted for separately. Accounting procedures shall conform to generally accepted government accounting standards. The recipient shall agree to provide access to these records to the department, the authority, the state auditor, the state or EPA, and the Office of the Inspector General at the EPA. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

26.4(5) *Site access.* The recipient shall agree to provide the department and the department's agent access to the project site at all times to verify that the loan funds are being used for the intended purpose and that the construction work meets all applicable state and federal requirements. Recipients shall also agree to provide the department periodic access to the project site for the duration of the loan to ensure that the project is being operated and maintained as designed.

26.4(6) *Cross-cutting laws.* Other federal and state statutes and programs may affect an SRF project. Loan agreements will include an assurance that a recipient will comply with all applicable federal and state requirements.

265—26.5(16) WPCSRF/DWSRF infrastructure construction loans.

26.5(1) *Loan agreements.* The authority will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the CWA/SDWA and applicable state rules for SRF funding. The loan shall be accompanied by an enforceability opinion in a form acceptable to the authority and, if applicable, a bond counsel opinion as to the status of interest on the obligation, in a form acceptable to the authority. A copy of the current form of the loan agreement shall be provided to the applicant upon request.

26.5(2) *Loan rates and terms.* Loan terms for point source projects shall include the following:

a. Interest rates. Loan interest rates shall be established in the IUP and shall be established by taking into account factors including, but not limited to, the following:

- (1) Interest rate cost of funds to the SRF;
- (2) Availability of other SRF funds;
- (3) Prevailing market interest rates of comparable non-SRF loans; and
- (4) Long-term SRF viability.

b. Loan initiation fee. The loan initiation fee shall be established in the IUP. The fee shall be payable on the closing date of the loan agreement.

c. Annual loan servicing fee. The annual loan servicing fee shall be established in the IUP.

d. Revenue pledge. The recipient shall establish sufficient revenue sources that are acceptable to the director for the repayment of the loan. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment in order to maintain annual net revenues at a level equal to at least 110 percent of the amount necessary to pay debt service on all revenue obligations during the next fiscal year, provided, however, that, at the discretion of the director, the authority may allow other revenue sources and coverage of less than 110 percent as security. In case of loan default, the authority shall have authority to require revenue adjustment, through the manner described above, to collect delinquent loan payments.

e. Security. The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations. The dedicated source of repayment is expected to be the net revenues of the recipient's system and the loan is expected to be secured by a first lien on said net revenues. Loans secured by revenues of a system may rank on a parity basis with other outstanding obligations or, with the approval of the director, may be subordinate in right of payment to the recipient's

other outstanding revenue obligations. Loans may also be secured by a general obligation of the recipient through the provision for a levy of taxes to repay the loan.

f. Construction payment schedules. An estimated construction drawdown schedule provided by the recipient shall be part of the loan agreement.

26.5(3) Loan commitments. A loan agreement shall be a binding commitment of the recipient.

26.5(4) Purpose of payments. The recipient shall use the proceeds of the WPCSRF/DWSRF loan solely for the purpose of funding the approved project.

26.5(5) Costs. All eligible costs must be documented to the satisfaction of the authority and the department before proceeds of the loan will be disbursed.

26.5(6) Loan amount and repayment period. All loans shall be made contingent on the availability of funds, the maximum loan term will be that allowed by EPA, and repayment of the loan must begin no later than one year after the project is completed or by the date specified in the loan agreement.

26.5(7) Prepayment. The loan may be prepaid, in whole or in part, on any date with the prior written consent of the authority.

[ARC 8457B, IAB 1/13/10, effective 2/17/10; ARC 0245C, IAB 8/8/12, effective 7/12/12; ARC 0431C, IAB 10/31/12, effective 12/5/12]

265—26.6(16) Planning and design loans.

26.6(1) Timing of loan. Prior to a recipient's execution of a loan agreement for project construction, funds may be loaned to the recipient to pay for initial eligible costs, including the cost of facility planning and design engineering.

26.6(2) Duration. Planning and design loans may not have a duration of longer than three years from their date of execution, unless the director provides written consent to a longer term.

26.6(3) Interest rate. The interest rate will be that rate specified in the most recent IUP.

26.6(4) Rollover to construction loan. All funds borrowed by the recipient as a planning and design loan may be financed as a part of a construction loan agreement upon expiration of the term of the planning and design loan.

26.6(5) Repayment. If the recipient does not execute an SRF construction loan, the planning and design loan shall be paid in full at the end of the three-year term, unless the loan term is extended by written consent of the director.

[ARC 8079B, IAB 8/26/09, effective 8/7/09]

265—26.7(16) Disadvantaged community status.

26.7(1) Criteria for disadvantaged community status. The authority, in conjunction with the department, may develop criteria to determine disadvantaged community status. Factors included in the criteria include, but are not limited to, the community's median household income and target user charges. Criteria to determine disadvantaged community status shall be established in the IUP.

26.7(2) Interest rate. Interest rates for disadvantaged communities shall be established in the IUP.
[ARC 8457B, IAB 1/13/10, effective 2/17/10]

265—26.8(16) WPCSRF nonpoint source set-aside loan programs.

26.8(1) Nonpoint source loan assistance. Loan assistance for nonpoint source projects shall be in the form of low-interest loans or through linked deposits or loan participations through participating lending institutions.

26.8(2) Application for loan assistance. Application for loan assistance may be made at any participating lending institution or submitted to the authority or the authority's agent, as applicable. A list of participating lending institutions will be made available by the authority, financial agent or other entity that the authority may use to administer this program. Application for loan assistance shall be made on forms provided by the authority or its agent.

26.8(3) Project approval. Each project must be approved by the appropriate environmental or conservation agency as determined by the department.

26.8(4) Loan approval. For linked deposit programs, the participating lending institution shall, upon receipt of a completed loan application form, either approve or deny the loan in accordance with the

program requirements. If the loan is approved, the lending institution shall notify the authority or its agent in order to reserve funds in that amount to ensure that funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant, clearly stating the reasons for the loan denial. For low-interest loans with the authority, the authority, or its agent, shall notify the applicant of the loan approval or denial.

26.8(5) Availability of funds. Before acting on a loan application, the lending institution shall ensure that adequate funds are available for the project and that the completed project has been inspected and approved by the appropriate environmental or conservation agency as determined by the department.

26.8(6) Property transfer. In the event of property transfer from the applicant to another person or entity during the repayment period specified in the loan agreement, the balance of the loan shall be immediately due in full.

26.8(7) Loan amount and period. All loans shall be made contingent on the availability of funds in the applicable fund or set-aside program as indicated in the IUP. The minimum and maximum loan amounts that will be considered are dependent on project type and are set forth as follows:

Type of Project	Type of Assistance	Minimum Loan Amount	Maximum Outstanding Balance	Maximum Loan Term	Project Approval Agency
General Nonpoint Source	Low-interest loans, Linked deposit or Loan participations	\$5,000	No maximum	20 years	DNR
Local Water Protection	Linked deposit	\$5,000	\$500,000 per common ownership	10 years	Division of Soil Conservation
Livestock Water Quality Facilities	Linked deposit	\$10,000	\$500,000 per common ownership	15 years*	Division of Soil Conservation
Onsite Wastewater Systems Assistance	Linked deposit	\$2,000	No maximum	10 years	County

*If the loan is made only for preparation of a comprehensive nutrient management plan, the loan period shall not exceed 5 years.

26.8(8) Prepayment. For direct loans, prepayment of the loan principal in whole or in part shall be allowed without penalty.

26.8(9) Loan adjustments. If the eligible costs exceed the loan amount, the recipient may request an increase in the loan amount. The lending institution is authorized to execute a loan for a principal amount of up to 10 percent above the amount of the loan application if the eligible costs exceed the application amount. To determine the appropriate action, the authority will evaluate the request by considering available moneys in the fund as well as the financial risk. Should the eligible costs be less than the loan amount, the loan shall be appropriately adjusted.

26.8(10) Disbursement of funds. Funds shall be disbursed in accordance with the loan agreement. The loan agreement may allow for periodic disbursement of funds.

[ARC 8457B, IAB 1/13/10, effective 2/17/10; ARC 8906B, IAB 6/30/10, effective 6/10/10]

265—26.9(16) Termination and rectification of disputes.

26.9(1) Termination. The authority shall have the right to terminate any loan if a term of the agreement has been violated. Loans are subject to termination if construction has not begun within one year of the execution of a loan agreement. The director will establish a repayment schedule for funds already loaned to the recipient. Every termination must be in writing.

26.9(2) Rectification and disputes. Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the authority, the authority's agent, or

the participating lending institution to withhold loan disbursements. The recipient is responsible for ensuring that the identified problem(s) is rectified. Once the deficiency is corrected, the loan funds can be released. A recipient that disagrees with the director's withholding of loan funds may request a formal review of the action. The recipient must submit to the director a written request for a formal review of the action within 30 days of receiving notice that loan disbursements will not be released.

These rules are intended to implement Iowa Code sections 16.5(17) and 16.133.

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CHAPTER 9
PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

PREAMBLE

These rules describe the records of the Iowa department of human services and procedures for access to these records. All records of the department are open to the public except those that the department is authorized or required by law to keep confidential.

These rules also implement the federal Health Insurance Portability and Accountability Act (HIPAA) regulations at 45 CFR Parts 160 and 164 as amended to August 14, 2002. These rules set forth the standards the department of human services must meet to protect the privacy of protected health information. The department has chosen to be considered a hybrid entity for purposes of HIPAA because there are parts of the department that are not part of the covered entity for purposes of HIPAA compliance.

The rules on protected health information apply only to those parts of the department that are considered part of the covered entity: the named health plans and health care providers defined in these rules and the divisions or programs that perform functions on behalf of a named health plan. Targeted case management, refugee services, and the child support recovery unit are examples of parts of the department that are not included in the covered entity.

441—9.1(17A,22) Definitions. As used in this chapter:

“Business associate” means a person or organization, other than a member of the department’s workforce, who meets one of the following criteria:

1. Performs, or assists in the performance of, a function or activity on behalf of the department which involves the use or disclosure of protected health information, including claims processing or administration, data analysis, research, utilization review, quality assurance, billing, benefit management, practice management, and repricing, or any other function or activity regulated by the rules on protected health information.

2. Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the department. The provision of the service shall involve the disclosure of protected health information from the department or from another business associate of the department to the person or organization.

“Client” means a person who has applied for or received services or assistance from the department.

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include:

1. Records or information contained in records that the department is prohibited by law from making available for examination by members of the public, and

2. Records or information contained in records that is specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Covered entity” means:

1. A health plan.
2. A health care clearinghouse.
3. A health care provider that transmits any health information in electronic form in connection with a transaction covered by the HIPAA regulations.

“Covered functions” means the functions performed by a covered entity which make the covered entity a health plan, health care clearinghouse, or health care provider.

“Custodian” means the department or a person who has been given authority by the department to act for the department in implementing Iowa Code chapter 22. For local offices, the custodian is the

service area manager. For a child support recovery office, the custodian is the regional administrator. For an institution, the custodian is the institution superintendent. For a central office unit, or for requests dealing with more than one service area, region, or institution, the custodian is the division administrator.

"Data aggregation" means the action by which a business associate combines protected health information of the department with protected health information of another covered entity to permit data analyses that relate to the health care operations of the respective covered entities.

"Department" means the Iowa department of human services.

"Designated record set" means a group of records maintained by or for the department that is:

1. The medical records about subjects that are maintained for facilities;
2. The enrollment, payment, and eligibility record systems maintained for Medicaid; or
3. The enrollment, payment, and eligibility record systems maintained for the HAWK-I program that are used, in whole or in part, by the HAWK-I program to make decisions about subjects.

For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for the department.

"Disclosure" means releasing, transferring, providing access to, or divulging in any other manner information outside the organization holding the information.

"Facility" or *"facilities"* means, with respect to HIPAA rules about health information, one or more of these department institutions: Cherokee Mental Health Institute, Clarinda Mental Health Institute, Glenwood Resource Center, Independence Mental Health Institute, Mount Pleasant Mental Health Institute, and Woodward Resource Center.

"Health care" means care, services, or supplies related to the health of a subject. "Health care" includes, but is not limited to, the following:

1. Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedures with respect to the physical or mental condition, or functional status, of a subject or affecting the structure or function of the body; and
2. Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

"Health care clearinghouse" means a public or private organization, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that performs either of the following functions:

1. Processes or facilitates the processing of health information received from another organization in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
2. Receives a standard transaction from another organization and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving organization.

"Health care operations" has the same definition as that stated in 45 CFR 164.501 as amended to August 14, 2002. For a covered entity in the department, "health care operations" has the following meaning:

1. For Medicaid, "health care operations" means any of the following activities of the department to the extent that the activities are related to covered functions:
 - Conducting quality assessments and evaluating outcomes.
 - Developing clinical guidelines.
 - Improving general health or reducing costs.
 - Developing protocols, including case management and care coordination models for MediPASS and pharmacy case management as well as for other service areas and client populations under the Medicaid program.
 - Informing clients of treatment alternatives and related functions.
 - Reviewing competence or qualifications or performance of health care professionals using the surveillance and utilization review subsystem.
 - Reviewing health plan performance from encounter data.

- Premium rating and rate setting.
- Performing activities in reinsurance of risk with the health maintenance organizations.
- Reviewing medical level of care and prior authorizations.
- Obtaining legal services through the attorney general's office or the county attorney's office.
- Cooperating in audits and fraud detection by Iowa and federal auditors, the Iowa Medicaid enterprise, or the department of inspections and appeals.
 - Conducting business planning and development including formulary development by the drug utilization review commission and the department's research and statistics staff.
 - Managing activities, which include claiming of federal financial participation, recovering unknown third-party liability, recovering nursing care funds and other expenditures through estate recovery, Grouper programming for hospitals, lock-in activities, and federal reporting of paid claims.
 - Providing customer service, which includes income maintenance workers answering questions about lock-in providers, copayment for pregnant women, and claims payment problems; and the Iowa Medicaid enterprise provider services unit answering questions on claims payment.
 - Coordinating care and monitoring the effective delivery of child welfare services to ensure the safety and well-being of children, including reporting and providing testimony to the court of jurisdiction on the condition and service progress of a client receiving services from the department. These care coordination and monitoring activities include providing information concerning the client to attorneys representing the various parties in the court proceedings.

2. For the HAWK-I program, "health care operations" means any of the following activities of the department to the extent that the activities are related to covered functions:

- Conducting quality assessment and improvement activities, including evaluation of outcomes and development of clinical guidelines; population-based activities relating to improving health or reducing health care costs, protocol development and related functions that do not include treatment.
- Reviewing health plan performance.
- Premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits.
- Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
- Performing business planning and development functions, such as conducting cost-management and planning-related analyses relating to management and operations and the development or improvement of methods of payment or coverage policies.
- Performing business management and general administrative activities, including, but not limited to, management activities relating to implementation of and compliance with privacy requirements, customer service, and resolution of internal grievances.

3. For the facilities, "health care operations" means any of the following activities of the department to the extent that the activities are related to covered functions:

- Conducting quality assessment and improvement activities, including evaluation of outcomes and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from these activities; population-based activities relating to improving health or reducing health care costs; protocol development; case management and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment.
 - Reviewing the competence or qualifications of health care professionals.
 - Evaluating performance of practitioners, providers and health plans.
 - Conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers.
 - Training of non-health care professionals.
 - Performing accreditation, certification, licensing, or credentialing activities.
 - Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.

- Performing business planning and development functions, such as conducting cost-management and planning-related analyses related to managing and operating the organization, including formulary development and administration, development or improvement of methods of payment or coverage policies.

- Performing business management and general administrative activities, including, but not limited to, management activities related to implementation of and compliance with the requirements of HIPAA; customer service, which includes the provision of data analyses for policyholders, plan sponsors, or other customers, provided that protected health information is not disclosed to the policyholder, plan sponsor, or customer; resolution of internal grievances; and activities consistent with the applicable requirements of subrule 9.10(29) on creating de-identified health information or a limited data set.

“*Health care provider*” means a provider of services, as defined in Section 1861(u) of the Social Security Act and 42 U.S.C. 1395x(u); a provider of medical or health services, as defined in Section 1861(s) of the Social Security Act and 42 U.S.C. 1395x(s); and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. In the department, “health care provider” means one of the department’s facilities.

“*Health information*” means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a subject; the provision of health care to a subject; or the past, present, or future payment for the provision of health care to a subject.

“*Health maintenance organization (HMO)*” means a public or private organization licensed as an HMO under the commerce department, insurance division, 191—Chapter 40.

“*Health oversight agency*” means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or organization acting under a grant of authority from or contract with a public agency, that is authorized by law to:

1. Oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance; or
2. Enforce civil rights laws for which health information is relevant.

The term “health oversight agency” includes the employees or agents of the public agency and its contractors or persons or organizations to which the agency has granted authority.

“*Health plan*” means an individual or group plan that provides or pays the cost of medical care, as defined at 45 CFR 160.103 as amended to August 14, 2002. In the department, “health plan” means Medicaid or HAWK-I.

“*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996.

“*Law enforcement official*” means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to:

1. Investigate or conduct an official inquiry into a potential violation of law; or
2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

“*Legal representative*” is a person recognized by law as standing in the place or representing the interests of another for one or more purposes. For example, guardians, conservators, custodians, attorneys, parents of a minor, and executors, administrators, or next of kin of a deceased person are legal representatives for certain purposes.

“*Mental health information*” means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services (as defined in Iowa Code section 228.1(8)) and which relates to the diagnosis, course, or treatment of the person’s mental or emotional condition. Mental or emotional conditions include mental illness, mental retardation, degenerative neurological conditions and any other condition identified in professionally recognized diagnostic manuals for mental disorders.

“*Open record*” means a record other than a confidential record.

“*Payment*,” with respect to HIPAA rules about protected health information, has the same definition as that stated in 45 CFR 164.501 as amended to August 14, 2002. In the department, “payment” applies

to subjects for whom health care coverage is provided under the Medicaid program or the HAWK-I program. “Payment” has the following meanings for these health plans:

1. For Medicaid, “payment” includes activities undertaken by this health plan to:
 - Determine or fulfill its responsibility for coverage and provision of benefits under the health plan.
 - Obtain or provide reimbursement for the provision of health care.
 - Determine eligibility, including spenddown for the medically needy program or obtaining premiums for the Medicaid for employed people with disabilities program, or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims.
 - Perform risk adjustment of amounts due based on enrollee health status and demographic characteristics.
 - Bill; manage claims; collect; obtain payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance; and conduct related health care data processing.
 - Review health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges.
 - Perform utilization review activities, including precertification and preauthorization of services and concurrent and retrospective review of services.
2. For the HAWK-I program, “payment” includes activities undertaken by this health plan to:
 - Obtain reimbursement or pay for providing health care services.
 - Obtain premiums or determine or fulfill its responsibility for coverage and providing benefits. Activities include, but are not limited to, determinations of eligibility for coverage, including coordination of benefits or the determination of cost-sharing amounts; billing and collection activities; review of health care services with respect to coverage under a health plan; and utilization review activities.

“*Personally identifiable information*” means information about or pertaining to the subject of a record which identifies the subject and which is contained in a record system. The incidental mention of another person’s name in a subject’s record (e.g., as employer, landlord, or reference) does not constitute personally identifiable information.

“*Personal representative*” means someone designated by another as standing in the other’s place or representing the other’s interests for one or more purposes. The term “personal representative” includes, but is not limited to, a legal representative. For disclosure of protected health information, the definition of “personal representative” is more restrictive, as described at rule 441—9.15(17A,22).

“*Plan sponsor*” has the same definition as that stated in Section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B).

“*Protected health information*” means information that contains a subject’s medical information, including past, present, or future treatment and payment information. “Protected health information” is a composite of multiple fields that grouped together give detailed accumulative information about a subject’s health. When joined together in an accessible record set, the following three distinct areas of health-care-processing file information constitute protected health information:

1. Information that identifies the subject.
2. Medical information describing condition, treatment, or health care.
3. Health care provider information.

Identification information together with any information from one of the other two categories constitutes protected health information. When the information that identifies the subject is present in the record set, any information that ties health care data to the subject’s identification information constitutes protected health information.

“*Psychotherapy notes*” means notes that are recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the subject’s medical record. “Psychotherapy notes” excludes medication prescription and monitoring, counseling session start and stop times, the methods of therapy and frequencies of treatment

furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

“Public health authority” means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or organization acting under a grant of authority from or contract with a public agency that is responsible for public health matters as part of its official mandate. “Public health authority” includes the employees or agents of the public agency and its contractors or persons or organizations to which it has granted authority.

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the department.

“Record system” means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of a subject, number, symbol, or other unique identifier assigned to a subject.

“Required by law” means a mandate contained in federal law, federal regulation, state law, state administrative rule, case law, or court order that is enforceable in a court of law. For the purposes of this chapter, “required by law” includes statutes or regulations that require the production of information, such as statutes or regulations that require the information if payment is sought under a government program that provides public benefits.

“Research” means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

“Subject” means the person who is the subject of the record, whether living or deceased.

“Substance abuse information” means information which indicates the identity, diagnosis, prognosis, or treatment of any person in an alcohol or drug abuse program.

“Transaction” means the electronic transmission of information between two parties to carry out financial or administrative activities related to health care. The term includes the following defined HIPAA standard transactions:

- Health care claims or equivalent encounter information.
- Health care payment and remittance advice.
- Coordination of benefits.
- Health care claim status.
- Enrollment and disenrollment in a health plan.
- Eligibility for a health plan.
- Health plan premium payments.
- Referral certification and authorization.
- Other transactions that the Secretary of Health and Human Services may prescribe by regulation.

“Treatment,” with respect to HIPAA rules about protected health information, means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation among health care providers about a patient; and the referral of a patient from one health care provider to another.

“Use,” with respect to protected health information, means the sharing, application, utilization, examination, or analysis of the information within an organization that maintains the protected health information.

“Workforce” means employees, volunteers, trainees, and other people whose conduct, in the performance of work for the covered entity, is under the direct control of the covered entity, whether or not these people are paid by the covered entity.

441—9.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This department is committed to the policies set forth in Iowa Code chapter 22. Department staff shall cooperate with members of the public in implementing the provisions of that chapter.

441—9.3(17A,22) Requests for access to records.

9.3(1) Location of record. A request for access to a record should be directed to the director or the particular department office where the record is kept.

a. If the location of the record is not known by the requester, the request shall be directed to the Office of Policy Analysis, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

b. If a request for access to a record is misdirected, department personnel will promptly forward the request to the appropriate person within the department.

9.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

9.3(3) Request for access. Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

9.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 441—9.4(17A,22) and other applicable provisions of law.

9.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

9.3(6) Copying. A reasonable number of copies of an open record may be made in the department office. If photocopy equipment is not available in the department office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

9.3(7) Fees.

a. When charged. The department may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the department shall be prominently posted in department offices. Copies of records may be made by or for members of the public on department photocopy machines or from electronic storage systems at cost as determined and posted in department offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual department expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in department offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a department clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

e. Summary of health information. The department may charge a fee for the cost of preparing an explanation or summary of health information as provided in paragraph 9.9(1)“c.” The department and the subject requesting the information shall agree to the amount of any fee imposed before the department prepares the explanation or summary.

441—9.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 441—9.3(17A,22).

9.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

9.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

9.4(3) Notice to subject of record and opportunity to obtain injunction.

a. Except as provided in 441—subrule 175.41(2), after receiving a request for access to a confidential record and before releasing the record, the custodian may make reasonable efforts to promptly notify any person:

- (1) Who is a subject of that record,
- (2) Who is identified in that record, and
- (3) Whose address or telephone number is contained in the record.

b. To the extent such a delay is practicable and in the public interest, the custodian may give the notified subject a reasonable time to seek an injunction under Iowa Code section 22.8. The custodian shall inform the subject identified in the record of how much time the subject has to seek an injunction before the information will be released.

9.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a.* The name and title or position of the custodian responsible for the denial; and
- b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

9.4(5) Request granted. Except as provided in 441—subrule 175.41(2), when the custodian grants a request for access to a confidential record, the custodian shall notify the requester or the person who is to receive the information and include any limits on the examination and copying of the record.

9.4(6) Records requiring special procedures. Special procedures are required for access to:

a. Child abuse information. Access to child abuse information is obtained according to rules 441—175.41(235A) and 441—175.42(235A).

b. Dependent adult abuse information. Access to adult abuse information is governed by rule 441—176.10(235A).

c. Quarterly list. Rescinded IAB 10/4/00, effective 12/1/00.

441—9.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examinations. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

9.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

9.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian.

a. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

b. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit stating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts.

c. Requests to temporarily treat a record as a confidential record shall specify the precise period of time for which that treatment is requested.

d. A person filing such a request shall, if possible, provide a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department by the person requesting confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

9.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the department does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

9.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

9.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

9.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs

the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

9.5(7) Rights to request privacy protection for protected health information. When the subject is requesting a restriction or confidential communication of protected health information, the department shall follow the provisions of this subrule, as applicable, in addition to the provisions of subrules 9.5(1) through 9.5(6).

a. Restriction of uses and disclosures.

(1) The subject may request that the department restrict uses or disclosures of the subject's protected health information:

1. To carry out treatment, payment, or health care operations; and

2. To persons involved in the subject's care or for notification purposes as permitted under subrule 9.7(3).

(2) The subject shall submit a request to the department on Form 470-3953, Request to Restrict Use or Disclosure of Health Information. If applicable, the subject shall provide verification that it is reasonable to anticipate the use or disclosure will endanger the subject.

(3) The department is not required to agree to a restriction. The department shall deny any restriction when the restriction would adversely affect the quality of the subject's care or services, the restriction would limit or prevent the department from making or obtaining payment for services, or federal or state law requires the use or disclosure. The department shall approve the request for restriction only when the use or disclosure would endanger the subject and none of the above reasons for denial apply.

(4) The department shall send the subject a written notice to accept or deny the restriction.

(5) If the department agrees to a restriction, it may not use or disclose protected health information in violation of the restriction. **EXCEPTION:** The department may use restricted protected health information or disclose the information to a health care provider when needed for the emergency treatment of the subject who requested the restriction. If restricted protected health information is disclosed to a health care provider for emergency treatment, the department shall request that the health care provider not further use or disclose the information.

(6) A restriction agreed to by the department under paragraph 9.5(7) "a" shall not prevent disclosures of protected health information to the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations. Also, a restriction shall not prevent uses or disclosures permitted or required for the categories listed in subparagraphs 9.14(5) "a"(1) through (11).

(7) The department may terminate its agreement to a restriction in writing if:

1. The subject agrees to or requests the termination in writing;

2. The subject orally agrees to the termination and the oral agreement is documented; or

3. The department informs the subject that it is ending its agreement to a restriction for protected health information created or received after it has so informed the subject.

b. Confidential communications. Subjects may ask to receive communications of protected health information by alternative means or at alternative locations. The department shall accommodate reasonable requests. For Medicaid and HAWK-I, the subject is required to clearly indicate the reason for requesting the confidential communication. Facilities shall not require the subject to explain the basis for the request as a condition of providing confidential communications.

(1) The subject shall request a confidential communication from the department using Form 470-3947, Request to Change How Health Information Is Provided.

(2) The department may require the subject to provide:

1. When appropriate, information as to how payment, if any, will be handled; and

2. An alternative address or other method of contact.

441—9.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

9.6(1) All programs. Except as otherwise provided by law, a subject may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that subject. However, the subject is not authorized to alter the original copy of the record or to expand the official record of any department proceeding.

a. The subject shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the office of policy analysis.

b. The request to review such a record or the written statement of additions, dissents, or objections must be dated and signed by the subject, and shall include the current address and telephone number of the subject or the subject's representative.

9.6(2) Additional procedures for protected health information.

a. Right to amend. A subject may request that the department amend protected health information or a record about the subject in a designated record set for as long as the protected health information is maintained in the designated record set. A subject shall submit a request to the department using Form 470-3950, Request to Amend Health Information. The subject shall provide a reason to support the requested amendment.

b. Timely action.

(1) The department shall act on a subject's request for an amendment no later than 60 days after receipt of the request.

(2) If the department is unable to act on the amendment within 60 days, the department may extend the due date one time, for a period not to exceed 30 days. In order to extend the due date, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department shall provide this written statement within the 60-day period after receipt of the request.

c. Action on amendment. If the department grants the requested amendment, in whole or in part, the department shall comply with the following requirements.

(1) The department shall timely inform the subject that the amendment is accepted. The subject shall identify relevant persons with whom the amendment needs to be shared and agree to have the department share the amendment with these persons.

(2) The department shall make the appropriate amendment to the protected health information or record by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

(3) The department shall make reasonable efforts to inform and provide the amendment to:

1. Persons identified by the subject as having received protected health information about the subject and as needing the amendment; and

2. Persons, including business associates, that the department knows have the subject's protected health information and that may have relied, or could foreseeably rely, on the information to the detriment of the subject.

d. Denial of amendment. The department may deny a subject's request for amendment, if the department determines that the protected health information or record that is the subject of the request:

(1) Was not created by the department, unless the subject provides a reasonable basis for the department to find that the originator of the protected health information is no longer available to act on the requested amendment;

(2) Is not part of the designated record set;

(3) Would not be available for inspection under rule 441—9.9(17A,22); or

(4) Is accurate and complete.

e. Action on denial of amendment. If the department denies the requested amendment, in whole or in part, the department shall provide the subject with a timely, written denial.

(1) The subject may submit to the department a written statement of disagreement with the denial of all or part of a requested amendment and the basis of the disagreement, in accordance with 45 CFR

164.526 as amended to August 14, 2002. The subject shall submit the statement of disagreement by filing an appeal request under subrule 9.14(7). The appeal request constitutes the statement of disagreement.

(2) The department shall prepare a written rebuttal to the subject's statement of disagreement, in accordance with 45 CFR 164.526 as amended to August 14, 2002. The appeal decision constitutes the rebuttal statement. The department shall provide a copy of the appeal decision to the subject who submitted the appeal request.

f. Record keeping of disputed amendments. The department shall, as appropriate, identify the record or protected health information in the designated record set that is the subject of the disputed amendment. The department shall append or otherwise link the subject's request for an amendment, the department's denial of the request, and the subject's appeal and the final decision, if any, to the designated record set.

g. Future disclosures regarding disputed amendments.

(1) If an appeal has been submitted by the subject, the department shall include the material appended in accordance with paragraph 9.6(2) "f" or, at the election of the department, an accurate summary of the information, with any subsequent disclosure of the protected health information to which the disagreement relates.

(2) If the subject has not submitted an appeal, the department shall include the subject's request for amendment and its denial, or an accurate summary of the information, with any subsequent disclosure of the protected health information only if the subject has requested this action.

(3) When a subsequent disclosure is made using a standard transaction that does not permit the additional material to be included with the disclosure, the department may separately transmit the material required by subparagraph 9.6(2) "g"(1) or (2), as applicable, to the recipient of the standard transaction.

h. Actions on notices of amendment. When the department is informed by another covered entity of an amendment to a subject's protected health information, the department shall amend the protected health information in designated record sets as provided by subparagraph 9.6(2) "c"(2).

441—9.7(17A,22,228) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records to be disclosed, the particular person or class of persons to whom the record may be disclosed, and the time period during which the record may be disclosed. The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity.

No confidential information about clients of the department shall be released without the client's consent, except as provided in rule 441—9.10(17A,22). Release of information includes:

1. Granting access to or allowing the copying of a record,
2. Providing information either in writing or orally, or
3. Acknowledging information to be true or false.

9.7(1) Forms.

a. General. Department staff shall use Form 470-2115, Authorization for the Department to Release Information, for releases by the subject that do not involve health information requiring use of the authorization form described in paragraph 9.7(1) "c."

b. Obtaining information from a third party. The department is required to obtain information to establish eligibility, determine the amount of assistance, and provide services. Requests to third parties for this information involve release of confidential identifying information about clients. Except as provided in rule 441—9.9(17A,22), the department may make these requests only when the client has authorized the release on one of the following forms.

- (1) Form 470-0461, Authorization for Release of Information.
- (2) Form 470-1630, Household Member Questionnaire.
- (3) Form 470-1631, Bank or Credit Union Information.
- (4) Form 470-4670, Addendum for Application and Review Forms for Release of Information.

- (5) Form 470-1638, Request for School Verification.
- (6) Form 470-2844, Employer's Statement of Earnings.
- (7) Form 470-1640, Verification of Educational Financial Aid.
- (8) Form 470-3742, Financial Institution Verification.
- (9) Form 470-3951, Authorization to Obtain or Release Health Care Information.

c. Health information.

(1) When consent or authorization for use or disclosure of health information is required, facilities and department staff responding to third-party requests for health information shall use Form 470-3951, Authorization to Obtain or Release Health Care Information, or a form from another source that meets HIPAA requirements.

The department shall not require a subject to sign a HIPAA authorization form as a condition of treatment, payment, enrollment in a health plan, or eligibility for benefits. The department as a health care provider may require a subject to sign a HIPAA authorization form for the use or disclosure of protected health information for research, as a condition of the subject's receiving research-related treatment.

A subject may revoke a HIPAA authorization provided under subparagraph 9.7(1) "c"(1) at any time, provided that the revocation is in writing using Form 470-3949, Request to End an Authorization, except to the extent that the department has taken action in reliance thereon.

(2) Except as provided in subparagraph 9.7(1) "c"(1), department staff shall release mental health or substance abuse information only with authorization on Form 470-0429, Consent to Obtain and Release Information, or a form from another source that meets requirements of law.

d. Photographs and recordings. The department uses Form 470-0060, Authorization to Take and Use Photographs, and Form 470-0064, Authorization to Take and Use Photographs of Minor or Ward, for permission to use photographs in department publications. The department shall obtain authorization from the subject or person responsible for the subject (such as a guardian, custodian, or personal representative) before taking photographs or making any type of recording for any purpose other than those specifically allowed by law or for internal use within an institution.

e. Veteran's Home. Rescinded IAB 10/29/03, effective 11/1/03.

9.7(2) Exceptions to use of forms.

a. Counsel. Appearance of counsel before the department on behalf of the subject of a confidential record is deemed to constitute consent for the department to disclose records about the subject to the subject's attorney.

b. Public official. A letter from the subject to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the department shall be treated as an authorization to release information. The department shall release sufficient information about the subject to the official to resolve the matter.

c. Medical emergency. Department staff may authorize release of confidential information to medical personnel in a medical emergency if the subject is unable to give or withhold consent. As soon as possible after the release of information, the subject shall be advised of the release.

d. Abuse information. Consent to release information is not required to gather information for investigations of child abuse or dependent adult abuse.

9.7(3) Opportunity for subject to agree or object. This subrule describes when the department may use or disclose protected health information, without a written authorization, to persons involved in the subject's care and for notification purposes. However, the department shall give the subject an opportunity to agree or object, unless this requirement is waived as specified in paragraph 9.7(3) "e."

a. Involvement in the subject's care. The department may disclose protected health information that is directly relevant either to a subject's care or to payment related to the subject's care, provided payment is relevant to the person's involvement in the subject's care. The person involved must be:

- (1) A family member;
- (2) Another relative;
- (3) A close personal friend of the subject; or
- (4) Any other person identified by the subject.

b. Notification purposes. The department may use or disclose protected health information to notify, or assist in notifying, identifying or locating a family member, a personal representative of the subject, or another person responsible for the care of the subject of the subject's location, general condition or death. For disaster relief purposes, the use or disclosure shall be in accordance with paragraph 9.7(3) "f."

c. Uses and disclosures with the subject present. If the subject is present for, or available before, a use or disclosure permitted by this subrule and has the capacity to make health care decisions, the department may use or disclose the protected health information if the department:

- (1) Obtains the subject's agreement;
- (2) Provides the subject with the opportunity to object to the disclosure, and the subject does not express an objection; or
- (3) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the subject does not object to the disclosure.

d. Informing the subject. The department may orally inform the subject of and obtain the subject's oral agreement or objection to a use or disclosure permitted by this subrule.

e. Limited uses and disclosures when the subject is not present. When the subject is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the subject's incapacity or an emergency circumstance, the department may, in the exercise of professional judgment, determine that disclosure is in the best interest of the subject.

(1) When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the person's involvement with the subject's health care.

(2) The department may use professional judgment and its experience with common practice to make reasonable inferences of the subject's best interest in allowing a person to act on behalf of the subject to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

f. For disaster relief purposes. The department may use protected health information or disclose protected health information to a public or private organization authorized by law or by its charter to assist in disaster relief efforts for the purpose of coordinating with these organizations the uses or disclosures permitted by paragraph 9.7(3) "b." The requirements in paragraphs 9.7(3) "c" and "d" apply to these uses and disclosures to the extent that the department, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

[ARC 0420C, IAB 10/31/12, effective 1/1/13]

441—9.8(17A,22) Notice to suppliers of information. When the department requests a person to supply information about that person, the department shall notify the person of how the information will be used, which persons outside the department might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested.

9.8(1) This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

9.8(2) The notice shall generally be given at the first contact with the department and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or where it would compromise the purpose of a department investigation.

9.8(3) In general, the department requests information to determine eligibility and benefit levels for assistance, to provide appropriate services or treatment, and to perform regulatory and administrative functions. Information is routinely shared outside the department when required by rules or law. Consequences of failure to provide information include ineligibility for public assistance, denial of licensure or regulatory approval, or inadequate service provision.

441—9.9(17A,22) Release to subject.**9.9(1) Access by subjects to protected health information.**

a. Right of access. Except as otherwise provided in paragraphs 9.9(1) “f” and “g,” a subject has a right of access to inspect or to obtain a copy of the protected health information about the subject that is maintained in a designated record set. Subjects shall submit all requests for access to the department using Form 470-3952, Request for Access to Health Information.

If the department does not maintain the protected health information that is the topic of the subject’s request for access, and the department knows where the requested information is maintained, the department shall inform the subject where to direct the request for access.

b. Timely action.

(1) The department shall act on a request for access no later than 30 days after receipt of the request unless the protected health information is not maintained or accessible to the department on site.

(2) If the requested information is not maintained or accessible to the department on site, the department shall take action no later than 60 days from the receipt of the request.

(3) If the department is unable to act within 30 days or 60 days as appropriate, the department may extend the time for the action by no more than 30 days. Within the applicable time limit, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department shall have only one extension of time for action on a request for access.

c. Action on providing access. If the department grants the request, in whole or in part, the department shall inform the subject that the request is accepted and shall provide the access requested. Access includes inspecting the protected health information about the subject in designated record sets, obtaining a copy of the information, or both. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the department need only produce the protected health information once in response to a request for access.

(1) The department shall provide the subject with access to the protected health information in the form or format requested by the subject, if the requested format is readily producible. If the requested format is not readily producible, the department shall provide the information in a readable hard-copy form or other format as agreed to by the department and the subject.

(2) The department may provide the subject with a summary of the protected health information requested instead of providing access to the protected health information. The department may provide an explanation of the protected health information to which access has been provided. The subject must agree in advance to a summary or explanation and to any fees imposed by the department for the summary or explanation.

d. Time and manner of access. The department shall provide the access as requested by the subject in a timely manner as described in paragraph 9.9(1) “b.” The department shall arrange with the subject for a time and place to inspect or obtain a copy of the protected health information that is convenient for both the subject and the department, or shall mail the copy of the protected health information at the subject’s request. The department may discuss the scope, format, and other aspects of the request for access with the subject as necessary to facilitate the timely provision of access.

e. Fees for access. If the subject requests a copy of the protected health information or agrees to a summary or explanation of the information, the department may impose a reasonable, cost-based fee, as set forth in subrule 9.3(7).

f. Mandatory reasons for denial of access. The department shall deny a subject access to protected health information when the requested information is:

(1) Psychotherapy notes;

(2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; or

(3) Protected health information maintained by the department that is:

1. Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. Section 263a, to the extent the provision of access to the subject would be prohibited by law; or

2. Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3(a)(2).

g. Optional reasons for denial of access. The department may deny a subject access in the following circumstances.

(1) The department may temporarily suspend a subject's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment. The subject must have agreed to the denial of access when consenting to participate in the research that includes treatment. The suspension may last for as long as the research is in progress. The department shall inform the subject that the right of access will be reinstated upon completion of the research.

(2) The department may deny a subject's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. Section 552a, if the denial of access under the Privacy Act would meet the requirements of that law.

(3) The department may deny a subject's access if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

(4) State or federal law prohibits a subject's access to protected health information, such as the state law limitations described in subrule 9.9(2).

(5) The department may deny a subject access, provided that the subject is given a right to have the denials reviewed as required by paragraph 9.9(1)"i," in the following circumstances:

1. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the subject or another person;

2. The protected health information makes reference to another person (unless the other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the other person; or

3. The request for access is made by the subject's personal representative, subject to the more restrictive definition of personal representative for protected health information, and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to the personal representative is reasonably likely to cause substantial harm to the subject or another person.

h. Action on denial of access. If the department denies access, in whole or in part, to protected health information, the department shall comply with the following requirements.

(1) The department shall, to the extent possible, give the subject access to any other protected health information requested, after excluding the protected health information to which the department has a reason to deny access.

(2) The department shall provide a timely, written denial to the subject, in accordance with paragraph 9.9(1)"b."

i. Review of denial of access. If access is denied for a reason permitted under subparagraph 9.9(1)"g"(5), a subject may submit a written request for a review of a denial. If the subject requests a review, the department shall promptly refer the request to a licensed health care professional who is designated by the department to act as a reviewing official and who did not participate in the original decision to deny.

(1) The designated reviewing official shall determine, within 30 days, whether or not to deny the access requested based on the standards in subparagraph 9.9(1)"g"(5).

(2) The department shall promptly provide written notice to the subject of the determination made by the designated reviewing official and shall take other action as required to carry out the designated reviewing official's determination.

9.9(2) Access by subjects to other confidential information. The department shall release confidential records to the subject of the record. However, when a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject. The department need not release the following records to the subject:

- a.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- b.* The identity of a person reporting suspected abuse to the department need not be disclosed to the subject. (See subrule 441—175.41(2) and Iowa Code section 235A.19.)
- c.* The identity of a person providing information to the department need not be disclosed directly or indirectly to the subject of the information when that information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).
- d.* Peace officers' investigative reports may be withheld from the subject, pursuant to Iowa Code section 22.7(5).
- e.* The department may withhold disclosure of confidential information when the department has reason to believe that disclosure of the information would cause substantial and irreparable harm and would not be in the public interest. The department may withhold disclosure to seek an injunction to restrain examination of the record according to procedures in Iowa Code section 22.8 or to notify the person who would be harmed to allow that person to seek an injunction.
- f.* The department may withhold information as otherwise authorized by law.

441—9.10(17A,22) Use and disclosure without consent of the subject. Open records are routinely disclosed without the consent of the subject. To the extent allowed by law, the department may also use and disclose confidential information without the consent of the subject or the subject's representative.

9.10(1) Internal use. Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use confidential records.

People affected by this rule include:

1. County-paid staff, field work students, and volunteers working under the direction of the department.
2. Council and commission members.
3. Policy review and advisory committees.
4. Consultants to the department.

9.10(2) Audits and health oversight activities.

a. Audits. Information concerning program expenditures and client eligibility is released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. Information is also released to auditors from federal agencies when those agencies provide program funds.

b. Health oversight activities. The department shall disclose protected health information to the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations.

(1) Except as specified in paragraph 9.10(2)“c,” the department may also use protected health information, or disclose it to a health oversight agency, for other health oversight activities authorized by law. Health oversight activities include audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

1. The health care system;
2. Government benefits programs for which protected health information is relevant to client eligibility;
3. Organizations subject to government regulatory programs for which protected health information is necessary for determining compliance with program standards; or
4. Organizations subject to civil rights laws for which protected health information is necessary for determining compliance.

(2) If a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation shall be considered a health oversight activity for purposes of subrule 9.10(2).

c. Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph 9.10(2) “b,” a health oversight activity shall not include an investigation or other activity in which the subject is also the subject of the investigation or activity, unless the investigation or other activity directly relates to:

- (1) The receipt of health care;
- (2) A claim for public health benefits; or
- (3) Qualification for or receipt of public benefits or services, when a patient’s health is integral to the claim for public benefits or services.

9.10(3) Program review. Information concerning client eligibility and benefits is released to state or federal officials responsible for determining whether the department is operating a program lawfully. These officials include the citizens’ aide office under Iowa Code section 2C.9, the auditor of state under Iowa Code section 11.2, the Office of Inspector General in the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services.

9.10(4) Contracts and agreements with agencies and persons.

a. The department may enter into contracts or agreements with public or private agencies, such as the department of inspections and appeals, and business associates, such as, but not limited to, the Iowa Medicaid enterprise units, in order to carry out the department’s official duties. Information necessary to carry out these duties may be shared with these agencies. The department may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if the department obtains satisfactory assurance that the business associate will appropriately safeguard the information.

b. The department may enter into agreements to share information with agencies administering federal or federally assisted programs which provide assistance or services directly to persons on the basis of need. Only information collected in the family investment program, the child care assistance program, the food assistance program, the refugee resettlement program, or the child support recovery program may be shared under these agreements.

c. To meet federal income and eligibility verification requirements, the department has entered into agreements with the department of workforce development, the United States Internal Revenue Service, and the United States Social Security Administration.

The department obtains information regarding persons whose income or resources are considered in determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, child care assistance, food assistance, Medicaid, state supplementary assistance and foster care. Identifying information regarding clients of these programs is released to these agencies. The information received may be used for eligibility and benefit determinations.

d. To meet federal requirements under the Immigration Reform and Control Act of 1986 (IRCA) relating to the Systematic Alien Verification for Entitlements (SAVE) program, the department has entered into an agreement with the Bureau of Citizenship and Immigration Service (BCIS). Under the agreement, the department exchanges information necessary to verify alien status for the purpose of determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, food assistance, Medicaid, state supplementary assistance and foster care assistance. Identifying information regarding these subjects is released to the BCIS. The information received may be used for eligibility and benefit determinations.

e. The department has entered into an agreement with the department of workforce development to provide services to family investment program clients participating in the PROMISE JOBS program as described at 441—Chapter 93. Information necessary to carry out these duties shall be shared with the department of workforce development, as well as with its subcontractors.

The department has entered into an agreement with the department of human rights to provide services to family investment program clients participating in the family development and self-sufficiency program as described at 441—Chapter 165. Information necessary to carry out these duties shall be shared with the department of human rights, as well as with that agency’s subcontractors.

f. State legislation requires that all emergency assistance households apply for and accept benefits for which they may qualify from the energy assistance, county general relief and veteran’s

affairs programs before approval for emergency assistance. To meet this requirement, the department may enter into agreements with the agencies that administer these programs under which they may provide services to emergency assistance households as described at 441—Chapter 58. Information necessary to carry out these duties shall be shared with these agencies.

g. The department has entered into an agreement with the department of education, vocational rehabilitation, disability determination services, to assist with Medicaid disability determinations.

h. The department has entered into an agreement with the department of education to share information that assists both schools and department clients in carrying out the annual verification process required by the United States Department of Agriculture, Food and Nutrition Service. That federal agency requires the department of education and local schools to verify eligibility of a percentage of the households approved for free-meal benefits under the school lunch program.

When a department office receives a written request from the local school, the department office responds in writing with the current family investment program and food assistance program status of each recipient of free meals listed in the request. Other client-specific information is made available only with written authorization from the client.

9.10(5) *Release for judicial and administrative proceedings.* Information is released to the court as required in Iowa Code sections 125.80, 125.84, 125.86, 229.8, 229.10, 229.13, 229.14, 229.15, 229.22, 232.48, 232.49, 232.52, 232.71B, 232.81, 232.97, 232.98, 232.102, 232.111, 232.117 and 235B.3.

a. The department may disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the department discloses only the protected health information expressly authorized by the order and the court makes the order knowing that the information is confidential.

b. When a court subpoenas information that the department is prohibited from releasing, the department shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

9.10(6) *Fraud.* Information concerning suspected fraud or misrepresentation to obtain department services or assistance is disclosed to the department of inspections and appeals and to law enforcement authorities.

9.10(7) *Service referrals.* Information concerning clients may be shared with purchase of service providers under contract to the department.

a. Information concerning the client's circumstances and need for service is shared with prospective providers to obtain placement for the client. If the client is not accepted for service, all written information released to the provider shall be returned to the department.

b. When the information needed by the provider is mental health information or substance abuse information, the subject's specific consent is required in subrule 9.3(4).

9.10(8) *Medicaid billing.* Only the following information shall be released to bona fide providers of medical services in the event that the provider is unable to obtain it from the subject and is unable to complete the Medicaid claim form without it:

a. Patient identification number.

b. Health coverage code as reflected on the subject's medical card.

c. The subject's date of birth.

d. The subject's eligibility status for the month that the service was provided.

e. The amount of spenddown.

f. The bills used to meet spenddown.

9.10(9) *County billing.* Information necessary for billing is released to county governments that pay part of the cost of care for intermediate care facility services for the mentally retarded under subrule 82.14(2) or Medicaid waiver services under rule 441—83.70(249A) or 441—83.90(249A). This information includes client names, identifying numbers, provider names, number of days of care, amount of client payment, and amount of payment due.

9.10(10) *Child support recovery.* The child support recovery unit has access to information from most department records for the purpose of establishing and enforcing support obligations. Information about absent parents and recipients of child support services is released according to the provisions of

Iowa Code chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, 598, 600B, and any other support chapter. Information is also released to consumer reporting agencies as specified in rule 441—95.12(252B).

9.10(11) *Refugee resettlement program.* Contacts with both sponsor and resettlement agencies are made as a part of the verification process to determine eligibility or the amount of assistance. When a refugee applies for cash or Medicaid, the refugee's name, address, and telephone number are given to the refugee's local resettlement agency.

9.10(12) *Abuse investigation.* The central abuse registry disseminates child abuse information and dependent adult abuse information as provided in Iowa Code sections 235A.15 and 235B.7, respectively. Reports of child abuse and dependent adult abuse investigations are submitted to the county attorney as required in Iowa Code sections 232.71B and 235B.3. Results of the investigation of a report by a mandatory reporter are communicated to the reporter as required in Iowa Code sections 235A.17(2) and 235A.15(2) "b"(5).

9.10(13) *Foster care.* Information concerning a child's need for foster care is shared with foster care review committees or foster care review boards and persons named in the case permanency plan.

9.10(14) *Adoption.* Adoptive home studies completed on families who wish to adopt a child are released to licensed child-placing agencies, to the United States Immigration and Naturalization Service, and to adoption exchanges. Information is released from adoption records as provided in Iowa Code sections 600.16 and 600.24.

9.10(15) *Disclosures to law enforcement.*

a. Disclosures by workforce members who are crime victims. The department is not considered to have violated the requirements of this chapter if a member of its workforce who is the victim of a criminal act discloses confidential information to a law enforcement official, provided that:

(1) The confidential information disclosed is about the suspected perpetrator of the criminal act and intended for identification and location purposes; and

(2) The confidential information disclosed is limited to the following information:

1. Name and address.

2. Date and place of birth.

3. Social security number.

4. ABO blood type and Rh factor.

5. Type of injury.

6. Date and time of treatment.

7. Date and time of death, if applicable.

8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

b. Crime on premises. The department may disclose to a law enforcement official protected health information that the department believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the department.

c. Decedents. The department may disclose protected health information to a law enforcement official about a subject who has died when the death resulted from child abuse or neglect or the death occurred in a department facility.

d. Other. The department may disclose confidential information to a law enforcement official when otherwise required or allowed by this chapter, such as disclosures about victims of child abuse or neglect; disclosures to avert a threat to health or safety, or to report suspected fraud; disclosures required by due process of law, such as disclosures for judicial and administrative proceedings; or other disclosures required by law.

9.10(16) *Response to law enforcement.* The address of a current recipient of family investment program benefits may be released upon request to a federal, state or local law enforcement officer if the officer provides the name of the recipient, and the officer demonstrates that:

a. The recipient is a fugitive felon who is fleeing prosecution, custody or confinement after conviction under state or federal law, or who is a probation or parole violator under state or federal law, or

b. The recipient has information that is necessary for the officer to conduct the officer's official duties, and

c. The location or apprehension of the recipient is within the officer's official duties.

9.10(17) Research. Information that does not identify individual clients may be disclosed for research purposes with the consent of the division administrator responsible for the records. The division administrator shall investigate the credentials of the researcher.

a. Mental health information may be disclosed for purposes of scientific research as provided in Iowa Code section 228.5, subsection 3, and section 229.25. Requests to do research involving records of a department facility shall be approved by the designated authority.

b. Abuse registry information may be disclosed for research purposes as provided in rules 441—175.42(235A) and 441—176.11(235B) and authorized by Iowa Code sections 235A.15(2) "e"(1) and 235B.6(2) "e"(1).

c. For research relating to protected health information, the researcher shall provide the department with information about the nature of the research, the protocol, the type of information being requested, and any other relevant information that is available concerning the request. If the researcher feels that contact with the subject is needed, the researcher shall demonstrate to the department that the research cannot be conducted without contact with the subject. The researcher shall pay for the costs of obtaining authorizations needed to contact the subjects and for the cost of files and preparation needed for the research.

9.10(18) Threat to health or safety.

a. All programs. A client's name, identification, location, and details of a client's threatened or actual harm to department staff or property may be reported to law enforcement officials. Other information regarding the client's relationship to the department shall not be released.

When a department staff person believes a client intends to harm someone, the staff person may warn the intended victim or police or both. Only the name, identification, and location of the client and the details of the client's plan of harm shall be disclosed.

b. Protected health information. The department may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the department, in good faith, believes the use or disclosure:

(1) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(2) Is necessary for law enforcement purposes as described in this chapter.

c. When the department uses or discloses protected health information pursuant to paragraph 9.10(18) "b," the department is considered to have acted in good faith if the action is based on the department's actual knowledge or on a credible representation by a person with apparent knowledge or authority.

9.10(19) Required by law.

a. Information is shared with other agencies without a contract or written agreement when federal law or regulations require it.

b. The department may use or disclose protected health information to the extent that use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.

c. State law shall preempt rules in this chapter about protected health information when any one of the following conditions exists:

(1) Exception granted by Secretary of Health and Human Services. A determination is made by the Secretary of Health and Human Services under 45 CFR 160.204 as amended to August 14, 2002, that the provision of state law:

1. Is necessary:

- To prevent fraud and abuse related to the provision of or payment for health care;
- To ensure appropriate state regulation of insurance and health plans to the extent expressly authorized by statute or regulation;

- For state reporting on health care delivery or costs; or
- For purposes of serving a compelling need related to public health, safety, or welfare, and, if a requirement under this chapter is at issue, the Secretary of Health and Human Services determines that the intrusion into privacy is warranted when balanced against the need to be served; or

2. Has as its principal purpose, the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances, as defined in 21 U.S.C. 802, or that is deemed a controlled substance by state law.

(2) State law more stringent. The provision of state law relates to the privacy of protected health information and is more stringent than a requirement of this chapter, within the meaning of “more stringent” found at 45 CFR 160.202 as amended to August 14, 2002.

(3) Reporting requirements. The provision of state law, including state procedures established under the law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(4) Requirements related to audits, monitoring, evaluation, licensing, and certification. The provision of state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities and persons.

9.10(20) School attendance. Rescinded IAB 7/7/04, effective 7/1/04.

9.10(21) Treatment, payment, or health care operations.

a. The department may use or disclose protected health information for treatment, payment, or health care operations, as described in this paragraph, except for psychotherapy notes, which are subject to the limits described in paragraph 9.10(21) “*b.*” The use or disclosure shall be consistent with other applicable requirements of this chapter.

(1) The department may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) The department may disclose protected health information for treatment activities of a health care provider.

(3) The department may disclose protected health information to another covered entity or a health care provider for the payment activities of the person or organization that receives the information.

(4) The department may disclose protected health information to another covered entity for health care operations activities of the covered entity that receives the information, if each covered entity either has or had a relationship with the person who is the subject of the protected health information being requested, the protected health information pertains to the relationship, and the disclosure is:

1. For a purpose listed in numbered paragraph “1” or “2” of the definition of health care operations in 45 CFR 164.501 as amended to August 14, 2002; or

2. For the purpose of health care fraud and abuse detection or compliance.

b. The department may use or disclose psychotherapy notes without an authorization for any one of the following reasons:

(1) To carry out the following treatment, payment, or health care operations:

1. Use by the originator of the psychotherapy notes for treatment.

2. Use or disclosure by the department for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling.

3. Use or disclosure by the department to defend itself in a legal action or other proceeding brought by the subject.

(2) When required by the Secretary of Health and Human Services to investigate or determine the department’s compliance with federal HIPAA regulations.

(3) For health oversight activities, as described at subrule 9.10(2), with respect to the oversight of the originator of the psychotherapy notes.

(4) When necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public as described at subrule 9.10(18).

(5) When required by law as described at subrule 9.10(19).

(6) To disclose protected health information in the designated record set to a coroner or medical examiner as described at subrule 9.10(24).

9.10(22) *Public health activities.* The department may disclose protected health information for the public health activities and purposes described in this subrule. This disclosure is in addition to any other disclosure to a public health authority allowed by this chapter, such as a disclosure to report child abuse or neglect. For the purposes of this subrule, a public health authority includes state and local health departments, the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention.

a. The department may disclose protected health information to a public health authority that is authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability.

(1) The information that may be disclosed includes, but is not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.

(2) At the direction of a public health authority, the department may also report this information to an official of a foreign government agency that is acting in collaboration with a public health authority.

b. The department may disclose protected health information to a person or organization that is subject to the jurisdiction of the FDA for public health purposes related to the quality, safety, or effectiveness of an FDA-regulated product or activity for which that person or organization has responsibility. These purposes include:

(1) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product).

(2) To track FDA-regulated products.

(3) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying subjects who have received products that have been recalled, withdrawn, or are the subject of lookback).

(4) To conduct postmarketing surveillance.

c. The department may disclose protected health information to a person who is at risk of contracting or spreading a disease or condition. The disclosure must be necessary to carry out public health interventions or investigations or to notify a person that the person has been exposed to a communicable disease to prevent or control the spread of the disease.

9.10(23) *Victims of domestic violence.* The department shall disclose confidential information about an individual whom the department reasonably believes to be a victim of domestic violence when required by state law.

9.10(24) *Disclosures to coroners, medical examiners, and funeral directors.*

a. Coroners and medical examiners. The department may disclose protected health information about a subject that is contained in the designated record set to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.

b. Funeral directors. The department may disclose protected health information about a subject that is contained in the designated record set to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the department may disclose the protected health information before, and in reasonable anticipation of, the subject's death.

9.10(25) *Disclosures for cadaveric organ, eye or tissue donation purposes.* The department may disclose protected health information about a subject that is contained in the designated record set to organ procurement organizations or other organizations engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation. The department shall make a disclosure only when the disclosure has been approved by the deceased subject's authorized legal representative and there is evidence that the decedent had given approval for organ, eye, or tissue donation procedures before the decedent's death.

9.10(26) *Specialized government functions.* Protected health information may be shared under the circumstances described at 45 CFR 164.512, paragraph "k," as amended to August 14, 2002, if

otherwise allowable under state law, such as sharing protected health information with the Social Security Administration in determining Medicaid eligibility for supplemental security income applicants and recipients.

9.10(27) Whistle blowers. The department is not considered to have violated the requirements of this chapter when a member of its workforce or a business associate discloses protected health information, provided that:

a. The workforce member or business associate has a good-faith belief that the department or a business associate has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or has provided care, services, or conditions that potentially endanger one or more patients, workers, or the public; and

b. The disclosure is made to one of the following:

(1) A health oversight agency or public health authority authorized by law to investigate or oversee conduct or conditions for the purpose of reporting the allegation of failure to meet professional standards or misconduct.

(2) An appropriate health care accreditation organization.

(3) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate.

9.10(28) Secondary to a use or disclosure of protected health information. The department may use or disclose protected health information that is secondary to a use or disclosure otherwise permitted or required by these rules, such as when a visitor in a facility overhears a doctor speaking to a subject about the subject's health.

9.10(29) De-identified data or a limited data set.

a. De-identified information. The department may use or disclose protected health information to create information that is de-identified under the conditions specified in 45 CFR 164.514, paragraphs "a" through "c," as amended to August 14, 2002.

b. Limited data set. The department may use or disclose a limited data set under the conditions specified at 45 CFR 164.514, paragraph "e," as amended to August 14, 2002, when the department enters into a data use agreement for research, public health, or health care operations.

441—9.11(22) Availability of records. This rule lists the department records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Department records are listed by category according to the legal basis for confidential treatment (if any). A single record may contain information from several categories.

The department administers several federally funded programs and is authorized by Iowa Code section 22.9 to enforce confidentiality standards from federal law and regulation as required for receipt of the funds. Where federal authority is cited in this rule, the department has determined that the right to examine and copy public records under Iowa Code section 22.2 would cause the denial of funds, services, or essential information from the United States government that would otherwise be available to the department.

The chart indicates whether the records in this category contain personally identifiable information and indicates the legal authority for confidentiality and for the collection of personally identifiable information.

Abbreviations are used in the chart as follows:

<u>Code</u>	<u>Meaning</u>
O	The records are open for public inspection.
C	The records are confidential and are not open to public inspection.
O/C	The record is partly open and partly confidential.
PI	Personally identifiable information
NA	Not applicable

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Records of council, commission and statutory committees	O/C	Iowa Code 21.5(4)	No	NA
Pharmaceutical and therapeutics committee records (including information related to the prices manufacturers or wholesalers charge for pharmaceuticals)	O/C	42 U.S.C. §1396r(8)(b)(3)(D) and Iowa Code 550	No	NA
Rule making	O	NA	No	NA
Declaratory order records	O/C	Iowa Code 217.30	No	NA
Rules and policy manuals	O	NA	No	NA
State plans	O	NA	No	NA
Publications	O	NA	No	NA
Statistical reports	O	NA	No	NA
Financial and administrative records	O	NA	No	NA
Personnel records	O/C	Iowa Code 22.7(11)	Yes	Iowa Code 217.1
Contracts and interagency agreements	O	NA	No	NA
Grant records				
• Child abuse prevention	O	NA	No	NA
• Mental health/mental retardation general allocation	O	NA	No	NA
• Mental health/mental retardation special allocation	O	NA	No	NA
• Developmental disabilities basic	O	NA	No	NA
• Alcohol/drug abuse/mental health block	O	NA	No	
• National Institute of Mental Health	O	NA	No	
• Pregnancy prevention	O	NA	No	NA
• Juvenile community-based services	O	NA	No	NA
• Runaway prevention	O	NA	No	NA
Collection service center payment records	O	Iowa Code 252B.9(2)	Yes	Iowa Code 252B.9, 252B.13A, 252B.16
Licensing, registration and approval				
• Juvenile detention and shelter care facilities	O/C	Iowa Code 217.30	No	NA
• Adoption investigators	O	NA	Yes	Iowa Code 600.2
• Supervised apartment living arrangement	O	NA	No	NA
• Mental health providers	O	NA	No	NA
• Family-life homes	O/C	Iowa Code 217.30	Yes	Iowa Code 234.6
• Foster care facilities	O/C	Iowa Code 237.9	Yes	Iowa Code 237
• Child care facilities	O/C	Iowa Code 237A.7	Yes	Iowa Code 237A
• Child-placing agencies	O/C	Iowa Code 238.24	No	NA
• Health care facilities	O/C	Iowa Code 135C.19	No	NA
Appeal records	O/C	Iowa Code 217.30	Yes	Iowa Code 217.1
Litigation files	O/C	Iowa Code 217.30, 22.7(4), 622.10	Yes	Iowa Code 217.1
Service provider records				
• Purchase of service providers	O/C	Iowa Code 217.30	Yes	Iowa Code 234.6
• Medicaid providers	O/C	Iowa Code 217.30, 42 U.S.C. §1396a(7), 42 CFR 431.300 to 307 as amended to November 13, 1996	Yes	Iowa Code 249A.4
• Residential care facilities	O/C	Iowa Code 217.30	No	NA
All service or assistance client records	C	Iowa Code 217.30	Yes	Iowa Code 217.1
• Family investment program	C	Iowa Code 217.30; 42 U.S.C. §602(a)(1) and §1306a	Yes	Iowa Code 239B

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
• Child care assistance	C	Iowa Code 237A.13	Yes	Iowa Code 237A
• State Supplementary Assistance	C	Iowa Code 217.30	Yes	Iowa Code 249
• Medicaid	C	Iowa Code 217.30; 42 U.S.C. §1396a(7); 42 CFR 431.300 to 307 as amended to November 13, 1996	Yes	Iowa Code 249A.4
• HAWK-I	C	Iowa Code 514I; 42 CFR 457.1110 as amended to January 11, 2001	Yes	Iowa Code 514I.4
• Food assistance	C	Iowa Code 217.30; 7 U.S.C. §2020(e)8 and 7 CFR 272.1 (c) and (d) as amended to January 1, 1987	Yes	Iowa Code 234.6
• Foster care	C	Iowa Code 237.9	Yes	Iowa Code 237.3 to 237.5
• Title IV-E foster care and adoption assistance	C	Iowa Code 217.30; 42 U.S.C. §671(a)(8); 45 CFR 1355.30(1) as amended to November 23, 2001	Yes	Iowa Code 217.1, Iowa Code 600.17 to 600.22
• Refugee resettlement	C	Iowa Code 217.30; 45 CFR 400.27 as amended to March 22, 2000	Yes	Iowa Code 217.1
• Substance abuse	C	Iowa Code 125.37 and 125.93; 42 U.S.C. §29 dd. 3 and ee. 3; 42 CFR Part 2 as amended to October 1, 2002; 38 U.S.C. §4132	Yes	Iowa Code 125, 218, 219 and 234.6 and 249A.4
• State institution resident records	C	Iowa Code 218.22, 229.24 and 229.25	Yes	Iowa Code 218.1
Program records				
• Child support recovery	O/C	Iowa Code 252B.9 and 252G.5; 42 U.S.C. §654(26), 42 U.S.C. §654a(d)	Yes	Iowa Code 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, and 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B, and 600.16A
• Child abuse	C	Iowa Code 235A.13, 235A.15, 235A.16, and 235A.17	Yes	Iowa Code 235A.14
• Dependent adult abuse	C	Iowa Code 235B.1, par 4(a)	Yes	Iowa Code 235B.1
• Adoption	C	Iowa Code 600.16 and 600.24	Yes	Iowa Code 600.8 and 600.16
Client records may contain information from restricted sources:				
• Federal tax returns	C	Iowa Code 422.20(2); 26 U.S.C. §6103	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A, 252B
• Department of revenue	C	Iowa Code 421.17, 422.20(1)	Yes	Iowa Code 252B.5 and 252B.9
• Department of workforce development	C	Iowa Code 217.30; 42 U.S.C. §503(d) and (e)	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A, 249C, 252B.9
• Income and eligibility verification system	C	Iowa Code 217.30; 42 U.S.C. §1230b-7	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A
• Department of public safety	C	Iowa Code 692.2, 692.3, 692.8 and 692.18	Yes	Iowa Code 237.8, 237A.5, 252B.9

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
• United States Department of Health and Human Services	C	Iowa Code 217.30; 42 CFR Part 401.134(c) as amended to October 1, 2002	Yes	Iowa Code 217.1, 234.6(7), 239B, 249, 249A, 252B
• Peer review organization	C	Iowa Code 217.30; 42 U.S.C. §1320c-9	Yes	Iowa Code 249A.4
• Juvenile court	C	Iowa Code 232.48, 232.97 and 232.147 to 232.151	Yes	Iowa Code 232 and 234.6
Other information				
• Mental health information	C	Iowa Code 228.2(1)	Yes	Iowa Code 217, 219, 222, 229
• Information received by a licensed social worker	C	Iowa Code 154C.5	Yes	Iowa Code 217.1
• Debtors to the department	C	Iowa Code 537.7103(3)	Yes	Iowa Code 217.1
• Health care facility complaint and citation records	C	Iowa Code 135C.19	No	Iowa Code 249A.4, 135C.19
• Hospital records, medical records, and professional counselor records	C	Iowa Code 22.7(2)	Yes	Iowa Code 218, 219, 222, 229
• Privileged communication and work products of attorneys representing the department	C	Iowa Code 22.7(4), Iowa Code of Professional Responsibility for Lawyers, Canon 4	No	NA
• Identity of volunteer informant who does not consent to release	C	Iowa Code 22.7(18)	No	Iowa Code 217.1
• School records	C	Iowa Code 22.7(1)	Yes	Iowa Code 218.1 and 234.6
• Library circulation records	C	Iowa Code 22.7(13) and (14)	No	Iowa Code 217.1
• Sealed bids prior to public opening	C	Iowa Code 72.3	No	NA
• Protected health information	C	HIPAA	Yes	Iowa Code 218.1, 249A.4, 514I.4

441—9.12(22,252G) Personally identifiable information. The confidentiality provisions affecting records described in this rule are addressed in rule 441—9.11(22).

9.12(1) Nature and extent. The personally identifiable information collected by the department varies by the type of record. The nature and extent of personally identifiable information is described below:

a. Recipients of assistance. Several different types of department records contain personally identifiable information about recipients of assistance programs such as food assistance, Medicaid, the family investment program, child care assistance, state supplementary assistance, refugee cash and medical assistance, and commodity supplemental foods.

(1) Client case file. Local office case files contain identifying information, demographic information, household composition, and income and resource information about applicants for and recipients of assistance, as well as any other persons whose circumstances must be considered in determining eligibility. Records may contain information about employment, disability, or social circumstances. Records identify the kind and amount of benefits received and what proof was obtained to verify the recipient's eligibility. Case files contain correspondence, appeal requests and decisions, and documentation of department actions.

(2) Local office administrative records. Client names and program data are kept in card files, appointment logs, worker case lists, and issuance records.

(3) Data processing systems. Client identifying information, eligibility data, and payment data are kept in the following systems. Some of these records are also kept on microfiche.

<u>System</u>	<u>Function</u>
Automated Benefit Calculation System	Determines eligibility for FIP, food assistance, Medicaid
Automated Child Abuse and Neglect System	Inactive child abuse/neglect system
Appeals Logging and Tracking System	Tracks client appeals
BCCT Program	Establishes Medicaid eligibility for breast and cervical cancer clients
Change Reporting System	Tracks client-reported changes and produces forms needed for client-reported changes
Diversion System	Tracks clients using diversion benefits
Electronic Payment Processing and Inventory Control System	Electronically issues food assistance
Eligibility Tracking System	Tracks clients' FIP eligibility and hardship status
Family and Children's Services System	Tracks foster care, adoption, family-centered and family preservation services
Food Stamps Case Reading Application	Food assistance accuracy tool used to record case reading information
Health Insurance Premium Payment System	Health insurance premium payment
Iowa Collection and Reporting System	Tracks child support recovery processes
Iowa Central Employee Registry	Child support new hire reporting system
Iowa Eligibility Verification System	Federal social security number verification and benefits
Iowa Plan Program	Assigns group codes for Iowa Plan clients
Individualized Services Information System	Used to establish facility eligibility, process data to and from ABC and Medicaid fiscal agent, establish waiver services, providers, and eligibility
Issuance History	Displays benefit issuances for FIP and food assistance
KACT System	Authorizes foster care service units
MEPD Premium Payment Program	Accounting system for billing and payment for Medicaid for employed people with disabilities program
Managed Health Care Program	Assigns managed health care providers to clients
Medicaid Management Information Systems	Process clients' Medicaid claims and assign Medicaid coverage to clients
Overpayment Recoupment System	Used to recover money from FIP, Food Assistance, Medicaid, Child Care Assistance, PROMISE JOBS, and HAWK-I clients
Public Information Exchange	Data exchange between states
PJCASE	Iowa Workforce Development interface with PROMISE JOBS
Purchase of Social Services System	Purchased services (mostly child care and in-home health clients)
Presumptive Eligibility Program	Establishes Medicaid eligibility for presumptive eligibility clients

<u>System</u>	<u>Function</u>
Quality Control System	Selects sample for quality control review of eligibility determination
RTS Claims Processing System	Processes rehabilitative treatment claims for federal match
State Data Exchange Display	State data exchange information for supplemental security income recipients
Social Security Buy-In System	Medicare premium buy-in
Social Services Reporting System	Services reporting system for direct and purchased services
Statewide Tracking of Assessment Reports	Tracks child abuse reports

(4) Quality control records. Files are developed containing data required to verify the correctness of department eligibility and benefit decisions for selected clients.

(5) Appeals. Records containing client eligibility and payment information are created by the department of inspections and appeals when a client (or, for Medicaid, a provider) requests a hearing on a department action.

(6) Fraud. When a client is suspected of fraud, the department of inspections and appeals generates an investigative record containing information pertinent to the circumstances of the case.

(7) Recoupment. When benefits have been overpaid, a record is established by the department of inspections and appeals concerning the circumstances of the overpayment and the client's repayment.

b. Recipients of social services. Several kinds of department records contain personally identifiable information about applicants for and recipients of direct or purchased social services.

(1) Client case records. Local offices create client case files containing identifying information and demographic information; income data; information substantiating the need for services, which may include medical, psychological or psychiatric reports; social history; the department evaluation of the client's situation; documentation of department actions; and provider reports. Records may contain court orders and reports.

(2) Local office administrative records. Client names and services data appear in records such as card files, case lists, and appointment logs.

(3) Data processing systems. Client identifying information, demographic data, and services eligibility data are stored in the service reporting system. The purchase of services system contains invoice and service payment data. The child and adult protection system contains information from abuse reports and investigations. Some of these records are also kept on microfiche.

(4) Appeals. Records containing client identifying information and eligibility information are created by the department of inspections and appeals when a client requests a hearing on a department action.

(5) Adoption records. The department keeps a master card file on all adoptions in Iowa as required in Iowa Code section 235.3, subsection 7. This record is also kept on microfilm.

The Iowa Adoption Exchange contains records on special needs children available for adoption and on families that have indicated an interest in adopting special needs children.

The department also keeps records on adoptions in which it has provided services. These files include the home study, information about the child, and legal documents. These records are also kept on microfiche.

(6) Abuse registry. Child and dependent adult abuse records contain names and information of the alleged victim and the victim's family, data on the reported abuse, details of injury, investigative data, name of alleged perpetrator, names of reporters, collateral contacts and findings.

(7) Interstate compact records. The department maintains records on placement of children across state lines. These records contain identifying information about the children and the conditions of their placement, as well as progress reports. Some of the records are kept on microfiche.

(8) Guardianship records. The department maintains records on all children under its guardianship. The records concern the children's characteristics and placements. Some of these records are kept on microfiche.

c. Institutions. Institution resident records may contain identifying and demographic information, medical and social histories, treatment records, treatment plans, educational information, admission procedures, financial accounts, county billings, residential unit notes, vocational information, economic data and information about personal effects. Some of this information is kept on microfiche.

Automated data processing systems associated with institutional client records include admission and discharge systems for the juvenile institutions and for the mental health and mental retardation institutions, institutional billing systems, client banking systems, and client data systems.

d. Child support recovery unit (CSRU) records. These records contain information such as client identifiers, demographic information, divorce decrees, child support orders, absent parent identifiers, employment history and physical characteristics of absent parents, payment history records, and termination of parental rights.

e. Collection services center. The collection services center maintains records of support orders issued or filed in Iowa that have been converted to the collection services center system. These records identify the person paying and the person receiving support, specify the support obligations, and contain a record of payments made. Most records are on an automated data processing system. Paper records may also be kept, including conversion documents, orders, and correspondence.

f. Contractor records for individual providers. Records of individual purchase of service and Medicaid providers contain information such as names of owners and employees, names of clients served, eligibility data, amounts of payment for clients, and kinds of services received by clients.

g. Regulatory files on individual providers. Files on persons who apply to be licensed, certified, registered, or approved by the department contain identifying information, a description of the person's operation or premises, and a department evaluation of the information collected. Files may contain data on criminal records and abuse registry records on the person and any employees. Files may contain information naming clients served (for example, in complaints or incident reports). Some of these records are also kept on microfilm.

h. Personnel files. The department maintains files containing information about employees, families and dependents, and applicants for paid or volunteer positions within the department. The files contain payroll records, biographical information, medical information pertaining to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding and information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

9.12(2) Data processing matching.

a. Internal. All data processing systems operated by the department which have comparable personally identifiable data elements permit the matching of personally identifiable information. (See subrule 9.12(1) for a description of these systems.) Matches which are routinely done include the following:

(1) Data from the service reporting system is matched with data from the purchase of service payment system for service eligibility and with the activity reporting system for cost allocation. Matches are also done with the state identification portion of the automated benefit calculation system.

(2) The automated benefit calculation system matches with the Medicaid eligibility system, the facility payment system, the child support collections system, the employment and training systems, the electronic payment processing and inventory control system, the eligibility tracking system, the Medicare buy-in system, the individualized services information system-waiver payment system, and the income eligibility and verification system.

(3) The Medicaid eligibility system matches information with the Medicaid management information system and the collection and recovery system.

b. External.

(1) The state data exchange matches information on department clients with records on recipients of supplemental security income.

- (2) The Medicare buy-in system matches information with the Social Security Administration.
- (3) The income and eligibility verification system matches information on department clients with income records from department of workforce development records on unemployment compensation and wages, tax records from the Internal Revenue Service, wage records and social security benefit records from the Social Security Administration, and public assistance records from other states.
- (4) Data from the collections and reporting system is matched with state and federal tax records, and with client records on the automated benefit calculation system.
- (5) Data on department clients is matched with the administering agency for the Workforce Investment Act and with private agencies working to help employers collect benefits under the work opportunity tax credit program.
- (6) Reports on disqualified food stamp recipients from other states are received from the United States Department of Agriculture to ensure that recipients are not evading penalties by reapplying in Iowa.
- (7) A list of recipients of benefits under the family investment program is released annually to the Internal Revenue Service for matching with records of dependents claimed.
- (8) A list of applicants for and recipients of the family investment program (FIP), the Medicaid program, and the food assistance program is matched with records on Iowa motor vehicle registration files to assist in the identification of countable resources.
- (9) The Medicaid management information system matches data on medical assistance recipients against data on insureds that is submitted by insurance carriers under rule 441—76.13(249A) in order to identify third-party payers for medical assistance recipients.

c. Centralized employee registry (CER) database. The CER receives data concerning employees and contractors who perform labor in Iowa. Information reported by Iowa employers about employees includes the employee's name, address, social security number, date of birth, beginning date of employment, whether health insurance is available, and when it may be available. Information reported by Iowa income payers about contractors is limited to the contractor's name, address, social security number, and date of birth, if known.

State agencies accessing the CER shall participate in proportionate cost sharing for accessing and obtaining information from the registry. Cost sharing shall include all costs of performing the match including costs for preparing the tapes and central processing unit time. Costs shall be specified in a 28E agreement with each agency. CER matches include the following data matches with:

- (1) The child support collections and reporting system for the establishment and enforcement of child and medical support obligations.
- (2) Other department of human services systems for the purpose of gathering additional information and verification for use in the determination of eligibility or calculation of benefits.
- (3) The department of employment services for the determination of eligibility or calculation of unemployment benefits, and to monitor employer compliance with job insurance tax liability requirements.
- (4) The department of workforce development to verify employment of participants in the PROMISE JOBS program.
- (5) The department of revenue for the recoupment of debts to the state.
- (6) The department of inspections and appeals for the recoupment of debts owed to the department of human services.

441—9.13(217) Distribution of informational materials.

9.13(1) Requirements for distribution. All material sent or distributed to clients, vendors, or medical providers shall:

- a.* Directly relate to the administration of the program.
- b.* Have no political implications.
- c.* Contain the names only of persons directly connected with the administration of the program.
- d.* Identify them only in their official capacity with the agency.

9.13(2) *Distribution prohibited.* The department shall not distribute materials such as holiday greetings, general public announcements, voting information, and alien registration notices.

9.13(3) *Distribution permitted.* The department may distribute materials directly related to the health and welfare of clients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

441—9.14(17A,22) Special policies and procedures for protected health information.

9.14(1) *Minimum necessary.* When using or disclosing protected health information or when requesting protected health information from another covered entity, the department shall make reasonable efforts, as described in paragraphs 9.14(1)“a” through “e,” to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

a. This requirement does not apply in the following circumstances:

- (1) Disclosures to or requests by a health care provider for treatment.
- (2) Uses or disclosures made to the subject.
- (3) Uses or disclosures made pursuant to an authorization.
- (4) Disclosures made to the Secretary of Health and Human Services.
- (5) Uses or disclosures that are required by law.
- (6) Uses or disclosures that are required for compliance with this chapter.

b. The department shall take the following actions:

(1) Identify those persons or classes of persons, as appropriate, in its workforce who need access to protected health information to carry out their duties.

(2) For each person or class of persons, identify the category or categories of protected health information to which access is needed and any conditions appropriate to the access.

(3) Make reasonable efforts to limit the access of these persons or classes.

c. For any type of disclosure that it makes on a routine and recurring basis, the department shall implement policies and procedures (which may be standard protocols) that limit the amount of the protected health information disclosed to that reasonably necessary to achieve the purpose of the disclosure.

For all other disclosures, the department shall develop criteria designed to limit the protected health information disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought. The department shall review requests for disclosure on an individual basis in accordance with the criteria.

The department may rely, if reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:

(1) Making permitted disclosures to a public official, provided the public official indicates that the information requested is the minimum necessary for the stated purposes;

(2) The information is requested by another covered entity; or

(3) The information is requested for the purpose of providing professional services to the department by a professional who is a workforce member or business associate of the department if the professional indicates that the information requested is the minimum necessary for the stated purpose.

d. Minimum necessary requests.

(1) When requesting information from other covered entities, the department shall limit any request for protected health information to that which is reasonably necessary to accomplish the purpose for which the request is made.

(2) For a request that is made on a routine and recurring basis, the department shall implement policies and procedures (which may be standard protocols) that limit the protected health information requested to the amount reasonably necessary to accomplish the purpose for which the request is made.

(3) For all other requests, the department shall develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made and to review requests for disclosure on an individual basis in accordance with the criteria.

e. For all uses, disclosures, or requests to which the minimum necessary requirements apply, the department shall not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

9.14(2) *Uses and disclosures for premium rating and related purposes.* If a health plan receives protected health information for the purpose of premium rating or other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and if the health insurance or health benefits are not placed with the health plan, the health plan shall not use or disclose the protected health information for any other purpose, except as may be required by law.

9.14(3) *Verification and documentation.*

a. Before any disclosure of protected health information, the department shall obtain verification or documentation as follows:

(1) Verify the identity of a person requesting protected health information and the person's authority to access protected health information, if the department does not know the identity or authority of the person. This requirement is waived for disclosures to persons involved in the subject's care or for notification purposes, as described at subrule 9.7(3).

(2) Obtain any oral or written documentation, including statements and representations, from the person requesting the protected health information when this is a condition of the disclosure under this chapter.

b. The following constitute appropriate verification or documentation, if reasonable under the circumstances:

(1) Documentation, statements, or representations. The department may rely on documentation, statements, or representations that, on their face, meet the applicable requirements.

(2) Identity of public officials. When disclosure of protected health information is requested by a public official or a person acting on behalf of the public official, the department may rely on any of the following to verify identity:

1. In-person presentation of an agency identification badge, other official credentials, or other proof of government status.

2. A written request on the appropriate government letterhead.

3. A written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes the person is acting on behalf of the public official.

(3) Authority of public officials. When the disclosure of protected health information is requested by a public official or a person acting on behalf of the public official, the department may rely on any of the following to verify authority:

1. A written statement of the legal authority under which the information is requested.

2. If a written statement would be impracticable, an oral statement of the legal authority.

3. An order issued by a judicial or administrative tribunal.

(4) Exercise of professional judgment. The requirements of this subrule are met if the department relies on the exercise of professional judgment in use or disclosure to persons involved in the subject's care or for notification purposes, in accordance with subrule 9.7(3), or acts on a good-faith belief in making a disclosure to avert a serious threat to health or safety, in accordance with subrule 9.10(18).

9.14(4) *Notice of privacy practices for protected health information.* A subject has a right to adequate notice of the uses and disclosures of protected health information that may be made by the department, and of the subject's rights and the department's legal duties with respect to protected health information.

9.14(5) *Right to receive an accounting of disclosures.* Within the limits described in this subrule, a subject has a right to receive an accounting of the disclosures of protected health information listed in paragraph 9.14(5) "a," including disclosures to or by business associates of the department. A subject shall request an accounting using Form 470-3985, Request for a List of Disclosures.

a. Disclosures that may be included in an accounting. A subject's right to receive an accounting of disclosures made by the department, or to or by business associates of the department, is limited to the following disclosures that do not require an authorization or an opportunity for the subject to agree or object:

- (1) For health oversight activities described at subrule 9.10(2).
- (2) For judicial and administrative proceedings described at subrule 9.10(5).
- (3) For law enforcement purposes described at subrule 9.10(15).
- (4) For averting a threat to health or safety described at subrule 9.10(18).
- (5) To meet requirements of law described at subrule 9.10(19).
- (6) For public health activities described at subrule 9.10(22).
- (7) For disclosures about suspected victims of domestic violence described at subrule 9.10(23).
- (8) For disclosures about suspected victims of abuse or neglect described in 441—Chapter 9.
- (9) To coroners, medical examiners, and funeral directors described at subrule 9.10(24).
- (10) For cadaveric organ, eye, or tissue donation described at subrule 9.10(25).
- (11) For specialized government functions described at subrule 9.10(26), except those made for national security or intelligence purposes.
- (12) By whistle blowers as described at subrule 9.10(27).

b. Content of the accounting. The department shall provide the subject who submits Form 470-3985, Request for a List of Disclosures, with a written accounting of disclosures that meets the following requirements.

(1) The accounting shall include disclosures of protected health information that occurred during the six years (or the shorter time requested by the subject) before the date of the request. However, disclosures that occurred before April 14, 2003, are not included in an accounting.

(2) Except for limitations regarding multiple disclosures to the same person or organization, the accounting shall include for each disclosure:

1. The date of the disclosure.
2. The name of the organization or person who received the protected health information and, if known, the address of the organization or person.
3. A brief description of the protected health information disclosed.
4. A brief statement of the purpose of the disclosure that reasonably informs the subject of the basis for the disclosure or, instead of the statement, a copy of a written request for a disclosure.

(3) If, during the period covered by the accounting, the department has made multiple disclosures of protected health information to a person or organization requesting a disclosure, the accounting may, with respect to the multiple disclosures, provide:

1. The information required by subparagraph 9.14(5) "b"(2), for the first disclosure during the accounting period;
2. The frequency, periodicity, or number of the disclosures made during the accounting period; and
3. The date of the last disclosure during the accounting period.

c. Time limits for providing the accounting. The department shall act on the subject's request for an accounting no later than 60 days after receipt of a request, as follows:

- (1) The department shall provide the subject with the accounting requested; or
- (2) If the department is unable to provide the accounting within these 60 days, the department may extend the due date one time, for a period not to exceed 30 days. In order to extend the due date, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department shall provide the accounting. The department shall provide this written statement within the 60-day period after receipt of the request for an accounting.

d. Fee for accounting. The department shall provide to a subject one accounting without charge in any 12-month period. The department may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same subject within the 12-month period, as set forth in subrule 9.3(7), provided that the department:

- (1) Informs the subject in advance of the fee; and

(2) Provides the subject with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

e. Suspension of right. The department shall temporarily suspend a subject's right to receive an accounting of disclosures made to a health oversight agency or law enforcement official, as permitted in this chapter, if the agency or official provides the department with a statement that the accounting would likely impede the agency's activities and specifies the time for which a suspension is required.

(1) If the agency or official statement is submitted in writing, the department shall suspend the right to receive accounting for the time specified by the agency or official.

(2) If the agency or official statement is made orally, the department shall:

1. Document the statement, including the identity of the agency or official making the statement;
2. Temporarily suspend the subject's right to an accounting of disclosures subject to the statement;

and

3. Limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless the agency or official statement is submitted in writing during that time.

9.14(6) Complaint procedure. A person who believes the department is not complying with the rules on protected health information or with the applicable requirements of 45 CFR Part 160 as amended to August 14, 2002, or with the applicable standards, requirements, and implementation specifications of 45 CFR of Subpart E of Part 164 as amended to August 14, 2002, may file a complaint with the department's privacy office or with the Secretary of Health and Human Services.

a. Complaints to the department's privacy office shall be in writing and may be delivered personally or by mail to the DHS Privacy Office, 1305 E. Walnut Street, First Floor, Des Moines, Iowa 50319-0114. Complaints regarding facilities may be sent to the applicable facility.

b. Complaints to the Secretary of Health and Human Services shall be made using the procedures set forth in 45 CFR 160.306 as amended to August 14, 2002.

9.14(7) Appeal rights.

a. If the subject disputes a decision by the privacy officer, the department's designated licensed health care professional, or the facility administrator on any of the following requests, the subject may appeal the decision in accordance with 441—Chapter 7.

- (1) A request for restriction on use or disclosure of protected health information.
- (2) A request for confidential communication of protected health information.
- (3) A request for access to protected health information.
- (4) A request to amend protected health information.
- (5) A request for accounting of disclosures.

b. The privacy officer or facility shall assist the subject in making the appeal, if needed.

c. Appeals shall be:

(1) Mailed to the Appeals Section, Fifth Floor, Iowa Department of Human Services, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114; or

(2) Submitted electronically at www.dhs.state.ia.us/appeals.asp.

9.14(8) Record retention. Notwithstanding any other department rule to the contrary, protected health information shall be retained for at least six years from the date of creation or the date when the information last was in effect, when required by 45 CFR 164.530, paragraph "j," as amended to August 14, 2002.

441—9.15(17A,22) Person who may exercise rights of the subject.

9.15(1) Adults. When the subject is an adult, including an emancipated minor, the subject's rights under this rule may also be exercised by the subject's legal or personal representative, except as provided in subrule 9.15(3).

9.15(2) Minors. Within the limits of subrule 9.15(3), when the subject is an unemancipated minor, the subject's rights under this rule shall be exercised only by the subject's legal representative, except as follows:

a. When the department otherwise deals with the minor as an adult, as in the case of minor parents under the family investment program.

b. When otherwise specifically provided by law. However, minor subjects shall be granted access to their own records upon request, subject to the limits in rule 441—9.9(17A,22).

9.15(3) Exceptions.

a. *Scope of authority.* Legal and personal representatives may act only within the scope of their authority. For protected health information, the designation must reflect the subject's ability to make health care decisions and receive protected health information. For example, court-appointed conservators shall have access to and authority to release only the following information:

- (1) Name and address of subject.
- (2) Amounts of assistance or type of services received.
- (3) Information about the economic circumstances of the subject.

b. *Mental health information.* Only an adult subject or a subject's legal representative may consent to the disclosure of mental health information. Records of involuntary hospitalization shall be released only as provided in Iowa Code section 229.24. Medical records of persons hospitalized under Iowa Code chapter 229 shall be released only as provided in Iowa Code section 229.25.

c. *Substance abuse information.* Only the subject may consent to the disclosure of substance abuse information, regardless of the subject's age or condition.

d. *Failure to act in good faith.* If the department has reason to believe that the legal or personal representative is not acting in good faith in the best interests of the subject, the department may refuse to release information on the authorization of the legal or personal representative.

e. *Abuse, neglect, and endangerment situations.* Notwithstanding a state law or any other requirement of this chapter, the department, in the exercise of professional judgment, may elect not to treat a person as a subject's personal representative if:

- (1) The department has reason to believe that the subject has been or may be subjected to domestic violence, abuse, or neglect by the person; or
- (2) The department has reason to believe that treating the person as a personal representative could endanger the subject.

f. *Protected health information.* A parent, guardian, or other person acting in place of a parent who does not represent the minor for protected health information may still access protected health information about the minor if required by law.

g. *Deceased subjects.* If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased subject or of the subject's estate, the department shall treat that person as a personal representative.

h. *Other.* If, under applicable law, the subject of a confidential record is precluded from having a copy of a record concerning the subject disclosed to a third party, the department shall not treat the third party as a personal representative.

These rules are intended to implement Iowa Code sections 17A.3, 22.11, 217.6 and 217.30, Iowa Code chapters 228 and 252G, and the Health Insurance Portability and Accountability Act of 1996.

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CHAPTER 109
CHILD CARE CENTERS

[Filed as Chapter 108, 2/14/75 and renumbered 7/1/75]

[Prior to 7/1/83, Social Services[770] Ch 109]

[Prior to 2/11/87, Human Services[498]]

PREAMBLE

The intent of this chapter is to specify minimum requirements for licensed child care centers and preschools and to define those child-caring environments that are governed by the licensing standards. The licensing standards govern licensing procedures, administration, parental participation, personnel, records, health and safety policies, physical facilities, activity programs, and food services.

441—109.1(237A) Definitions.

“*Adult*” means a person 18 years of age or older.

“*Child*” means either of the following:

1. A person 12 years of age or younger.
2. A person 13 years of age or older but younger than 19 years of age who has a developmental disability, as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law No. 106-402, codified in 42 U.S.C. 15002(8).

“*Child care*” means the care, supervision, or guidance of a child by a person other than the parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child’s home, but does not include care, supervision, or guidance of a child by any of the following:

1. An instructional program administered by a public or nonpublic school system accredited by the department of education or the state board of regents or a program provided under Iowa Code sections 279.49 and 280.3A.
2. Any of the following church-related programs:
 - An instructional program.
 - A youth program other than a preschool, before or after school child care program, or other child care program.
 - A program providing care to children on church premises while the children’s parents are attending church-related or church-sponsored activities on the church premises.
3. Short-term classes of less than two weeks’ duration held between school terms or during a break within a school term.
4. A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to Iowa Code chapter 135B.
5. A program operated not more than one day per week by volunteers that meets all the following conditions:
 - Not more than 11 children are served per volunteer.
 - The program operates for less than 4 hours during any 24-hour period.
 - The program is provided at no cost to the children’s parent, guardian, or custodian.
6. A nationally accredited camp.
7. A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.
8. An instructional program for children at least four years of age who are attending prekindergarten, as defined by the state board of education, or a higher grade level, administered by a nonpublic school system which is not accredited by the department of education or the state board of regents.
9. An after-school program continuously offered throughout the school year to children who are at least five years of age and enrolled in school and attend the program intermittently, or a summer-only program for such children. The program must be provided through a nominal membership fee or at no cost.

10. A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.

11. A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:

- A purchase of service or managed care contract with the department.
- A contract approved by a local decategorization governance board.
- An arrangement approved by a juvenile court order.

12. Care provided on site to children of parents residing in an emergency, homeless, or domestic violence shelter.

13. A child care facility providing respite care to a licensed foster family home for a period of 24 hours or more to a child who is placed with that licensed foster family home.

14. A program offered to a child whose parent, guardian, or custodian is engaged solely in a recreational or social activity, remains immediately available and accessible on the physical premises on which the child's care is provided, and does not engage in employment while the care is provided. However, if the recreational or social activity is provided in a fitness center or on the premises of a nonprofit organization, the parent, guardian, or custodian of the child may be employed to teach or lead the activity.

"Child care center" or *"center"* means a facility providing child day care for seven or more children, except when the facility is registered as a child development home. For the purposes of this chapter, the word *"center"* shall apply to a child care center or preschool, unless otherwise specified.

"Child care facility" or *"facility"* means a child care center, a preschool, or a registered child development home.

"Department" means the department of human services.

"Direct responsibility for child care" means being charged with the care, supervision, or guidance of a child.

"Extended evening care" means child care provided by a child care center between the hours of 9 p.m. and 5 a.m.

"Facility" means a building or physical plant established for the purpose of providing child day care.

"Get-well center" means a facility that cares for a child with an acute illness of short duration for short enrollment periods.

"Involvement with child care" means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

"National Health and Safety Performance Standards" means the National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs produced by the American Public Health Association and the American Academy of Pediatrics with the support of the Maternal and Child Health Bureau, Department of Health and Human Services.

"Parent" means parent or legal guardian.

"Person subject to an evaluation" means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for licensure or is licensed.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.

"Preschool" means a child day care facility which provides care to children aged three through five, for periods of time not exceeding three hours per day. The preschool's program is designed to help the children develop intellectual, social and motor skills, and to extend their interest in and understanding of the world about them.

“*Regulatory fee*” means the amount payable to the department for licensure of a child care center based on the capacity of the center.

“*Transgression*” means the existence of any of the following in a person’s record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

“*Unrestricted access*” means that a person has contact with a child alone or is directly responsible for child care.

[ARC 8650B, IAB 4/7/10, effective 6/1/10; ARC 0030C, IAB 3/7/12, effective 5/1/12]

441—109.2(237A) Licensure procedures.

109.2(1) Application for license.

a. Any adult or agency has the right to apply for a license. The application for a license shall be made to the department on Form 470-0722, Application for a License to Operate a Child Care Center, provided by the department.

b. Requested reports including the fire marshal’s report and other information relevant to the licensing determination shall be furnished to the department upon application and renewal. A building owned or leased by a school district or accredited nonpublic school that complies with rules adopted by the state fire marshal for school buildings under 661—Chapter 5 is considered appropriate for use by a child care facility.

c. When a center makes a sufficient application for an initial license, it may operate for a period of up to 120 calendar days from the date of issuance of Form 470-4690, Permission to Open Without a License, pending a final licensing decision. A center has made a sufficient application when it has submitted the following to the department:

- (1) An application for a license.
- (2) An approved fire marshal’s report.
- (3) A floor plan indicating room descriptions and dimensions, including location of windows and doors.
- (4) Information sufficient to determine that the center director meets minimum personnel qualifications.

d. Applicants shall be notified of approval or denial of initial applications within 120 days from the date the application is submitted.

(1) If the applicant has been issued Form 470-4690, Permission to Open Without a License, the applicant shall be notified of approval or denial within 120 calendar days of the date of issuance of Form 470-4690.

(2) No full or provisional license shall be issued before payment of the applicable regulatory fee as determined pursuant to subrule 109.2(7).

e. The department shall not act on a licensing application for 12 months after an applicant’s child care center license has been denied or revoked.

f. When the department has denied or revoked a license, the applicant or person shall be prohibited from involvement with child care unless the department specifically permits involvement through a record check decision.

109.2(2) License.

a. An applicant showing full compliance with center licensing laws and these rules, including department approval of center plans and procedures and submission of the regulatory fee as specified in subrule 109.2(7) to the department by the date due, shall be issued a license for 24 months. In determining whether or not a center is in compliance with the intent of a licensing standard outlined in this chapter, the department shall make the final decision.

b. A new license shall be applied for when the center moves, expands, or the facility is remodeled to change licensed capacity.

c. A new license shall be applied for when another adult or agency assumes ownership or legal responsibility for the center.

109.2(3) Provisional license.

a. A provisional license may be issued or a previously issued license may be reduced to a provisional license for a period up to one year when the center does not meet all standards imposed by law and these rules.

b. A provisional license shall be renewable when written plans giving specific dates for completion to bring the center up to standards are submitted to and approved by the department. A provisional license shall not be reissued for more than two consecutive years when the lack of compliance with the same standards has not been corrected within two years.

c. When the center submits documentation or it can otherwise be verified that the center fully complies with all standards imposed by law or these rules, the license shall be upgraded to a full license.

109.2(4) Denial. Initial applications or renewals shall be denied when:

a. The center does not comply with center licensing laws and these rules in order to qualify for a full or provisional license.

b. The center is operating in a manner which the department determines impairs the safety, health, or well-being of children in care.

c. A person subject to an evaluation has transgressions that merit prohibition of involvement with child care and of licensure, as determined by the department.

d. Information provided either orally or in writing to the department or contained in the center's files is shown to have been falsified by the provider or with the provider's knowledge.

e. The center is not able to obtain an approved fire marshal's certificate as prescribed by the state fire marshal in 661—Chapter 5 or Iowa Code chapter 100 or fails to comply in correcting or repairing any deficiencies in the time determined by the fire marshal or the fire marshal determines the facility is not safe for occupancy.

f. The regulatory fee as specified in subrule 109.2(7) is not received by the department's division of fiscal management by the due date indicated on Form 470-4834, Child Care Center Licensing Fee Invoice.

109.2(5) Revocation and suspension. A license shall be revoked or suspended if corrective action has not been taken when:

a. The center does not comply with center licensing laws or these rules.

b. The center is operating in a manner which the department determines impairs the safety, health, or well-being of the children in care.

c. A person subject to an evaluation has transgressions that merit prohibition of involvement with child care and of licensure, as determined by the department.

d. Information provided to the department or contained in the center's files is shown to have been falsified by the provider or with the provider's knowledge.

e. The facility is not able to obtain an approved fire marshal's certificate as prescribed by the state fire marshal in 661—Chapter 5 or Iowa Code chapter 100 or fails to comply in correcting or repairing any deficiencies in the time determined by the fire marshal or the fire marshal determines the facility is not safe for occupancy.

f. The regulatory fee as specified in subrule 109.2(7) is not paid in full due to insufficient funds to cover a check submitted to the department for the fee.

109.2(6) Adverse actions.

a. Notice of adverse actions for a denial, revocation, or suspension and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—Chapter 7.

b. An applicant or licensee affected by an adverse action may request a hearing by means of a written request directed to the Department of Human Services, Appeals Section, 1305 E. Walnut Street, Fifth Floor, Des Moines, Iowa 50319-0114. The request shall be submitted within 30 days after the date the department mailed the official notice containing the nature of the denial, revocation, or suspension.

c. A letter received by an owner or director of a licensed center initiating action to deny, suspend, or revoke the facility's license shall be conspicuously posted at the main entrance to the facility where it can be read by parents or any member of the public. The letter shall remain posted until resolution of the action to deny, suspend or revoke the license. If the action to deny, suspend, or revoke is upheld, the center shall return the license to the department.

d. If the center's license is denied, suspended or revoked, the department shall notify the parent, guardian, or legal custodian of each child for whom the facility provides child care. The center shall cooperate with the department in providing the names and address of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

109.2(7) Regulatory fees. For relicensure with an effective date on or after August 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after June 1, 2010, a fee based upon center capacity is due to the department before the issuance of the license in accordance with this subrule.

a. *Fee structure.* The amount of the fee is based on the capacity of the center as indicated below:

<u>Center Capacity</u>	<u>Fee Amount</u>
0 to 20 children	\$50
21 to 50 children	\$75
51 to 100 children	\$100
101 to 150 children	\$125
151 or more children	\$150

b. *Determination of capacity.* The licensing consultant shall determine center capacity by dividing the amount of usable space by the amount of space required per child, as specified in subrule 109.11(1) and subparagraphs 109.11(3) "a"(2) and (3). Upon approval by the department, the final determination of center capacity may include evaluation of other factors that influence capacity, as long as physical space requirements per child as defined in subrule 109.11(1) and subparagraphs 109.11(3) "a"(2) and (3) are maintained.

c. *Notification.* Upon final determination of center capacity by the licensing consultant, the licensing consultant or designee shall sign and provide Form 470-4834, Child Care Center Licensing Fee Invoice, to the center.

d. *Payment.* The center shall return Form 470-4834 to the department with the licensing fee payment within 30 calendar days from the date of the licensing consultant's or designee's signature on Form 470-4834. Payment may be in the form of cash, check, money order, or cashier's check.

(1) Payment must be received before the department will issue a full or provisional license.

(2) Regulatory fees are nonrefundable and nontransferable.

[ARC 8650B, IAB 4/7/10, effective 6/1/10]

441—109.3(237A) Inspection and evaluation. The department shall conduct an on-site visit in order to make a licensing recommendation for all initial and renewal applications for licensure and shall determine compliance with licensing standards imposed by licensing laws and these rules when a complaint is received.

109.3(1) At least one unannounced on-site visit shall be conducted each calendar year.

109.3(2) After each visit and complaint, the department shall document whether a center was in compliance with center licensing standards imposed by licensing laws and these rules.

109.3(3) The written documentation of the department's conclusion as to whether a center was in compliance with licensing standards for all licensing visits and complaints shall be available to the public. However, the identity of the complainant shall be withheld unless expressly waived by the complainant.

441—109.4(237A) Administration.

109.4(1) Purpose and objectives. Incorporated and unincorporated centers shall submit a written statement of purpose and objectives. The plan and practices of operation shall be consistent with this statement.

109.4(2) Required written policies. The child care center owner, board or director shall:

- a. Develop fee policies and financial agreements for the children served.
- b. Develop and implement policies for enrollment and discharge of children, field trips and non-center activities, transportation, discipline, nutrition, and health and safety policies.
- c. Develop a curriculum or program structure that uses developmentally appropriate practices and an activity program appropriate to the developmental level and needs of the children.
- d. Develop and implement a written plan for staff orientation to the center's policies and to the provisions of 441—Chapter 109 where applicable to staff.

e. Develop and implement a written plan for ongoing training and staff development in compliance with professional growth and development requirements established by the department in rule 441—109.7(237A).

f. Make available for review a copy of the center policies and program to all staff at the time of employment and each parent at the time a child is admitted to the center. A copy of the fee policies and financial agreements shall be provided to each parent at the time a child is admitted to the center.

g. Develop and implement a policy for responding to incidents of biting that includes the following elements.

- (1) An explanation of the center's perspective on biting.
- (2) A description of how the center will respond to individual biting incidents and episodes of ongoing biting.
- (3) A description of how the center will assess the adequacy of caregiver supervision and the context and the environment in which the biting occurred.
- (4) A description of how the center will respond to the individual child or caregiver who was bitten.
- (5) A description of the process for notification of parents of children involved in the incident.
- (6) A description of how the incident will be documented.
- (7) A description of how confidentiality will be protected.
- (8) A description of first-aid procedures that the center will use in response to biting incidents.

h. Develop a policy to ensure that people do not have unauthorized access to children at the center. The policy shall be subject to review for minimum safety standards by the licensing consultant. The policy shall include but is not limited to the following:

(1) The center's criteria for allowing people to be on the property of the facility when children are present.

(2) A description of how center staff will supervise and monitor people who are permitted on the property of the center when children are present, but who have not been cleared for involvement with child care through the formal record check process as outlined in subrule 109.6(6). The description shall include definitions of "supervision" and "monitoring."

(3) A description of how responsibility for supervision and monitoring of people in the center will be delegated to center staff, which includes provisions that address conflicts of interest.

(4) A description of how the policy will be shared with parents, guardians, and custodians of all children who are enrolled at the center.

109.4(3) Required postings.

a. Postings are required for the certificate of license, notice of exposure of children to a communicable disease, and notice of actions to deny, suspend, or revoke the center's license and shall be conspicuously placed at the main entrance to the center. If the center is located in a building used for additional purposes and shares the main entrance to the building, the required postings shall be conspicuously placed in the center in an area that is frequented daily by parents or the public.

b. Postings are required for mandatory reporter requirements, the notice of availability of the handbook required in subrule 109.4(5), and the program activities and shall be placed in an area that is frequented daily by parents or the public.

109.4(4) *Mandatory reporters.* Requirements and procedures for mandatory reporting of suspected child abuse as defined in Iowa Code section 232.69 shall be posted where they can be read by staff and parents. Methods of identifying and reporting suspected child abuse and neglect shall be discussed with all staff within 30 days of employment.

109.4(5) *Handbook.* A copy of Form SS-0711, Child Care Centers and Preschools Licensing Standards and Procedures, shall be available in the center, and a notice stating that a copy is available for review upon request from the center director shall be conspicuously posted. The name, office mailing address and telephone number of the child care consultant shall be included in the notice.

109.4(6) *Certificate of license.* The child care license shall be posted in a conspicuous place and shall state the particular premises in which child care may be offered and the number of children who may be cared for at any one time. Notwithstanding the requirements in rule 441—109.8(237A), no greater number of children than is authorized by the license shall be cared for at any one time.

[ARC 8650B, IAB 4/7/10, effective 6/1/10]

441—109.5(237A) Parental participation.

109.5(1) *Unlimited access.* Parents shall be afforded unlimited access to their children and to the provider caring for their children during the center's hours of operation or whenever their children are in the care of a provider, unless parental contact is prohibited by court order. The provider shall inform all parents of this policy in writing at the time the child is admitted to the center.

109.5(2) *Parental evaluation.* If requested by the department, centers shall assist the department in conducting an annual survey of parents being served by their center by providing to parents Form 470-3409, Parent Survey: Child Care Centers. The department shall notify centers of the time frames for distribution and completion of the survey and the procedures for returning the survey to the department. The purpose of the survey shall be to increase parents' understanding of developmentally appropriate and safe practice, solicit statewide information regarding parental satisfaction with the quality of care being provided to children and obtain the parents' perspective regarding the center's compliance with licensing requirements.

441—109.6(237A) Personnel. The board or director of the center shall develop policies for hiring and maintaining staff that demonstrate competence in working with children and that meet the following minimum requirements:

109.6(1) *Center director requirements.* Centers that have multiple sites shall have a center director or on-site supervisor in each center. The center director is responsible for the overall functions of the center, including supervising staff, designing curriculum and administering programs. The director shall ensure services are provided for the children within the framework of the licensing requirements and the center's statement of purpose and objectives. The center director shall have overall responsibility for carrying out the program and ensuring the safety and protection of the children. Information shall be submitted in writing to the child care consultant prior to the start of employment. Final determination shall be made by the department. Information shall be submitted sufficient to determine that the director meets the following minimum qualifications:

- a. Is at least 21 years of age.
- b. Has obtained a high school diploma or passed a general education development test.
- c. Has completed at least one course in business administration or 12 contact hours in administrative-related training related to personnel, supervision, record keeping, or budgeting or has one year of administrative-related experience.
- d. Has certification in infant, child, and adult cardiopulmonary resuscitation (CPR), first aid, and Iowa's training for the mandatory reporting of child abuse.
- e. Has achieved a total of 100 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT- RELATED TRAINING
Bachelor's or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	20	One point per contact hour of training
Associate's degree in child development or bachelor's degree in a child-related field	50	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	40	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor's degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate's degree in a non-child-related field or completion of at least two years of a four-year degree	20	Registered child development home provider	10	
		Nonregistered family home provider	5	

(1) In obtaining the total of 100 points, a minimum of two categories must be used, no more than 75 points may be achieved in any one category, and at least 20 points shall be obtained from the experience category.

(2) Points obtained in the child development-related training category shall have been taken within the past five years.

(3) For directors in centers predominantly serving children with special needs, the directors may substitute a disabilities-related or nursing degree for the bachelor's degree in early childhood, child development or elementary education in determining point totals. In addition, experience in working with children with special needs in an administrative or direct care capacity shall be equivalent to full-time experience in a child care center or preschool in determining point totals.

(4) For directors in centers serving predominantly school-age children, the directors may substitute a degree in secondary education, physical education, recreation or related fields for the bachelor's degree in early childhood, child development or elementary education in determining point totals. In addition, child-related experience working with school-age children shall be equivalent to full-time experience in a child care center or preschool in determining point totals.

109.6(2) On-site supervisor. The on-site supervisor is responsible for the daily supervision of the center and must be on site daily either during the hours of operation that children are present or a minimum of eight hours of the center's hours of operation. Information shall be submitted in writing to the child care consultant prior to the start of employment. Final determination shall be made by the department. Information shall be submitted sufficient to determine that the on-site supervisor meets the following minimum qualifications:

- a. Is an adult.
- b. Has obtained a high school diploma or passed a general education development test.
- c. Has certification in infant, child, and adult cardiopulmonary resuscitation (CPR), first aid, and Iowa's mandatory reporting of child abuse.
- d. Has achieved a total of 75 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT- RELATED TRAINING
Bachelor's or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	20	One point per contact hour of training
Associate's degree in child development or bachelor's degree in a child-related field	50	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	40	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor's degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate's degree in a non-child-related field or completion of at least two years of a four-year degree	20	Registered child development home provider	10	
		Nonregistered family home provider	5	

(1) In obtaining the total of 75 points, a minimum of two categories must be used, no more than 50 points may be achieved in any one category, and at least 10 points shall be obtained from the experience category.

(2) Points obtained in the child development-related training category shall have been taken within the past five years.

(3) For on-site supervisors in centers predominantly serving children with special needs, the on-site supervisor may substitute a disabilities-related or nursing degree for the bachelor's degree in early childhood, child development or elementary education in determining point totals. In addition, experience in working with children with special needs in an administrative or direct care capacity shall be equivalent to full-time experience in a child care center or preschool in determining point totals.

(4) For on-site supervisors in centers serving predominantly school-age children, the on-site supervisor may substitute a degree in secondary education, physical education, recreation or related fields for the bachelor's degree in early childhood, child development or elementary education in determining point totals. In addition, child-related experience working with school-age children shall be equivalent to full-time experience in a child care center or preschool in determining point totals.

109.6(3) Director and on-site supervisor functions combined. In a center where the functions of the center director and the on-site supervisor are accomplished by the same person, the educational and experience requirements for a center director shall apply. If the center director is serving in the role of the on-site supervisor, the director shall be on site daily either during the hours of operation or a minimum of at least eight hours of the center's hours of operation. If the staff person designated as the on-site supervisor is temporarily absent from the center, another responsible adult staff shall be designated as the interim on-site supervisor.

109.6(4) Transition period for staff. In achieving the qualifications outlined in rule 441—109.6(237A), staff hired prior to April 1, 1998, shall obtain the education, experience or child-developmental training sufficient to meet the required point totals by April 1, 1999.

109.6(5) Volunteers and substitutes. A volunteer shall be at least 16 years of age. All volunteers and substitutes shall:

a. Sign a statement indicating whether or not they have one of the following:

(1) A conviction of any law in any state or any record of founded child abuse or dependent adult abuse in any state.

(2) A communicable disease or other health concern that could pose a threat to the health, safety, or well-being of the children.

b. Sign a statement indicating the volunteer or substitute has been informed of the volunteer's or substitute's responsibilities as a mandatory reporter.

c. Undergo the record check process when any of the following criteria are met:

(1) The volunteer or substitute is included in meeting the required child-to-staff ratio;

(2) The volunteer or substitute has direct responsibility for a child or children; or

(3) The volunteer or substitute has access to a child or children with no other staff present.

d. Have on file at the facility a record containing the statements required in paragraphs 109.6(5) "a" and "b" and documentation of any record check process. The record shall be maintained as required in paragraph 109.9(1) "b."

109.6(6) Record checks.

a. Applicability.

(1) Criminal and child abuse record checks shall be conducted for:

1. Each owner, director, staff member, substitute, volunteer, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone;

2. Anyone living in the child care facility who is 14 years of age or older.

(2) Parents, guardians, and custodians are exempt from the record check process in relation to access to their own children or wards.

(3) Professional staff who hold a current, valid license issued by the educational examiners board are exempt from the record check process in relation to children in the center to whom they provide professional services consistent with Iowa Code chapter 272 and rules adopted by the educational examiners board.

b. Authorization. The person subject to record checks shall complete Form 595-1396, DHS Criminal History Record Check Form B, and any other forms required by the department of public safety to authorize the release of records.

c. Iowa records checks. Checks and evaluations of Iowa child abuse and criminal records, including the sex offender registry, shall be completed before the person's involvement with child care at the center. Iowa records checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any possible transgressions. The department is not responsible for the cost of conducting the Iowa records check.

(1) The child care center may access the single-contact repository (SING) as necessary to conduct a criminal and child abuse record check of the person in Iowa. If the results of the check indicate a potential transgression, the center shall send a copy of the results to the department for determination of whether or not the person may be involved with child care, regardless of the person's status with the center.

(2) Unless a record check has already been conducted in accordance with subparagraph (1), the department shall conduct a criminal and child abuse record check in Iowa for a person who is subject to a record check. When the department conducts the records check, the fee shall be \$25 for each record check through June 30, 2010, and \$35 effective July 1, 2010. The center shall submit the fee before the department initiates the record check process. Payment must be in the form of cash, check, money order, or cashier's check. The department may access SING to conduct the records check. The department may also conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa for a person who is subject to a record check.

(3) Centers that participate in student intern programs may seek a waiver for substitution of the state record check process with a check performed by the student's educational institution. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

d. National criminal history checks. National criminal history checks based on fingerprints are required for all persons subject to record checks under this subrule effective with a center's initial licensure or relicensure on or after June 1, 2010. The national criminal history check shall be repeated for each person every four years and when the department or center becomes aware of any new

transgressions committed by that person in another state. The department is not responsible for the cost of conducting the national criminal history check.

(1) The child care center is responsible for obtaining the fingerprints of all persons subject to record checks. Fingerprints may be taken by law enforcement agencies, by agencies or companies that specialize in taking fingerprints, or by center staff or subcontractors who have received appropriate training in the taking of fingerprints.

(2) If the results of the Iowa records checks do not warrant prohibition of the person's involvement with child care or otherwise present protective concerns, the person may be involved with child care on a provisional basis until the national criminal history check and evaluation have been completed.

(3) The child care center shall provide fingerprints to the department of public safety no later than 30 days after the subject's approval for employment at the center. The center shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(4) Centers that are required to submit fingerprint-based checks of the FBI national criminal database to comply with federal regulations may seek a waiver to substitute that record check for the procedure required in this subrule. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

(5) Centers that participate in student intern programs may seek a waiver to substitute the fingerprint-based check of the FBI national criminal database performed by the student's educational institution for the procedure required in this subrule. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

(6) A center considering involvement of a person who has had a national criminal history check at another center may request information from that center. That center may provide the following information in writing upon a center's request, using Form 470-4896, National Criminal History Check Confirmation:

1. Date of most recent national criminal history check conducted by the center on the person in question, and

2. Whether or not the national check process resulted in clearance of the person for involvement with child care.

(7) If the results of the national criminal history check indicate that the person has committed a transgression, the center, if interested in continuing the person's involvement in child care, shall send a copy of the results to the department for evaluation. The department shall determine whether or not the person may be involved with child care.

(8) A center shall submit all required fingerprints to the department of public safety before the issuance or renewal of the center's license on or after June 1, 2010. EXCEPTION: Centers that have an initial or renewal licensure date of June 1, 2010, shall have until July 1, 2010, to submit the fingerprints to the department of public safety.

e. Mandatory prohibition. A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.

- (2) Placement on the sex offender registry.

- (3) Felony child endangerment or neglect or abandonment of a dependent person.

- (4) Felony domestic abuse.

- (5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.

- (6) Forcible felony.

f. Mandatory time-limited prohibition.

(1) A person with the following convictions or founded abuse reports is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.

2. Founded child abuse that was determined to be physical abuse.

(2) After the five-year prohibition period imposed pursuant to 109.6(6)"f"(1), the person may request the department to perform an evaluation under paragraph 109.6(6)"g" to determine whether prohibition of the person's involvement with child care continues to be warranted.

g. Evaluation required. For all other transgressions, and as requested under subparagraph 109.6(6) “f”(2), the department shall notify the affected person and the licensee that an evaluation shall be conducted to determine whether prohibition of the person’s involvement with child care is warranted.

(1) The person with the transgression shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form by the specified date shall result in denial or revocation of the license or denial of employment.

(2) The department may use information from the department’s case records in performing the evaluation.

(3) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression in relation to the position sought or held.
2. The time elapsed since the commission of the transgression.
3. The circumstances under which the transgression was committed.
4. The degree of rehabilitation.
5. The likelihood that the person will commit the transgression again.
6. The number of transgressions committed by the person.

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person’s involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department’s previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

2. Any restrictions placed on the person’s employment by the department in the previous evaluation shall remain applicable in the person’s subsequent employment.

3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person’s personnel file pursuant to the person’s authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.

4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

h. Evaluation decision. Within 30 days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall make a decision on the person’s involvement with child care. The department has final authority in determining whether prohibition of the person’s involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) The department shall mail to the individual on whom the evaluation was completed Form 470-2386, Record Check Decision, that explains the decision reached regarding the evaluation of the transgression and Form 470-0602, Notice of Decision.

(2) If the department determines through an evaluation of a person’s transgressions that the person’s prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.

(3) The department may permit a person who is evaluated to maintain involvement with child care if the person complies with the department’s conditions and corrective action plan relating to the person’s involvement with child care.

(4) The department shall send a letter to the employer that informs the employer whether the person subject to an evaluation has been approved or denied involvement with child care. If the person has been approved, the letter shall inform the employer of any conditions and corrective action plan relating to the person’s involvement with child care.

i. Notice to parents. The department shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care if there has been founded child abuse committed by an owner, director, or staff member of the child care center. The center shall cooperate with the department in providing the names and addresses of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

109.6(7) Use of controlled substances and medications. All owners, personnel, and volunteers shall be free of the use of illegal drugs and shall not be under the influence of alcohol or of any prescription or nonprescription drug that could impair their ability to function.

[ARC 8650B, IAB 4/7/10, effective 6/1/10; ARC 9441B, IAB 4/6/11, effective 6/1/11; ARC 0418C, IAB 10/31/12, effective 1/1/13]

441—109.7(237A) Professional growth and development. The center director, on-site supervisor, and staff counted as part of the staff ratio shall meet the following minimum staff training requirements:

109.7(1) Required training within the first six months of employment. During their first six months of employment, all staff shall receive the following training:

- a. Two hours of Iowa's training for mandatory reporting of child abuse.
- b. At least one hour of training regarding universal precautions and infectious disease control.

109.7(2) Center directors and staff employed 20 hours or more per week. The requirements of this subrule apply to all center directors, regardless of whether the director works on a full-time or part-time basis.

a. During their first year of employment, all center directors and all staff employed 20 hours or more per week shall receive the following training:

(1) Certification in American Red Cross or American Heart Association infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

(2) Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

(3) Ten contact hours of training from one or more of the following content areas:

1. Planning a safe, healthy learning environment (includes nutrition).
2. Steps to advance children's physical and intellectual development.
3. Positive ways to support children's social and emotional development (includes guidance and discipline).
4. Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).
5. Strategies to manage an effective program operation (includes business practices).
6. Maintaining a commitment to professionalism.
7. Observing and recording children's behavior.
8. Principles of child growth and development.

(4) At least four hours of the ten contact hours of training shall be received in a group setting as defined in subrule 109.7(7). Six hours may be received in self-study using a training package approved by the department as defined in subrule 109.7(8). Training received for cardiopulmonary resuscitation (CPR), first aid, mandatory reporting of child abuse, and universal precautions shall not count toward the ten contact hours. A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.

(5) Center directors and on-site supervisors shall receive all ten hours of training in a group setting as defined in subrule 109.7(7).

(6) Staff who have completed a comprehensive training package of at least ten contact hours offered through a child care resource and referral agency or community college within six months prior to initial employment shall have the first year's ten contact hours of training waived.

b. Following their first year of employment, all center directors and all staff who are employed 20 hours or more a week shall:

(1) Maintain current certification for Iowa's training for the mandatory reporting of child abuse; infant, child and adult CPR; and infant, child and adult first aid.

(2) Receive six contact hours of training annually from one or more of the content areas listed in subparagraph 109.7(2)"a"(3). A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.

(3) Center directors and on-site supervisors shall receive eight contact hours of training annually from one or more of the content areas listed in subparagraph 109.7(2)"a"(3). At least four of the eight contact hours shall be in a group setting as defined in subrule 109.7(7).

109.7(3) Staff employed less than 20 hours per week.

a. During their first year of employment, all staff who are employed less than 20 hours a week shall receive the following training:

(1) Five contact hours of training from one or more of the following topical areas: child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence.

(2) At least two of the five contact hours shall be in a sponsored group setting.

(3) Staff who have completed a comprehensive training package of at least ten contact hours offered through a child care resource and referral agency or community college within six months prior to initial employment shall have the five contact hours required in the first year waived.

b. Following their first year of employment, all staff who are employed less than 20 hours a week shall:

(1) Maintain current certification for Iowa's training for mandatory reporting of child abuse.

(2) Receive four contact hours of training annually from one or more of the following topical areas: child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence. At least two of the four contact hours shall be in a sponsored group setting.

109.7(4) Staff employed in centers that operate summer-only programs. Staff who are employed in centers that operate only in the summer months when school is not in session shall receive the following training:

a. Two hours of Iowa's training for mandatory reporting of child abuse.

b. At least one hour of training regarding universal precautions and infectious disease control.

c. At least one staff person on duty in the center and outdoor play area when children are present and on field trips shall have certification in American Red Cross or American Heart Association infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

d. At least one staff person on duty in the center and outdoor play area when children are present and on field trips shall receive certification in infant, child and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

109.7(5) Training plans. Training shall supplement educational and experience requirements in rule 441—109.6(237A) and shall enhance the staff's skill in working with the developmental and cultural characteristics of the children served.

109.7(6) Substitution. A provider who submits documentation from a child care resource and referral agency that the provider has completed the Iowa Program for Infant/Toddler Care (IA PITC), ChildNet, or Beyond Business Basics training series may use those hours to fulfill a maximum of two years' training requirements, not including first-aid and mandatory reporter training.

109.7(7) Group training. Training received in a group setting is not self-study, but is training received with other adults, either in or out of the child care center.

a. The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed or obtained with the written permission of one of the following entities:

- (1) An accredited university or college.
- (2) A community college.
- (3) Iowa State University Extension.
- (4) A child care resource and referral agency.
- (5) An area education agency.
- (6) The regents' center for early developmental education at the University of Northern Iowa.
- (7) A hospital (for health and safety, first-aid, and CPR training).
- (8) The American Red Cross, the American Heart Association, the National Safety Council, or Medic First Aid (for first-aid and CPR training).
- (9) An Iowa professional association, including the Iowa Association for the Education of Young Children (Iowa AEYC), the Iowa Family Child Care Association (IFCCA), the Iowa After School Alliance, and the Iowa Head Start Association.
- (10) A national professional association, including the National Association for the Education of Young Children (NAEYC), the National Child Care Association (NCCA), the National Association for Family Child Care (NAFCC), the National After School Association, and the American Academy of Pediatrics.
- (11) The Child and Adult Care Food Program and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
- (12) The Iowa department of public health, department of education, or department of human services.
- (13) Head Start agencies or the Head Start technical assistance system.

b. Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph "a" or an entity approved under paragraph "g." Approved training shall be made available to Iowa child care providers through the child care provider training registry beginning July 1, 2009.

c. Training received in a group setting may include distance learning opportunities such as training conducted over the Iowa communications network, on-line courses, or Web conferencing (webinars) if:

- (1) The training meets the requirements in subrule 109.7(9);
- (2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and
- (3) The training organization meets the requirements listed in this subrule or is approved by the department.

d. The department will not approve more than eight hours of training delivered in a single day.

e. The department may randomly monitor any state-approved training for quality control purposes.

f. Training conducted with staff either during the hours of operation of the facility, staff lunch hours, or while children are resting must not diminish the required staff ratio coverage. Staff shall not be actively engaged in care and supervision and simultaneously participate in training.

g. A training organization not approved by the department may submit training for approval to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

109.7(8) Self-study training.

a. Self-study training packages approved by the department include curriculum developed and materials distributed by:

- (1) Department child care licensing consultants,
- (2) Iowa State University Extension, or
- (3) A child care resource and referral agency.

b. Self-study training materials not distributed by these entities may be submitted by the training organization to the department for approval on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

109.7(9) *Approved training.* Training provided to Iowa child care providers shall offer:

a. Instruction that is consistent with:

- (1) Iowa child care regulatory standards;
- (2) The Iowa early learning standards; and
- (3) The philosophy of developmentally appropriate practice as defined by the National Association for the Education of Young Children, the Program for Infant/Toddler Care, and the National Health and Safety Performance Standards.

b. Content equal to at least one contact hour of training.

c. An opportunity for ongoing interaction and timely feedback, including questions and answers within the contact hours if training is delivered in a group setting.

d. A certificate of training for each participant that includes:

- (1) The name of the participant.
- (2) The title of the training.
- (3) The dates of training.
- (4) The content area addressed.
- (5) The name of the training organization.
- (6) The name of the instructor.
- (7) The number of contact hours.
- (8) An indication of whether the training was delivered through self-study or in a group setting.

[ARC 8650B, IAB 4/7/10, effective 6/1/10]

441—109.8(237A) Staff ratio requirements.

109.8(1) *Staff requirements.* Persons counted as part of the staff ratio shall meet the following requirements:

a. Be at least 16 years of age. If less than 18 years of age, the staff shall be under the direct supervision of an adult.

b. Be involved with children in programming activities.

c. At least one staff person on duty in the center and outdoor play area when children are present and present on field trips shall be over the age of 18 and hold current certification in first aid and cardiopulmonary resuscitation (CPR) as required in rule 441—109.7(237A).

109.8(2) *Staff ratio.* The staff-to-child ratio shall be as follows:

<u>Age of children</u>	<u>Minimum ratio of staff to children</u>
Two weeks to two years	One to every four children
Two years	One to every six children
Three years	One to every eight children
Four years	One to every twelve children
Five years to ten years	One to every fifteen children
Ten years and over	One to every twenty children

a. Combinations of age groupings for children four years of age and older may be allowed and may have staff ratio determined on the age of the majority of the children in the group. If children three years of age and under are included in the combined age group, the staff ratio for children aged three and under shall be maintained for these children. Preschools shall have staff ratios determined on the age of the majority of the children, including children who are three years of age.

b. If a child between the ages of 18 and 24 months is placed outside the infant area, as defined at subrule 109.11(2), the staff ratio of 1 to 4 shall be maintained as would otherwise be required for the group until the child reaches the age of two.

c. Every child-occupied program room shall have adult supervision present in the room.

d. During nap time, at least one staff shall be present in every room where children are resting. Staff ratio requirements may be reduced to one staff per room where children are resting for a period of time not to exceed one hour provided staff ratio coverage can be maintained in the center. The staff ratio shall always be maintained in the infant area.

e. The minimum staff ratio shall be maintained at mealtimes and for any outdoor activities at the center.

f. When seven or more children over the age of three are present on the licensed premises or are being transported in one vehicle, at least two adult staff shall be present. Only one adult is required when a center is transporting children in a center-owned vehicle with parent authorization for the sole purpose of transporting children to and from school. When a center contracts with another entity to provide transportation other than for the purpose of transporting school-age children to or from school, at least one adult staff in addition to the driver shall be present if at least seven children provided care by the center are transported.

g. Any child care center-sponsored program activity involving five or more children conducted away from the licensed facility shall provide a minimum of one additional staff over the required staff ratio for the protection of the children.

h. For a period of two hours or less at the beginning or end of the center's hours of operation, one staff may care for six children or less, provided no more than two of the children are under the age of two years.

i. For centers or preschools serving school-age children, the ratio for school-age children may be exceeded for a period of no more than four hours during a day when school classes start late or are dismissed early due to inclement weather or structural damage provided the children are already enrolled at the center and the center does not exceed the licensed capacity.

441—109.9(237A) Records.

109.9(1) Personnel records. The center shall maintain personnel information sufficient to ensure that persons employed in the center meet minimum staff and training requirements and do not pose any threat to the health, safety, or well-being of the children. Each employee's file shall contain, at a minimum, the following:

a. A statement signed by each individual indicating whether or not the individual has any conviction of violating any law in any state or has any record of founded child abuse or dependent adult abuse in any state.

b. Copies of all records checks kept in accordance with state and federal law regarding confidentiality of records checks. These records shall include:

(1) A copy of Form 595-1396, DHS Criminal History Record Check Form B, or any other permission form approved by the department of public safety for conducting an Iowa or national criminal history record check.

(2) A copy of Form 470-0643, Request for Child Abuse Information, when applicable.

(3) Copies of the results of Iowa records checks conducted through the SING for review by the department upon request.

(4) Copies of national criminal history check results.

(5) Any department-issued documents sent to the center related to a records check, regardless of findings.

c. Reserved.

d. A physical examination report. Personnel shall have good health as evidenced by a preemployment examination, including testing for communicable diseases which shall include testing for tuberculosis, performed within six months prior to beginning employment by a licensed medical

doctor, doctor of osteopathy, physician's assistant or advanced registered nurse practitioner and repeated at least every three years after initial employment.

e. Documentation showing the minimum staff training requirements as outlined at rule 441—109.7(237A) are met, including current certifications in first aid and cardiopulmonary resuscitation (CPR) and Iowa's training for the mandatory reporting of child abuse.

f. A photocopy of a valid driver's license if the staff will be involved in the transportation of children.

109.9(2) *Child's file.* Centers shall maintain sufficient information in a file for each child, which shall be updated at least annually or when the parent notifies the center of a change or the center becomes aware of a change, to ensure that:

a. A parent or an emergency contact authorized by the parent can be contacted at any time the child is in the care of the center.

b. Appropriate emergency medical and dental services can be secured for the child while in the center's care.

c. Information is available in the center regarding the specific health and medical needs of a child, including information regarding any professionally prescribed treatment. Information shall include a physical examination report as required at subrule 109.10(1). For a center serving school-age children that operates in the same school facility in which the child attends school, documentation shall include a statement signed by the parent that the immunization information is available in the school file.

d. A child is released only to authorized persons.

e. Documentation of injuries, accidents, or other incidents involving the child is maintained.

f. Parent authorization is obtained for a child to attend center-sponsored field trips and non-center activities. If parental authorization is obtained on an authorization form inclusive of all children participating in the activity, the authorization form shall be kept on file at the center.

109.9(3) *Immunization certificates.* Signed and dated Iowa immunization certificates, provided by the state department of public health, shall be on file for each child enrolled as prescribed by the department of public health at 641—Chapter 7.

109.9(4) *Daily activities.* For each child under two years of age, the center shall make a daily written record. At the end of the child's day at the center, the daily written record shall be provided verbally or in writing to the parent or the person who removes the child from the center. The record shall contain information on each of these areas:

a. The time periods in which the child has slept.

b. The amount of food consumed and the times at which the child has eaten.

c. The time of and any irregularities in the child's elimination patterns.

d. The general disposition of the child.

e. A general summary of the activities in which the child participated.

[ARC 8650B, IAB 4/7/10, effective 6/1/10]

441—109.10(237A) Health and safety policies. The child care center shall establish definite health policies, including the criteria for excluding a sick child from the center. The policies shall be consistent with the recommendations of the National Health and Safety Performance Standards and shall include, but are not limited to:

109.10(1) *Physical examination report.*

*a. *Preschool-age children.** For each child five years of age and younger not enrolled in kindergarten, the child care center shall require an admission physical examination report, submitted within 30 days from the date of admission, signed by a licensed medical doctor, doctor of osteopathy, physician's assistant or advanced registered nurse practitioner. The date of the physical examination shall be no more than 12 months prior to the first day of attendance at the center. The written report shall include past health history, status of present health including allergies, medications, and acute or chronic conditions, and recommendations for continued care when necessary. Annually thereafter, a statement of health condition, signed by a licensed medical doctor, doctor of osteopathy, physician's

assistant or advanced registered nurse practitioner, shall be submitted that includes any change in functioning, allergies, medications, or acute or chronic conditions.

b. School-age children. For each child five years of age and older and enrolled in school, the child care center shall require, prior to admission, a statement of health status signed by the parent or legal guardian that certifies that the child is free of communicable disease and that specifies any allergies, medications, or acute or chronic conditions. The statement from the parent shall be submitted annually thereafter.

c. Religious exemption. Nothing in this rule shall be construed to require medical treatment or immunization for staff or the child of any person who is a member of a church or religious organization which has guidelines governing medical treatment for disease that are contrary to these rules. In these instances, an official statement from the organization shall be incorporated in the personnel or child's file.

109.10(2) Medical and dental emergencies. The center shall have sufficient information and authorization to meet the medical and dental emergencies of children. The center shall have written procedures for medical and dental emergencies and shall ensure, through orientation and training, that all staff are knowledgeable of and able to implement the procedures.

109.10(3) Medications. The center shall have written procedures for the dispensing, storage, authorization, and recording of all prescription and nonprescription medications, including the following:

a. All medications shall be stored in their original containers, with accompanying physician or pharmacist's directions and label intact and stored so they are inaccessible to children and the public. Nonprescription medications shall be labeled with the child's name.

b. For every day an authorization for medication is in effect and the child is in attendance, there shall be a notation of administration including the name of the medicine, date, time, dosage given or applied, and the initials of the person administering the medication or the reason the medication was not given.

c. In the case of medications that are administered on an ongoing, long-term basis, authorization shall be obtained for a period not to exceed the duration of the prescription.

109.10(4) Daily contact. Each child shall have direct contact with a staff person upon arrival for early detection of apparent illness, communicable disease, or unusual condition or behavior which may adversely affect the child or the group. The center shall post notice at the main entrance to the center where it is visible to parents and the public of exposure of a child receiving care by the center to a communicable disease, the symptoms, and the period of communicability. If the center is located in a building used for other purposes and shares the main entrance to the building, the notice shall be conspicuously posted in the center in an area that is frequented daily by parents or the public.

109.10(5) Infectious disease control. Centers shall establish policies and procedures related to infectious disease control and the use of universal precautions with the handling of any bodily excrement or discharge, including blood and breast milk. Soiled diapers shall be stored in containers separate from other waste.

109.10(6) Quiet area for ill or injured. The center shall provide a quiet area under supervision for a child who appears to be ill or injured. The parents or a designated person shall be notified of the child's status in the event of a serious illness or emergency.

109.10(7) Staff hand washing. The center shall ensure that staff demonstrate clean personal hygiene sufficient to prevent or minimize the transmission of illness or disease. All staff shall wash their hands at the following times:

- a.* Upon arrival at the center.
- b.* Immediately before eating or participating in any food service activity.
- c.* After diapering a child.
- d.* Before leaving the rest room either with a child or by themselves.
- e.* Before and after administering nonemergency first aid to a child if gloves are not worn.
- f.* After handling animals and cleaning cages.

109.10(8) Children's hand washing. The center shall ensure that staff assist children in personal hygiene sufficient to prevent or minimize the transmission of illness or disease. For each infant or child with a disability, a separate cloth for washing and one for rinsing may be used in place of running water. Children's hands shall be washed at the following times:

- a. Immediately before eating or participating in any food service activity.
- b. After using the rest room or being diapered.
- c. After handling animals.

109.10(9) First-aid kit. The center shall ensure that a clearly labeled first-aid kit is available and easily accessible to staff at all times whenever children are in the center, in the outdoor play area, and on field trips. The kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children.

109.10(10) Recording incidents. Incidents involving a child, including minor injuries, minor changes in health status, or behavioral concerns, shall be reported to the parent on the day of the incident. Incidents resulting in an injury to a child shall be reported to the parent on the day of the incident. Incidents resulting in a serious injury to a child or significant change in health status shall be reported immediately to the parent. A written report shall be provided to the parent or person authorized to remove the child from the center. The written report shall be prepared by the staff member who observed the incident and a copy shall be retained in the child's file.

109.10(11) Smoking. Smoking and the use of tobacco products shall be prohibited at all times in the center and in every vehicle used to transport children. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during hours of operation of the center. Nonsmoking signs shall be posted at every entrance of the child care center and in every vehicle used to transport children. All signs shall include:

- a. The telephone number for reporting complaints, and
- b. The Internet address of the department of public health (www.iowasmokefreeair.gov).

109.10(12) Transportation. As outlined in Iowa Code section 321.446, all children transported in a motor vehicle subject to registration, except a bus, shall be individually secured by a safety belt, safety seat, or harness in accordance with federal motor vehicle safety standards and the manufacturer's instructions.

a. Children under the age of 6 shall be secured during transit in a federally approved child restraint system. Children under 1 year of age and weighing less than 20 pounds shall be secured during transit in a rear-facing child restraint system.

b. Children under the age of 12 shall not be located in the front seating section of the vehicle.

c. Drivers of vehicles shall possess a valid driver's license and shall not operate a vehicle while under the influence of alcohol, illegal drugs, prescription or nonprescription drugs that could impair the drivers' ability to operate a motor vehicle.

d. Vehicles that are owned or leased by the center shall receive regular maintenance and inspection according to manufacturer-recommended guidelines for vehicle and tire maintenance and inspection.

109.10(13) Field trip emergency numbers. Emergency telephone numbers for each child shall be taken by staff when transporting children to and from school and on field trips and non-center-sponsored activities away from the premises.

109.10(14) Pets. Animals kept on site shall be in good health with no evidence of disease, be of such disposition as to not pose a safety threat to children, and be maintained in a clean and sanitary manner. Documentation of current vaccinations shall be available for all cats and dogs. No ferrets, reptiles, including turtles, or birds of the parrot family shall be kept on site. Pets shall not be allowed in kitchen or food preparation areas.

109.10(15) Emergency plans.

a. The center shall have written emergency plans for responding to fire, tornado, flood (if area is susceptible to flood), intruders within the center, intoxicated parents and lost or abducted children. In addition, the center shall have guidelines for responding or evacuating in case of blizzards, power failures, bomb threats, chemical spills, earthquakes, or other disasters that could create structural damage to the center or pose health hazards. If the center is located within a ten-mile radius of a nuclear power

plant or research facility, the center shall also have plans for nuclear evacuations. Emergency plans shall include written procedures including plans for transporting children and notifying parents, emergency telephone numbers, diagrams, and specific considerations for immobile children.

b. Emergency instructions, telephone numbers, and diagrams for fire, tornado, and flood (if area is susceptible to floods) shall be visibly posted by all program and outdoor exits. Emergency plan procedures shall be practiced and documented at least once a month for fire and for tornado. Records on the practice of fire and tornado drills shall be maintained for the current and previous year.

c. The center shall develop procedures for annual staff training on these emergency plans and shall include information on responding to fire, tornadoes, intruders, intoxicated parents and lost or abducted children in the orientation provided to new employees.

d. The center shall conduct a daily check to ensure that all exits are unobstructed.

109.10(16) *Supervision and access.*

a. The center director and on-site supervisor shall ensure that each staff member, substitute, or volunteer knows the number and names of children assigned to that staff member, substitute, or volunteer for care. Assigned staff, substitutes, and volunteers shall provide careful supervision.

b. Any person in the center who is not an owner, staff member, substitute, or volunteer who has a record check and department approval to be involved with child care shall not have unrestricted access to children for whom that person is not the parent, guardian, or custodian.

c. Persons who are exempt from the record check process are granted access in accordance with 109.6(6)“a”(2) unless the provisions of paragraph 109.10(16)“d” apply.

d. A sex offender who has been convicted of a sex offense against a minor and who is required to register with the Iowa sex offender registry under the provisions contained in Iowa Code chapter 692A shall not operate, manage, be employed by, or act as a contractor or volunteer at a child care center. The sex offender also shall not be present upon the property of a child care center without the written permission of the center director, except for the time reasonably necessary to transport the offender’s own minor child or ward to and from the center.

(1) Written permission shall include the conditions under which the sex offender may be present, including:

1. The precise location in the center where the sex offender may be present;
2. The reason for the sex offender’s presence at the facility;
3. The duration of the sex offender’s presence;
4. Description of the supervision that the center staff will provide the sex offender to ensure that no child is alone with the sex offender.

(2) Before giving written permission, the center director shall consult with the center licensing consultant. The written permission shall be signed and dated by the center director and the sex offender and kept on file for review by the center licensing consultant.

[ARC 8650B, IAB 4/7/10, effective 6/1/10]

441—109.11(237A) Physical facilities.

109.11(1) *Room size.* The program room size shall be a minimum of 80 square feet of useable floor space or sufficient floor space to provide 35 square feet of useable floor space per child. In rooms where floor space occupied by cribs is counted as useable floor space, there shall be 40 square feet of floor space per child. Kitchens, bathrooms, halls, lobby areas, storage areas and other areas of the center not designed as activity space for children shall not be used as regular program space or counted as useable floor space.

109.11(2) *Infants’ area.* An area shall be provided properly and safely equipped for the use of infants and free from the intrusion of children two years of age and older. Children over 18 months of age may be grouped outside this area if appropriate to the developmental needs of the child. Upon the recommendation of a child’s physician or the area education agency serving the child, a child who is two years of age or older with a disability that results in significant developmental delays in physical and cognitive functioning who does not pose a threat to the safety of the infants may, if appropriate and for a limited time approved by the department, remain in the infant area.

109.11(3) Facility requirements.

a. The center shall ensure that:

(1) The facility and premises are sanitary, safe and hazard-free.

(2) Adequate indoor and outdoor program space that is adjacent to the center is provided. Centers shall have a safe outdoor program area with at least sufficient square footage to accommodate 30 percent of the enrollment capacity at any one time at 75 square feet per child. The outdoor area shall include safe play equipment and an area of shade.

(3) Sufficient program space is provided for dining to allow ease of movement and participation by children and to allow staff sufficient space to attend to the needs of the children during routine care and emergency procedures.

(4) Sufficient lighting shall be provided to allow children to adequately perform developmental tasks without eye strain.

(5) Sufficient ventilation is provided to maintain adequate indoor air quality.

(6) Sufficient heating is provided to allow children to perform tasks comfortably without excessive clothing.

(7) Sufficient cooling is provided to allow children to perform tasks without being excessively warm or subject to heat exposure.

(8) Sufficient bathroom and diapering facilities are provided to attend immediately to children's toileting needs and maintained to reduce the transmission of disease.

(9) Equipment, including kitchen appliances, placed in a program area is maintained so as not to result in burns, shock or injury to children.

(10) Sanitation and safety procedures for the center are developed and implemented to reduce the risk of injury or harm to children and reduce the transmission of disease.

b. Approval may be given by the department to waive the outdoor space requirement for programs of three hours or less, provided there is suitable substitute space and equipment available.

c. Approval may be given by the department for centers operating in a densely developed area to use alternative outdoor play areas in lieu of adjacent outdoor play areas.

d. The director or designated person shall complete and keep a record of at least monthly inspections of the outdoor recreation area and equipment for the purpose of assessing and rectifying potential safety hazards. If the outdoor play area is not used for a period of time due to inclement weather conditions, the center shall document the reasons why the monthly inspection did not occur and shall complete and document an inspection prior to resuming use of the area.

e. Centers that operate in a public school building, including before and after school programs and summer programs serving school-age children, may receive limited exemption from a facility requirement at subrule 109.11(3), particularly relating to ventilation and bathroom facilities, if complying with the requirement would require a structural or mechanical change to the school building. Centers shall ensure that the space occupied by the center is sanitary, safe, and hazard-free and shall conduct monthly playground inspections or provide documentation that one has been completed by the public school personnel.

109.11(4) Bathroom facilities. At least one functioning toilet and one sink for each 15 children shall be provided in a room with natural or artificial ventilation. Training seats or chairs may be used for children under two years of age. New construction after November 1, 1995, shall provide for at least one sink in the same area as the toilet and, for centers serving children two weeks to two years of age, shall provide for at least one sink in the central diapering area. At least one sink shall be provided in program rooms for infants and toddlers or in an adjacent area other than the kitchen. New construction after April 1, 1998, shall have at least one sink provided in the program rooms for infants and toddlers.

109.11(5) Telephone. A working nonpay telephone shall be available in the center with emergency telephone numbers for police or 911, fire, ambulance, and poison information center posted adjacent to the telephone. The street address and telephone number of the center shall be included in the posting. A separate file or listing of emergency telephone numbers for each child shall be maintained near the telephone.

109.11(6) *Kitchen appliances and microwaves.* Gas or electric ranges or ovens shall not be placed in the program area. If kitchen appliances are maintained in the program area for food preparation activities, the area shall be sectioned off and shall not be counted as useable floor space for room size. Centers using microwave ovens for warming infant bottles or infant food shall ensure that the formula or food item is not served immediately to the child after being removed from the microwave. The infant bottle shall be shaken or food stirred and the formula or food item tested by the caregiver before being fed to the infant. Breast milk shall not be warmed in a microwave.

109.11(7) *Environmental hazards.*

a. Within one year of being issued an initial or renewal license, centers operating in facilities built prior to 1960 shall conduct a visual assessment for lead hazards that exist in the form of peeling or chipping paint. If the presence of peeling or chipping paint is found, the paint shall be presumed to be lead-based paint unless a certified inspector as defined in department of public health rules at 641—Chapter 70 determines that it is not lead-based paint. If the presence of peeling or chipping paint is found, interim controls using safe work methods as defined by the state department of public health shall be accomplished prior to a full license being issued.

b. Within one year of being issued an initial or renewal license, centers operating in facilities that are at ground level, use a basement area as program space, or have a basement beneath the program area shall have radon testing performed as prescribed by the state department of public health at 641—Chapter 43. Testing shall be required if test kits are available from the local health department or the Iowa Radon Coalition. Retesting shall be accomplished at least every two years from the date of the initial measurement if test kits are available from the local health department or the Iowa Radon Coalition. If testing determines confirmed radon gas levels in excess of 4.0 picocurie per liter, a plan using radon mitigation procedures established by the state department of public health shall be developed with and approved by the state department of public health prior to a full license being issued.

c. To reduce the risk of carbon monoxide poisoning, all centers shall, on an annual basis prior to the heating season, have a professional inspect all fuel-burning appliances, including oil and gas furnaces, gas water heaters, gas ranges and ovens, and gas dryers, to ensure the appliances are in good working order with proper ventilation. All centers shall install one carbon monoxide detector on each floor of the center that is listed with Underwriters Laboratory (UL) as conforming to UL Standard 2034.

d. Centers that operate before and after school programs and summer-only programs that serve only school-age children and that operate in a public school building are exempted from testing for lead, radon, and carbon monoxide.

441—109.12(237A) Activity program requirements.

109.12(1) *Activities.* The center shall have a written curriculum or program structure that uses developmentally appropriate practices and a written program of activities planned according to the developmental level of the children. The center shall post a schedule of the program in a visible place. The child care program shall complement but not duplicate the school curriculum. The program shall be designed to provide children with:

a. A curriculum or program of activities that promotes self-esteem and positive self-image; social interaction; self-expression and communication skills; creative expression; and problem-solving skills.

b. A balance of active and quiet activities; individual and group activities; indoor and outdoor activities; and staff-initiated and child-initiated activities.

c. Activities which promote both gross and fine motor development.

d. Experiences in harmony with the ethnic and cultural backgrounds of the children.

e. A supervised nap or quiet time for all children under the age of six not enrolled in school who are present at the center for five or more hours.

109.12(2) *Discipline.* The center shall have a written policy on the discipline of children which provides for positive guidance, with direction for resolving conflict and the setting of well-defined limits. The written policy shall be provided to staff at the start of employment and to parents at time of admission. The center shall not use as a form of discipline:

a. Corporal punishment including spanking, shaking, and slapping.

b. Punishment which is humiliating or frightening or which causes pain or discomfort to the child. Children shall never be locked in a room, closet, box or other device. Mechanical restraints shall never be used as a form of discipline. When restraints are part of a treatment plan for a child with a disability authorized by the parent and a psychologist or psychiatrist, staff shall receive training on the safe and appropriate use of the restraint.

c. Punishment or threat of punishment associated with a child's illness, lack of progress in toilet training, or in connection with food or rest.

d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.

109.12(3) *Policies for children requiring special accommodations.* Reasonable accommodations, based on the special needs of the child, shall be made in providing care to a child with a disability. Accommodation can be a specific treatment prescribed by a professional or a parent, or a modification of equipment, or removal of physical barriers. The accommodation shall be recorded in the child's file.

109.12(4) *Play equipment, materials and furniture.* The center shall provide sufficient and safe indoor play equipment, materials, and furniture that conform with the standards or recommendations of the Consumer Product Safety Commission or the American Society for Testing and Materials for juvenile products. Play equipment, materials, and furniture shall meet the developmental, activity, and special needs of the children.

Rooms shall be arranged so as not to obstruct the direct observation of children by staff. Individual covered mats, beds, or cots and appropriate bedding shall be provided for all children who nap. The center shall develop procedures to ensure that all equipment and materials are maintained in a sanitary manner. Sufficient spacing shall be maintained between equipment to reduce the transmission of disease, to allow ease of movement and participation by children and to allow staff sufficient space to attend to the needs of the children during routine care and emergency procedures. The center shall provide sufficient toilet articles for each child for hand washing. Parents may provide items for oral hygiene (if appropriate to the developmental age and needs of the child). The center shall ensure that sanitary procedures are followed for use and storage of the articles.

109.12(5) *Infant environment.* A child care center serving children two weeks to two years old must provide an environment which protects the children from physical harm, but is not so restrictive as to inhibit physical, intellectual, emotional, and social development.

a. Stimulation shall be provided to each child through being held, rocked, played with and talked with throughout the time care is provided. Insofar as possible, the same adult should provide complete care for the same child.

b. Each infant and toddler shall be diapered in a sanitary manner as frequently as needed at a central diapering area. Diapering, sanitation, and hand-washing procedures shall be posted and implemented in every diapering area. There shall be at least one changing table for every 15 infants.

c. Highchairs or hook-on seats shall be equipped with a safety strap which shall be engaged when the chair is in use and shall be constructed so the chair will not topple.

d. Safe, washable toys, large enough so they cannot be swallowed and with no removable parts, shall be provided. All hard-surface toys used by children shall be sanitized daily.

e. Children under the age of one year shall be placed on their backs when sleeping unless otherwise authorized by a parent or physician. A crib or criblike furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the Consumer Product Safety Commission or the American Society for Testing and Materials for juvenile products shall be provided for each child under two years of age if developmentally appropriate. Crib railings shall be fully raised and secured when the child is in the crib. A crib or criblike furniture shall be provided for the number of children present at any one time. The center shall develop procedures for maintaining all cribs or criblike furniture and bedding in a clean and sanitary manner. There shall be no restraining devices of any type used in cribs.

f. When playpens are provided, no more than one child shall be placed in one at any time.

g. Infant walkers shall not be used.

h. For programs operating five hours or less on a daily basis, the center shall have a sufficient number of cribs or criblike furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards from the Consumer Product Safety Commission or the American Society for Testing and Materials for juvenile products for children who may nap during the time in attendance. Cribs or criblike furniture shall be used by only one child at a time and shall be maintained in a clean and sanitary manner.

441—109.13(237A) Extended evening care. A center providing extended evening care shall comply with the licensing requirements for centers contained in Iowa Code chapter 237A and this chapter, with the additional requirements set forth below.

109.13(1) Facility requirements.

a. The center shall ensure that sufficient cribs, beds, cots and bedding are provided appropriate to the child's age and that sufficient furniture, lighting, and activity materials are available for the children. Equipment and materials shall be maintained in a safe and sanitary manner.

b. The center shall ensure that a separate space is maintained for school-age boys and girls to provide privacy during bathroom and bedtime activities. Bathroom doors used by children shall be nonlockable.

c. The center shall ensure that parents have provided the personal effects needed to meet their child's personal hygiene and prepare for sleep. The center shall supplement those items needed for personal hygiene which the parent does not provide. The center shall obtain written information from the parent regarding the child's snacking, toileting, personal hygiene and bedtime routines.

109.13(2) Activities.

a. Evening activities shall be primarily self-selected by the child.

b. Every child-occupied room except those rooms used only by school-age children for sleeping shall have adult supervision present in the room. Staff counted for purposes of meeting child-to-staff ratios shall be present and awake at all times. In rooms where only school-age children are sleeping, visual monitoring equipment may be used. If a visual monitor is used, the monitoring must allow for all children to be visible at all times. Staff shall be present in the room with the monitor and shall enter the room used for sleeping to conduct a check of the children every 15 minutes.

441—109.14(237A) Get-well center. A get-well center shall comply with the licensing requirements for centers contained in Iowa Code chapter 237A and this chapter with the additional requirements and exceptions set forth below.

109.14(1) Staff requirements.

a. The center shall have a medical advisor for the center's health policy. The medical advisor shall be a medical doctor or a doctor of osteopathy currently in pediatrics or family practice.

b. A center shall have a licensed LPN or RN on duty at all times that children are present. If the nurse on duty is an LPN, the medical advisor or an RN shall be available in the proximate area as defined in state board of nursing rules at 655—6.1(152).

109.14(2) Health policies.

a. The center shall have a written health policy, consistent with the National Health and Safety Performance Standards, approved and signed by the owner or the chair of the board and by the medical advisor before the center can begin operations. Changes in the health policy shall be approved by the medical advisor and submitted in writing to the department. A written summary of the health policy shall be given to the parent when a child is enrolled in the center. The center's health policy at a minimum shall address procedures in the following areas:

(1) Medical consultation, medical emergencies, triage policies, storage and administration of medications, dietary considerations, sanitation and infection control, categorization of illness, length of enrollment periods, exclusion policy, and employee health policy.

(2) Reportable disease policies as required by the state department of public health.

b. The child shall be given a brief evaluation by an LPN or RN upon each arrival at the center.

c. The parent shall receive a brief written summary when the child is picked up at the end of the day. The summary must include:

- (1) Admitting symptoms.
- (2) Medications administered and time they were administered.
- (3) Nutritional intake.
- (4) Rest periods.
- (5) Output.
- (6) Temperature.

109.14(3) Exceptions. The following exceptions to 441—Chapter 109 shall be applied to get-well centers:

a. A center shall maintain a minimum staff ratio of one-to-four for infants and one-to-five for children over the age of two.

b. All staff that have contact with children shall have a minimum of 17 clock hours of special training in caring for mildly ill children. Current certification of the training shall be contained in the personnel files. Special training shall be department-approved and include the following:

(1) Four hours' training in infant and child cardiopulmonary resuscitation (CPR), four hours' training in pediatric first aid, and one hour of training in infection control within the first month of employment.

(2) Six hours' training in care of ill children, and two hours' training in child abuse identification and reporting within the first six months of employment and every five years thereafter.

c. There shall be 40 square feet of program space per child.

d. There shall be a sink with hot and cold running water in every child-occupied room.

e. Outdoor space may be waived with the approval of the department if the program is in an area adjacent to the pediatrics unit of a hospital.

f. Grouping of children shall be allowed by categorization of illness or by transmission route without regard to age, and shall be in separate rooms with full walls and doors.

441—109.15(237A) Food services. Centers participating in the USDA Child and Adult Care Food Program (CACFP) may have requirements that differ from those outlined in this rule in obtaining CACFP reimbursement and shall consult with a state CACFP consultant.

109.15(1) Nutritionally balanced meals or snacks. The center shall serve each child a full, nutritionally balanced meal or snack as defined by the USDA Child and Adult Care Food Program (CACFP) guidelines and shall ensure that staff provide supervision at the table during snacks and meals. Children remaining at the center two hours or longer shall be offered food at intervals of not less than two hours or more than three hours apart unless the child is asleep.

109.15(2) Menu planning. The center shall follow the minimum CACFP menu patterns for meals and snacks and serving sizes for children aged infant to 13 years. Menus shall be planned at least one week in advance, made available to parents, and kept on file at the center. Substitutions in the menu, including substitutions made for infants, shall be noted and kept on file. Foods with a high incident rate of causing choking in young children shall be avoided or modified. Provisions of this subrule notwithstanding, exceptions shall be allowed for special diets because of medical reasons in accordance with the child's needs and written instructions of a licensed physician or health care provider.

109.15(3) Feeding of children under two years of age.

a. All children under 12 months of age shall be fed on demand, unless the parent provides other written instructions. Meals and snacks provided by the center shall follow the CACFP infant menu patterns. Foods shall be appropriate for the infant's nutritional requirements and eating abilities. Menu patterns may be modified according to written instructions from the parent, physician or health care provider. Special formulas prescribed by a physician or health care provider shall be given to a child who has a feeding problem.

b. All children under six months of age shall be held or placed in a sitting-up position sufficient to prevent aspiration during feeding. No bottles shall be propped for children of any age. A child shall

not be placed in a crib with a bottle or left sleeping with a bottle. Spoon feeding shall be adapted to the developmental capabilities of the child.

c. Single-service, ready-to-feed formulas, concentrated or powdered formula following the manufacturer's instructions or breast milk shall be used for children 12 months of age and younger unless otherwise ordered by a parent or physician.

d. Whole milk for children under age two who are not on formula or breast milk unless otherwise directed by a physician.

e. Cleaned and sanitized bottles and nipples shall be used for bottles prepared on site. Prepared bottles shall be kept under refrigeration when not in use.

109.15(4) *Food brought from home.*

a. The center shall establish policies regarding food brought from home for children under five years of age who are not enrolled in school. A copy of the written policy shall be given to the parent at admission. Food brought from home for children under five years of age who are not enrolled in school shall be monitored and supplemented if necessary to ensure CACFP guidelines are maintained.

b. The center may not restrict a parent from providing meals brought from home for school-age children or apply nutritional standards to the meals.

c. Perishable foods brought from home shall be maintained to avoid contamination or spoilage.

d. Snacks that may not meet CACFP nutrition guidelines may be provided by parents for special occasions such as birthdays or holidays.

109.15(5) *Food preparation, storage, and sanitation.* Centers shall ensure that food preparation and storage procedures are consistent with the recommendations of the National Health and Safety Performance Standards and provide:

a. Sufficient refrigeration appropriate to the perishable food to prevent spoilage or the growth of bacteria.

b. Sanitary and safe methods in food preparation, serving, and storage sufficient to prevent the transmission of disease, infestation of insects and rodents, and the spoilage of food. Staff preparing food who have injuries on their hands shall wear protective gloves. Staff serving food shall have clean hands or wear protective gloves and use clean serving utensils.

c. Sanitary methods for dish-washing techniques sufficient to prevent the transmission of disease.

d. Sanitary methods for garbage disposal sufficient to prevent the transmission of disease and infestation of insects and rodents.

109.15(6) *Water supply.* The center shall ensure that suitable water and sanitary drinking facilities are available and accessible to children. Centers that serve infants and toddlers shall provide individual cups for drinking in addition to drinking fountains that may be available in the center.

a. Private water supplies shall be of satisfactory bacteriological quality as shown by an annual laboratory analysis. Water for the analysis shall be drawn between May 1 and June 30 of each year. When the center provides care for children under two years of age, a nitrate analysis shall also be obtained.

b. When public or private water supplies are determined unsuitable for drinking, commercially bottled water certified as chemically and bacteriologically potable or water treated through a process approved by the health department or designee shall be provided.

These rules are intended to implement Iowa Code section 232.69 and chapter 237A.

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CHAPTER 110
CHILD DEVELOPMENT HOMES

[Prior to 7/1/83, Social Services[770] Ch 110]

[Prior to 2/11/87, Human Services[498]]

PREAMBLE

This chapter establishes registration procedures for child development homes. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint investigation.

441—110.1(237A) Definitions.

“Adult” means a person aged 18 or older.

“Assistant” means a responsible person aged 14 or older. The assistant may never be left alone with children. Ultimate responsibility for supervision is with the child care provider.

“Child” means either of the following:

1. A person 12 years of age or younger.
2. A person 13 years of age or older but younger than 19 years of age who has a developmental disability, as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law No. 106-402, codified in 42 U.S.C. 15002(8).

“Child care” means the care, supervision, or guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis. Child care shall not mean special activity programs that meet on a regular basis such as music or dance classes, organized athletics or sports programs, scouting programs, or hobby or craft classes or clubs.

“Child care facility” or *“facility”* means a child care center, a preschool, or a registered child development home.

“Child care home” means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.

“Child development home” means a person or program registered under this chapter that may provide child care to six or more children at any one time.

“Department” means the department of human services.

“Involvement with child care” means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

“Parent” means parent or legal guardian.

“Part-time hours” means the hours that child development homes in categories B and C are allowed to exceed their maximum preschool or school-age capacity. A provider may use a total of up to 180 hours per month as part-time hours. No more than two children using part-time hours may be in the child development home at any one time.

“Person subject to an evaluation” means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for registration or is registered.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.
5. The person will reside or resides in a child care home that is not registered but that receives public funding for providing child care.

“Provider” means the person or program that applies for registration to provide child care and is approved as a child development home.

“*Registration*” means the process by which child care providers certify that they comply with rules adopted by the department.

“*Registration certificate*” means the written document issued by the department to publicly state that the provider has certified in writing compliance with the minimum requirements for registration of a child development home.

“*School*” means kindergarten or a higher grade level.

“*Transgression*” means the existence of any of the following in a person’s record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

441—110.2(237A) Application for registration. A provider shall apply for registration on Form 470-3384, Application for Child Development Home Registration, provided by the department’s local office or, if available, on the department’s Web site. The provider shall also use Form 470-3384 to inform the department of any changes in circumstances that would affect the registration.

441—110.3(237A) Renewal. Renewal of registration shall be completed every 24 months. To request renewal, a provider shall submit Form 470-3384, Application for Child Development Home Registration, and copies of certificates of training, to be retained in the registration file. The renewal process shall include completion of child abuse, sex offender, and criminal record checks.

441—110.4(237A) Number of children. The number of children shall conform to the following standards:

110.4(1) Limit. Except as provided in subrule 110.4(3), no greater number of children shall be received for care at any one time than the number authorized on the registration certificate.

110.4(2) Children counted. In determining the number of children cared for at any one time in a child development home, each child present in the child development home shall be considered to be receiving care unless the child is described by one of the following exceptions:

a. The child’s parent, guardian, or custodian established or operates the child development home and either the child is attending school or the child receives child care full-time on a regular basis from another person.

b. The child has been present in the child development home for more than 72 consecutive hours and meets the requirements of the exception in paragraph “*a*” as though the person who established or operates the child development home is the child’s parent, guardian, or custodian.

110.4(3) Exception for emergency school closing. On days when schools are closed due to emergencies such as inclement weather or physical plant failure, a child development home may have additional children present in accordance with the authorization for the registration category of the home and subject to all of the following conditions:

a. The child development home has prior written approval from the parent or guardian of each child present in the home concerning the presence of additional children in the home.

b. The child development home has a department-approved assistant, aged 14 or older, on duty to assist the care provider, as required for the registration category of the home.

c. One or more of the following conditions are applicable to each of the additional children present in the child development home:

- (1) The home provides care to the child on a regular basis for periods of less than two hours.
- (2) If the child were not present in the child development home, the child would be unattended.
- (3) The home regularly provides care to a sibling of the child.

d. The provider shall maintain a written record including the date of the emergency school closing, the reason for the closing, and the number of children in care on that date.

441—110.5(237A) Standards. The provider shall certify that the child development home meets the following standards and also the standards in either rule 110.8(237A), 110.9(237A), or 110.10(237A), specific to the category of home for which the provider requests registration.

110.5(1) Health and safety. Conditions in the home shall be safe, sanitary, and free of hazards.

a. The home shall have a non-pay, working telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. A cell phone shall not be used as the primary phone. The number for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be readily accessible by the telephone.

b. All medicines and poisonous, toxic, or otherwise unsafe materials shall be secured from access by a child.

c. A first-aid kit shall be available and easily accessible whenever children are in the child development home, in the outdoor play area, in vehicles used to transport children, and on field trips. The kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children.

d. Medications shall be given only with the parent's or doctor's written authorization. Each prescribed medication shall be accompanied by a physician's or pharmacist's direction. Both nonprescription and prescription medications shall be in the original container with directions intact and labeled with the child's name. All medications shall be stored properly and, when refrigeration is required, shall be stored in a separate, covered container so as to prevent contamination of food or other medications. All medications shall be stored so they are inaccessible to children.

e. Electrical wiring shall be maintained with all accessible electrical outlets safely capped and electrical cords properly used. Improper use includes running cords under rugs, over hooks, through door openings, or other use that has been known to be hazardous.

f. Combustible materials shall be kept away from furnaces, stoves, water heaters, and gas dryers.

g. Approved safety gates at stairways and doors shall be provided and used as needed.

h. A safe outdoor play area shall be maintained in good condition throughout the year. The play area shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child, and shall have both sunshine and shade areas. The play area shall be kept free from litter, rubbish, and flammable materials and shall be free from contamination by drainage or ponding of sewage, household waste, or storm water.

i. Annual laboratory analysis of a private water supply shall be conducted to show satisfactory bacteriological quality. When children under the age of two are to be cared for, the analysis shall include a nitrate analysis. When private water supplies are determined unsuitable for drinking, commercially bottled water or water treated through a process approved by the health department or designee shall be provided.

j. Emergency plans in case of man-made or natural disaster shall be written and posted by the primary and secondary exits. The plans shall clearly map building evacuation routes and tornado and flood shelter areas.

k. Fire and tornado drills shall be practiced monthly and the provider shall keep documentation evidencing compliance with monthly practice on file.

l. A safety barrier shall surround any heating stove or heating element, in order to prevent burns.

m. The home shall have at least one 2A 10BC rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.

n. The home shall have at least one single-station, battery-operated, UL-approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed according to manufacturer's recommendations. The provider shall test each smoke detector monthly and keep a record of testing for inspection purposes.

o. Smoking and the use of tobacco products shall be prohibited at all times in the home and in every vehicle in which children receiving care in the home are transported. Smoking and the use of tobacco

products shall be prohibited in the outdoor play area during the home's hours of operation. Nonsmoking signs shall be posted at every entrance of the child care home and in every vehicle used to transport children. All signs shall include:

- (1) The telephone number for reporting complaints, and
- (2) The Internet address of the department of public health (www.iowasmokefreeair.gov).

p. Children under the age of one year shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician.

q. Providers shall inform parents of the presence of any pet in the home.

(1) Each dog or cat in the household shall undergo an annual health examination by a licensed veterinarian and be issued a veterinary health certificate. This certificate shall verify that the animal's routine immunizations, particularly rabies, are current and that the animal is free of endoparasites (e.g., roundworms, hookworms, whipworms) and ectoparasites (e.g., fleas, mites, ticks, lice).

(2) Each pet bird in the household shall be purchased from a dealer licensed by the Iowa department of agriculture and land stewardship and shall be examined by a veterinarian to verify that it is free of infectious diseases. Children shall not handle pet birds.

(3) Aquariums shall be well maintained and installed in a manner that prevents children from accessing the water or pulling over a tank.

(4) All animal waste shall be immediately removed from the children's areas and properly disposed of. Children shall not perform any feeding or care of pets or cleanup of pet waste.

(5) No animals shall be allowed in the food preparation, food storage, or serving areas during food preparation and serving times.

r. When there is a swimming or wading pool on the premises:

(1) A wading pool shall be drained daily and shall be inaccessible to children when it is not in use.

(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the standards of the American Society for Testing and Materials.

(3) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is four feet above the side walls.

(4) An uncovered in-ground swimming pool shall be enclosed with a fence that is at least four feet high and flush with the ground.

s. If children are allowed to use an aboveground or in-ground swimming pool:

(1) Written permission from parents shall be available for review.

(2) Equipment needed to rescue a child or adult shall be readily accessible.

(3) The child care provider shall accompany the children and provide constant supervision while the children use the pool.

(4) The child care provider shall complete training in cardiopulmonary resuscitation for infants, toddlers, and children, according to the criteria of the American Red Cross or the American Heart Association.

t. Homes served by private sewer systems shall be compliant with environmental protection commission rules on wastewater treatment and disposal systems at 567—Chapter 69. Compliance shall be verified by the local board of health within 12 months of renewal or new registration.

u. The provider shall have written policies regarding the care of mildly ill children and exclusion of children due to illness and shall inform parents of these policies.

v. The provider shall have written policy and procedures for responding to health-related emergencies.

w. The provider shall document all injuries that require first aid or medical care using an injury report form. The form shall be completed on the date of occurrence, shared with the parent, and maintained in the child's file.

x. A provider operating in a facility built before 1960 shall assess and control lead hazards before being issued an initial child development home registration or a renewal of the registration. To comply with this requirement, the provider shall:

(1) Conduct a visual assessment of the facility for lead hazards that exist in the form of peeling or chipping paint;

(2) Apply interim controls on any chipping or peeling paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and

(3) Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.

EXCEPTION: Providers that have a valid registration on November 1, 2009, shall assess and control lead hazards by June 30, 2010.

110.5(2) Provider files. A provider file shall be maintained and shall contain the following:

a. A physician's signed statement that the provider and members of the provider's household are free of diseases or disabilities that would prevent good child care. This statement shall:

(1) Be obtained at the time of the first registration and at least every two years thereafter on all members of the provider's household that may be present when children are in the home.

(2) Include immunization or immune status for measles, mumps, rubella, diphtheria, tetanus, and polio. Providers may consult with their physician regarding recommendations for varicella, influenza, pneumonia, hepatitis A, and hepatitis B immunizations.

b. Certificates or other documentation verifying required training as set forth in subrule 110.5(11).

c. An individual file for each staff assistant that contains:

(1) A completed Form 595-1396, DHS Criminal History Record Check.

(2) A completed Form 470-0643, Request for Child Abuse Information.

(3) A physician's signed statement that meets the requirements of paragraph 110.5(2) "a."

(4) Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse completed within six months of employment and every five years thereafter, as required by Iowa Code section 232.69.

d. An individual file for each substitute that contains:

(1) A completed Form 595-1396, DHS Criminal History Record Check.

(2) A completed Form 470-0643, Request for Child Abuse Information.

(3) A physician's signed statement that meets the requirements of paragraph 110.5(2) "a."

(4) Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse completed within six months of employment and every five years thereafter, as required by Iowa Code section 232.69.

(5) Certification in first aid that meets the requirements of subparagraph 110.5(2) "b"(2).

110.5(3) Activity program. There shall be an activity program which promotes self-esteem and exploration and includes:

a. Active play.

b. Quiet play.

c. Activities for large muscle development.

d. Activities for small muscle development.

e. Play equipment and materials in a safe condition, for both indoor and outdoor activities which are developmentally appropriate for the ages and number of children present.

110.5(4) The certificate of registration shall be displayed in a conspicuous place.

110.5(5) Parental access. Parents shall be afforded unlimited access to their children and to the people caring for their children during the normal hours of operation or whenever their children are in the care of the child development home, unless parental contact is prohibited by court order.

110.5(6) Discipline. Discipline shall conform to the following standards:

a. Corporal punishment including spanking, shaking and slapping shall not be used.

b. Punishment which is humiliating or frightening or which causes pain or discomfort to the child shall not be used.

c. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.

d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.

e. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

110.5(7) Meals. Regular meals and midmorning and midafternoon snacks shall be provided which are well-balanced, nourishing, and in appropriate amounts as defined by the USDA Child and Adult Care Food Program. Children may bring food to the child development home for their own consumption, but shall not be required to provide their own food.

110.5(8) Children's files. An individual file shall be maintained for each child and updated annually or when the provider becomes aware of changes. The file shall contain:

a. Identifying information including, at a minimum, the child's name, birth date, parent's name, address, telephone number, special needs of the child, and the parent's work address and telephone number.

b. Emergency information including, at a minimum, where the parent can be reached, the name, street address, city and telephone number of the child's regular source of health care, and the name, telephone number, and relationship to the child of another adult available in case of emergency.

c. A signed medical consent from the parent authorizing emergency treatment.

d. An admission physical examination report signed by a licensed physician or designee in a clinic supervised by a licensed physician.

(1) The date of the physical examination shall not be more than 12 months before the child's first day of attendance at the child development home.

(2) The written report shall include past health history, status of present health, allergies and restrictive conditions, and recommendations for continued care when necessary.

(3) For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physical examination report.

(4) The examination report or statement of health status shall be on file before the child's first day of care.

e. A statement of health condition signed by a physician or designee submitted annually from the date of the admission physical. For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physician statement.

f. A list signed by the parent which names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

g. A signed and dated immunization certificate provided by the state department of public health. For the school-age child, a copy of the most recent immunization record shall be acceptable.

h. For each school-age child, on the first day of attendance, documentation of a physical examination that was completed at the time of school enrollment or since.

i. Written permission from the parent for the child to attend activities away from the child development home. The permission shall include:

(1) Times of departure and arrival.

(2) Destination.

(3) Persons who will be responsible for the child.

j. Injury report forms documenting injuries requiring first aid or medical care.

110.5(9) Provider. The provider shall meet the following requirements:

a. Give careful supervision at all times.

b. Exchange information with the parent of each child frequently to enhance the quality of care.

c. Give consistent, dependable care and be capable of handling emergencies.

d. Be present at all times except when emergencies occur or an absence is planned, at which time care shall be provided by a department-approved substitute. When an absence is planned, the provider shall give parents at least 24 hours' prior notice.

110.5(10) Substitutes. The provider shall assume responsibility for providing adequate and appropriate supervision at all times when children are in attendance. Any designated substitute shall have the same responsibility for providing adequate and appropriate supervision. Ultimate responsibility for supervision shall be with the provider.

- a. All standards in this chapter regarding supervision and care of children shall apply to substitutes.
- b. Except in emergency situations, the provider shall inform parents in advance of the planned use of a substitute.
- c. The substitute must be 18 years of age or older.
- d. Use of a substitute shall be limited to:
 - (1) No more than 25 hours per month.
 - (2) An additional period of up to two weeks in a 12-month period.
- e. The provider shall maintain a written record of the number of hours substitute care is provided, including the date and the name of the substitute.

110.5(11) Professional development.

- a. The provider shall receive two hours of Iowa's training for mandatory reporting of child abuse:
 - (1) During the first three months of registration as a child development home; and
 - (2) Every five years thereafter.
- b. The provider shall obtain first-aid training within the first three months of registration as a child development home.
 - (1) First-aid training shall be provided by a nationally recognized training organization, such as the American Red Cross, the American Heart Association, the National Safety Council, or Emergency Medical Planning (Medic First Aid) or by an equivalent trainer using curriculum approved by the department.
 - (2) First-aid training shall include certification in infant and child first aid that includes management of a blocked airway and mouth-to-mouth resuscitation.
 - (3) The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.
- c. During the first year of registration, the provider shall receive a minimum of 12 hours of training from one or more of the following content areas. The provider shall receive at least 6 of these hours in a group setting as defined in subrule 110.5(12), and 2 of the hours must be from the content area in subparagraph 110.5(11) "c"(1). A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.
 - (1) Planning a safe, healthy learning environment (includes nutrition).
 - (2) Steps to advance children's physical and intellectual development.
 - (3) Positive ways to support children's social and emotional development (includes guidance and discipline).
 - (4) Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).
 - (5) Strategies to manage an effective program operation (includes business practices).
 - (6) Maintaining a commitment to professionalism.
 - (7) Observing and recording children's behavior.
 - (8) Principles of child growth and development.
- d. During the second year of registration and each succeeding year, the provider shall receive a minimum of 12 hours of training from one or more of the content areas as defined in paragraph "c." The provider shall receive at least 6 of these hours in a group setting as defined in subrule 110.5(12). The provider may receive the remaining hours in self-study as defined in subrule 110.5(13). A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.
- e. A provider who submits documentation from a child care resource and referral agency that the provider has completed the Iowa Program for Infant/Toddler Care (IA PITC), ChildNet, or Beyond Business Basics training series may use those hours to fulfill a maximum of two years' training requirements, not including first-aid and mandatory reporter training.

110.5(12) Group training. Training received in a group setting is not self-study, but is training received with other adults.

a. The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed by or obtained with the written permission of one of the following entities:

- (1) An accredited university or college.
- (2) A community college.
- (3) Iowa State University Extension.
- (4) A child care resource and referral agency.
- (5) An area education agency.
- (6) The regents' center for early developmental education at the University of Northern Iowa.
- (7) A hospital (for health and safety, first-aid, and CPR training).
- (8) The American Red Cross, the American Heart Association, the National Safety Council, or Medic First Aid (for first-aid and CPR training).
- (9) An Iowa professional association, including the Iowa Association for the Education of Young Children (Iowa AEYC), the Iowa Family Child Care Association (IFCCA), the Iowa After School Alliance, and the Iowa Head Start Association.
- (10) A national professional association, including the National Association for the Education of Young Children (NAEYC), the National Child Care Association (NCCA), the National Association for Family Child Care (NAFCC), the National After School Association, and the American Academy of Pediatrics.
- (11) The Child and Adult Care Food Program and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
- (12) The Iowa department of public health, department of education, or department of human services.
- (13) Head Start agencies or the Head Start technical assistance system.

b. Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph "a" or an entity approved under paragraph "g." Approved training shall be made available to Iowa child care providers through the child care provider training registry beginning July 1, 2009.

c. Training received in a group setting may include distance learning opportunities such as training conducted over the Iowa communications network, on-line courses, or Web conferencing (webinars) if:

- (1) The training meets the requirements in subrule 110.5(14);
- (2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and
- (3) The training organization meets the requirements listed in this subrule or is approved by the department.

d. The department will not approve more than eight hours of training delivered in a single day.

e. The department may randomly monitor any state-approved training for quality control purposes.

f. Training conducted with staff either during the hours of operation of the facility, staff lunch hours, or while children are resting must not diminish the required staff ratio coverage. Staff shall not be actively engaged in care and supervision and simultaneously participate in training.

g. A training organization not approved by the department may submit training for approval to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

110.5(13) Self-study training. Up to six hours of training may be received in self-study using a training package approved by the department.

a. Self-study training packages approved by the department include curriculum developed and materials distributed by:

- (1) Department child care licensing consultants,

- (2) Iowa State University Extension, or
- (3) A child care resource and referral agency.

b. Self-study training materials not distributed by these entities may be submitted by the training organization to the department for approval on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

110.5(14) Approved training. Training provided to Iowa child care providers shall offer:

a. Instruction that is consistent with:

- (1) Iowa child care regulatory standards;
- (2) The Iowa early learning standards; and
- (3) The philosophy of developmentally appropriate practice as defined by the National Association for the Education of Young Children, the Program for Infant/Toddler Care, and the National Health and Safety Performance Standards.

b. Content equal to at least one contact hour of training.

c. An opportunity for ongoing interaction and timely feedback, including questions and answers within the contact hours if training is delivered in a group setting.

d. A certificate of training for each participant that includes:

- (1) The name of the participant.
- (2) The title of the training.
- (3) The dates of training.
- (4) The content area addressed.
- (5) The name of the training organization.
- (6) The name of the instructor.
- (7) The number of contact hours.
- (8) An indication of whether the training was delivered through self-study or in a group setting.

[ARC 8098B, IAB 9/9/09, effective 11/1/09]

441—110.6(237A) Compliance checks. During a calendar year, the department shall check 20 percent or more of all child development homes in each county for compliance with registration requirements. Completed evaluation checklists shall be placed in the registration files.

441—110.7(234) Registration decision. The department shall issue Form 470-3498, Certificate of Registration, when an applicant meets all requirements for registration. Each local office of the department shall maintain a current list of registered child development homes as a referral service to the community.

110.7(1) Registration shall be denied or revoked if the department finds a hazard to the safety and well-being of a child and the provider cannot correct or refuses to correct the hazard, even though the hazard may not have been specifically listed under the health and safety rules. Registration may also be denied or revoked if the department determines that the provider has failed to comply with standards imposed by law and these rules.

110.7(2) Record shall be kept in an open file of all denials or revocations of registration and the documentation of reasons for denying or revoking the registration.

110.7(3) Record checks. The department shall submit record checks in Iowa for each registrant, substitute, and staff member, and for anyone living in the home who is 14 years of age or older and anyone having access to a child when the child is alone. The purpose of these record checks is to determine whether the person has committed a transgression. The department may use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, or any other form required for criminal and child abuse record checks. The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or in other states.

a. Mandatory prohibition. A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) Placement on the sex offender registry.
- (3) Felony child endangerment or neglect or abandonment of a dependent person.
- (4) Felony domestic abuse.
- (5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.
- (6) Forcible felony.

b. Mandatory time-limited prohibition.

(1) A person with the following convictions or founded abuse reports is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.
2. Founded child abuse that was determined to be physical abuse.

(2) After the five-year prohibition period from the date of the conviction or the founded abuse report as defined in subparagraph 110.7(3)“b”(1), the person may request the department to perform an evaluation under paragraph 110.7(3)“c” to determine whether prohibition of the person’s involvement with child care continues to be warranted.

c. Evaluation required. For all other transgressions, the department shall deny or revoke the registration, unless an evaluation of the transgression determines that the transgression does not warrant prohibition of involvement with child care.

(1) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression.
2. The time elapsed since the transgression.
3. The circumstances under which the transgression was committed.
4. The degree of rehabilitation.
5. The likelihood that the person will commit the transgression again.
6. The number of transgressions committed by the person.

(2) The person with the transgression shall complete and return Form 470-2310, Record Check Evaluation, to be used to assist in the evaluation. Failure of the person to complete and return the form within ten calendar days of the date on the form shall result in denial or revocation of the registration certificate.

(3) The department may use information from the department’s case records in performing the evaluation.

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person’s involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department’s previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

2. Any restrictions placed on the person’s employment by the department in the previous evaluation shall remain applicable in the person’s subsequent employment.

3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person’s personnel file pursuant to the person’s authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.

4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

d. Evaluation decision. The department has final authority in determining whether prohibition of the person’s involvement with child care is warranted and in developing any conditional requirements and a corrective action plan. The evaluation and decision shall be made by the service area manager or designee.

(1) Within 30 days of receipt of the completed Form 470-2310, the department shall mail to the person subject to an evaluation and to the registrant for an employee of the registrant Form 470-2386, Record Check Decision, that explains the decision reached regarding the evaluation of the transgression. The department shall also issue Form 470-2386 when the person subject to an evaluation fails to complete the evaluation form within the ten-calendar-day time frame.

(2) If the department determines, through the record check evaluation, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care.

(3) The department may permit a person who is evaluated to be involved with child care if the person complies with the department's conditions relating to the person's involvement with child care, which may include completion of additional training. For an employee of a registrant, these conditional requirements shall be developed with the registrant.

110.7(4) Letter of revocation. A letter received by an owner or operator of a child development home initiating action to deny or revoke the home's registration shall be conspicuously posted where it can be read by parents or any member of the public. The letter shall remain posted until resolution of the action to deny or revoke an owner's or operator's certificate of registration.

110.7(5) If the department has denied or revoked a registration because the provider has continually or repeatedly failed to operate in compliance with Iowa Code chapter 237A and 441—Chapter 110, the person shall not own or operate a registered facility for a period of 12 months from the date of denial or revocation. The department shall not act on an application for registration submitted by the applicant or provider during the 12-month period. The applicant shall be prohibited from involvement with child care unless the department specifically permits the involvement.

[ARC 0418C, IAB 10/31/12, effective 1/1/13]

441—110.8(237A) Additional requirements for child development home category A. In addition to the requirements in rule 441—110.5(237A), a provider requesting registration in child development home category A shall meet the following standards:

110.8(1) *Limits on number of children in care.*

a. No more than six children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these six children, not more than four children who are 24 months of age or younger shall be present at any one time. Of these four children, no more than three may be 18 months of age or younger.

c. In addition to the six children not in school, no more than two children who attend school may be present for a period of less than two hours at a time.

d. No more than eight children shall be present at any one time when an emergency school closing is in effect.

110.8(2) *Provider qualifications.*

a. The provider shall be at least 18 years old.

b. The provider shall have three written references which attest to character and ability to provide child care.

441—110.9(237A) Additional requirements for child development home category B. In addition to the requirements in rule 441—110.5(237A), a provider requesting registration in child development home category B shall meet the following standards:

110.9(1) *Limits on number of children in care.*

a. No more than six children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these six children, not more than four children who are 24 months of age or younger shall be present at any one time. Of these four children, no more than three may be 18 months of age or younger.

c. In addition to the six children not in school, no more than four children who attend school may be present.

d. In addition to these ten children, no more than two children who are receiving care on a part-time basis may be present.

e. No more than 12 children shall be present at any one time when an emergency school closing is in effect.

f. If more than eight children are present at any one time for a period of more than two hours, the provider shall be assisted by a department-approved assistant who is at least 14 years old.

110.9(2) Provider qualifications.

a. The provider shall be at least 20 years old.

b. The provider shall have a high school diploma or GED.

c. The provider shall either:

(1) Have two years of experience as a registered or nonregistered child care provider, or

(2) Have a child development associate credential or any two-year or four-year degree in a child-care-related field and one year of experience as a registered or nonregistered child care home provider.

110.9(3) Facility requirements.

a. The home shall have a minimum of 35 square feet of child-use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors.

b. The home shall have a separate quiet area for sick children.

c. The home shall have a minimum of two direct exits to the outside from the main floor.

(1) If the second level or the basement of the home is used for the provision of child care, other than the use of a restroom, each additional child-occupied floor shall have at least one direct exit to the outside in addition to one inside stairway.

(2) All exits shall terminate at grade level with permanent steps.

(3) A basement window may be used as an exit if the window can be opened from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor, with permanent steps inside leading up to the window.

(4) Occupancy above the second floor shall not be permitted for child care.

441—110.10(237A) Additional requirements for child development home category C. In addition to the requirements in rule 441—110.5(237A), a provider requesting registration in child development home category C shall meet the following standards:

110.10(1) Limits on number of children in care.

a. No more than 12 children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these 12 children, not more than 4 children who are 24 months of age or younger shall be present at any one time. Whenever 4 children who are under the age of 18 months are in care, both providers shall be present.

c. In addition to the 12 children not in school, no more than 2 children who attend school may be present for a period of less than two hours at any one time.

d. In addition to these 14 children, no more than 2 children who are receiving care on a part-time basis may be present.

e. No more than 16 children shall be present at any one time when an emergency school closing is in effect. If more than 8 children are present at any one time due to an emergency school closing exception, the provider shall be assisted by a department-approved assistant who is at least 18 years of age.

f. If more than eight children are present, both providers shall be present. Each provider shall meet the provider qualifications for child development home category C.

110.10(2) Provider qualifications.

a. One provider who meets the following qualifications must always be present:

(1) The provider shall be at least 21 years old.

(2) The provider shall have a high school diploma or GED.

- (3) The provider shall either:
 1. Have five years of experience as a registered or nonregistered child care provider, or
 2. Have a child development associate credential or any two-year or four-year degree in a child care-related field and four years of experience as a registered or nonregistered child care home provider.

b. The coprovider shall meet the requirements of subrule 110.9(2).

110.10(3) Facility requirements.

a. The home shall have a minimum of 35 square feet of child-use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors.

b. The home shall have a separate quiet area for sick children.

c. The home shall have a minimum of two direct exits to the outside from the main floor.

(1) If the second level or the basement of the home is used for the provision of child care, other than the use of a restroom, each additional child-occupied floor shall have at least one direct exit to the outside in addition to one inside stairway.

(2) All exits shall terminate at grade level with permanent steps.

(3) A basement window may be used as an exit if the window can be opened from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor, with permanent steps inside leading up to the window.

(4) Occupancy above the second floor shall not be permitted for child care.

441—110.11(237A) Complaints. The department shall conduct an on-site visit when a complaint is received.

110.11(1) After each complaint visit, the department shall document whether the child development home was in compliance with registration requirements.

110.11(2) The written documentation of the department's conclusion as to whether the child development home was in compliance with requirements shall be available to the public. However, the identity of all complainants shall be confidential, unless expressly waived by the complainant.

441—110.12(237A) Registration actions for nonpayment of child support. The department shall revoke or deny the issuance or renewal of a child development home registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter shall apply.

110.12(1) Service of notice. The notice required by Iowa Code section 252J.8 shall be served upon the applicant or registrant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rules of Civil Procedure 56.1. Alternatively, the applicant or registrant may accept service personally or through authorized counsel.

110.12(2) Effective date. The effective date of the revocation or denial of the registration as specified in the notice required by Iowa Code section 252J.8 shall be 60 days following service of the notice upon the applicant or licensee.

110.12(3) Preparation of notice. The department director or designee of the director is authorized to prepare and serve the notice as required by Iowa Code section 252J.8 upon the applicant or registrant.

110.12(4) Responsibilities of registrants and applicants. Registrants and registrant applicants shall keep the department informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the department copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in the actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

110.12(5) District court. A registrant or applicant may file an application with the district court within 30 days of service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9.

a. The filing of the application shall stay the department action until the department receives a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

b. For purposes of determining the effective date of the revocation, or denial of the issuance or renewal of a registration, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

110.12(6) Procedure for notification. The department shall notify the applicant or registrant in writing through regular first-class mail, or such other means as the department deems appropriate in the circumstances, within ten days of the effective date of the revocation of a registration or the denial of the issuance or renewal of a registration, and shall similarly notify the applicant or registrant when the registration is issued, renewed, or reinstated following the department's receipt of a withdrawal of the certificate of noncompliance.

110.12(7) Appeal rights. Notwithstanding Iowa Code section 17A.18, the registrant does not have the right to a hearing regarding this issue, but may request a court hearing pursuant to Iowa Code section 252J.9.

441—110.13(237A) Transition exception. The following transition exceptions shall apply to providers renewing a valid previously issued child care home registration on or after December 1, 2002:

110.13(1) If the provider is providing child care to four infants at the time of renewal, the provider may continue to provide child care to those four infants. However, when the provider no longer provides child care to one or more of the four infants, or one or more of the four infants reaches the age of 24 months, this exception shall no longer apply. This exception does not affect the overall limit on the number of children in care under the child development home category within which the provider is registered.

110.13(2) If the provider is providing child care to school-age children in excess of the number allowable for the provider's registration category at the time of renewal, the provider may continue to provide care to those children and may exceed the total number of children authorized for that category by the excess number of school-age children. This exception is subject to the following conditions:

- a.* The maximum number of children attributable to this exception is five.
- b.* The provider must comply with the other requirements limiting the number of children under that registration category.
- c.* If more than eight children are present at any one time for more than two hours, the provider shall be assisted by a department-approved assistant who is at least 14 years of age.
- d.* When the provider no longer provides child care to one or more of the school-age children who was receiving child care at the time of registration, the excess number of children allowed under this exception shall be reduced accordingly.

441—110.14(237A) Prohibition from involvement with child care. If the department has prohibited a person or program from involvement with child care, that person or program shall not provide child care as a nonregistered child care home provider.

These rules are intended to implement Iowa Code section 234.6 and chapter 237A.

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CHAPTER 156
PAYMENTS FOR FOSTER CARE

[Prior to 7/1/83, Social Services[770] Ch 137]
[Previously appeared as Ch 137—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services[498]]

441—156.1(234) Definitions.

“*Child welfare services*” means age-appropriate activities to maintain a child’s connection to the child’s family and community, to promote reunification or other permanent placement, and to facilitate a child’s transition to adulthood.

“*Cost of foster care*” means the maintenance and supervision costs of foster family care, the maintenance costs and child welfare service costs of group care, and the maintenance and service costs of supervised apartment living and shelter care. The cost for foster family care supervision and for supervised apartment living services provided directly by the department caseworker shall be \$250 per month. When using this average monthly charge results in unearned income or parental liability being collected in excess of the cost of foster care, the excess funds shall be placed in the child’s escrow account. The cost for supervised apartment living services purchased from a private provider shall be the actual costs paid by the department.

“*Department*” means the Iowa department of human services.

“*Director*” means the director of the child support recovery unit of the department or the director’s designee.

“*Earned income*” means income in the form of a salary, wages, tips, bonuses, commissions earned as an employee, income from job corps or profit from self-employment.

“*Escrow account*” means an interest bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

“*Family foster care supervision*” means the support, assistance, and oversight provided by department caseworkers to children in family foster care and directed toward achievement of the child’s permanency plan goals.

“*Foster care*” means substitute care furnished on a 24-hour-a-day basis to an eligible child in a licensed or approved facility by a person or agency other than the child’s parent or guardian but does not include care provided in a family home through an informal arrangement for a period of 20 days or less. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision and health care.

“*Foster family care*” means foster care provided by a foster family licensed by the department according to 441—Chapter 113 or licensed or approved by the placing state. The care includes the provision of food, lodging, clothing, transportation, recreation, and training that is appropriate for the child’s age and mental and physical capacity.

“*Group care maintenance*” means food, clothing, shelter, school supplies, personal incidentals, daily care, general parenting, discipline, and supervision of children to ensure their well-being and safety, and administration of maintenance items provided in a group care facility.

“*Income*” means earned and unearned income.

“*Mental health professional*” means a person who meets all of the following conditions:

1. Holds at least a master’s degree in a mental health field including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and

2. Holds a current Iowa license when required by the Iowa professional licensure laws (such as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker); and

3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and service needs and in providing mental health services.

“*Mental retardation professional*” means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the

educational requirements for the profession, as required in the state of Iowa, and has one year of experience working with persons with mental retardation.

“*Parent*” means the biological or adoptive parent of the child.

“*Parental liability*” means a parent’s liability for the support of a child during the period of foster care placement. Liability shall be determined pursuant to 441—Chapter 99, Division I.

“*Physician*” means a licensed medical or osteopathic doctor as defined in rule 441—77.1(249A).

“*Service area manager*” means the department employee or designee responsible for managing department offices within a department service area and for implementing policies and procedures of the department.

“*Special needs child*” means a child with needs for emotional care, behavioral care, or physical and personal care which require additional skill, knowledge, or responsibility on the part of the foster parents, as measured by Form 470-4401, Foster Child Behavioral Assessment. See subrule 156.6(4).

“*Unearned income*” means any income which is not earned income and includes supplemental security income (SSI) and other funds available to a child residing in a foster care placement.

This rule is intended to implement Iowa Code section 234.39.

[ARC 7606B, IAB 3/11/09, effective 5/1/09; ARC 7741B, IAB 5/6/09, effective 7/1/09; ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—156.2(234) Foster care recovery. The department shall recover the cost of foster care provided by the department pursuant to the rules in this chapter and the rules in 441—Chapter 99, Division I, which establishes policies and procedures for the computation and collection of parental liability.

156.2(1) Funds shall be applied to the cost of foster care in the following order and each source exhausted before utilizing the next funding source:

- a. Unearned income of the child.
- b. Parental liability of the noncustodial parent.
- c. Parental liability of custodial parent(s).

156.2(2) The department shall serve as payee to receive the child’s unearned income. When a parent or guardian is not available or is unwilling to do so, the department shall be responsible for applying for benefits on behalf of a child placed in the care of the department. Until the department becomes payee, the payee shall forward benefits to the department. For voluntary foster care placements of children aged 18 and over, the child is the payee for the unearned income. The child shall forward these benefits, up to the actual cost of foster care, to the department.

156.2(3) The custodial parent shall assign child support payments to the department.

156.2(4) Unearned income of a child and parental liability of the noncustodial parent shall be placed in an account from whence it shall be applied toward the cost of the child’s current foster care and the remainder placed in an escrow account.

156.2(5) When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the foster care payments and not prohibited by the source of the funds.

156.2(6) When the child leaves foster care, funds in escrow shall be paid to the custodial parent(s) or guardian or to the child when the child has attained the age of majority, unless a guardian has been appointed.

156.2(7) When a child who has unearned income returns home after the first day of a month, the remaining portion of the unearned income (based on the number of days in the particular month) shall be made available to the child and the child’s parents, guardian or custodian, if the child is eligible for the unearned income while in the home of a parent, guardian or custodian.

This rule is intended to implement Iowa Code section 234.39.

441—156.3(252C) Computation and assessment of parental liability. Rescinded IAB 3/13/96, effective 5/1/96.

441—156.4(252C) Redetermination of liability. Rescinded IAB 3/13/96, effective 5/1/96.

441—156.5(252C) Voluntary payment. Rescinded IAB 3/13/96, effective 5/1/96.

441—156.6(234) Rate of maintenance payment for foster family care.

156.6(1) Basic rate. Effective July 1, 2012, a monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

<u>Age of child</u>	<u>Daily rate</u>
0 through 5	\$15.98
6 through 11	\$16.62
12 through 15	\$18.19
16 or over	\$18.43

156.6(2) Out-of-state rate. A monthly payment for care in a foster family home licensed or approved in another state shall be made to the foster family based on the rate schedule in effect in Iowa, except that the service area manager or designee may authorize a payment to the foster family at the rate in effect in the other state if the child's family lives in that state and the goal is to reunite the child with the family.

156.6(3) Mother and child in foster care. When the child in foster care is a mother whose young child is in placement with her, the rate paid to the foster family shall be based on the daily rate for the mother according to the rate schedule in subrules 156.6(1) and 156.6(4) and for the child according to the rate schedule in subrule 156.6(1). The foster parents shall provide a portion of the young child's rate to the mother to meet the partial maintenance needs of the young child as defined in the case permanency plan.

156.6(4) Difficulty of care payment.

a. For placements made before January 1, 2007, when foster parents provide care to a special needs child, the foster family shall be paid the basic maintenance rate plus \$5 per day for extra expenses associated with the child's special needs. This rate shall continue for the duration of the placement.

b. When a foster family provides care to a sibling group of three or more children, an additional payment of \$1 per day per child may be authorized for each nonspecial needs child in the sibling group.

c. When the foster family's responsibilities in the case permanency plan include providing transportation related to family or preplacement visits outside the community in which the foster family lives, the department worker may authorize an additional maintenance payment of \$1 per day. Expenses over the monthly amount may be reimbursed with prior approval by the worker. Eligible expenses shall include the actual cost of the most reasonable passenger fare or gas.

d. Effective January 1, 2007, when a foster family provides care to a child who was receiving behavioral management services for children in therapeutic foster care in that placement as of October 31, 2006, the foster family shall be paid the basic maintenance rate plus \$15 per day for that child. This rate shall continue for the duration of the placement.

e. Effective January 1, 2007, when a service area manager determines that as of October 31, 2006, a foster family was providing care for a child comparable to behavioral management services for children in therapeutic foster care, except that the placement is supervised by the department and the child's treatment plan is supervised by a physician, mental health professional, or mental retardation professional, the foster family shall be paid the basic maintenance rate plus \$15 per day for that child. This rate shall continue for the duration of the placement.

f. For placements made on or after January 1, 2007, the supervisor may approve an additional maintenance payment above the basic rate in subrule 156.6(1) to meet the child's special needs as identified by the child's score on Form 470-4401, Foster Child Behavioral Assessment. The placement worker shall complete Form 470-4401 within 30 days of the child's initial entry into foster care.

(1) Additional maintenance payments made under this paragraph shall begin no earlier than the first day of the month following the month in which Form 470-4401 is completed and shall be awarded as follows:

1. Behavioral needs rated at level 1 qualify for a payment of \$4.81 per day.
2. Behavioral needs rated at level 2 qualify for a payment of \$9.62 per day.
3. Behavioral needs rated at level 3 qualify for a payment of \$14.44 per day.

(2) The department shall review the child's need for this difficulty of care maintenance payment using Form 470-4401:

1. Whenever the child's behavior changes significantly;
 2. When the child's placement changes;
 3. After termination of parental rights, in preparation for negotiating an adoption subsidy or pre-subsidy payment; and
 4. Before a court hearing on guardianship subsidy.
- g. All maintenance payments, including difficulty of care payments, shall be documented on Form 470-0716, Foster Family Placement Contract.
- h. Rescinded IAB 1/3/07, effective 1/1/07.

156.6(5) Payment method. All foster family maintenance payments shall be made directly to the foster family.

156.6(6) Return of overpayments. When a foster family has received payments in excess of those allowed under this chapter, the department caseworker shall ask the foster family to return the overpayment. If the foster family is returning the overpayment to the department, the caseworker will note the monthly amount the foster family agrees to pay in the family's case file. The amount returned shall not be less than \$50 per month.

This rule is intended to implement Iowa Code section 234.38 and 2012 Iowa Acts, Senate File 2336, section 34.

[ARC 8010B, IAB 7/29/09, effective 10/1/09; ARC 8451B, IAB 1/13/10, effective 1/1/10; ARC 8653B, IAB 4/7/10, effective 5/12/10; ARC 8904B, IAB 6/30/10, effective 7/1/10; ARC 9778B, IAB 10/5/11, effective 11/9/11; ARC 0240C, IAB 8/8/12, effective 7/11/12; ARC 0419C, IAB 10/31/12, effective 12/5/12]

441—156.7(234) Purchase of family foster care services. Rescinded IAB 5/6/09, effective 7/1/09.

441—156.8(234) Additional payments.

156.8(1) Clothing allowance. When, in the judgment of the worker, clothing is needed at the time the child is removed from the child's home and placed in foster care, an allowance may be authorized, not to exceed \$237.50, to purchase clothing.

a. Once during each calendar year that the child remains in foster care, the department worker may authorize another clothing allowance, not to exceed \$190 for family foster care and \$100 for all other levels when:

- (1) The child needs clothing to replace lost clothing or because of growth or weight change, and
- (2) The child does not have escrow funds to cover the cost.

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the worker within 30 days of purchase for auditing purposes, using Form 470-1952, Foster Care Clothing Allowance.

156.8(2) Supervised apartment living. Effective July 1, 2011, when a child is initially placed in supervised apartment living, the service area manager or designee may authorize an allowance not to exceed \$600 if the child does not have sufficient resources to cover initial costs.

156.8(3) Medical care. When a child in foster care needs medical care or examinations which are not covered by the Medicaid program and no other source of payment is available, the cost may be paid from foster care funds with the approval of the service area manager or designee. Eligible costs shall include emergency room care, medical treatment by out-of-state providers who refuse to participate in the Iowa Medicaid program, and excessive expenses for nonprescription drugs or supplies. Requests for payment for out-of-state medical treatment and for nonprescription drugs or supplies shall be approved prior to the care being provided or the drugs or supplies purchased. Claims shall be submitted to the department on Form GAX, General Accounting Expenditure, within 90 days after the service is provided. The rate of payment shall be the same as allowed under the Iowa Medicaid program.

156.8(4) Transportation for medical care. When a child in foster family care has expenses for transportation to receive medical care which cannot be covered by the Medicaid program, the expenses may be paid from foster care funds, with the approval of the service area manager. The claim for all the expenses shall be submitted to the department on Form GAX, General Accounting Expenditure, within

90 days after the trip. This payment shall not duplicate or supplement payment through the Medicaid program. The expenses may include the actual cost of meals, parking, child care, lodging, passenger fare, or mileage at the rate granted state employees.

156.8(5) *Funeral expense.* When a child under the guardianship of the department dies, the department will pay funeral expenses not covered by the child's resources, insurance or other death benefits, the child's legal parents, or the child's county of legal settlement, not to exceed \$650.

The total cost of the funeral and the goods and services included in the total cost shall be the same as defined in rule 441—56.3(239,249).

The claim shall be submitted by the funeral director to the department on Form GAX, General Accounting Expenditure, and shall be approved by the service area manager. Claims shall be submitted within 90 days after the child's death.

156.8(6) *School fees.* Payment for required school fees of a child in foster family care or supervised apartment living that exceed \$5 may be authorized by the department worker in an amount not to exceed \$50 per calendar year if the child does not have sufficient escrow funds to cover the cost. Required school fees shall include:

- a. Fees required for participation in school or extracurricular activities; and
- b. Fees related to enrolling a child in preschool when a mental health professional or a mental retardation professional has recommended school attendance.

156.8(7) *Respite care.* The service area manager or designee may authorize respite for a child in family foster care for up to 24 days per calendar year per placement. Respite shall be provided by a licensed foster family. The payment rate to the respite foster family shall be the rate authorized under rule 441—156.6(234) to meet the needs of the child.

156.8(8) *Tangible goods, child care, and ancillary services.* To the extent that a foster child's escrow funds are not available, the service area manager or designee may authorize reimbursement to foster parents for the following:

a. Tangible goods for a special needs child including, but not limited to, building modifications, medical equipment not covered by Medicaid, specialized educational materials not covered by educational funds, and communication devices not covered by Medicaid.

b. Child care services when the foster parents are working, the child is not in school, and the provision of child care is identified in the child's case permanency plan.

(1) Child care services shall be provided by a licensed foster parent or a licensed or registered child care provider when available.

(2) When foster parents elect to become child care providers, they shall be registered pursuant to 441—Chapter 110.

c. Ancillary services needed by the foster parent to meet the needs of a special needs child including, but not limited to, specialized classes when directed by the case permanency plan.

d. Ancillary services needed by the special needs child including, but not limited to, recreation fees, in-home tutoring and specialized classes not covered by education funds.

e. Requests for tangible goods, child care, and ancillary services shall be submitted to the service area manager for approval on Form 470-3056, Request for Tangible Goods, Child Care, and Ancillary Services. Payment rates for tangible goods and ancillary services shall be comparable to prevailing community standards. Payment rates for child care shall be established pursuant to 441—subrule 170.4(7).

f. Prior payment authorization shall be issued by the service area manager before tangible goods, child care, and ancillary services are purchased by or for foster parents.

This rule is intended to implement Iowa Code section 234.35.

[ARC 7606B, IAB 3/11/09, effective 5/1/09; ARC 8010B, IAB 7/29/09, effective 10/1/09; ARC 8451B, IAB 1/13/10, effective 1/1/10; ARC 8653B, IAB 4/7/10, effective 5/12/10; ARC 9778B, IAB 10/5/11, effective 11/9/11]

441—156.9(234) Rate of payment for foster group care.

156.9(1) In-state reimbursement. Effective November 1, 2006, public and private foster group care facilities licensed or approved in the state of Iowa shall be paid for group care maintenance and child welfare services in accordance with the rate-setting methodology in this subrule.

a. A provider of group care services shall maintain at least the minimum staff-to-child ratio during prime programming time as established in the contract. Staff shall meet minimum qualifications as established in 441—Chapters 114 and 115. The actual number and qualifications of the staff will vary depending on the needs of the children.

b. Additional payment for group care maintenance may be authorized if a facility provides care for a mother and her young child according to subrule 156.9(4).

c. Reimbursement rates shall be adjusted based on the provider's rate in effect on October 31, 2006, to reflect an estimate that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services. The reimbursement rate shall be calculated as follows:

(1) Step 1. Annualize the provider's combined daily reimbursement rate for maintenance and service in effect on October 31, 2006, by multiplying that combined rate by 365 days.

(2) Step 2. Annualize the provider's remedial services reimbursement rate for one hour per day of remedial services code 96153 (health and behavioral interventions - group), as established by the Iowa Medicaid enterprise, by multiplying that rate by 365 days.

(3) Step 3. Annualize the provider's remedial services reimbursement rate for one hour per week of remedial services code 96152 (health and behavioral interventions - individual), as established by the Iowa Medicaid enterprise, by multiplying that rate by 52 weeks.

(4) Step 4. Add the amounts determined in Steps 2 and 3.

(5) Step 5. Subtract the amount determined in Step 4 from the amount determined in Step 1.

(6) Step 6. Divide the amount determined in Step 5 by 365 to compute the new combined maintenance and child welfare service per diem rate.

(7) Step 7. Determine the maintenance portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 85.62 percent.

(8) Step 8. Determine the child welfare service portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 14.38 percent.

EXAMPLE: Provider A has the following rates as of October 31, 2006:

- A combined daily maintenance and service rate of \$121.45;
- A Medicaid rate for service code 96153 of \$5.10 per 15 minutes, or \$20.40 per hour;
- A Medicaid rate for service code 96152 of \$19.92 per 15 minutes, or \$79.68 per hour.

Step 1. $\$121.45 \times 365 \text{ days} = \$44,329.25$

Step 2. $\$20.40 \times 365 \text{ days} = \$7,446.00$

Step 3. $\$79.68 \times 52 \text{ weeks} = \$4,143.36$

Step 4. $\$7,446.00 + \$4,143.36 = \$11,589.36$

Step 5. $\$44,329.25 - \$11,589.36 = \$32,739.89$

Step 6. $\$32,739.89 \div 365 \text{ days} = \89.70

Step 7. $\$89.70 \times 0.8562 = \76.80 maintenance rate

Step 8. $\$89.70 \times 0.1438 = \12.90 child welfare service rate

Provider A's rates are \$76.80 for maintenance and \$12.90 for child welfare services.

d. No less than annually, the department shall redetermine the allocation of the combined child welfare service per diem rate between the maintenance and service portions based on review of verified remedial services cost reports for foster group care services providers. If the new allocation differs from the current allocation, the department shall:

(1) Reallocate the combined child welfare service per diem for foster group care between the maintenance and service portions of the combined rate; and

(2) Notify all providers of any change in the allocation between maintenance and service rates and the effective date.

156.9(2) *Out-of-state group care payment rate.* The payment rate for maintenance and child welfare services provided by public or private agency group care licensed or approved in another state shall be established using the same rate-setting methodology as that in subrule 156.9(1), unless the director determines that appropriate care is not available within the state pursuant to the following criteria and procedures.

a. Criteria. When determining whether appropriate care is available within the state, the director shall consider each of the following:

- (1) Whether the child's treatment needs are exceptional.
- (2) Whether appropriate in-state alternatives are available.
- (3) Whether an appropriate in-state alternative could be developed by using juvenile court-ordered service fund or wrap-around funds.
- (4) Whether the placement and additional payment are expected to be time-limited with anticipated outcomes identified.
- (5) If the placement has been approved by the service area manager or chief juvenile court officer.

b. Procedure. The service area manager or chief juvenile court officer shall submit the request for director's exception to the Appeals Section, Department of Human Services, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114. This request shall be made in advance of placing the child and should allow a minimum of two weeks for a response. The request shall contain documentation addressing the criteria for director's approval listed in 156.9(2) "a."

c. Appeals. The decision of the director regarding approval of an exception to the rate determination in rule 441—152.3(234) is not appealable.

156.9(3) *Supplemental payments for in-state facilities.* Rescinded IAB 9/1/93, effective 8/12/93.

156.9(4) *Mother-young child rate.* When a group foster care facility provides foster care for a mother and her young child, the maintenance rate for the mother shall include an additional amount to cover the actual and allowable maintenance needs of the young child. No additional amount shall be allowed for service needs of the child.

a. The rate shall be determined according to the policies in rule 441—152.3(234) and added to the maintenance rate for the mother. The young child portion of the maintenance rate shall be limited to the costs associated with food, clothing, shelter, personal incidentals, and supervision for each young child and shall not exceed the maintenance rate for the mother. Costs for day care shall not be included in the maintenance rate.

b. Rescinded IAB 6/8/94, effective 6/1/94.

c. Unless the court has transferred custody from the mother, the mother shall have primary responsibility for providing supervision and parenting for the young child. The facility shall provide services to the mother to assist her to meet her parenting responsibilities and shall monitor her care of the young child.

d. The facility shall provide services to the mother to assist her to:

- (1) Obtain a high school diploma or general education equivalent (GED).
- (2) Develop preemployment skills.
- (3) Establish paternity for her young child whenever appropriate.
- (4) Obtain child support for the young child whenever paternity is established.

e. The agency shall maintain information in the mother's file on:

- (1) The involvement of the mother's parents or of other adults.
- (2) The involvement of the father of the minor's child, including steps taken to establish paternity, if appropriate.
- (3) A decision of the minor to keep and raise her young child.
- (4) Plan for the minor's completion of high school or a GED program.
- (5) The parenting skills of the minor parent.
- (6) Child care and transportation plans for education, training or employment.
- (7) Ongoing health care of the mother and child.
- (8) Other services as needed to address personal or family problems or to facilitate the personal growth and development toward economic self-sufficiency of the minor parent and young child.

f. The agency shall designate \$35 of the young child rate as an allowance to the mother to meet the maintenance needs of her young child, as defined in her case permanency plan.

This rule is intended to implement Iowa Code sections 234.6 and 234.38.
[ARC 7741B, IAB 5/6/09, effective 7/1/09; ARC 8715B, IAB 5/5/10, effective 7/1/10; ARC 9778B, IAB 10/5/11, effective 11/9/11]

441—156.10(234) Payment for reserve bed days.

156.10(1) Group care facilities. The department shall provide payment for group care maintenance and child welfare services according to the following policies.

a. Family visits. Reserve bed payment shall be made for days a child is absent from the facility for family visits when the absence is in accord with the following:

- (1) The visits shall be consistent with the child's case permanency plan.
- (2) The facility shall notify the worker of each visit and its planned length prior to the visit.
- (3) The intent of the department and the facility shall be for the child to return to the facility after the visit.
- (4) Staff from the facility shall be available to provide support to the child and family during the visit.
- (5) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (6) If the department and the facility agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (7) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
- (8) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.
- (9) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

b. Hospitalization. Reserve bed payment shall be made for days a child is absent from the facility for hospitalization when the absence is in accord with the following:

- (1) The facility shall contact the worker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.
- (2) The intent of the department and the facility shall be for the child to return to the facility after the hospitalization.
- (3) Staff from the facility shall be available to provide support to the child and family during the hospitalization.
- (4) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (5) If the department and the facility agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (6) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
- (7) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.
- (8) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

c. Runaways. Reserve bed payment shall be made for days a child is absent from the facility after the child has run away when the absence is in accord with the following:

- (1) The facility shall notify the worker within 24 hours after the child runs away.
- (2) The intent of the department and the facility shall be for the child to return to the facility once the child is found.
- (3) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (4) If the department and the facility agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(6) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

(7) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

d. Preplacement visits. Reserve bed payment shall be made when a child is making a planned preplacement visit to another foster care placement or an adoptive placement when the absence is in accord with the following:

(1) The visits shall be consistent with the child's case permanency plan.

(2) The intent of the department and the facility shall be for the child to return to the facility.

(3) Staff from the facility shall be available to provide support to the child and provider during the visit.

(4) Payment shall be canceled and payment returned if the facility refuses to accept the child back.

(5) Payment shall not exceed two consecutive days.

(6) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

156.10(2) Foster family care.

a. Family visits. Reserve bed payment shall be made for days a foster child is absent from the foster family home for family visits when the absence is in accord with the following:

(1) The visits shall be consistent with the child's case permanency plan.

(2) The intent of the department and the foster family shall be for the child to return to the foster family home after the visit.

(3) Payment shall be canceled and payments returned if the foster family refuses to accept the child back.

(4) If the department and the foster family agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.

(5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(6) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

b. Hospitalization. Reserve bed payment shall be made for days a foster child is absent from the foster family home for hospitalization when the absence is in accord with the following:

(1) The intent of the department and the foster family shall be for the child to return to the foster family home after the hospitalization.

(2) Payment shall be canceled and payments returned if the foster family refuses to accept the child back.

(3) If the department and the foster family agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.

(4) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(5) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

c. Runaways. Reserve bed payment shall be made for days a foster child is absent from the foster family home after the child has run away when the absence is in accord with the following:

(1) The foster family shall notify the worker within 24 hours after the child runs away.

(2) The intent of the department and the foster family shall be for the child to return to the foster family home once the child is found.

(3) Payment shall be canceled and payments returned if the foster family refuses to accept the child back.

(4) If the department and the foster family agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.

(5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(6) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

d. Preplacement visits. Reserve bed payment shall be made when a foster child is making a planned preplacement visit to another foster care placement or an adoptive placement when the absence is in accord with the following:

- (1) The visits shall be consistent with the child's case permanency plan.
- (2) The intent of the department and the foster family home shall be for the child to return to the foster family home.
- (3) Payment shall be canceled and payment returned if the foster family home refuses to accept the child back.
- (4) Payment shall not exceed two consecutive days.

156.10(3) Shelter care facilities.

a. Hospitalization. Reserve bed payment shall be made for days a child is absent from the facility for hospitalization when the absence is in accord with the following:

- (1) The facility shall contact the worker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.
- (2) The intent of the department and the facility shall be for the child to return to the facility after the hospitalization.
- (3) Staff from the facility shall be available to provide support to the child and family during the hospitalization.
- (4) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (5) If the department and the facility agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (6) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
- (7) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.
- (8) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

b. Preplacement visits. Reserve bed payment shall be made when a child is making a planned preplacement visit to another foster care placement or an adoptive placement when the absence is in accord with the following:

- (1) The visits shall be consistent with the child's case permanency plan.
- (2) The intent of the department and the facility shall be for the child to return to the facility.
- (3) Staff from the facility shall be available to provide support to the child and provider during the visit.
- (4) Payment shall be canceled and payment returned if the facility refuses to accept the child back.
- (5) Payment shall not exceed two consecutive days.
- (6) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

This rule is intended to implement Iowa Code sections 234.6 and 234.35.
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—156.11(234) Emergency care.

156.11(1) and 156.11(2) Rescinded IAB 3/11/09, effective 5/1/09.

156.11(3) Shelter care payment. Public and private juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the rate-setting methodology in 441—paragraph 150.3(5)“p.”

a. Facilities shall bill for actual units of service provided in accordance with 441—subrule 150.3(8). In addition, facilities may be guaranteed a minimum level of payment to the extent determined by the department through a request-for-proposal process.

- (1) Guaranteed payment shall be calculated monthly.

(2) The guaranteed level of payment shall be calculated by multiplying the number of beds for which payment is guaranteed by the number of days in the month.

(3) When the actual unit billings for a facility do not equal the guaranteed level of payment for the month, the facility may submit a supplemental billing for the deficiency.

(4) The amount of the supplemental billing shall be determined by multiplying the facility's unit cost for shelter care by the number of units below the guaranteed level for the month for which the facility was not reimbursed.

b. The total reimbursement to the agency shall not exceed the agency's allowable costs as defined in 441—subrule 150.3(5). Agencies shall refund any payments which have been made in excess of the agencies' allowable costs.

c. Shelter contracts for the state fiscal year beginning July 1, 2007, shall provide for the statewide availability of a daily average of 273 guaranteed emergency juvenile shelter care beds during the fiscal year.

This rule is intended to implement Iowa Code section 234.35.

[ARC 7606B, IAB 3/11/09, effective 5/1/09]

441—156.12(234) Supervised apartment living.

156.12(1) Maintenance. Effective July 1, 2011, when a child at least aged 16½ but under the age of 20 is living in a supervised apartment living situation, the monthly maintenance payment for the child shall be \$750. This payment may be paid to the child or another payee, other than a department employee, for the child's living expenses.

156.12(2) Service. When services for a youth in supervised apartment living are purchased, the service components and number of hours purchased shall be specified by the service worker in the youth's case permanency plan.

This rule is intended to implement Iowa Code section 234.35 and 2011 Iowa Acts, House File 649, section 28(4).

[ARC 8451B, IAB 1/13/10, effective 1/1/10; ARC 8653B, IAB 4/7/10, effective 5/12/10; ARC 9778B, IAB 10/5/11, effective 11/9/11]

441—156.13(234) Excessive rates. Rescinded IAB 6/9/93, effective 8/1/93.

441—156.14(234,252C) Voluntary placements. When placement is made on a voluntary basis, the parent or guardian shall complete and sign Form 470-0715, Voluntary Placement Agreement.

441—156.15(234) Child's earnings. Earned income of a child who is not in a supervised apartment living arrangement and who is a full-time student or engaged in an educational or training program shall be reported to the department and its use shall be a part of a plan for service, but the income shall not be used towards the cost of the child's care as established by the department. When the earned income of children in supervised apartment living arrangements or of other children exceeds the foster care standard, the income in excess of the standard shall be applied to meet the cost of the child's care. When the income of the child exceeds twice the cost of maintenance, the child shall be discontinued from foster care.

441—156.16(234) Trust funds and investments.

156.16(1) When the child is a beneficiary of a trust and the proceeds therefrom are not currently available, or are not sufficient to meet the child's needs, the worker shall assist the child in having a petition presented to the court requesting release of funds to help meet current requirements. When the child and responsible adult cooperate in necessary action to obtain a ruling of the court, income shall not be considered available until the decision of the court has been rendered and implemented. When the child and responsible adult do not cooperate in the action necessary to obtain a ruling of the court, the trust fund or investments shall be considered as available to meet the child's needs immediately. When the child or responsible adult does not cooperate within 90 days in making the income available the maintenance payment shall be terminated.

156.16(2) The Iowa department of human services shall be payee for income from any trust funds or investments unless limited by the trust.

156.16(3) Savings accounts from any income and proceeds from the liquidation of securities shall be placed in the child's account maintained by the department and any amount in excess of \$1,500 shall be applied towards cost of the child's maintenance.

This rule is intended to implement Iowa Code section 234.39.

441—156.17(234) Preadoptive homes. Payment for a foster child placed in a preadoptive home shall be limited to the amount negotiated pursuant to rule 441—201.5(600) and shall not exceed the foster care maintenance amount paid in family foster care.

This rule is intended to implement Iowa Code section 234.38.
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—156.18(237) Foster parent training expenses. Rescinded IAB 7/29/09, effective 10/1/09.

441—156.19(237) Rate of payment for care in a residential care facility. When a child is receiving group care maintenance and child welfare services in a licensed residential care facility and is not eligible for supplemental security income or state supplementary assistance, the department will pay for the group care maintenance and child welfare services in accordance with subrule 156.9(1). When a child receives group care maintenance and child welfare services in a licensed residential care facility and is eligible for supplemental security income or state supplementary assistance, the department will pay for child welfare services in accordance with subrule 156.9(1).

This rule is intended to implement Iowa Code section 237.1(3)“e.”

441—156.20(234) Eligibility for foster care payment.

156.20(1) Client eligibility. Foster care payment shall be limited to the following populations.

a. Youth under the age of 18 shall be eligible based on legal status, subject to certain limitations.

(1) Legal status. The youth's placement shall be based on one of the following legal statuses:

1. The court has ordered foster care placement pursuant to Iowa Code section 232.52, subsection 2, paragraph “d,” Iowa Code section 232.102, subsection 1, Iowa Code section 232.117, or Iowa Code section 232.182, subsection 5.

2. The child is placed in shelter care pursuant to Iowa Code section 232.20, subsection 1, or Iowa Code section 232.21.

3. The department has agreed to provide foster care pursuant to rule 441—202.3(234).

(2) Limitations. Department payment for group care shall be limited to placements which have been authorized by the department and which conform to the service area group care plan developed pursuant to rule 441—202.17(232). Payment for an out-of-state group care placement shall be limited to placements approved pursuant to 441—subrule 202.8(2).

b. Youth aged 18 and older who meet the definition of child in rule 441—202.1(234) shall be eligible based on age, a voluntary placement agreement pursuant to 441—subrule 202.3(3), and type of placement.

(1) Except as provided in subparagraph 156.20(1)“b”(3), payment for a child who is 18 years of age shall be limited to family foster care or supervised apartment living.

(2) Except as provided in subparagraph 156.20(1)“b”(3), payment for a child who is 19 years of age shall be limited to supervised apartment living.

(3) Exceptions. An exception to subparagraphs (1) and (2) shall be granted for all unaccompanied refugee minors. The service area manager or designee shall grant an exception for other children when the child meets all of the following criteria. The child's eligibility for the exception shall be documented in the case record.

1. The child does not have mental retardation. Funding for services for persons with mental retardation is the responsibility of the county or state pursuant to Iowa Code section 222.60.

2. The child is at imminent risk of becoming homeless or of failing to graduate from high school or obtain a general equivalency diploma. "At imminent risk of becoming homeless" shall mean that a less restrictive living arrangement is not available.

3. The placement is in the child's best interests.

4. Funds are available in the service area's allocation. When the service area manager has approved payment for foster care pursuant to this subparagraph, funds which may be necessary to provide payment for the time period of the exception, not to exceed the current fiscal year, shall be considered encumbered and no longer available. Each service area's funding allocation shall be based on the service area's portion of the total number of children in foster care on March 31 preceding the beginning of the fiscal year, who would no longer be eligible for foster care during the fiscal year due to age, excluding unaccompanied refugee minors.

c. A young mother shall be eligible for the extra payment for her young child living with her in care as set forth in subrule 156.6(4), paragraph "a," and subrule 156.9(4) if all of the following apply:

(1) The mother is placed in foster care.

(2) The mother's custodian determines, as documented in the mother's case permanency plan, that it is in her best interest and the best interest of the young child that the child remain with her.

(3) A placement is available.

(4) The mother agrees to refund to the department any child support payments she receives on behalf of the child and to allow the department to be made payee for any other unearned income for the child.

156.20(2) Provider eligibility for payment.

a. Providers of shelter care services and supervised apartment living services shall have a purchase of service contract under 441—Chapter 150 in force.

b. Providers of group care services shall have a foster group care services contract under 441—Chapter 152 in force.

This rule is intended to implement Iowa Code sections 232.143, 234.35 and 234.38.
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

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CHAPTER 202
FOSTER CARE PLACEMENT AND SERVICES

[Prior to 7/1/83, Social Services[770] Ch 136]
[Previously appeared as Ch 136—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services[498]]

441—202.1(234) Definitions.

“*Case permanency plan*” shall mean the plan identifying goals, needs, strengths, problems, services, time frames for meeting goals and for delivery of the services to the child and parents, objectives, desired outcomes, and responsibilities of all parties involved and reviewing progress.

“*Child*” shall mean the same as defined by Iowa Code section 234.1.

“*Department*” shall mean the Iowa department of human services and includes the local offices of the department.

“*Eligible child*” shall mean a child for whom the court has given guardianship to the department or has transferred legal custody to the department or for whom the department has agreed to provide foster care services on the basis of a signed placement agreement or who has been placed in emergency care for a period of not more than 30 days upon the approval of the director or the director’s designee.

“*Facility*” means the personnel, program, plant and equipment of a person or agency providing child foster care.

“*Family safety, risk, and permanency service*” means a service provided under 441—Chapter 172 that uses strategies and interventions designed to achieve safety and permanency for a child with an open department child welfare case, regardless of the setting in which the child resides.

“*Foster care*” shall mean substitute care furnished on a 24-hour-a-day basis to an eligible child in a licensed or approved facility by a person or agency other than the child’s parent or guardian but does not include care provided in a family home through an informal arrangement for a period of 20 days or less. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision, and health care.

“*Natural parent*” shall mean a parent by blood, marriage, or adoption.

“*Person*” or “*agency*” shall mean individuals, institutions, partnerships, voluntary associations, and corporations, other than institutions under the management or control of the department, who are licensed by the department as a foster family home, child caring agency or child placing agency, or approved as a shelter care facility.

“*Resource family*” means an individual person or married couple who is licensed to provide foster family care or approved for adoption.

“*Safety-related information*” means information that indicates whether the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse.

“*Service area manager*” shall mean the department employee responsible for managing department offices and personnel within the service area and for implementing policies and procedures of the department.

“*Social history*” or “*child study*” means a written description of the child that includes strengths and needs; medical, mental, social, educational, placement and court history; and the child’s relationships with the birth family and significant others.

This rule is intended to implement Iowa Code section 234.6(6) “b.”
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—202.2(234) Eligibility.

202.2(1) Only an eligible child as defined in these rules shall be considered for foster care services supervised by the department.

202.2(2) The need for foster care placement and social and other related services, including but not limited to medical, psychiatric, psychological, and educational services, shall be determined by an assessment of the child and family to determine their needs and the appropriateness of services.

a. Assessments shall include:

- (1) The educational, physical, psychological, social, family living, and recreational needs of the child,
- (2) The family's ability to meet those needs, and
- (3) A family genogram to determine relatives and other suitable support persons who have a kinship bond with the child.

b. The assessment is a continual process to identify needed changes in service or placement for the child.

202.2(3) With the exception of emergency care, a social history shall be completed on each child before a department recommendation for foster care placement, using the outline RC-0027, Social History Format.

a. For voluntary emergency placements, a social history shall be completed before a decision is made to extend the placement beyond 30 days.

b. For court-ordered emergency placements, a social history shall be completed before the disposition hearing.

202.2(4) Foster care placement shall be recommended by the department only after efforts have been made to prevent or eliminate the need for removal of the child from the family unless the child is in immediate danger at home.

202.2(5) The need for foster care and the efforts to prevent placement shall be evaluated by a review committee prior to placement or, for emergency placements only, within 30 days after the date of placement. For children who are mentally retarded or developmentally disabled and receive case management services, this requirement may be met by the interdisciplinary staffing described in 441—Chapter 90, as long as the service area manager approves, the department worker attends the staffing, and the staffing meets the requirements of paragraphs “*b*” to “*h*” below.

The review shall meet the following requirements:

a. Department staff on the review committee shall be the child's service worker, a supervisor knowledgeable in child welfare, and one or more additional persons appointed by the service area manager.

b. The review shall be open to the participation of the parents or guardian of the child, local and area education staff, juvenile court staff, the guardian ad litem, current service providers and previous service providers who have maintained a license.

c. The present foster care provider, if any, shall be notified of the review and have the opportunity to participate.

d. Written notice of the review shall be sent to the child's parents or guardian at least five working days prior to the date of the review.

e. Other persons may be invited to the review with the consent of the parents or guardian.

f. A written summary of the review recommendations shall be sent to the child's parents or guardian following the review.

g. Review committee recommendations shall be advisory to the service worker and supervisor, who are responsible for development of the department case plan and for reports and recommendations to the juvenile court.

h. At least one of the persons on the review committee shall be someone without responsibility for the case management or the delivery of services to either the child or the parents or guardian who are the subject of the review.

202.2(6) The citizenship or alien status of a child who enters foster care must be verified.

a. When the child will remain in foster care for no more than 60 days, Form 470-4500, Statement of Citizenship Status: Foster Care, signed by the parent or guardian of the child is sufficient.

b. When the child will remain in foster care for more than 60 days, one of the documents listed in this paragraph is required. Any one of the following documents shall be accepted as satisfactory documentation of citizenship or nationality:

(1) A certificate of birth in the United States.

(2) Form FS-240 (Report of Birth Abroad of a Citizen of the United States) issued by the U.S. Citizenship and Immigration Services.

(3) Form FS-545 or Form DS-1350 (Certification of Birth Abroad) issued by the U.S. Citizenship and Immigration Services.

(4) A United States passport.

(5) Form I-97 (United States Citizen Identification Card) issued by the U.S. Citizenship and Immigration Services.

(6) Form N-560 or N-561 (Certificate of United States Citizenship) issued by the U.S. Citizenship and Immigration Services.

(7) Form N-550 or N-570 (Certificate of Naturalization) issued by the U.S. Citizenship and Immigration Services.

(8) A valid state-issued driver's license or other identity document described in Section 274A(b)(1)(D) of the United States Immigration and Nationality Act, but only if the state issuing the license or document either:

1. Requires proof of United States citizenship before issuance of the license or document; or

2. Obtains a social security number from the applicant and verifies before certification that the number is valid and is assigned to the applicant who is a citizen.

(9) Another document that provides proof of United States citizenship or nationality as the Secretary of the U.S. Department of Health and Human Services may specify by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(B)(v) or 1396b(x)(3)(C)(v).

c. A child entering foster care is exempt from these requirements when the family has previously presented satisfactory documentary evidence of citizenship, as specified by the Secretary of the U.S. Department of Health and Human Services.

d. The parent or guardian of the child shall have a reasonable period to obtain and provide proof of citizenship. For the purposes of this requirement, the "reasonable period" begins on the date when the child is placed in foster care and continues to the date when the proof is provided or when the department establishes that the parent or guardian is no longer making a good-faith effort to obtain the proof.

This rule is intended to implement Iowa Code sections 234.6(1) and 234.6(6) "b."
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—202.3(234) Voluntary placements.

202.3(1) All voluntary placement agreements initiated after July 1, 2003, for children under the age of 18 shall terminate after 90 days.

202.3(2) When the voluntary placement is of a child who is under the age of 18, a Voluntary Foster Care Placement Agreement, Form 470-0715, shall be completed and signed by the parent(s) or guardian and the county office where the parent or guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with parents or guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's parent or guardian moves outside Iowa after the placement.

202.3(3) Voluntary placement of a child aged 18 or older may be granted for six months at a time.

a. The department shall enter into the agreement only when the child:

(1) Meets the definition of "child" in Iowa Code section 234.1,

(2) Was in foster care or a state institution immediately before reaching the age of 18,

(3) Has continued in foster care or a state institution since reaching the age of 18,

(4) Has demonstrated a willingness to participate in case planning and to fulfill responsibilities as defined in the case permanency plan, and

(5) Will be placed in foster family care or supervised apartment living in Iowa.

b. Payment shall be limited pursuant to 441—paragraph 156.20(1) "b."

c. When the voluntary placement is of a child who is aged 18 or older and who has a court-ordered guardian, the Voluntary Foster Care Placement Agreement, Form 470-0715, shall be completed and signed by the guardian and the local office where the guardian resides. Voluntary Foster Care Placement Agreements shall not be signed with guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's guardian moves outside Iowa after the placement.

d. When the voluntary placement is of a child who is aged 18 or older and who does not have a court-appointed guardian, the Voluntary Foster Care Placement Agreement, Form 470-0715, shall be completed and signed by the child and the local office where the child resides.

e. An exception to the requirement for continuous placement may be made for a youth who leaves foster care at age 18 and voluntarily returns to supervised apartment living foster care before the youth's twentieth birthday in order to complete high school or obtain a general equivalency diploma (GED).

202.3(4) All voluntary placements shall be approved by the service area manager or designee.

This rule is intended to implement Iowa Code sections 234.6(6) "b" and 234.35(1) "c."
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—202.4(234) Selection of facility.

202.4(1) Placement consistent with the best interests and special needs of the child shall be made in the least restrictive, most family-like facility available and in close proximity to the child's home. Race, color, or national origin may not be routinely considered in placement selections.

202.4(2) Efforts shall be made to place siblings together unless to do so would be detrimental to any of the children's physical, emotional or mental well-being. Efforts to prevent separating siblings, reasons for separating siblings, and plans to maintain sibling contact shall be documented in the child's case permanency plan.

202.4(3) The department shall first consider placing the child in a relative's home unless no relatives are available or willing to accept placement or such placement would be detrimental to the child's physical, emotional or mental well-being.

a. If a relative or a suitable person who has a kinship bond with the child will accept placement of the child:

(1) The person shall sign Form 595-1489, Non-Law Enforcement Record Check Request, and

(2) The department shall complete record checks as listed in 441—subrule 113.13(1) to evaluate if the person's home is appropriate for the child before making the placement.

b. Efforts to place the child in a relative's home and reasons for using a nonrelative placement shall be documented in the child's case permanency plan.

202.4(4) If the child cannot be placed with a relative or a suitable person who has a kinship bond with the child, foster family care shall be used for a child unless the child has problems which require specialized services that cannot be provided in a family setting. Reasons for using a more restrictive placement shall be documented in the child's case permanency plan.

202.4(5) A foster family shall be selected on the basis of compatibility with the child, taking into consideration:

a. The extent to which interests, strengths, abilities and needs of the foster family enable the foster family members to understand, accept and provide for the individual needs of the child.

b. The child's individual problems, medical needs, and plans for future care. The department shall not place a child with asthma or other respiratory health issues in a foster home where any member of the household smokes.

c. The capacity of the foster family to understand and accept the child's case permanency plan, the needs and attitudes of the child's parents, and the relationship of the child to the parents.

d. The characteristics of the foster family that offer a positive experience for the child who has specific problems as a consequence of past relationships.

e. An environment that will cause minimum disruption of the child including few changes in placement for the child.

f. Rescinded IAB 4/11/07, effective 7/1/07.

202.4(6) A foster group care facility shall be selected on the basis of its ability to meet the needs of the child, promote the child's growth and development, and ensure physical, intellectual and emotional progress during the stay in the facility. The department shall place a child only in a licensed or approved facility which has a current contract with the department pursuant to 441—Chapter 152.

This rule is intended to implement Iowa Code section 234.6(6) "b."
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—202.5(234) Preplacement.

202.5(1) Except for placements made in less than 24 hours, a child placed in a facility shall have a preplacement visit involving:

- a. The child,
- b. The foster parents or agency staff, if the child is placed in a public or private agency,
- c. The department service worker, and
- d. The child's parents, unless their presence would be disruptive to the child's placement.

202.5(2) Before placement, the worker shall provide the facility with general information regarding the child, including a description of the child's medical needs, behavioral patterns including safety-related information, educational plans, and permanency goal. Safety-related information shall be withheld only if:

- a. Withholding the information is ordered by the court; or
- b. The department or the agency developing the service plan determines that providing the information would be detrimental to the child or to the family with whom the child is living.

202.5(3) The child shall have a physical examination by a physician before the initial placement in foster care or within 14 calendar days of placement. The physician shall complete a preliminary screening for dental and mental health and refer the child to a dentist or mental health professional if appropriate. To address any immediate medical needs, the child shall be seen immediately at an emergency room, an urgent care center, or other community health resource.

This rule is intended to implement Iowa Code section 234.6(6) "b."
[ARC 7606B, IAB 3/11/09, effective 5/1/09; ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—202.6(234) Placement.

202.6(1) At the time of placement, the department worker shall furnish to the foster care provider any available information regarding the child.

- a. The information provided shall include:
 - (1) The child's full name and date of birth;
 - (2) The names, work addresses, and telephone numbers of the placement worker and the worker's supervisor, including a home telephone, cell phone, or on-call number;
 - (3) The names, addresses, and telephone numbers of the child's physician and dentist;
 - (4) The names, addresses, and telephone numbers of significant relatives of the child, including parents, grandparents, brothers and sisters, aunts and uncles, and any other significant persons (for an adopted child, the adoptive parents and adoptive relatives);
 - (5) The case permanency plan;
 - (6) The results of a physical examination, including immunization history;
 - (7) The child's medical needs including allergies, physical limitations, dental and medical recommendations, and special needs of HIV;
 - (8) Behavioral patterns including safety-related information;
 - (9) Educational arrangements including, but not limited to, the school the child attends, special education needs, and school contacts;
 - (10) The placement contract or agreement including the date of acceptance for care;
 - (11) Medical authorizations, service authorizations, and other releases as needed; and
 - (12) If the child is an Indian, the identification of the child's tribe and tribal social service agency including telephone number and contact person.
- b. Before releasing specific information about HIV, the department shall use Form 470-3225, Authorization to Release HIV-Related Information, to obtain a release from the child or the child's parent or guardian, or a court order permitting the release of the information.
 - (1) The person receiving this information shall complete Form 470-3227, Receipt of HIV-Related Information, to document understanding of the confidentiality of this knowledge.
 - (2) Form 470-3226, HIV General Agreement, shall be completed by foster parents who have agreed to care for children who have AIDS, test HIV positive, or are at risk for HIV infection.
- c. Safety-related information shall be withheld only if:

- (1) Withholding the information is ordered by the court; or
- (2) The department or the agency developing the service plan determines that providing the information would be detrimental to the child or to the family with whom the child is living.

202.6(2) For each foster care placement in a foster family home supervised directly by department staff, Form 470-0716 or 470-0716(S), Foster Family Placement Contract, shall be completed by the foster family and the placement worker and supervisor. A new foster family placement contract shall be completed when the rate of payment or special provisions change.

202.6(3) A follow-up visit shall be made to the child at the foster family home within two weeks of the initial placement for placements supervised directly by the department.

202.6(4) The case permanency plan shall be reviewed at least every six months to ensure appropriateness of the child's placement. A copy of the subsequent case plan shall be submitted to the court every six months unless the court orders a different frequency for reports.

202.6(5) In conjunction with the case plan review, the case shall be presented every six months to a review committee which conforms to the requirements in subrule 202.2(5). The service area manager may also approve a review by a local foster care review board authorized in Iowa Code section 237.19 or the court as meeting this requirement as long as the review conforms to subrule 202.2(5), paragraphs "b" to "h," and to subrule 202.6(5), paragraphs "a" to "e." The review committee shall:

- a. Evaluate the continuing necessity for foster care placement.
- b. Evaluate the continuing appropriateness of the foster care placement.
- c. Evaluate the extent of compliance with the case plan.
- d. Evaluate the extent of progress made toward lessening the causes for foster care placement.
- e. Project a likely date by which the child will leave foster care.

This rule is intended to implement Iowa Code sections 234.6(6) "b," and 237.19.

[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—202.7(234) Out-of-area placements.

202.7(1) When the department makes a placement of a child in the foster care system out of the service area in which the child resides, this placement shall occur only when there is no appropriate placement within the service area, when the placement is necessary to facilitate reunification of the child with the parents, or when an out-of-area agency is closer to the community where the child resides than an in-area agency offering the same services.

202.7(2) The authority for approving out-of-area placements rests with both the placing and receiving service area managers.

202.7(3) Transfer of responsibility for supervision, planning, and visitation shall be approved by the placing and receiving service area managers and, when appropriate, by the court.

This rule is intended to implement Iowa Code section 234.6(6) "b."

441—202.8(234) Out-of-state placements.

202.8(1) The department shall make an out-of-state foster family care placement only with the approval of the service area manager or designee. Approval shall be granted only when the placement will not interfere with the goals of the child's case permanency plan and when one of the following conditions exists:

- a. The foster family with whom the child is placed is moving out of state.
- b. An out-of-state family having previous knowledge of the child desires to provide foster care to the child.
- c. An out-of-state family is approved to adopt the child under subsidy and is eligible to receive maintenance payments until the adoption is final.
- d. An out-of-state placement is necessary to facilitate reunification of the child with the parents.

202.8(2) Placements shall be made in an out-of-state group care facility only with the approval of the service area manager or designee.

202.8(3) All out-of-state placements shall be made pursuant to interstate compact procedures.

202.8(4) The reasons for selecting an out-of-state placement shall be documented in the child's case permanency plan.

202.8(5) Regional out-of-state placement committees. Rescinded IAB 7/6/94, effective 7/1/94.

This rule is intended to implement Iowa Code section 234.6(6) "b."
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—202.9(234) Supervised apartment living. A supervised apartment living arrangement shall provide a child with an environment in which the child can experience living in the community with supervision and prepare for self-sufficiency. The child must have the capacity to live in the community with less supervision than that provided by a foster family or in a group care setting and must be able to follow the provisions of the case plan and participate in activities and services to achieve self-sufficiency.

202.9(1) Living arrangements.

a. The two types of supervised apartment living arrangements are as follows:

(1) A cluster setting, which provides support in a structured setting. Up to six children reside in apartments or bedrooms in one building (such as an apartment building or residential housing), supervised by one agency. The supervising agency must have an adult staff member present and available on site in the living arrangement at any time when more than one child is present.

(2) A scattered-site setting, which is the less restrictive of the two types of living arrangements. Up to three children supervised by one agency may reside in individual housing arrangements, such as apartments or residential housing, located in one building. Children must be able to contact supervising agency staff 24 hours a day, seven days a week.

b. If an agency rents an apartment to the child, there shall be a signed lease between both parties that includes, but is not limited to:

- (1) Amount to be paid for the rental unit.
- (2) The term of the lease with both a beginning and an ending date.
- (3) Rights and responsibilities of the tenant.
- (4) Rights and responsibilities of the landlord.
- (5) Conditions under which the lease can be terminated.

202.9(2) Eligibility. To be eligible for supervised apartment living placement, a child shall meet all of the following conditions:

a. The child must be at least 16½ years old for placement in a cluster setting.

b. The child must be at least 17 years old for placement in a scattered-site setting.

c. If the child is under the age of 18, the child must:

(1) Satisfactorily attend school, in accordance with the school's attendance policies, with the objective of obtaining a high school diploma; or

(2) Satisfactorily attend an instructional program, pursuant to the program's policies, necessary to obtain a general equivalency diploma (GED); or

(3) Attend school to obtain postsecondary education or training on a full-time basis (based upon the institution's definition of full-time) or attend on a part-time basis and be either working or participating in a work training program leading to employment; or

(4) Work at least an average of 80 hours per month if not enrolled in school; or

(5) Participate in a work training program leading to employment if not enrolled in school.

d. If the child is aged 18 or older, the child must:

(1) Meet the definition of "child" in Iowa Code section 234.1; and

(2) Have been in foster care immediately before reaching the age of 18 and have continued in foster care since reaching the age of 18. The service area manager or designee may waive the requirement for continuous placement for a child who leaves foster care at age 18 and voluntarily returns before the child's twentieth birthday in order to complete high school or obtain a GED, consistent with Iowa Code sections 234.35(1) "f" and 234.35(3) "c"; and

(3) Attend school on a full-time basis leading to a high school diploma or attend an instructional program leading to a GED.

e. The child must need foster care placement and services, based on an assessment completed according to rule 441—202.2(234) and subrule 202.6(5).

f. The child must participate in services and activities to achieve self-sufficiency.

g. The child must have the capacity to live in the community with less supervision than that provided by a foster family or in a group care setting, as determined by an assessment that reviews available information on the child to identify the needs, strengths, and resources of the child, especially as they pertain to the child's ability to function in the community. To determine if a supervised apartment living foster care placement is suitable for the child, the department worker must complete Form 470-4063, Preplacement Screening for Supervised Apartment Living Foster Care.

h. The child must have an approved living situation that meets the following minimum standards:

(1) Comply with applicable state and local zoning, fire, sanitary and safety regulations.

(2) Be located so as to provide reasonably convenient access to schools, places of employment, and services and supports required by the child.

(3) Be reasonably priced so as to fit within the child's budget.

i. If supervised apartment living foster care is deemed suitable for the child, the worker shall complete Form 470-3186, Request for Approval of Supervised Apartment Living Foster Care Placement, to request that the service area manager or designee approve the placement. This form is also to be used to request that the service area manager or designee waive the requirement for continuous placement for a child who leaves foster care on or after the child's eighteenth birthday and voluntarily returns before the child's twentieth birthday in order to complete high school or obtain a GED.

j. The placement must have the approval of the juvenile court if the child is under court jurisdiction.

202.9(3) Services to be provided. To ensure that the supervised apartment living arrangement is meeting the child's needs, required services shall be provided directly by the department or purchased from an agency that has a contract with the department to provide supervised apartment living foster care services. The following services are required:

a. Development of a case or service plan (by either the department worker or the service provider, if contracted out) in consultation with the child and the child's family (unless a reason for noninvolvement is documented in the case record) and significant others whenever appropriate that documents the following:

(1) Goals, intended to meet the specific needs of the child to achieve self-sufficiency, with projected dates of accomplishment.

(2) Objectives (action steps) to be taken by the child, the child's support system, and staff, with projected dates of accomplishment.

(3) Services to be provided and activities to be undertaken, the frequency of such services, who will provide the services, the child's progress with the goals and objectives, and the child's compliance with the service plan.

(4) A budget, developed with the child, based upon the child's monthly maintenance payment, any start-up allowance, any earned or unearned incomes and financially related assistance (e.g., food assistance). Staff will work with the child to ensure payment of bills and receipt of necessary items as outlined in the budget.

b. Life skills training involving interpersonal and daily living skills training to prepare the child to maintain a safe, healthy, and stable lifestyle and achieve self-sufficiency. Life skills training includes training of "hard" skills (e.g., money management, self-care and hygiene, physical and mental health care, skills related to educational and employment goals, housing and home management, time management, accessing community resources) and training of "soft" skills (e.g., decision making, problem solving, developing healthy relationships, self-advocacy). Life skills training should be individualized to the needs of the child toward achieving self-sufficiency. If a child needs a specific life skills training service or services (e.g., parenting skill development, counseling services to reduce stress and social, emotional, or behavioral problems that affect the child's stability or ability to achieve self-sufficiency) in addition to basic life skills training services and services are purchased,

the department worker will specify the necessary services under special provisions on Form 470-5081, Placement Agreement and Service Authorization for Supervised Apartment Living (SAL).

c. Through visits with the child and to the living situation, determination and documentation that:

- (1) The living arrangement and mode of living are safe and suitable and provide an environment that allows for the child's social and emotional needs to be met; and
- (2) There is no reasonable cause to believe that the child's living situation or mode of living presents any unacceptable risks to the child's health or safety; and
- (3) The child has access to a telephone; and
- (4) There is an operating smoke alarm on each level of occupancy; and
- (5) The child is receiving any necessary medical care; and
- (6) The child is receiving appropriate and sufficient services and supports to achieve the child's goals and facilitate objectives according to the child's service plan.

d. Supervision to assist the child in developing the needed structure to live in the supervised apartment living setting and in locating and using other needed services. If the child is under the age of 18, supervision shall include a minimum of weekly face-to-face contacts. For a child aged 18 or older, supervision shall include a minimum of biweekly (every other week) face-to-face contacts. Supervision may include guidance, oversight, and behavior monitoring.

e. Ongoing assessment activities to monitor the child's ability to achieve self-sufficiency.

f. If services are purchased, visits by the department to the child according to subrule 202.11(2).

g. If services are purchased, compliance by the provider with all reporting requirements in 441—paragraph 150.3(3)“j,” including requirements for the individual service plan, quarterly reports, and a termination summary.

h. A review of the case and case plan every six months, in accordance with subrules 202.6(4) and 202.6(5).

202.9(4) Method of service provision. Supervised apartment living services may be provided directly by the department or purchased from an agency that has a contract with the department to provide supervised apartment living foster care services. If services are purchased:

a. Department staff shall be responsible to determine the specific service components and the specific number of service units to be provided for required services. The department case permanency plan shall specify the goals and objectives (action steps) of the services that are being purchased. If services are purchased, the worker shall complete Form 470-5081, Placement Agreement and Service Authorization for Supervised Apartment Living (SAL), to place the child with the contractor and to authorize service codes (scattered-site or cluster setting; individual services or services provided with a group of children in supervised apartment living placement) and the specific number of units to be provided and billable.

b. Service billings for services shall be based on one hour (one unit equals one hour of service), or any portion thereof (with monthly cumulative units rounded up or down to the nearest whole unit), of:

- (1) Direct face-to-face contact between the service provider and the child.
- (2) Activities undertaken to assist the child in developing the needed structure and supports to live in the supervised apartment living setting.
- (3) Activities undertaken to assist the child in locating and using other needed services, supports, and community resources and to consult and collaborate on service directions on behalf of the child with schools, employers, landlords, volunteers, extended family members, peer support groups, training resources, or other community resources.

c. Service billings for group services shall be based on one hour (one unit equals one hour of service), or any portion thereof (with monthly cumulative units rounded up or down to the nearest whole unit), for each child in the group.

d. Expenses of transporting the child, service management activities, and other administrative functions shall be allowable indirect costs subject to the restrictions set forth in rule 441—150.3(234) and are not billable units of service.

e. Contractors providing a cluster setting shall be paid \$500 per month per child in the setting for agency staffing costs, in addition to billable units of services provided to the child, but are eligible for

this payment only when two or more children are in the setting. For a child who enters a cluster setting during the month, the prorated amount per day is \$16.44. If a child exits the setting on or before the last day of the month, the \$500 shall be prorated up to the date before the date of exit.

202.9(5) Termination of services.

a. Mandatory termination. Supervised apartment living services shall be terminated when the child:

- (1) No longer meets eligibility criteria;
- (2) No longer needs services or needs a more restrictive level of placement;
- (3) Chooses to live in a nonapproved setting; or
- (4) Refuses to follow the provisions of the case plan.

b. When services are purchased and the department plans to remove a child from the supervised apartment living placement, the department shall inform the provider in writing of the date of removal, the reason for the removal, the recourse available, if any, and that the contested case (appeal) proceeding does not apply to the removal.

c. The provider shall be informed ten days in advance of the removal, except when the court orders removal of the child from the placement or there is evidence of neglect or physical or sexual abuse.

This rule is intended to implement Iowa Code section 234.6.

[ARC 0417C, IAB 10/31/12, effective 1/1/13]

441—202.10(234) Services to foster parents. Foster parents shall be provided necessary supportive services for the purpose of aiding them in the care and supervision of the child. These services shall include, but not be limited to:

202.10(1) Availability of social service staff on a 24-hour basis in case of emergency.

202.10(2) Conferences to develop in-depth planning regarding family visits, expectations of the department, future objectives and time frames, use of resources, and termination of placements.

202.10(3) Visitation by the service worker at least monthly regardless of the duration of the placements.

202.10(4) Making available all known pertinent information needed for the care of the child including HIV status, safety-related information, and special confidentiality requirements.

a. Before releasing specific information about HIV, the department shall use Form 470-3225, Authorization to Release HIV-Related Information, to obtain a release from the child or the child's parent or guardian, or a court order permitting the release of the information. The person receiving this information shall complete Form 470-3227, Receipt of HIV-Related Information, to document understanding of the confidentiality of this knowledge.

b. Safety-related information shall be withheld only if:

- (1) Withholding the information is ordered by the court; or
- (2) The department or the agency developing the service plan determines that providing the information would be detrimental to the child or to the family with whom the child is living.

c. When continued breastfeeding of the child is determined to be in the best interest of the child, the service worker and the foster parents shall make reasonable efforts to support the continued breastfeeding of the child by the mother.

This rule is intended to implement Iowa Code section 234.6(6)“*b.*”

441—202.11(234) Services to the child. The department service worker shall maintain a continuous relationship with the child.

202.11(1) The department service worker shall:

- a.* Help the child plan for the future,
- b.* Evaluate the child's needs and progress,
- c.* Supervise the living arrangement,
- d.* Arrange for social and other related services including, but not limited to, medical, psychiatric, psychological, and educational services from other resources as needed, and
- e.* Counsel the child in adjusting to the placement.

202.11(2) The assigned department service worker shall personally visit each child in out-of-home care at least once every calendar month, with the frequency of the visits based upon the needs of the child.

a. The visit shall take place in the child's place of residence the majority of the time.

b. The visit shall be of sufficient length to focus on issues pertinent to case planning. During the visit, the worker shall address the safety, permanency, and well-being of the child, including the child's needs, services to the child, and achievement of the case permanency plan goals.

202.11(3) When placement of a breastfeeding child is made, the service worker shall:

a. Assess in consultation with the worker's supervisor whether continued breastfeeding by the mother is in the best interest of the child;

b. Make every reasonable effort to support the mother's continued breastfeeding for the child if determined appropriate; and

c. Document the assessment and efforts in the child's case plan and case notes.

202.11(4) When a child is in continuous foster care, a new physical examination shall not be required when the child transfers from one foster care placement to another unless there is some indication that an examination is necessary. The service worker shall obtain from the health practitioner or practitioners an annual medical review of treatment the child has received.

This rule is intended to implement Iowa Code section 234.6(6) "b."

202.11(5) Throughout the provision of care, the foster care provider shall actively ensure that the child stays connected to the child's kin, culture, and community as documented in the child's case permanency plan.

202.11(6) When the child has reached the age of majority under state law, the department shall provide a free copy of the child's health and education records to the child when the child leaves foster care.

202.11(7) Independent living program. The purpose of the independent living program is to provide supports and services that assist children currently or formerly in foster care in acquiring skills and abilities necessary for successful adult living. The independent living program offers a life skills assessment, transition plan development, and transition services.

a. Eligibility. To be eligible for the independent living program, a child must be or have been in foster care as defined by rule 441—202.1(234) or 45 Code of Federal Regulations 1355.20 as amended to October 1, 2008, and must meet at least one of the following eligibility requirements:

(1) Is currently in foster care and is 16 years of age or older.

(2) Is under the age of 21 and was adopted from foster care on or after October 7, 2008, and was at least 16 years of age at the time of adoption.

(3) Is under the age of 21 and was placed in a subsidized guardianship arrangement from foster care on or after October 7, 2008, and was at least 16 years of age at the time of placement.

(4) Was formerly in foster care and is eligible for and participating in Iowa's aftercare services program as described at 441—Chapter 187.

(5) Was formerly in foster care and is eligible for and participating in Iowa's education and training voucher (ETV) program as described at 42 U.S.C. 677(a)(6-7).

b. Assessment. A life skills assessment shall be administered to all children in foster care who are aged 16 or older. An assessment shall be available upon request to any child who has been discharged from foster care but meets the eligibility requirements in paragraph "a." The assessment is designed to evaluate the child's strengths and needs in areas including, but not limited to:

(1) Education,

(2) Physical and mental health,

(3) Employment,

(4) Housing and money management, and

(5) Supportive relationships.

c. Transition plan development. A transition plan shall be completed for all children in foster care who are aged 16 or older, as provided in Iowa Code section 232.2(4) "f." Transition plan development shall also be available upon request to any child who has been discharged from foster care but meets the

eligibility requirements in paragraph “a,” but the transition plan will not be part of a case permanency plan.

(1) The transition plan shall be personalized at the direction of the child and shall be developed and reviewed by the department in collaboration with a child-centered transition team, honoring the goals and concerns of the child.

(2) The transition plan shall address the strengths and needs identified in the assessment; detail the steps, services, supports and referrals needed to implement the plan to best assist the child in preparing for adulthood; and document the membership of the transition team and the meeting dates for the team.

(3) The transition plan shall be reviewed and updated at each case review after the plan’s initial development; within 90 days before the child’s eighteenth birthday; and within 90 days before the child is expected to leave foster care if the child remains in care after reaching the age of 18.

d. Transition services. Children shall be offered services, supports, and referrals within some or all of the five areas described below according to the child’s strengths and needs as documented by the transition plan.

(1) Education skills increase the child’s chances of completing high school or obtaining a GED and of entering a satisfying career. Services may include assistance in academic advising and guidance, secondary and postsecondary educational support, records transfer coordination, tutoring, financial aid planning, career exploration, mentoring, and career advising. Education financial assistance may be available to eligible children.

(2) Physical and mental health skills promote healthy physical, mental and emotional functioning. Health education services may include guidance on risk prevention, how to be healthy and fit, how to self-advocate for health care needs, how to select medical professionals, and how to make informed decisions regarding treatment, lifestyle considerations, spirituality, and recreation.

(3) Employment skills enable children to prepare for, seek, and maintain gainful career employment. Services may include employment programs or vocational training, employment search resources, career advising, résumé writing, interview skills, workplace etiquette, and on-the-job training.

(4) Housing and money management skills prepare a child to select, manage, and maintain safe and stable housing. Services may include lessons on the physical maintenance and cleaning of a house and guidance on managing personal finances, such as financial decisions, budgeting, bill paying, use of credit, and financing. Financial assistance for room and board may be available to children who meet the eligibility criteria of the preparation for adult living program pursuant to 441—Chapter 187.

(5) Supportive relationships skills promote the healthy development and maintenance of rewarding, lasting relationships. Services may include family support and healthy marriage education, mentoring opportunities, and guidance on how to recognize the needs of others, how to identify and understand personal motivations, how to ensure personal safety, and how to communicate effectively.

[ARC 7606B, IAB 3/11/09, effective 5/1/09; ARC 8010B, IAB 7/29/09, effective 10/1/09; ARC 8718B, IAB 5/5/10, effective 7/1/10; ARC 0417C, IAB 10/31/12, effective 1/1/13]

441—202.12(234) Services to parents.

202.12(1) Child welfare services shall be made available to the parents throughout the period of placement for the purpose of reuniting the family in an agreed-upon time frame. Family safety, risk, and permanency services may be provided to:

- a. Promote identification and enhancement of family strengths and protective capacities;
- b. Address the factors that resulted in the child's being removed from the family home; and
- c. Strengthen family connections to community resources and informal supports.

202.12(2) Placement notification.

a. The parents shall be notified of the location and nature of the child’s placement, unless the conditions of this subrule are met.

(1) The department evaluates the situation and determines that notifying the child’s parents of the location of the placement would be detrimental to the child’s safety and well-being and to the stability of the child’s placement due to:

1. Evidence of a direct or indirect threat to harm the foster child or the foster family; or
 2. Credible third-party information of a threat of harm to the foster child or the foster family.
- (2) The department includes a statement in the child's case permanency plan explaining the decision not to disclose the location of the child to the parents.

b. The decision not to disclose the location of a child's placement shall be reviewed at least every six months when the child's case permanency plan is revised.

202.12(3) The case plan and treatment plan shall specify the services to be provided and the time frame for reuniting the family. These plans shall be developed in cooperation with the parents.

202.12(4) Personal contact shall be made regularly with the parents and the progress towards goal attainment reviewed and documented in the case record. The frequency of the personal contact shall be at least monthly and shall be specified in the child's case permanency plan.

202.12(5) When placement of a breastfeeding child is made, the service worker shall:

a. Assess in consultation with the worker's supervisor whether continued breastfeeding by the mother is in the best interest of the child;

b. Make every reasonable effort to support the mother's continued breastfeeding of the child if determined appropriate; and

c. Document the assessment and efforts in the child's case plan and case notes.

This rule is intended to implement Iowa Code section 234.6(6) "b."
[ARC 8010B, IAB 7/29/09, effective 10/1/09; ARC 9961B, IAB 1/11/12, effective 12/15/11]

441—202.13(234) Removal of the child.

202.13(1) When the department plans to remove a child from a facility, the facility shall be informed in writing of the date of the removal, the reason for the removal, the recourse available to the facility, if any, and that the chapter 17A contested case proceeding is not applicable to the removal. The department shall inform the facility ten days in advance of the removal, except that the facility may be informed less than ten days prior to the removal in the following instances:

a. When the parent or guardian removes the child from voluntary placement.

b. When the court orders removal of a child from placement.

c. When there is evidence of neglect or physical or sexual abuse.

202.13(2) The department may remove a child from a facility when any of the following conditions exist:

a. There is evidence of abuse, neglect, or exploitation of the child.

b. The child needs a specialized service that the facility does not offer.

c. The child is unable to benefit from the placement as evidenced by lack of progress of the child.

d. There is evidence the facility is unable to provide the care needed by the child and fulfill its responsibilities under the case plan.

e. There is lack of cooperation of the facility with the department.

202.13(3) If a foster family objects in writing within seven days from the date that the department furnishes notice of plans to remove the child, the service area manager or designee shall grant a conference to the foster family to determine whether the removal is in the child's best interest.

a. This conference shall not be construed to be a contested case under the Iowa administrative procedure Act, Iowa Code chapter 17A.

b. The conference shall be provided before the child is removed except in instances listed in 202.13(1) "a" to "c." The service area manager or designee shall review the propriety of the removal and explain the decision to the foster family.

c. The service area manager or designee, on finding that the removal is not in the child's best interests, may overrule the removal decision unless a court order or parental decision prevents the department from doing so.

202.13(4) When the facility requests a child be removed from its care, it shall give a minimum of ten days' notice to the department so planning may be made on behalf of the child.

This rule is intended to implement Iowa Code section 234.6(6) "b."
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

441—202.14(234) Termination. The foster care services shall be terminated when the child is no longer an eligible child, or when the attainment of goals in the case plan has been achieved, or when the goals for whatever reasons cannot be achieved, or when it is evident that the family or individual is unable to benefit from the service or unwilling to accept further services.

This rule is intended to implement Iowa Code section 234.6(6) “b.”

441—202.15(234) Case permanency plan.

202.15(1) The department worker shall ensure that a case permanency plan is developed for each child who is placed in foster care if the department has agreed to provide foster care through a voluntary placement agreement, if a court has transferred custody or guardianship to the department for the purpose of foster care, or if a court has placed the child in foster care and ordered the department to supervise the placement.

202.15(2) The department worker shall develop the case permanency plan with the child’s parents, unless the child’s parents are unwilling to participate in the plan’s development, and with the child, unless the child is unable or unwilling to participate.

202.15(3) The department worker shall be responsible for ensuring the development of the case permanency plan within the time frames specified in rule 441—130.7(234). In all cases, the case permanency plan shall be completed within 60 days of the date the child entered foster care.

202.15(4) Copies of the initial and subsequent case permanency plans shall be provided to the child, the child’s parents, and the foster care provider. Copies shall also be provided to the following, if involved in services to the child: the juvenile court officer, the judge, the child’s attorney, the child’s guardian ad litem, the child’s guardian, the child’s custodian, the child’s court-appointed special advocate, the parents’ attorneys, the county attorney, the state foster care review board, and any other interested parties identified in the plan.

202.15(5) The initial and subsequent case permanency plans shall be completed on the forms specified in rule 441—130.7(234).

202.15(6) Rescinded IAB 4/28/04, effective 6/2/04.

441—202.16(135H) Department approval of need for a psychiatric medical institution for children.

202.16(1) Applicants for departmental approval of need shall submit the following to the division of child and family services:

a. A description of the population to be served, including age, sex, and types of disorders, and an estimate of the number of these youth in need of psychiatric care in the area of the state in which the applicant is located.

b. A statement of the number of beds requested and a description of the treatment program to be provided, the outcomes to be achieved and the techniques for measuring outcomes.

c. A proposed date of operation as a psychiatric medical institution for children.

d. A description of the applicant’s experience with providing similar services to youth, especially the target population.

e. A description of the applicant’s plan, including the timeline for achieving accreditation to provide psychiatric services from a federally recognized accrediting organization under the organization’s standards for residential settings and licensure as a psychiatric medical institution for children, or a copy of the organization’s report if already accredited.

f. References from the service area manager for the department service area in which the proposed psychiatric medical institution for children would be located, the chief juvenile court officer of the judicial district in which the proposed psychiatric medical institution for children would be located and the applicant’s licenser from the department of inspections and appeals or department of public health.

202.16(2) The department shall evaluate proposals and issue a decision based on the following criteria:

a. The number of psychiatric medical institutions for children beds for the proposed population which are needed in the area of the state in which the facility would be located, based on the department’s most recent needs assessment.

b. The steps the facility has taken towards achieving accreditation from a federally recognized accrediting organization and licensure as a psychiatric medical institution for children.

c. The applicant's ability to provide services and support consistent with the requirements under Iowa Code chapter 232 including, but not limited to, evidence that:

(1) Children will be served in a setting which is in close proximity to their parents' home.

(2) Each child will receive services consistent with the child's best interests and special psychiatric needs as identified in the child's case permanency plan.

(3) Children and their families will receive services to facilitate the children's return home or other permanent placement.

d. The applicant's ability to provide children with a non-hospital-type living environment if the applicant is not freestanding from a hospital or health care facility.

e. The limits on the number of beds found in Iowa Code section 135H.6, subsection 5.

202.16(3) If a facility has not been licensed as a psychiatric medical institution for children within one year after the date of the department's approval of need, the department's approval shall expire unless the department has approved an extension. An extension may be approved up to a maximum of six months if the agency has documented extenuating circumstances which prevented completion of the licensing process.

This rule is intended to implement Iowa Code section 135H.6.

441—202.17(232) Area group care targets.

202.17(1) *Area target.* A group care budget target shall be established for each departmental service area, which shall be based on the annual statewide group care appropriation established by the general assembly.

a. The department and the judicial branch shall jointly develop a formula for allocating the group care appropriation among the departmental service areas. The formula shall be based on:

(1) Proportional child population.

(2) Proportional group foster care usage in the previous five completed fiscal years.

(3) Other indicators of need.

b. Any portion of the group care appropriation allocated for 50 highly structured juvenile program beds and not used may be used for group care.

c. Upon written agreement of the affected service area managers and chief juvenile court officers, service areas may transfer part of their group care budget from one service area to another. A service area may exceed its budget target figure up to 5 percent during the fiscal year, providing that the overall funding allocation by the department for all child welfare services in the service area is not exceeded.

d. Notwithstanding the statewide appropriation established in this subrule, a budget established in a service area's group care plan pursuant to Iowa Code section 232.143 may be exceeded, a group care placement may be ordered, and state payment may be made if the review organization finds that the placement is necessary to meet the child's service needs and if the service area has additional funds transferred from another service area or if the service area is within 5 percent of its group care budget target figure pursuant to 441—paragraph 202.17(1)“c.”

The department and juvenile court services shall work together to ensure that a service area's group care expenditures shall not exceed the funds allocated to the service area for group care in the fiscal year.

e. If at any time after September 30, 1998, annualization of a service area's current expenditures indicates a service area is at risk of exceeding its group foster care expenditure target under Iowa Code section 232.143 by more than 5 percent, the department and juvenile court services shall examine all group foster care placements in that service area in order to identify those which might be appropriate for termination. In addition, any aftercare services believed to be needed for the children whose placements may be terminated shall be identified.

The department and juvenile court services shall initiate action to set dispositional review hearings for the placements identified. In the dispositional review hearing, the juvenile court shall determine whether needed aftercare services are available and whether termination of the placement is in the best interest of the child and the community.

202.17(2) *Plan for achieving target.* For each of the departmental service areas, representatives appointed by the department and juvenile court services shall establish a plan for containing the expenditure for children placed in group care within the budget target allocated to that service area. The plan shall include monthly targets and strategies for developing alternatives to group care placements.

The plans shall also ensure potential group care referrals are reviewed by the review organization prior to submission of a recommendation for group care placement to the court.

Each area plan shall be established in advance of the fiscal year to which the plan applies. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subrule with planning for services paid under Iowa Code section 232.141, subsection 4. The department's service area manager shall communicate regularly, as specified in the area plan, with the juvenile courts within the service area concerning the current status of the plan's implementation.

This rule is intended to implement Iowa Code section 232.143.

441—202.18(235) Local transition committees. Local transition committees shall be established in each of the department service areas. The service area manager or designee shall determine the number of local transition committees needed within the service area, set operating policies and procedures, and appoint committee membership.

202.18(1) *Purpose.* The purpose of local transition committees, as established by Iowa Code Supplement section 235.7, is to ensure that the transition needs of youth in foster care who are 16 years of age or older have been addressed in order to assist the youth in preparing for the transition from foster care to adulthood.

202.18(2) *Membership.* Each committee shall have a designated number of members.

a. The standing committee membership may include, but is not limited to:

- (1) Department staff involved with child welfare, adult services, or transition planning.
- (2) Juvenile court services staff.
- (3) Adult service system staff.
- (4) Education staff.
- (5) Service care provider representation.
- (6) Others knowledgeable about community resources.

b. Additionally, nonstanding membership may include those knowledgeable about the youth, including the child's court-appointed special advocate, guardian ad litem, and service or care providers.

c. In areas where teams or boards already in existence are involved in review and planning for youth needs, such as the foster care review board or child welfare funding decategorization boards, such teams or boards may serve as local transition committees.

202.18(3) *Duties.* Local transition committees shall address the transition needs of youth in foster care who are 16 years of age or older and who have a case permanency plan as defined in Iowa Code Supplement section 232.2. Each committee shall have operating policies and procedures to carry out the duties below.

a. Each committee shall establish a process for review and approval of written transition plans for youth for whom the committee has placement responsibility that meets a continuum of case needs and coordinates with local transition planning protocol. The process may include a paper review or an in-person review, or both, according to case need.

b. The committee may be involved when the youth is at least 16 years of age, but shall be involved in reviewing and approving a youth's transition plan before the youth reaches age 17½. When a youth enters foster care at age 17½ or older, the committee shall be involved in reviewing and approving the youth's transition plan within 30 days of completion.

c. In reviewing a youth's transition plan, the committee shall identify and act to address gaps existing in services or supports available that would assist the youth in the transition from foster care to adulthood.

d. For those youth expected to need services as adults, the committee shall ensure that the transition plan was developed with the participation of any person reasonably expected to be a service provider when the youth becomes an adult or to become responsible for the costs of services at that time.

e. The committee shall ensure that transition planning and review is coordinated with overall case planning and review. Committee review and approval shall be indicated in the youth's case permanency plan.

f. With respect to meetings involving a specific youth receiving foster care and the youth's family, the local transition committees are not subject to Iowa Code chapter 21.

g. The information and records of or provided to a local transition committee regarding a youth receiving foster care and the youth's family are not public records pursuant to Iowa Code chapter 22 when the records relate to the foster care placement and transition needs of the youth.

h. Members of the committees are subject to the standards of confidentiality set forth in Iowa Code sections 600.16, 217.30 and 235A.15.

202.18(4) Report. The service area manager or designee shall submit a report on transition planning committees to the department's division of child and family services. The report shall be submitted annually by October 1 for the immediately preceding fiscal year. The report shall include, but not be limited to, the following:

- a.* The geographical area covered for each committee within the service area.
- b.* Standing committee membership for each committee.
- c.* The number of cases reviewed by each committee.
- d.* Identification of barriers to successful transition and gaps in community services or supports.
- e.* Suggestions for ways to transition youth from foster care to adulthood more effectively.

This rule is intended to implement Iowa Code Supplement section 235.7.

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REVENUE DEPARTMENT[701]

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CHAPTER 1

STATE BOARD OF TAX REVIEW—ADMINISTRATION

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CHAPTER 2

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DIVISION I APPELLATE CASES

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[Prior to 12/17/86, Revenue Department[730]]

701—12.1(422) Returns and payment of tax. Every retailer collecting more than \$50 in tax in any one month shall make a monthly deposit with the department. A retailer collecting between \$50 and \$500 a month shall deposit the actual amount of tax collected during the month or an amount equal to not less than 30 percent of the amount of tax collected and paid during the preceding quarter. A retailer collecting \$500 or more a month shall deposit the actual amount of tax collected. This deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months in the quarter.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter. The quarterly return is due on or before the last day of the month following the end of the quarter.

Effective January 1, 1983, retailers collecting \$50 a month and not more than \$4000 in tax in a semimonthly period shall deposit the actual amount of tax collected during the month or an amount equal to one-third of the amount of tax collected and paid during the preceding quarter.

Every retailer collecting more than \$4000 in tax in a semimonthly period shall make a semimonthly deposit with the department. A retailer collecting more than \$4000 in a semimonthly period shall deposit (1) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the preceding quarter or (2) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the same quarter of the previous year. The method of reporting selected by the retailer, either option 1 or option 2, shall remain consistent for at least four quarters. The first semimonthly deposit is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth of the month. The second semimonthly deposit is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter.

Retailers required to make semimonthly or monthly deposits under any of the above methods of estimating tax based upon a period when the tax rate was 4 percent shall adjust deposits for periods beginning on or after July 1, 1992, to reflect the increase in the tax rate to 5 percent as provided in Iowa Code section 422.43.

On the quarterly return, every retailer shall report the gross sales for the entire quarter listing all allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited for the previous five semimonthly deposits. The quarterly return is due on or before the last day of the month following the end of the calendar quarter.

A seasonal business retailer with gross receipts in only one quarter during the year may request, and the director may grant, permission to file and remit sales tax for only that specific quarter in which the retailer conducted business.

Effective January 1, 1980, if it is expected that the total annual tax liability of a retailer will not exceed \$120 for a calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The returns and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

Following are nonexclusive examples the department could reasonably expect to be within the guidelines for annual reporting:

1. A person selling tangible personal property or taxable services where a major portion of the business is the selling of tangible personal property or taxable services exempt from the imposition of tax; such as a wholesaler whose sales are primarily for resale, or a contractor whose business is primarily new construction.

2. A person whose business is primarily seasonal, or a person engaged in part-time selling of tangible personal property or taxable services.

3. A person whose sales are of a nontaxable service and who may, on occasion, sell tangible personal property incidental to the service.

When the due date falls on Saturday, Sunday, or a legal holiday, the return or deposit will be due the first business day following such Saturday, Sunday, or legal holiday. If a return or deposit is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return or deposit not be received until after that date. Mailed returns should be addressed to Sales/Use Tax Processing, P.O. Box 10412, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47, 422.51, 422.52, and 423.2.

701—12.2(422,423) Remittances. The correct amount of tax collected and due shall accompany the forms prescribed by the department unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. The name, address, and permit number of the sender and amount of tax for the quarterly remittance or a semimonthly or monthly deposit shall be stated unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer unless electronic transmission requirements apply; and, when feasible, the taxpayer shall use them when completing and mailing a return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

For tax periods starting on or after April 1, 1990, semimonthly deposits and quarterly remittances of taxpayers required to make semimonthly deposits shall be made electronically in a format and by means specified in the department. Deposit forms are not required to be filed when electronic transmission of deposits is done in the prescribed format by specified means. Quarterly returns shall be filed separately from the electronic transfer of remittances for taxpayers required to make semimonthly deposits. Deposits and remittances transmitted electronically are considered to have been made on the date that the deposit or remittance is added to the bank account designated by the treasurer of the state of Iowa. The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

This rule is intended to implement Iowa Code sections 422.16, 422.51, 422.52, 423.6, 423.13 and 423.14.

701—12.3(422) Permits and negotiated rate agreements. A person making retail sales in Iowa is required to obtain a sales tax permit from the department of revenue. Certain qualified purchasers, users, or consumers may obtain a direct pay permit which allows qualified purchasers, users, or consumers to remit tax directly to the department rather than to the retailer at the time of purchase or use. The following provisions govern the issuance of each type of permit.

12.3(1) Sales tax permits. Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 701—29.1(423) relating to use tax may remit sales taxes collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons, except cities and counties, who have sales activity from gambling.

12.3(2) Direct pay permits. Effective January 1, 1998, qualified purchasers, users, and consumers of tangible personal property or enumerated services pursuant to Iowa Code chapters 422, 422B, and 423 may remit tax owed directly to the department of revenue instead of the tax being collected and remitted by the seller. A qualified purchaser, user, or consumer may not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department of revenue.

a. Qualifications for a direct pay permit. To qualify for a direct pay permit, all of the following criteria must be met:

(1) The applicant must be a purchaser, user, or consumer of tangible personal property or enumerated services.

(2) The applicant must have an accrual of sales and use tax liability on consumed goods of more than \$4,000 in a semimonthly period. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of \$4,000 in sales and use tax liability in a semimonthly period to qualify, if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer must indicate which locations will be utilizing the direct pay permit at the time of application.

(3) The applicant must make deposits and file returns pursuant to Iowa Code section 422.52. See subrule 12.3(2), paragraph “d,” for further details.

b. Nonqualifying purchases or uses. The granting of a direct pay permit is not allowed for any of the following:

(1) Taxes imposed on the sale, furnishing, or service of gas, electricity, water, heat, pay television service, or communication service.

(2) Taxes imposed under Iowa Code section 422C.3 (sales tax on the rental receipts of qualifying rental motor vehicles), Iowa Code section 423.7 (use tax on the sale or use of motor vehicles), or Iowa Code section 423.7A (use tax on the lease price of qualifying leased motor vehicles).

c. Application and permit information. To obtain a direct pay permit, a purchaser, user, or consumer must properly complete an application form prescribed by the director of revenue and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department of revenue or vendors over the last two years prior to application, an average of \$4,000 in a semimonthly period.

Upon approval, the director will issue a direct pay permit to qualifying applicants. The permit will contain direct pay permit identifying information including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—15.3(422,423).

d. Remittance and reporting. Sales, use, and local option tax that is to be reported and remitted to the department will be on a semimonthly basis. Remittance of tax due under a direct pay permit will begin with the first quarter after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit must be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales and service tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a quarterly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 422.52. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 422.52.

e. Permit revocation and nontransferability. A direct pay permit may be used indefinitely unless it is revoked by the director. A direct pay permit is not transferable and it may not be assigned to a third party. The director may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 422.53. If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of

purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

f. Record-keeping requirements. The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit must retain possession of the direct pay permit. The permit holder must keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(422,423).

(2) Vendor. A vendor must retain a valid exemption certificate under rule 701—15.3(422,423) which is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(422,423). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—15.3(422,423).

12.3(3) Negotiated rate agreements. Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in subrule 12.3(2), paragraph "b," above, and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

All negotiated rate agreements shall contain the following information or an explanation for its omission:

1. The name of the taxpayer who has entered into the agreement with the department.
2. The name and title of each person signing the agreement and the name, telephone or fax number, and E-mail or physical address of at least one person to be contacted if questions regarding the agreement arise.
3. The period during which the agreement is in effect and the renewal or extension rights (if any) of each party, and the effective date of the agreement.
4. The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items which will be excluded from the agreement, and any circumstances which will result in a changed rate or rates or changed composition of classes to which rates are applicable.
5. Actions or circumstances which render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.
6. Rights, if any, of the parties to resort to mediation or arbitration.
7. An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.
8. The conditions by which the agreement may be terminated and the effective date of the termination.
9. The methodology used to determine the negotiated rate and any schedules needed to verify percentages.
10. Any other matter deemed necessary to the parties' mutual understanding of the agreement.

This rule is intended to implement Iowa Code sections 422.45(20) and 422.53 as amended by 1997 Iowa Acts, House File 266.

701—12.4(422) Nonpermit holders. Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record-keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the

bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

The department shall determine the due date of returns and payment of tax for temporary permit holders, giving due consideration to the type of business and frequency of sales. Persons holding nonpermit identification certificates may be required to remit tax upon demand or at the end of the event.

Persons regularly engaged in selling tangible personal property which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section 422.43 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section 422.53.

701—12.5(422,423) Regular permit holders responsible for collection of tax. A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 422.53 and 423.9.

701—12.6(422,423) Sale of business. A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. See 701—subrule 18.28(2) regarding possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections 422.51(2) and 422.52.

701—12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 422.51(2).

701—12.8(422) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return which includes gross receipts from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the gross receipts.

This rule is intended to implement Iowa Code sections 422.42(16), 422.43, 422.51, and Iowa Code chapter 455C.

701—12.9(422) Claim for refund of tax. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.8(17A).

When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972, to June 30, 1977. A \$10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of their audit liability if the decision in Y's case was also applicable to X.

EXAMPLE: X, a utility company, filed a request for a rate increase with the commerce commission on June 30, 1967. The rate increase became effective January 1, 1968. However, a final decision of whether X was allowed this rate increase is not made until September 30, 1974. The rate increase was disallowed. X then had to refund to its customers all disallowed, but collected, rate increases plus sales tax. X files a claim for refund of the involved sales tax on December 30, 1974. Only the tax for the years 1970 to 1974 will be refunded. The tax for the years 1968 and 1969 will be denied as being beyond the five-year statute set forth in Iowa Code section 422.73(1). However, if X had filed a claim covering the rate increase any time before January 31, 1973, requesting it be held in abeyance pending the outcome of the commerce commission ruling, then X would have been allowed a full refund of all the sales tax that is refunded from the effective date of the rate increase, January 1, 1968, through September 30, 1974.

EXAMPLE: X is audited by the department for the period July 1, 1973, to June 30, 1978, and assessed July 31, 1978. X pays the assessment on December 31, 1978. No protest was filed and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 1980, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision which makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 1975, through June 30, 1978, will be allowed as this is the only portion within the five-year statute of limitations set forth in section Iowa Code 422.73(1). If the claim had been filed on or before December 31, 1979, then the entire audit period July 1, 1973, to June 30, 1978, could have been considered for refund as the claim would have been filed within one year of payment.

This rule is intended to implement Iowa Code section 422.73.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—12.10(423) Audit limitation for certain services.

12.10(1) Definitions. For purposes of this rule, the following definitions shall govern:

“*Landscaping*” means the same as defined in rule 701—26.61(423).

“*Lawn care*” means the same as defined in rule 701—26.61(423).

“*Tree trimming and removal*” means the same as defined in rule 701—26.66(423).

12.10(2) Audit limitation for lawn care, landscaping, and tree trimming and removal services. Notwithstanding any other provision of the Iowa Code to the contrary, the department shall not attempt to collect delinquent sales tax or use tax on a transaction involving the furnishing of lawn care, landscaping, or tree trimming and removal services which occurred more than five years prior to

the date of an audit. The date an audit will begin is when the department presents notification that the person is being contacted for an audit.

This rule is intended to implement Iowa Code section 423.31 as amended by 2008 Iowa Acts, Senate File 2428, section 23.

701—12.11 Reserved.

701—12.12(422) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section 422.51.

701—12.13(422) Determination of filing status.

12.13(1) Prior to January 1, 2003. Iowa Code sections 422.51(4) and 422.52 provide, based on the amount of tax collected, how often retailers file deposits or returns with the department (see rule 701—12.1(422)).

The department will determine if the retailer's current filing status is correct by reviewing the most recent four quarters of the retailer's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

<u>Filing Status</u>	<u>Statutory Requirement</u>	<u>Test Criteria</u>
Semimonthly	\$4,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds \$24,000.
Monthly	\$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds \$150.
Annual	\$120 or less in tax in prior year.	Retailer remits \$120 or less in tax for last 4 quarters and requests annual filing.
Seasonal		Retailer remits tax for only 1 quarter during the previous calendar year and requests filing for 1 quarter only.
Quarterly	All other filers.	

When it is determined that a retailer's filing status is to be changed, the retailer will be notified and will be given 30 days to provide the department with a written request to prevent the change.

Retailers may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

a. Incorrect historical data is used in the conversion. A business may meet the criteria based on initial information available, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

b. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by department.

Exceptions will not be granted in instances where the retailer's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Retailers will be notified in writing of approval or denial of their request for reduced filing periods.

Retailers may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the retailer's request.

12.13(2) January 1, 2003, and after. Effective July 1, 2002, the department and the department of management have the authority to change the above-mentioned filing thresholds established by department rule. After review of these filing thresholds, the department has determined that new thresholds are necessary and are to be implemented January 1, 2003. Accordingly, this subrule sets forth the filing thresholds for each filer based on the amount of sales tax collected.

<u>Filing Status</u>	<u>Threshold</u>	<u>Test Criteria</u>
Semimonthly	Greater than \$60,000 in annual state sales tax (more than \$2,500 in a semimonthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$15,000 per quarter.
Monthly	Between \$6,000 and \$60,000 in annual state sales tax (more than \$500 in a monthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$1,500 per quarter.
Quarterly	Between \$120 and \$6,000 in annual state sales tax.	Tax remitted in 3 of most recent 4 quarters examined exceeds \$30 per quarter.
Annual	Less than \$120 in state sales tax for the prior year.	Tax remitted in prior year is less than \$120.
Seasonal	Retailer remits tax for only 1 quarter during the previous calendar year and requests filing for 1 quarter only.	

A retailer shall be notified in writing when it is determined that a retailer's filing status will be changed. A retailer has the option of requesting, within 30 days of the date of the department's notice of a change in filing frequency, that the retailer file more or less frequently than required by the department. A request to file on a less frequent basis than assigned by the department must be in writing and submitted to the department. Once such a written request is filed by the retailer, the department will review the request and issue a written determination to the retailer.

A change in assigned filing status to file on a less frequent basis will be granted in only two instances:

a. Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

b. Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

A retailer may also request to file more frequently than assigned by the department; the request may be made orally, in person, or by telephone. With the exception of those retailers who previously filed on a quarterly basis and have been changed to an annual filing frequency, any retailer seeking to file on a more frequent basis than assigned shall be required to deposit revenues by electronic funds transfer if the department allows the retailer to file more frequently.

The department and the department of management may perform review of filing thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing thresholds need to be changed include, but are not limited to: tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.

This rule is intended to implement Iowa Code sections 421.14, 422.51, and 422.52, and sections 422.54 as amended by 2002 Iowa Acts, House File 2622, section 11, and 423.13 as amended by 2002 Iowa Acts, House File 2622, section 14.

701—12.14(422,423) Immediate successor liability for unpaid tax. A retailer ceasing to do business is obligated to prepare a final return and pay all tax due within the time required by law. If a retailer ceasing to do business fails to do this, any immediate successor to the retailer who purchases the business or stock of goods is obligated to withhold from the purchase price enough of the purchase price to pay the tax, interest, or penalty which the retailer owes. Any immediate successor who intentionally fails to withhold sufficient of the purchase price to pay the delinquent tax, interest, and penalty is personally liable for the payment of the tax. However, if the immediate successor's purchase of the business or stock of goods was made in good faith that the retailer owed no tax, interest, or penalty, then the department may waive the immediate successor's liability.

12.14(1) Immediate successors having a duty to withhold. Only an immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price if necessary. Persons who fail some aspect of this test, e.g., because they take by operation of law rather than by contract or provide no consideration, are not obligated to investigate or withhold. Nonexclusive examples of persons not so obligated are the following:

- a. A person foreclosing on a valid security interest.
- b. A person retaking possession of premises under a valid lease.
- c. A spouse electing to take under a will.
- d. A person taking by gift.
- e. Any other person taking for what would legally be considered "for value" but without the payment of a recognizable "purchase price."

Included within the meaning of the phrase "immediate successor" is a corporation resulting from the action of a sole proprietor who incorporates a business in which the sole proprietor is the only or the controlling shareholder; or a sole proprietorship established from a corporation of which the sole proprietor was the exclusive, majority, or controlling stockholder.

12.14(2) More than one immediate successor. If a retailer sells a business or stock of goods to two or more persons the following rules apply:

a. *Sale of stock of goods to two or more persons.* If a retailer sells a substantial portion of the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person is an "immediate successor" and personally liable for payment of tax to the extent of tax, interest, or penalty owed or the amount of the individual purchase price, whichever is the lesser.

EXAMPLE: A sells the stock of goods from a furniture business, in unequal portions, to B, C, and D. B pays a \$5,000 purchase price for a portion of the stock of goods, C pays \$20,000 for a portion of the stock of goods, and D pays a \$30,000 purchase price for the remainder of A's stock of goods. A, at the time of the transfers, owes the department of revenue \$10,000 in sales tax, interest, and penalty. Neither B, C, nor D withholds any amount for payment of tax from the purchase price. B, C, and D individually and together are liable for payment of the tax. Each is personally liable up to the amount of the purchase price which each has paid or the amount of tax, interest, and penalty owing, whichever is the lesser. In this example, B is liable for \$5,000, the lesser amount of B's purchase price (\$5,000) and the amount of tax which A owes (\$10,000); C is liable for \$10,000, since purchase price and tax owed are equal; and D is liable for \$10,000, the lesser amount of tax owed (\$10,000) and D's purchase price (\$30,000). The department can proceed against any one, two, or all three of the immediate successors up to the amount of tax which each owes, as it chooses.

b. *Purchase of differing places of business.* If one person owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

12.14(3) "Sale of a retailer's business" characterized. Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. *People v. Gabriel*, 135 P.2d 378 (Cal. App. 1943). The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty

for the sale of any type of tangible personal property constitutes the selling of the retailer's business, and the person to whom the business is sold is an "immediate successor" and liable for tax.

EXAMPLE: A is a furniture dealer. The furniture business falls on hard times. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

12.14(4) *"Good faith" characterized.* An immediate successor to a retailer has purchased the retailer's business or stock of goods "in good faith" if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists. The list of situations is exclusive:

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid; or

b. The immediate successor has taken "in good faith" a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase. Immediate successors should not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor should request a written statement to this effect. For information regarding delinquent tax, interest, or penalty and tax liens write to: Collections Section Supervisor, Iowa Department of Revenue, P.O. Box 10471, Hoover State Office Building, Des Moines, Iowa 50306. A "certified statement" from a retailer is a statement the truth of which is attested to before a notary public or other officer authorized to take oaths. A certified statement has been taken from a retailer "in good faith" if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer's statement was false or no reason to question the truth of the retailer's statement.

This rule is intended to implement Iowa Code section 421.28.

701—12.15(422,423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax.

12.15(1) *Personal liability—how determined.* There are various criteria which can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

- a. The duties of officers as outlined in the corporate bylaws,
- b. The duties which various officers have assumed in practice,
- c. Which officers are empowered to sign checks for the corporation,
- d. Which officers hire and fire employees, and

e. Which officers control the financial affairs of the corporation. An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills which had been selected for payment will be paid. "Final control" means a significant control over which bills should or should not be paid rather than exclusive control. The observations in this paragraph are applicable to partnerships as well as corporations.

12.15(2) *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An open account is one which is neither finally settled or finally closed, but is still running and "open" to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an "account receivable." The amount due has been finally settled

and is not open to future adjustment. The usual consumer installment contract is a “note receivable” rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

12.15(3) *Beginning date of personal liability.* Officers and partners are not personally liable for state sales tax due and unpaid prior to March 13, 1986. They are liable for state sales taxes which are both due and unpaid on and after that date. See department rule 701—107.12(422B) for an explanation of officer and partner liability for unpaid local option sales tax.

701—12.16(422) Show sponsor liability. Persons sponsoring flea markets or craft, antique, coin, stamp shows, or similar events are, under certain circumstances, liable for payment of sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Included within the meaning of the term “similar event” is any show at which guns or collectibles, e.g., depression glassware or comic books, are sold or traded. To avoid liability, sponsors of these events must obtain from retailers appearing at the events proof that a retailer possesses a valid Iowa sales tax permit or a statement from the retailer, taken in good faith, that the property or service which the retailer offers for sale is not subject to sales tax. “Good faith” may demand that the sponsor inquire into the nature of the property or service sold or why the retailer believes the property or services for sale to be exempt from tax. A sponsor who fails to take these measures assumes all of the liabilities of a retailer. This includes not only the obligation to pay tax, penalty, and interest, but also to keep the records required of a retailer and to file returns.

Excluded from the requirements of this rule and from sponsor liability are organizations which sponsor events fewer than three times a year and state, county, or district agricultural fairs.

This rule is intended to implement the requirements of Iowa Code section 422.52.

701—12.17(422) Purchaser liability for unpaid sales tax. For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see 701—subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone.

This rule is intended to implement Iowa Code section 422.52.

701—12.18(423) Biodiesel production refund. A refund of sales or use tax is available for certain producers of biodiesel for calendar years 2012 to 2014.

12.18(1) *Qualifications for the refund.* A biodiesel producer must meet the following criteria to be eligible for the refund.

a. The producer must be engaged in the manufacture of biodiesel and have registered with the United States Environmental Protection Agency as a manufacturer in accordance with the requirements of 40 CFR Part 79.4.

b. The biodiesel produced must be for use in biodiesel blended fuel in accordance with Iowa Code section 214A.2.

c. The biodiesel must be produced in Iowa.

12.18(2) *Calculation of the refund.*

a. The refund is calculated by multiplying the total number of gallons produced by the biodiesel producer in this state during each quarter of the calendar year by the following rate:

- (1) For the calendar year 2012, three cents.
- (2) For the calendar year 2013, two and one-half cents.
- (3) For the calendar year 2014, two cents.

b. The refund is calculated on the first 25 million gallons of biodiesel produced at each facility during the calendar year. No refund will be allowed on gallons produced in excess of 25 million at a

facility during each of the calendar years 2012 to 2014. No refund will be allowed for gallons produced at a facility on or after January 1, 2015.

12.18(3) *Claiming the tax credit.* The refund shall be computed after subtracting any amount of sales or use tax imposed and paid upon purchases made by the biodiesel producer. The biodiesel producer must file and report the amount of sales or use tax upon purchases made during each calendar year quarter from 2012 to 2014 by filing a quarterly sales or use tax return. The biodiesel producer must then file Form IA 843, Claim for Refund, for each calendar quarter and report all of the following:

- a. The amount of biodiesel produced during the quarter at each facility.
- b. The calculation of the biodiesel production refund.
- c. The amount of sales or use tax paid upon purchases during the quarter.
- d. The amount of biodiesel production refund requested.

EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2012. The producer owes \$10,000 of Iowa consumers use tax based on purchases made during the first quarter of 2012. The producer will file an Iowa consumers use tax return and report \$10,000 of tax due, but this amount will not be paid with the return. The producer will also file Form IA 843, Claim for Refund, to request a refund of \$140,000 for the first quarter of 2012. This amount is calculated by multiplying 5 million gallons times three cents, or \$150,000, less the \$10,000 of Iowa consumers use tax due.

This rule is intended to implement Iowa Code section 423.4 as amended by 2011 Iowa Acts, Senate Files 531 and 533.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

701—12.19(15) Sales and use tax refund for eligible businesses. For eligible businesses approved under the high quality jobs program, enterprise zone program, or housing enterprise zone program by the Iowa economic development authority, a refund of sales and use tax is available.

12.19(1) *Sales and use tax eligible for refund.* The sales and use tax for which the eligible business can receive a refund consists of the following:

a. Sales and use tax paid for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the eligible business.

b. If the eligible business is involved in a warehouse or a distribution center, sales and use tax attributable to racks, shelving and conveyor equipment.

12.19(2) *Sales and use tax ineligible for refund.* The sales and use tax for which the eligible business cannot receive a refund consists of the following:

a. Any local option sales tax paid is not eligible for the refund. The refund is limited to the state sales and use tax paid.

b. Any sales and use tax attributable to intangible property and furniture and fixtures is not eligible for the refund.

12.19(3) *Claiming the refund.* To receive the refund, the eligible business must file a claim for refund within one year of project completion. For a manufacturing facility, project completion is the first date upon which the average annualized production of finished project for the preceding 90-day period at the manufacturing facility is at least 50 percent of the initial design capacity of the facility. For all other facilities, project completion is the date of completion of all improvements necessary for the start-up, location, expansion or modernization of the business.

a. To request a refund of the sales and use tax paid for gas, electric, water or sewer utility services used during construction, the eligible business must file Form IA 843, Claim for Refund, with the department of revenue. The claim shall include the agreement number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

b. To request a refund of the sales and use tax paid on goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor relating to the construction or equipping of a facility, the eligible business must file the Construction Contract Claim for Refund form,

along with the Iowa Contractor's Statement, with the department of revenue. It is not necessary to attach invoices to the Construction Contract Claim for Refund form.

c. To request a refund of the sales and use tax attributable to racks, shelving and conveyor equipment, the eligible business must file Form IA 843, Claim for Refund, with the department of revenue. The claim shall include the agreement number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount. The combined amount of refunds attributable to sales and use tax paid on racks, shelving and conveyor equipment, along with tax credit certificates issued for sales and use tax paid on racks, shelving and conveyor equipment provided in 701—subrule 52.10(5), shall not exceed \$500,000 during a fiscal year. The requests for refunds or tax credit certificates will be processed in the order the requests are received on a first-come, first-served basis until the amount of refunds or credits authorized for issuance has been exhausted. If applications for refunds or tax credit certificates exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

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◊ Two or more ARCs

CHAPTER 240
RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES
AND USE TAX AGREEMENT

701—240.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used. Any database maintained by the department which displays tax rates and tax jurisdictional boundaries based on either a five-digit or nine-digit zip code system shall, if an area encompassing one zip code has two or more rates of tax, provide to retailers a means of identifying and applying the lowest rate within the area for use in computing tax due. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the lowest rate for the five-digit zip code area.

This rule is intended to implement 2005 Iowa Code section 423.55.

701—240.2(423) Permissible categories of exemptions.

240.2(1) Definitions.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product.

“Product-based exemption” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Use-based exemption” means an exemption based on the purchaser’s use of the product.

240.2(2) Product-based exemptions. Iowa will enact a product-based exemption without restriction only if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, Iowa will exempt all items included within the definition but will not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

240.2(3) Entity-based and use-based exemptions. Iowa will enact an entity-based or a use-based exemption without restriction only if the agreement has no definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, Iowa will enact an entity-based or a use-based exemption that applies to that product only if the exemption utilizes the agreement’s definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, Iowa has the power to enact an entity-based or a use-based exemption for the product without restriction.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.3(423) Requirement of uniformity in the filing of returns and remittance of funds. Any model 1, 2, or 3 seller may submit its sales or use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The department will require only one remittance for each return except as otherwise allowed by the agreement. If any additional remittance is required, it will only be required from sellers that have collected more than \$30,000 in sales and use taxes in Iowa during the preceding calendar year. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.4(423) Allocation of bad debts. If a seller is entitled under the provisions of 2005 Iowa Code section 423.21 to deduct bad debts owed to it and those bad debts consist of any sales price or purchase price upon which tax has been paid to the state of Iowa as well as a state or states other than Iowa, then allocation of the bad debt is allowed. The seller must support an allocation of the bad debts between Iowa and the other state or states through the proper accounting of its books and records.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.5(423) Purchaser refund procedures. Iowa law allows a purchaser to seek a return of overcollected sales or use taxes from the seller who collected them. See 2005 Iowa Code subsection 423.45(2). In connection with any purchaser's request of a seller that the seller return sales or use tax alleged to have been overcollected, the seller to whom the request is directed shall be rebuttably presumed to have a reasonable business practice if, in the collection of such sales or use tax, the seller uses either a provider or a system, including a proprietary system, which is certified by this state; and has remitted all taxes collected by the use of that provider system to the department, less any deductions, credits, or collection allowances.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.6(423) Relief from liability for reliance on taxability matrix. Iowa provides and maintains a taxability matrix in a database that is in a downloadable format approved by the governing board. All sellers and certified service providers are relieved from liability to Iowa and any jurisdiction imposing a local option tax under Iowa Code chapter 423B or 423E for having charged and collected the incorrect amount of sales or use tax resulting from the seller's or certified service provider's reliance on erroneous data provided by that taxability matrix.

This rule is intended to implement 2005 Iowa Code chapter 423, subchapter IV.

701—240.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished. Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring on or after the effective date of the rate increase. If the rate of taxation has been decreased, the new rate shall apply to bills rendered on or after the effective date of the rate decrease.

This rule is intended to implement 2011 Iowa Code chapter 423, subchapter IV.

[ARC 0415C, IAB 10/31/12, effective 12/5/12]

701—240.8(423) Prospective application of defining "retail sale" to include a lease or rental. The definition of "retail sale" which includes leasing or renting (see 701—Chapter 211) is applied only prospectively from the date of July 1, 2004, and will have no retroactive impact on leases or rentals existing prior to that date. This definition of "retail sale" does not impact any Iowa exemption or exclusion in force prior to July 1, 2004, and applicable to a sale-leaseback transaction, nor does the definition preclude this state from adopting a sale-leaseback exemption or exclusion after July 1, 2004.

This rule is intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 205.

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LABOR SERVICES DIVISION[875]

[Prior to 11/19/97, see Labor Services Division[347]]

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CHAPTER 90
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

[Prior to 1/14/98, see 347—Chs 41 to 49]

[Prior to 8/16/06, see 875—Chs 200, 202]

875—90.1(89) Purpose and scope. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object shall not be considered “under pressure” and shall not be within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less.

[ARC 0416C, IAB 10/31/12, effective 12/5/12]

875—90.2(89,261,252J,272D) Definitions. To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule shall be applicable to the rules contained in 875—Chapters 90 to 96.

“*Alteration*” means a change in a boiler or pressure vessel that substantially alters the original design requiring consideration of the effect of the change on the original design. It is not intended that the addition of nozzles smaller than an unreinforced opening size will be considered an alteration.

“*ANSI/ASME CSD-1*” means Control and Safety Devices for Automatically Fired Boilers.

“*ASME*” means the American Society of Mechanical Engineers.

“*Blowoff valve*” means all blowoff valves, drain valves, and pipe connections.

“*Boiler*” means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat. “Boiler” includes all temporary boilers.

“*Certificate of noncompliance*” means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;
2. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or
3. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

“*CFR*” means Code of Federal Regulations.

“*Construction or installation code*” means the applicable standard for construction or installation in effect at the time of installation.

“*Division*” means the division of labor services, unless another meaning is clear from the context.

“*Electric boilers*” means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

“*External inspection*” means as complete an examination as can be reasonably made of the external surfaces and safety devices while the boiler or pressure vessel is in operation.

“*High temperature water boiler*” means a water boiler intended for operations at pressures in excess of 160 psig or temperatures in excess of 250 degrees F.

“*Hot water heating boiler*” means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F at the boiler outlet.

“*Hot water supply boiler*” means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig or at temperatures not exceeding 250 degrees F.

“*Internal inspection*” means as complete an examination as can be reasonably made of the internal and external surfaces of a boiler or pressure vessel while it is shut down and while manhole plates, handhole plates or other inspection opening closures are removed as required by the inspector.

“*ISO*” means International Standards Organization.

“*Labor commissioner*” means the labor commissioner or the commissioner’s designee.

“*Lap seam crack*” means a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

“*National Board*” means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of boiler codes.

“*National Board Inspection Code*” means the Manual for Boiler and Pressure Vessel Inspectors (ANSI/NB 23) published by the National Board. Copies of the code may be obtained from the National Board.

“*Object*” means a boiler or pressure vessel.

“*Power boiler*” means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch or a water boiler intended for operation at pressures in excess of 160 pounds per square inch or temperatures in excess of 250 degrees Fahrenheit.

“*Process steam generator*” means a vessel or system of vessels comprised of one or more drums and one or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

“*Psig*” means pounds per square inch gage.

“*Reinstalled boiler or pressure vessel*” means an object removed from its original setting and reinstalled at the same location or at a new location.

“*Relief valve*” means an automatic pressure-relieving device actuated by a static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure and that is used primarily for liquid service.

“*Repair*” means work necessary to return a boiler or pressure vessel to a safe operating condition.

“*Rupture disk device*” means a nonreclosing pressure-relief device actuated by inlet static pressure and designed to function by the bursting of a pressure-containing disk.

“*Safety appliance*” shall include, but not be limited to:

1. Rupture disk device;
2. Safety relief valve;
3. Safety valve;
4. Temperature limit control;
5. Pressure limit control;
6. Gas switch;
7. Air switch; or
8. Any major gas train control.

“*Safety relief valve*” means an automatic, pressure-actuated relieving device suitable for use as a safety or relief valve, depending on application.

“*Safety valve*” means an automatic, pressure-relieving device actuated by the static pressure upstream of the valve and characterized by full opening pop action. The safety valve is used for gas or vapor service.

“*Special inspection*” means an inspection which is not required by Iowa Code chapter 89.

“*Temperature and pressure relief valve*” means a valve set to relieve at a designated temperature and pressure.

“*Unfired steam boiler*” means a vessel or system of vessels intended for operation at a pressure in excess of 15 psig for the purpose of producing and controlling an output of thermal energy.

“*Unfired steam pressure vessel*” means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source.

“*U.S. customary units*” means feet, pounds, inches and degrees Fahrenheit.

“*Water heater supply boiler*” means a closed vessel in which water is heated by combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressure not exceeding 160 psig and shall include all controls and devices necessary to prevent water temperatures from exceeding 210 degrees F.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 9790B, IAB 10/5/11, effective 11/9/11; ARC 0319C, IAB 9/5/12, effective 10/10/12]

875—90.3(89) Iowa identification numbers. All objects shall be identified by an Iowa identification number. State inspectors and special inspectors shall assign identification numbers as directed by the

division to all jurisdictional objects that lack numbers. Identification numbers shall be attached in plain view to the object using one of the following methods:

1. A yellow sticker 2 inches by 3 inches affixed to the object and bearing the number.
2. A metal tag 1 inch by 2½ inches affixed to the object and bearing the number.
3. Numbers at least 5/16 of an inch high and stamped directly on the object.

875—90.4(89) National Board registration. Rescinded IAB 11/18/09, effective 1/1/10.

875—90.5(89) Preinspection owner or user preparation.

90.5(1) Preparation of objects. Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.

90.5(2) Confined space and lockout, tagout procedures.

a. It is the responsibility of the owner or user to assess all objects for compliance with the confined space and lockout, tagout standards pursuant to 29 CFR 1910.146 and 1910.147. If an object is a non-permit-required confined space or a permit-required confined space as defined by 29 CFR 1910.146, the owner or user must comply with all applicable requirements of 29 CFR 1910.146 and 1910.147 in preparing the object for inspection.

b. It is the duty of the owner or user to inform any inspector of the owner's or user's confined space entry and lockout, tagout procedures and supply to the inspector all information necessary to assess whether the confined space is safe for entry. It is the right of an inspector to verify any of the information supplied.

c. If the requirements of 29 CFR 1910.146 and 1910.147 are not met, the inspector shall not enter the space. If there is a breach of the procedure or the procedure is inconsistent with 29 CFR 1910.146 or 1910.147, the inspection process shall cease until the space is reassessed and determined to be safe or the procedure is rewritten in a manner consistent with the standards. No inspector shall violate the owner's or user's confined space or lockout, tagout procedures in making an inspection.

d. The owner or user shall have all objects locked and tagged, as applicable, prior to the inspector's entry for inspection or testing.

e. For entry into a permit-required confined space, the owner or user shall provide the necessary equipment such as air monitors and a qualified attendant who has received all the information relevant to the entry.

90.5(3) Hydrostatic tests. The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the inspector, which date shall be not less than seven days after the date of notification.

90.5(4) Boilers. A boiler shall be prepared for internal inspection in the following manner:

a. Fluid shall be drawn off and the boiler washed thoroughly.

b. Manhole and handhole plates, washout plugs and inspection plugs in water columns shall be removed as required by the inspector. The furnace and combustion chambers shall be thoroughly cooled and cleaned.

c. All grates of internally fired boilers shall be removed.

d. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

e. Low-water fuel cutoff controls shall be opened or removed to allow for visual inspection.

90.5(5) Pressure vessels. The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required, including affording reasonable means of access and removing manhole plates and inspection openings. In other cases, preparation shall include removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel if required by the inspector.

90.5(6) Removal of covering or brickwork to permit inspection. If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other

form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

90.5(7) *Improper preparation for inspection.* If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

[ARC 9082B, IAB 9/22/10, effective 10/27/10]

875—90.6(89) Inspections.

90.6(1) *General.* All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (2011), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

90.6(2) *Schedule.* Inspections must be performed according to the schedule set forth in Iowa Code section 89.3 and within a 60-day period prior to the expiration date of the operating certificate. Modification of this period will be permitted only upon written application showing just cause for waiver of the 60-day period. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

90.6(3) *Inspections conducted by special inspectors.* Special inspectors shall provide copies of the completed report to the insured and to the division within 30 days of the inspection. The reports shall list all adverse conditions and all requirements, if any. If the special inspector has not notified the division of the inspection results within 30 days of the expiration of an operating certificate, the division may conduct the inspection.

90.6(4) *Type of inspection.* The inspection shall be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. Conditions including, but not limited to, the following may also be the basis for an internal inspection:

- a. Visible metal or insulation discoloration due to excessive heat.
- b. Visible distortion of any part of the pressure vessel.
- c. Visible leakage from any pressure-containing boundary.
- d. Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or to a temperature above or below the nameplate design temperature.
- e. A suspected or known history of internal corrosion or erosion.
- f. Evidence or knowledge of a vessel having been subjected to external heat from a fire.
- g. A welded repair not documented as required.
- h. Evidence of an accident, incident or malfunction that could affect or may have resulted from a problem with the object's integrity.

90.6(5) *Internal inspections for unfired steam pressure vessels operating at more than 15 pounds per square inch.* The commissioner may require an internal inspection of an unfired steam pressure vessel operating in excess of 15 psi when an inspector observes any deviation from these rules, Iowa Code chapter 89, the construction code, the installation code, or the National Board Inspection Code.

90.6(6) *Inspection of inaccessible parts.* When, in the opinion of the inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

90.6(7) *Imminent danger.* If the labor commissioner determines that continued operation of an object constitutes an imminent danger that could seriously injure or cause death to any person, notice to immediately cease operation of that object shall be posted by the labor commissioner. Upon such notice, the owner shall immediately begin the necessary steps to cease operation of the object. The object shall not be used until the necessary repairs have been completed and the object has passed

inspection. Operation of an object in violation of this subrule may result in further legal action pursuant to Iowa Code sections 89.11 and 89.13.

90.6(8) Internal inspections on a four-year cycle. The owner shall demonstrate compliance with the requirements set forth in 2012 Iowa Acts, Senate File 2280, by annually submitting to the labor commissioner a notarized affidavit. The affidavit shall be in a format approved by the labor commissioner and shall be signed by the owner or an officer of the company.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 0319C, IAB 9/5/12, effective 10/10/12]

875—90.7(89) Fees.

90.7(1) Special inspector commission fee. A \$40 fee shall be paid annually to the commissioner to obtain a special inspector commission pursuant to Iowa Code section 89.7.

90.7(2) Certificate fee. A \$25 fee shall be paid for each one-year certificate, a \$50 fee shall be paid for each two-year certificate, and a \$100 fee shall be paid for each four-year certificate.

90.7(3) Fees for inspection. An inspection fee for each object inspected by a division inspector shall be paid by the appropriate party as follows:

- a. A \$40 fee for each water heater supply boiler.
- b. An \$80 fee for each boiler, other than a water heater supply boiler, having a working pressure up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.
- c. A \$200 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.
- d. A \$40 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure of 15 pounds or more per square inch.
- e. In addition to the applicable object's inspection fee, if the division cannot follow normal practice of scheduling inspections in a cost-effective manner due to a request by an owner or user for a customized schedule, travel expenses may be charged at the discretion of the division.
- f. Inspections and code qualification surveys made by the commissioner at the request of a boiler or tank manufacturer shall be charged at a rate set by the commissioner not to exceed the rate currently charged by the various insurance companies for performing a similar service. This charge shall not void the regular fee for inspection or certification when the boiler or tank is installed.
- g. If a boiler or pressure vessel has to be reinspected through no fault of the division, there shall be another inspection fee as specified above. However, there shall be no fee charged for the first scheduled reinspection to verify that ordered repairs have been made.

90.7(4) Fees for attempted inspections. A \$20 fee shall be charged for each attempt by a division inspector to conduct an inspection which is not completed through no fault of the division.

[ARC 7863B, IAB 6/17/09, effective 7/1/09; ARC 8081B, IAB 8/26/09, effective 9/30/09; ARC 0319C, IAB 9/5/12, effective 10/10/12]

875—90.8(89) Certificate. A certificate to operate shall not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid. The current certificate to operate or a copy of the current certificate to operate shall be conspicuously posted in the room where the object is installed.

875—90.9(89,252J,261) Special inspector commissions.

90.9(1) Application. A person applying for a commission shall complete, sign, and submit to the division with the required fee the form entitled "Application for Boiler and Pressure Vessel Special Inspector Commission" provided by the division. Additionally, the applicant shall submit a copy of the applicant's current National Board work card with each application.

90.9(2) Expiration. The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. Each commission shall expire no later than June 30 of each year.

90.9(3) Changes. The special inspector shall notify the division at the time any of the information on the form or attachments changes.

90.9(4) Denials. The labor commissioner may refuse to issue or renew a special inspector's commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in subrules 90.9(6) to 90.9(8).

90.9(5) Investigations. Investigations shall take place at the time and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

90.9(6) Reasons for probation. The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

90.9(7) Reasons for suspension. The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals the following:

- a. The special inspector failed to submit and report inspections on a timely basis;
- b. The special inspector abused the special inspector's authority;
- c. The special inspector misrepresented self as a state inspector or a state employee;
- d. The special inspector used commission authority for inappropriate personal gain;
- e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;
- f. The special inspector committed numerous violations as described in subrule 90.9(6);
- g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- h. The National Board revoked or suspended the special inspector's work card;
- i. The division received a certificate of noncompliance; or
- j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs "a" to "h" of this subrule.

90.9(8) Reasons for revocation. The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

- a. The special inspector filed a misleading, false or fraudulent report;
- b. The special inspector failed to perform a required inspection;
- c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;
- d. The special inspector failed to notify the division in writing of any accident involving an object;
- e. The special inspector committed repeated violations as described in subrule 90.9(7);
- f. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- g. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs "a" to "f" of this subrule;
- h. The National Board revoked or suspended the special inspector's work card; or
- i. The division received a certificate of noncompliance.

90.9(9) Procedures. The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

a. *Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy shall be sent to the insurance company employing the special inspector.

b. *Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. *Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

d. *Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

e. Probation period. A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

f. Suspension period. A special inspector's commission may be suspended up to five years for each incident causing a suspension.

g. Revocation period. A special inspector's commission that has been revoked shall not be reinstated for five years.

h. Concurrent actions. Multiple actions may proceed at the same time against any special inspector.

i. Revoked or suspended commissions. Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall forfeit the special inspector's commission card to the labor commissioner.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

875—90.10(89) Quality reviews, surveys and audits.

90.10(1) An entity that manufactures or repairs boilers, pressure vessels or related equipment may request quality reviews, surveys or audits from certifying organizations such as the ASME or the National Board. The division is authorized to conduct the quality reviews, surveys or audits. If the division performs the service, the manufacturer or repairer shall pay all applicable expenses.

90.10(2) Quality reviews, surveys and audits for certification to the National Board or ASME standards shall be conducted only by a person or organization designated by the labor commissioner. Any person or organization seeking this designation on behalf of the division shall provide documented evidence of training, examination, experience, and certification for the type of reviews, surveys and audits to be performed. The labor commissioner shall have final authority to determine qualifications and designations.

a. Assessing quality programs. The division recognizes the ASME and the National Board as qualified designees for conducting quality reviews, surveys and audits that lead to ASME or National Board program certification.

b. ISO 9000 assessments. The division recognizes the ASME and the National Board:

(1) To be acceptable ISO 9000 registrars of quality systems for boilers and pressure vessels and the related pressure-technology equipment industry;

(2) To certify auditors and lead auditors to the requirements of ISO 10011-2 1991(E), Annex A; and

(3) To conduct ISO 9000 assessments for the boiler, pressure vessel, and related pressure-technology equipment industry.

875—90.11(89) Notification of explosion. Owners and users of covered objects must report any object explosion by calling (515)281-3647 or (515)281-6533. If the explosion occurs during normal division operating hours, notification shall occur before close of business on that day. If the explosion occurs when the division office is closed, the notification shall occur no later than close of business on the next division business day. Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.

875—90.12(89) Publications available for review. Pursuant to Iowa Code section 89.5, subsection 3, the standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa.

875—90.13(89) Notice prior to installation. Written notice of intent to install objects subject to the jurisdiction of Iowa Code chapter 89 shall be provided to the labor commissioner at least ten days before installation. Written notice shall be accomplished by completing and submitting to the labor commissioner either:

1. The form designated by the labor commissioner, or
2. The National Board's Boiler Installation Report, I-1.

875—90.14(89) Temporary boilers. A certificate to operate a temporary boiler shall expire one year from the date of issuance or when the temporary boiler is disconnected. Inspections on temporary boilers that remain in one location longer than one year shall be performed according to the inspection schedule of Iowa Code section 89.3. A temporary boiler that is installed at a different location less than a year since the prior internal inspection of the boiler shall be subjected to a hydrostatic test pursuant to the National Board Inspection Code or to an internal inspection, at the discretion of the inspector.

875—90.15(89) Conversion of a power boiler to a low-pressure boiler. The following requirements apply to the conversion of a power boiler to a low-pressure boiler. The owner shall comply with the requirements of subrule 90.15(1) for each conversion. In addition, the owner shall comply with the requirements of subrule 90.15(2) if the converted object will be located outside of a place of public assembly or with the requirements of subrule 90.15(3) if the converted object will be located in a place of public assembly.

90.15(1) General requirements.

a. The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at http://www.iowaworkforce.org/labor/boiler_inspection_.htm. At a minimum the notice shall contain the following:

- (1) Address, uses, and owner of the building where the boiler is located.
- (2) The Iowa identification number assigned to the boiler.
- (3) Name and contact information for the person completing the notice.
- (4) Name and contact information for the contractor or other person planning to perform the conversion.

b. Pressure controls shall not exceed 14 pounds per square inch.

c. All boiler controls shall comply with ASME CSD-1.

d. Safety valves and safety relief valves shall be manufactured in accordance with a national or international standard.

e. One or more spring-pop safety valves meeting the following requirements shall be installed on each steam boiler:

- (1) The valve shall be adjusted and sealed to discharge at a pressure not to exceed 15 psig.
- (2) The valve capacity shall be certified by the National Board.

f. The converted boiler shall be subject to post-conversion external inspection to ensure that the requirements of this rule are met.

90.15(2) Boilers located outside places of public assembly. A power boiler that was converted to a low-pressure boiler and that is located outside of a place of public assembly shall not be converted back to a power boiler unless the following requirements are met:

a. The owner shall notify the labor commissioner at least ten days prior to converting the boiler.

b. The owner shall comply with the editions of ASME Section I and CSD-1 in effect at the time of the second conversion.

c. The owner shall comply with the version of 875—Chapter 92 in effect at the time of the second conversion.

90.15(3) Boilers located in places of public assembly. A power boiler converted to a low-pressure boiler that is located in a place of public assembly shall comply with 875—Chapter 94.

[ARC 9232B, IAB 11/17/10, effective 12/22/10]

These rules are intended to implement Iowa Code chapters 17A, 89, 252J, 261, and 272D.

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[Filed ARC 0416C (Notice ARC 0322C, IAB 9/5/12), IAB 10/31/12, effective 12/5/12]

◇ Two or more ARCs

¹ Date corrected IAC Supp. 3/26/08

CHAPTER 91
GENERAL REQUIREMENTS FOR ALL OBJECTS

[Prior to 1/14/98, see 347—Chs 41 to 49]

[Prior to 8/16/06, see 875—Ch 203]

875—91.1(89) Codes and code cases adopted by reference.

91.1(1) *ASME boiler and pressure vessel codes adopted by reference.* The ASME Boiler and Pressure Vessel Code (2010 with 2011a addenda) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (2010 with 2011a addenda) except for objects that meet one of the following criteria:

a. An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;

b. An object within the scope of 875—Chapter 95;

c. Rescinded IAB 10/5/11, effective 11/9/11.

d. A miniature boiler installed before March 31, 1967;

e. A power boiler or unfired steam pressure vessel installed before July 4, 1951; or

f. A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

91.1(2) *ASME code cases.* If the manufacturer of an object listed ASME Code Case 2529, 2568, 2571, 2571-1, 2710, or 2714 on the manufacturer's data report for the object and the object is otherwise in compliance with all applicable provisions, the object is in compliance with these rules.

91.1(3) *Inspection code adopted by reference.* The National Board Inspection Code (2011) is adopted by reference, and reinstallations, installations, alterations, and repairs after October 10, 2012, shall comply with it.

91.1(4) *Electric code adopted by reference.* The National Electrical Code (2008) is adopted by reference, and reinstallations and installations after January 1, 2010, shall comply with it.

91.1(5) *Piping codes adopted by reference.* The Power Piping Code, ASME B31.1 (2007), ASME B31.1a (2008), and ASME B31.1b (2009), and the Building Services Piping Code, ASME B31.9 (2008), are adopted by reference, and reinstallations and installations after April 14, 2010, shall comply with them up to and including the first valve.

91.1(6) *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) (2009) is adopted by reference, and reinstallations and installations after January 1, 2010, shall comply with it.

91.1(7) *Mechanical code adopted by reference.* Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (2009) are adopted by reference effective January 1, 2010.

91.1(8) *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2011), is adopted by reference.

91.1(9) *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2009), is adopted by reference.

91.1(10) *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2011), is adopted by reference.

91.1(11) *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2011), is adopted by reference.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 8590B, IAB 3/10/10, effective 4/14/10; ARC 9232B, IAB 11/17/10, effective 12/22/10; ARC 9790B, IAB 10/5/11, effective 11/9/11; ARC 0319C, IAB 9/5/12, effective 10/10/12; ARC 0416C, IAB 10/31/12, effective 12/5/12]

875—91.2(89) Safety appliance. No person shall remove, disable or tamper with a required safety appliance except for the purpose of repair or inspection. An object shall not be operated unless all applicable safety appliances are properly functional and operational.

875—91.3(89) Pressure-reducing valves. Where pressure-reducing valves are used, one or more relief or safety valves shall be provided on the low-pressure side of the reducing valve when the piping equipment on the low-pressure side does not meet the requirements for the full initial pressure. The

relief or safety valves shall be located adjoining or as close as possible to the reducing valve. Proper protection shall be provided to prevent injury or damage caused by the escaping fluid from the discharge of relief or safety valves if vented to the atmosphere. The combined discharge capacity of the relief valves or safety valves shall be such that the pressure rating of the lowest pressure piping or equipment shall not be exceeded in case the reducing valve sticks open. If a bypass around the reducing valves is used, a safety valve is required on the low-pressure side and shall be of sufficient capacity to relieve all the fluid that can pass through the bypass without overpressuring the low-pressure side. A pressure gage shall be installed on the low-pressure side of a reducing valve.

875—91.4(89) Blowoff equipment. The blowdown from an object that enters a sanitary sewer system or blowdown that is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature. The temperature of the water leaving the blowoff equipment shall not exceed 150 degrees Fahrenheit. If the local jurisdiction has a temperature limit of less than 150 degrees Fahrenheit, the temperature of the water leaving the blowoff equipment shall comply with the limit set by the local jurisdiction. The pressure of the water leaving the blowoff equipment shall not exceed 5 psig. The blowoff piping and fittings between the object and the blowoff tank shall comply with the construction or installation code. All materials used in the fabrication of object blowoff equipment shall comply with the construction or installation code. All blowoff equipment shall be equipped with openings to facilitate cleaning and inspection.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

875—91.5(89) Location of discharge piping outlets. The discharge from safety valves, safety relief valves, blowoff pipes and other outlets shall be so arranged that there will be no danger of scalding personnel. When the safety valve or temperature and pressure relief valve discharge is piped away from the object to the point of discharge, provision shall be made for properly draining the piping. The size of the discharge piping shall not be reduced from the size of the relief valve.

875—91.6(89) Pipe, valve, and fitting requirements.

91.6(1) Pipes, valves, and fittings subject to the effects of galvanic action shall not be used on objects covered by these rules except where permitted in 875—Chapter 95. Dielectric fittings shall be used where dissimilar metals are joined.

91.6(2) and 91.6(3) Rescinded IAB 11/18/09, effective 1/1/10.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

875—91.7(89) Electric steam generator. Rescinded ARC 0319C, IAB 9/5/12, effective 10/10/12.

875—91.8(89) Alterations, retrofits and repairs to objects. Rescinded ARC 0319C, IAB 9/5/12, effective 10/10/12.

875—91.9(89) Boiler door latches. Rescinded ARC 0319C, IAB 9/5/12, effective 10/10/12.

875—91.10(89) Clearance.

91.10(1) All objects installed prior to September 20, 2006, shall be so located that adequate space is provided for the proper operation, inspection, and necessary maintenance and repair of the object and its appurtenances.

91.10(2) This subrule applies to installations and reinstallations after September 20, 2006. Minimum clearance on all sides of objects shall be 24 inches, or the manufacturer's recommended service clearances if they allow sufficient room for inspection. Where a manufacturer identifies in the installation manual or any other document that the unit requires more than 24 inches of service clearance, those dimensions shall be followed. Manholes shall have five feet of clearance between the manhole opening and any wall, ceiling or piping that would hinder entrance or exit from the object.

875—91.11(89) Fall protection. Safe access to all necessary parts of boilers over eight feet tall shall be provided by a runway platform or fall protection system consistent with the requirements below.

91.11(1) Runway platform. A steel runway platform in compliance with the criteria of 29 CFR 1910.23 and 1910.27 shall be installed across the tops of objects or at some other convenient level for the purpose of affording safe access. All runways shall have at least two means of exit remotely located from each other.

91.11(2) Fall protection system. A fall protection system shall be in compliance with the requirements of 29 CFR 1910.132.

875—91.12(89) Exit from rooms containing objects. All rooms exceeding 500 square feet of floor area and containing one or more objects having a fuel-burning capacity of 1 million Btu's shall have two means of exit remotely located from each other on each level.

875—91.13(89) Air and ventilation.

91.13(1) Notice concerning other rules. The division and the Iowa department of public safety both enforce requirements concerning air and ventilation. Objects that are covered by both sets of rules must comply with both sets of rules.

91.13(2) Documentation. Documentation of compliance with any requirement of this rule shall be maintained in the boiler room. However, it is not necessary to maintain documentation of the louvered area.

91.13(3) National combustion air standards.

a. Installations and reinstallations. Installations and reinstallations shall comply with the edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC currently adopted at rule 875—91.1(89) or with the Iowa combustion air standard in subrule 91.13(4). However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA.

b. Existing objects. An adequate supply of combustion air shall be maintained for all objects while in operation. Compliance with the current edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC as adopted at rule 875—91.1(89) or with subrule 91.13(4) constitutes compliance with this rule. Compliance with an earlier edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC constitutes compliance with this rule. However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA. Compliance with an earlier version of Iowa's combustion air rule constitutes compliance with this rule. Earlier versions of Iowa's combustion air rule are available for reference at [http://www.iowaworkforce.org/labor/boiler_inspection .htm](http://www.iowaworkforce.org/labor/boiler_inspection.htm).

91.13(4) Iowa combustion air standard. A permanent source of outside air shall be provided for each room to permit satisfactory combustion of fuel and ventilation if necessary under normal operations. The minimum ventilation for coal, gas, or oil burners in rooms containing objects is based on the Btu's per hour, required air, and louvered area. The minimum net louvered area shall not be less than 1 square foot. The following table shall be used to determine the net louvered area in square feet:

INPUT (Btu's per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3
5,000,000	1,200	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

When mechanical ventilation is used, the supply of combustion and ventilation air to the objects and the firing device shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilating fan shall not exceed 500 feet per minute, and the total air delivered shall be equal to or greater than shown above.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

875—91.14(89) Condensate return tank. Condensate return tanks shall be equipped with at least two vents or a vent and overflow pipe to protect against a loose float plugging a single connection.

875—91.15(89) Conditions not covered. Any condition not governed by these rules shall be governed by the construction or installation code.

875—91.16(89) Nonstandard objects. Rescinded IAB 3/12/08, effective 4/16/08.

875—91.17(89) English language and U.S. customary units required. All documentation supplied for the unit including but not limited to the manufacturers' data report, drawings, parts lists, installation manuals, and operating manuals shall be in English, and all measurements shall be in U.S. customary units. All pressure gages, thermometers and other controls and safety devices shall also be in U.S. customary units.

875—91.18(89) National Board registration. Except for cast iron boilers, cast aluminum boilers, and objects governed by 875—Chapter 95, all objects shall be registered with the National Board.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

875—91.19(89) ASME stamp. Except for water heaters regulated by 875—Chapter 95, all objects shall bear the appropriate ASME stamp. Objects shall not be utilized in a manner inconsistent with the stamp.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

875—91.20(89) CSD-1 Report.

91.20(1) The installer shall complete a Manufacturer's/Installing Contractor's Report for ASME CSD-1 (CSD-1 Report) for each object except for the following:

- a. An object within the scope of 875—Chapter 95;
- b. An object within the scope of 875—Chapter 96; or
- c. A hot water supply boiler covered by ASME Section IV, Part HLW.
- d. A boiler with a fuel input rating greater than or equal to 12,500,000 Btu per hour, falling within the scope of NFPA 85, Boiler and Combustion Systems Hazards Code.

91.20(2) The owner shall make the CSD-1 Report available for inspection.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 9232B, IAB 11/17/10, effective 12/22/10]

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