ATTORNEY GENERAL[61]

DEPARTMENT OF JUSTICE

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CHAPTER 1
GENERAL PROVISIONS

61—1.1(13) Position and scope.

1.1(1) The head of the department of justice is the attorney general, an official elected for a term of four years. The main office is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-5164.

1.1(2) The attorney general provides legal counsel and direction to the state by participation in cases before the courts where the state has an interest and by formulating written opinions to state officers and county attorneys on questions of state law of public importance.

The Iowa department of justice represents the state and its officers in litigation, issues formal opinions, provides legal advice to state officers and agencies, prosecutes certain criminal cases, enforces state regulatory and consumer laws, represents the state's position in all criminal and juvenile court appeals, provides training to criminal justice professionals, provides victim services, and appears on behalf of consumers in utility rate cases.

1.1(3) At the close of each biennium, the attorney general submits a report to the governor setting forth the condition of the office, opinions rendered and other business transacted which is of public interest or required by law.

61—1.2(13) Administration.

1.2(1) *Appointed officials.* The attorney general is assisted by appointed officials who are responsible to the attorney general.

1.2(2) *Assistants.* Four deputy attorneys general and a director of administrative services assist the attorney general in the management of the office. The executive deputy attorney general coordinates the management of the department, serves as acting attorney general in the attorney general's absence, coordinates the formal opinion writing process in the office, advises the attorney general on public policy issues, and performs such other duties as assigned by the attorney general. The deputy attorney general for public protection supervises the public protection bureau. The deputy attorney general for civil justice supervises the civil justice bureau. The deputy attorney general for criminal justice supervises the criminal justice bureau.

1.2(3) *Administrative services division.* The administrative services division is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-5164. The administrative services division conducts the fiscal, personnel, automation, facilities, communications and policy development activities of the office of the attorney general and department of justice. The division director reports to the attorney general and has the responsibility for carrying out the functions of the division.

61—1.3(13) Organization—bureaus established. The attorney general has established three bureaus to carry out the duties of the attorney general. In addition, the office of consumer advocate is a separate statutory office within the department under the supervision of the attorney general. The bureaus are each directed by a deputy attorney general. Each bureau consists of one or more divisions or other units. The name and a brief summary of matters handled by each bureau, together with its location and telephone number, are as follows:

1.3(1) *Civil justice bureau.* The civil justice bureau is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-5164. The civil justice bureau represents various state departments and agencies and coordinates the department's amicus representation activities in the United States Supreme Court and performs such other duties as may be assigned by the attorney general. The civil justice bureau consists of the following divisions:

a. *Regents and human services division.* This division is located in the Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-8330. The division defends and prosecutes cases relating to welfare assistance programs, mental health, day care, and juvenile court appeals and

advises and represents the director and the department of human services. The division also counsels and represents the board of regents and regents institutions.

b. Revenue division. This division is located in Executive Hills East, 1223 Court Avenue, Des Moines, Iowa 50319, telephone (515)281-5846. It furnishes legal guidance and advice to the department of revenue prepares opinions on revenue matters and represents the director and department in litigation and in administrative proceedings.

c. Transportation division. The location of this division is at the Department of Transportation, General Counsel Division, 800 Lincoln Way, Ames, Iowa 50010, telephone (515)239-1521. The division is responsible for eminent domain litigation, counseling and advising the department of transportation and its staff, construction claims and other contract litigation, tort claims defense, administrative hearings and judicial review proceedings.

d. Special litigation division. The special litigation division is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-5881. The division is responsible for the investigation and defense of tort claims against the state, cases arising from the institutions operated by the department of corrections, advice to that department and such other special litigation matters as assigned by the attorney general.

1.3(2) *Public protection bureau.* The public protection bureau is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-3349. The public protection bureau consists of those divisions within the office providing direct public protection activities in the civil law area and representing professional licensing agencies of state government in regulating activities in order to protect the public. The divisions within the bureau are as follows:

a. Environmental law division. This division is located in Executive Hills East, 1223 Court Avenue, Des Moines, Iowa 50319, telephone (515)281-5351. This division represents state agencies in the protection of natural resources and pollution control. The division furnishes legal representation and advice to the department of natural resources, the agriculture and land stewardship department and related agencies. It initiates and conducts litigation involving environmental, conservation and agricultural matters.

b. Consumer protection division. This division is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-5926. It handles complaints regarding violations of the Iowa consumer fraud Act and the Iowa consumer credit code. The division staff warns the public of questionable practices affecting consumers and farmers and prosecutes lawsuits to prevent or halt illegal sales and business practices. Citizens are encouraged to file their complaints in writing but may also file by telephone or in person at the consumer protection division office.

c. Licensing and administrative law division. This division is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-8760. The departments of education, public safety, public health, general services, auditor's office, treasurer of state, secretary of state, the department of commerce licensing boards, division of banking, division of savings and loan associations, division of credit unions, insurance division, the Iowa college student aid commission, department of health licensing boards, and other professional licensing boards and agencies not otherwise represented by another division of the attorney general's office are provided legal counsel by this division. The division prosecutes professional licensing disciplinary cases on behalf of the public.

d. Underground storage tank unit. This unit is located in Executive Hills East, 1223 Court Avenue, Des Moines, Iowa 50319, telephone (515)281-5351. This unit is responsible for the underground storage tank fund litigation.

1.3(3) *Criminal justice bureau.* This bureau is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-3349. The criminal justice bureau includes those divisions and areas of activity within the office in the criminal law field. The principal responsibility for the development of the attorney general's positions on criminal justice policy issues is within this bureau. The divisions and units within the bureau are as follows:

a. Area prosecutions division. This division is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-3648. The division provides experienced, full-time prosecutors upon request of a county attorney when additional assistance is required or when

the county attorney experiences a conflict of interest. The division provides services from informal advice to the complete undertaking of complex felony cases.

b. Crime victim assistance division. The crime victim assistance division of the criminal justice bureau is located in the Old Historical Building, Des Moines, Iowa 50319, telephone (515)281-5044. This division is responsible for various crime victim assistance programs.

c. Criminal appeals division. This division is located on the Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-5976. The responsibilities of the criminal appeals division are to represent the state in appeals in criminal cases; certiorari proceedings related to criminal cases; appeals in postconviction relief cases under Iowa Code chapter 822; applications for discretionary review; and federal habeas corpus cases. This division advises the governor's office on extradition matters and provides advice to county attorneys in criminal matters.

d. Prosecuting attorneys training coordinator. This division of the department of justice is located in the Old Historical Building, Des Moines, Iowa 50319, telephone (515)281-5428. It provides reference materials, support services and continuing legal education for all prosecuting attorneys in the state.

e. Civil rights. The civil rights unit is a separate unit within the criminal justice bureau. The attorneys assigned to this unit are located in the Colony Building, Des Moines, Iowa 50319, telephone (515)281-4121. It furnishes legal advice to the civil rights commission and its staff, prosecutes civil rights cases, and represents the commission in cases in which it is a party or is interested.

This rule is intended to implement Iowa Code section 13.2.

61—1.4(13,22) Public information.

1.4(1) Complaints, inquiries and requests for information may be referred in writing or in person to the office of the attorney general or directly to the appropriate division of the attorney general's office which handles the subject matter at hand. Except in certain consumer areas, the office does not have the authority to provide legal advice to the public but may provide information or referral as appropriate.

1.4(2) Formal opinions of general interest and summaries of letter opinions are published biennially. Only elected or appointed state officers, legislators, and county attorneys may request the attorney general to issue an opinion. Copies of opinions are available to the public. An index to all opinions is maintained in the office; this index is divided according to subject matter and by appropriate Iowa Code sections. Summaries of opinions are published monthly in the Iowa Administrative Bulletin. Copies of unpublished opinions may be obtained from the administrative assistant to the executive deputy attorney general, telephone (515)281-5166.

1.4(3) Docket entries pertaining to court cases handled by attorneys assigned to the attorney general's office are indexed by case title, maintained in each division and are available for public inspection in the attorney general's office.

1.4(4) Copies of the attorney general's biennium reports to the governor are maintained by the attorney general's office and are available for public inspection.

1.4(5) Copies can be made by the public at cost as determined and posted by the director of administrative services. The cost of postage and of other services provided in connection with the request may be charged as appropriate.

1.4(6) The executive deputy attorney general is delegated the responsibility for implementing the requirements of Iowa Code chapter 22 concerning records in the possession of the attorney general's office.

61—Chapter 2 also governs access to records of this office.

This rule is intended to implement Iowa Code chapter 13 and section 22.3.

61—1.5(13) Opinions.

1.5(1) Written opinions are provided upon request on questions of law submitted by the legislature or by any state officer, elective or appointive. The questions must be of a public nature and relate to the duties of the requesting officer. Written opinions may also be issued to county attorneys when appropriate for their supervision in matters pertaining to the duties of their offices. The attorney general does not issue opinions to other persons.

1.5(2) Opinion requests are to be addressed to the attorney general and contain sufficient information to determine the precise legal question presented. The request should also indicate if the question is pending in litigation or before any agency of state, local, or federal government, if the requester has a personal interest in the question, and any other matter which would be relevant to resolution of the request.

1.5(3) The attorney general may decline to issue an opinion where appropriate, as in the following examples:

a. The matter is pending in litigation or litigation is imminent, or other formal proceeding provided by law for resolution of the issue and issuance of the opinion could interfere with the authority of the other forum.

b. A conflict of interest exists on the part of the attorney general or the requester.

c. The question calls for resolution of a question of fact or policy rather than determination of a question of law, or the legal question is dependent upon the facts of specific cases.

d. The request does not involve a concise question of state law of general significance.

e. The question is likely to be rendered moot, as in the case of pending legislation.

1.5(4) The attorney general may also determine that a question can more appropriately be addressed by other means and so advise the requester. Alternative means for resolution of questions which are frequently appropriate include advice from assistant attorneys general and existing administrative procedures available from state agencies or other branches of government.

1.5(5) Official opinions may be formal opinions, which are published in full biennially, or letter opinions, summaries of which are published. Formal opinions are generally limited to those which resolve an important, previously undecided legal issue which is of broad public interest or of significant precedential effect. Both formal and letter opinions are official opinions of the attorney general. In contrast, letters of advice from assistant attorneys general represent the legal advice of an attorney and are not official opinions of the attorney general. The function of an official opinion is to decide a question of state law; the function of letters of advice is to provide legal guidance to agencies or to provide information. Requesters are encouraged to contact the appropriate division or the deputy attorney general for opinions to discuss whether an opinion request would be the preferred means for handling a specific question.

1.5(6) Questions and comments about the opinion process should be addressed to the executive deputy attorney general. Questions about the status of a specific opinion request or requests for copies of opinions should be addressed to the administrative assistant to that executive deputy attorney general, telephone (515)281-5166.

61—1.6(13) Forms.

1.6(1) Complaints to the consumer protection division may be made by letter or by completion of a Consumer Protection Complaint Form which asks for the name, address, and telephone numbers of the complaining party and the person against whom the complaint is brought, the product or service involved, date of purchase or contract, and amount of purchase or contract. The form also asks the complainant to describe any prior contacts with the company, to state whether an attorney has been contacted, to state what relief is sought to resolve the complaint, and to provide a summary of the complaint.

1.6(2) Complaints to the farm division may be made by letter or by completion of a Farm Division Complaint Form which asks for the name, address, and telephone numbers of the complaining party and the person against whom the complaint is brought, the product or service involved, date of purchase or contract, and the amount of the purchase or contract. The form also asks the complainant to describe any prior contacts with the company, to state whether an attorney has been contacted, to state what relief is sought to resolve the complaint and to provide a summary of the complaint.

The division also has forms which address specific types of complaints including feeder cattle, swine, herbicides and pesticides, and steel buildings.

1.6(3) Copies of the complaint forms may be obtained from the Consumer Protection Division or the Farm Division of the Office of the Attorney General, Hoover State Office Building, 1300 East Walnut, Des Moines, Iowa 50319, or by calling (515)281-5926 or 281-6634.

These rules are intended to implement Iowa Code sections 7A.6, 7E.2, 22.3 and chapter 13.

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

61—2.1(17A,22) Definitions. As used in this chapter:

"Agency" means the attorney general.

"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 records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are 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.

"Custodian" means the attorney general, or a person lawfully delegated authority by the attorney general to act for the agency in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" means the whole or a part of a "public record" as defined in Iowa Code section 22.1.

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

61—2.2(17A,22) Statement of policy. This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

61—2.3(17A,22) Requests for access to records.

2.3(1) *Location of record.* A request for access to a record should be directed to the attorney general or the particular agency office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Attorney General, 1300 E. Walnut, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

2.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

2.3(3) *Request for access.* Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. 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.

2.3(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 2.4(17A,22) and other applicable provisions of law.

2.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency 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.

2.3(7) *Fees.*

a. When charged. 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 agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency 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 agency 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 agency 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 an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. 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.

61—2.4(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 2.3(17A,22).

2.4(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.

2.4(2) *Requests.* The custodian may require that a request to examine and copy a confidential record 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.

2.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential

record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

2.4(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.

2.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

61—2.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. 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.

2.5(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.

2.5(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. 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. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with 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 agency by the person requesting such 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.

2.5(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 agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 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.

2.5(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.

2.5(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.

2.5(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 need 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.

61—2.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person 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 person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the attorney general. The request to review such a record or the written statement of such a record of additions, dissents or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

61—2.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is 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 that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is 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. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

61—2.8(17A,22) Notice to suppliers of information. The agency shall notify persons completing agency forms of the use that will be made of personal information, which persons outside the agency 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. This notice may be given in these rules, on the 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. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law, or similar demands for information.

61—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 2.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

61—2.10(17A,22) Routine use.

2.10(1) *"Routine use"* means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) *Examples.* To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential or exempt records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the agency or officer which this office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

61—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 2.7(17A,22).

2.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

61—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or records otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

2.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

61—2.13(17A,22) Availability of records.

2.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law. Because this office primarily serves as an attorney for the state, many of its records are privileged. This office advises most state agencies. As a result, this office may have records in its possession which are subject to various confidentiality requirements. The office also has possession of many records which may be open records but which are copies of materials from another agency, which have been filed in judicial or administrative proceedings, or which are available in the state law library. This office will often refer persons to the originating agency, the clerk of the appropriate court, or the law library for those records. This is consistent with the functions of those entities, ensures that the requester get a clean official copy of the record, and protects the integrity of attorney files against unintended disclosures of confidential information.

2.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20, 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

f. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2, 17A.3.)

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R. Civ. P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Antitrust investigative records as provided in Iowa Code section 553.9.

i. Criminal investigative reports or investigative data under Iowa Code section 22.7(5).

j. Criminal history and intelligence data under Iowa Code sections 22.7(9), 692.3, and 692.18.

k. Confidential informant information under Iowa Code section 22.7(18).

l. Presentence investigation reports under Iowa Code section 901.4.

m. Minutes of testimony under Iowa Rules of Criminal Procedure 4(6)(a) and 5(5).

n. Information obtained in grand jury investigations under Rule 3(4)(d).

o. Information obtained through a prosecuting attorney's subpoena under Rule 5(6).

p. Information which is confidential under the law governing the referring agency client or the agency providing information to this office.

q. Biographical or identifying information about a child victim under Iowa Code section 910A.13.

r. Victim registration under Iowa Code sections 910A.6 to 910A.10 and 910A.17.

s. Any other records made confidential by law.

2.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested persons and withhold the records from inspection as provided in subrule 2.4(3).

61—2.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.2(17A,22). Unless otherwise stated, the authority for this office to maintain the record is provided by Iowa Code chapter 13, the statutes governing the subject matter of the record, and the enabling statutes of the agency client, where applicable. Because this office primarily acts as an attorney for the state, its officers and agencies, almost all record categories contain information which is confidential as attorney work product or attorney-client communications. Those privileges may render some or all of the following information confidential whether or not asserted in the description of the record. The record systems maintained by the agency are:

2.14(1) *Escheats to the state.* Records concerning possible escheats to the state under Iowa Code sections 633.543 to 633.546. These records consist primarily of court records and correspondence concerning estates. This office advises the department of revenue and finance, which maintains the original records.

2.14(2) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include pleadings, briefs, depositions, discovery material, docket sheets, documents, general correspondence, attorney-client correspondence, attorneys' notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. Most of these records are paper files. However, some case management records and other records are in computer form. The files are generally maintained by division and are commonly indexed by the name of the opposing party. Some files are indexed by subject matter, witness, agency, or other category. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

2.14(3) *Criminal data.* Information pertaining to criminal investigations and charges and criminal history and intelligence data is confidential under Iowa Code sections 692.3, 692.8, 692.18. This office has records concerning criminal cases and investigations as a result of prosecutions brought by the area prosecutor's division, appeals by the criminal appeals division, advice to the department of public safety, and other law enforcement functions of the attorney general. Peace officer investigative reports containing criminal investigative data are confidential under Iowa Code section 22.7(5), prior to and following the filing of a charge, except as otherwise ordered by the court. Investigative information obtained through grand jury proceedings or pursuant to a prosecuting attorney's subpoena is confidential under Iowa Rules of Criminal Procedure 3, 4, and 5(6). Confidential informant information is protected under Iowa Code section 22.7(18). Minutes of testimony or evidence attached to an indictment or trial information are not open to inspection by any person other than the court, the prosecuting attorney, or the defendant and defendant's counsel under Rule 4(6)(b). Constitutional restraints, statutes, the Rules of Criminal Procedure, the Iowa Code of Professional Responsibility, and the American Bar Association

Standards on pretrial publicity further restrict dissemination of investigative information in criminal cases prior to or during the course of a criminal trial proceeding.

Except as noted above, the charging document and pleadings filed in criminal cases are public records. Copies may be obtained from the clerk of the appropriate court where the official record of the proceeding is maintained.

2.14(4) *Other investigative files.* This office from time to time conducts investigations for a variety of purposes other than enforcement of criminal statutes. Investigative materials are subject to any applicable confidentiality requirements and may be confidential as attorney work product.

2.14(5) *Attorney advice records.* Attorneys in many divisions represent state agencies and officers as well as provide advice to state agencies and officers on a variety of topics. In the course of this representation this office compiles records from those agencies and creates records. These files may contain legal research, attorneys' notes, attorney advice, investigative materials, etc. Attorney advice files often overlap with litigation files. Much of this information is confidential as attorney work product or attorney-client communication. Some of it may also be confidential under other law governing dissemination of the subject matter or governing access to the agency records in question. Some of these files may be retrieved by the names of individuals in division files; the files may have information concerning individuals who are involved in the legal matter. Most of the records are in paper form; some are stored in computerized form.

2.14(6) *Antitrust investigations.* The special litigation division has records of investigations of alleged violations of Iowa Code chapter 533 or other antitrust laws. Information obtained in an investigation under Iowa Code section 533.9 is confidential as provided in that section. These files may also contain attorney notes and memos protected as attorney work product. Pleadings may be obtained from appropriate clerk of court.

2.14(7) *Claim files.* The tort claims division maintains files of general claims against the state, tort claims, and highway claims. The transportation division maintains files of claims against the department of transportation. These files are maintained pursuant to Iowa Code chapters 25 and 669. The files are retrievable by number or name of the claimant. These files contain information which is confidential as attorney work product and attorney-client communications and may contain information which is confidential under other applicable provisions of law. Those matters within the files which are open for public inspection are copies of records within the possession of the state appeal board. Requests to examine and copy claim records would generally be referred to the executive secretary of the state appeal board who maintains the official record.

2.14(8) *Consumer protection division and farm division complaints files.* These files contain consumer complaints, investigations, responses from businesses, correspondence, and other materials. The complaints themselves, including but not limited to consumer credit code complaints under Iowa Code chapter 537, and inquiries concerning complaints are open records. Some responses and information received during a potential investigation, investigation, or litigation may be confidential under Iowa Code sections 22.7(3), 22.7(6), 22.7(18), and 622.11. Work product of an attorney or an investigator at an attorney's direction is considered to be confidential work product. The name or identity of a person whose acts or conduct the administrator of the consumer credit code investigates pursuant to Iowa Code section 537.6106, and the facts disclosed in the investigation, are confidential under Iowa Code section 537.6106(4). Criminal history or intelligence data contained in a file is confidential under Iowa Code sections 22.7(5), 692.13, and 692.18.

2.14(9) *Consumer protection and farm division database files.* Some of the information in complaint files is also contained on a computer database for investigative purposes pursuant to the consumer fraud Act, Iowa Code section 714.16. This serves as a means of organizing information on particular problem areas into a readily accessible format. The information can be retrieved by name of the consumer or respondent or by subject matter of the complaint. The records are subject to the same confidentiality provisions as are complaint files.

2.14(10) *Records.* State of Iowa files are a subpart of the complaint file system and contain general information on an individual or business including correspondence, investigative information, agency subpoenas, demands for information and responses. Work product information contained in the state of

Iowa file is considered confidential. The records are subject to the same confidentiality provisions as are complaint files.

2.14(11) *Consumer protection and farm division investigative records.* The consumer protection division and farm division participate with the Federal Trade Commission, the United States Postal Service and other state attorneys general offices in sharing investigative information. The information is computerized and indexed by the name of the business or individual who is under investigation. The agencies who participate in these information exchange programs do so pursuant to agreements whereby the information is kept confidential. The records are confidential pursuant to Iowa Code sections 22.7(4) and 22.9. The attorney general's office has determined that the viability and utility of these information-sharing systems depend, in part, on the willingness of the Federal Trade Commission and United States Postal Service to participate. Neither of those agencies of the federal government would participate in the information-sharing program unless the confidentiality of the data was maintained. In order, therefore, to prevent the denial of services and information provided by these agencies, the information will be kept confidential and any requirements to the contrary in Iowa Code chapter 22 must be waived as provided in Iowa Code section 22.9.

2.14(12) *Human services monetary collections records.* The human services division maintains on behalf of the Iowa department of human services monetary collection files which contain correspondence, settlement, litigation, and collection records. Collections files for medical subrogation/Title XIX contain information relative to Title XIX medical assistance claims paid on behalf of a recipient, including printouts, copies of claims, correspondence and pleadings regarding personal injury lawsuits; this information is collected under Iowa Code section 249A.6 and chapter 13 and is confidential under Iowa Code section 217.30. Collections files for mental health institutes contain information relative to treatment and counseling on an outpatient self-pay basis. The information is confidential under Iowa Code sections 22.7(2), 217.30, 229.24, and 229.25, and chapter 228. Hospital schools collection records contain similar information about individuals and are confidential under Iowa Code sections 22.7(2), 217.30, and 218.22, and chapter 228. Veterans home collections files contain information relating to patient treatment, residency, financial qualifications, and contracts. The information is confidential under Iowa Code sections 22.7(2), 217.30, and 218.22. Some records are also confidential as work product or attorney-client communications. Personally identifiable information about mental health institutes, hospital schools, and veterans home patients is collected under the authority of Iowa Code sections 218.1 and 218.21, and chapter 13. This information is stored in paper form.

2.14(13) *Personnel files.* The department and individual divisions maintain files containing information about employees and applicants for positions with the agency. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information may be confidential under Iowa Code sections 22.7(11) and 22.7(18). The transportation division personnel records for former employees after one year are transferred to the department of transportation human resources bureau. Personnel records are stored in both paper and computerized form.

2.14(14) *Child support recovery records.* Attorneys assigned to the child support recovery unit of the department of human services maintain records necessary for the performance of legal services for the child support recovery program, the enforcement of laws for the recovery of child support from responsible relatives, and the supervision of county attorneys in the recovery of child support. These records are confidential under Iowa Code sections 217.30, 252B.9 and as attorney work product and attorney-client communications.

2.14(15) *Sharing of information with child support recovery unit.* Notwithstanding any statutory confidentiality provision, the attorney general may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying registrants or applicants subject to enforcement under Iowa Code chapter 13C, 252J or 557B.

61—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 2.1(17A,22). The records listed may contain information about individuals. Unless otherwise designated, the authority for this office to maintain the record is provided by Iowa Code chapter 13, the statutes governing the subject matter of the record, and the enabling statutes of the agency client, where applicable. Because this office primarily acts as an attorney for the state, its officers, and agencies, almost all record categories contain information which is confidential as attorney work product or attorney-client communications. Those privileges or other provisions of law may render some or all of the following information confidential whether or not asserted in the description of the record. All records are stored both on paper and in automated data processing systems unless otherwise noted.

2.15(1) *Opinions of the attorney general.* Official opinions of the attorney general are available to the public. A card index is maintained by subject and by Iowa Code section. Various legal publications provide citations to these opinions. Formal opinions are published in full every two years in the Report of the Attorney General. Summaries of letter opinions are also published.

2.15(2) *Consumer credit code advice letters.* The attorney general has designated the head of the consumer protection division the administrator of the consumer credit code under Iowa Code chapter 537. The deputy administrator, an attorney in that division, has authority to issue advisory letters interpreting the consumer credit code as provided in Iowa Code section 537.6104(1)*"d."* These advisory letters are stored and indexed by number, name of requester, name of business, and subject or issue. These letters are regularly provided to persons inquiring about similar issues. Copies may be obtained by contacting the Consumer Credit Code Administrator, Attorney General's Office, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319, (515)281-5926.

2.15(3) *Legal research and form files.* Various divisions maintain files on legal issues which may recur. These files include copies of cases and other published materials as well as attorney memoranda, notes, and briefs. Divisions also often maintain form pleadings which may contain attorney notes for use in drafting pleadings, contracts, etc., in future cases. The files contain information which is confidential as attorney work product or attorney-client communications or is confidential under other applicable provisions of law. The compilation of these materials as well as the individual materials may be privileged as attorney work product.

2.15(4) *Collections of documents generated by individual attorneys.* Several divisions maintain a chronological collection of all correspondence, pleadings, briefs, etc., produced by each attorney. Some of this information is confidential as attorney work product or attorney-client communication or by virtue of other applicable law.

2.15(5) *Citizen inquiry and response files.* Many people write this office on a variety of governmental problems or legal issues. The office does not generally provide legal advice to individuals but may provide general information.

2.15(6) *Consumer protection division membership campground licensing files.* Under Iowa Code chapter 557B, membership campground operators must register annually with this office. The applications and correspondence concern the requirements provided in Iowa Code chapter 557B and Iowa Administrative Code 61—Chapter 25. The records, which are retrieved by name of the applicant or registrant, are generally open to the public but may contain attorney work product or confidential communication under Iowa Code sections 22.7(3), 22.7(4), 22.7(6), and 22.7(18).

2.15(7) *Consumer protection division trade and vocational schools registration records.* Under Iowa Code sections 714.18 to 714.22, trade and vocational schools register with this office. The files contain information about whether the applicants meet the registration requirements or are exempt. These files are generally open but may contain attorney work product and information which is confidential under Iowa Code sections 22.7(3), 22.7(4), 22.7(6), and 22.7(18).

2.15(8) *Title opinions and title vesting certificates.* The environmental division maintains a file on all title opinions and title vesting certificates issued regarding the department of natural resources and certain other departments.

2.15(9) *Administrative records.* This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

2.15(10) *Publications.* The office receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state law library.

2.15(11) *Office publications.* This office issues a variety of materials including consumer and farm brochures and pamphlets, press releases, statistical reports, Iowa Criminal Law Bulletin, Iowa Criminal Law Handbook and Updates.

2.15(12) *Litigation control dockets.* The office maintains a chronological list of pleadings for each litigation file. These records are generally open to the public.

2.15(13) *Rule-making records.* Official documents executed during the promulgation of agency rules and public comments are available for public inspection.

2.15(14) *Consumer protection division investigative hearing records.* These are records of any hearings which may be held pursuant to Iowa Code section 714.16(4)*"a."* Records of these hearings are open except to the extent that they may constitute work product.

2.15(15) *Office manuals.* Information in office manuals such as the Consumer Division Complaint Assignment Book may be confidential under Iowa Code section 17A.2(7)*"f"* or other applicable provision of law.

2.15(16) *Records concerning charitable trusts.* Under Iowa Code section 633.303 this office may exercise oversight functions over charitable trusts. These files concern such matters as litigation to which the state or this office is a party, review and approval of annual reports, requests for orders regarding trust administration, and correspondence with trust attorneys, trustees, or otherwise. Some of this information is confidential as attorney work product. Litigation records are further discussed in subrule 2.14(2).

2.15(17) *All other records.* Records are open if not exempted from disclosure by law.

61—2.16(17A,22) Data processing systems. None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

61—2.17(17A,22) Applicability.

2.17(1) *Scope.* This chapter does not:

a. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations.

2.17(2) *Entities covered.* This chapter applies to the office of the attorney general. Iowa farmer creditor mediation service records are confidential under Iowa Code section 654A.13. The office of consumer advocate is exempt from the requirements of Iowa Code section 22.11. This chapter applies to records held by the office of the prosecuting attorneys training coordinator in its official capacity under Iowa Code chapter 13A but does not apply to records of the Iowa county attorneys association held by the coordinator on behalf of that association.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTERS 3 and 4
Reserved

CHAPTER 5
QUARTERLY ESCROW INSTALLMENTS FROM PARTICULAR NONPARTICIPATING MANUFACTURERS

61—5.1(453D) Purpose. To promote compliance with Iowa Code chapter 453C and Iowa Code Supplement section 453D.5(5), the attorney general may require nonparticipating manufacturers to make escrow payments required by Iowa Code section 453C.2(2) in quarterly installments during the year in which sales covered by such payments are made.

61—5.2(453D) Definitions.

"Nonparticipating manufacturer" has the same meaning in this rule as that cited in Iowa Code Supplement section 453D.2(7).

"Participating manufacturer" has the same meaning in this rule as that cited in Iowa Code Supplement section 453D.2(8).

61—5.3(453D) Applicability. The attorney general may require quarterly payments from a nonparticipating manufacturer to which any of the following criteria apply:

5.3(1) *No previous escrow deposit.* The nonparticipating manufacturer has not previously established and funded a qualified escrow fund in Iowa;

5.3(2) *No escrow deposit for more than one year.* The nonparticipating manufacturer has not made any escrow deposits for more than one year;

5.3(3) *Untimely or incomplete deposits.* The nonparticipating manufacturer has failed to make a timely and complete escrow deposit for any prior calendar year;

5.3(4) *Outstanding judgments.* The nonparticipating manufacturer has failed to pay any judgment awarded to the state, including any civil penalty;

5.3(5) *Large sales volume.* The nonparticipating manufacturer sells more than 1,630,000 sticks or 147,000 ounces of roll-your-own product during a quarter.

5.3(6) *Other reasonable cause.* In addition to the criteria specified in subrules 5.3(1) to 5.3(5), the attorney general may require quarterly payments from a nonparticipating manufacturer if the attorney general has reasonable cause to believe that the nonparticipating manufacturer may not make its full required escrow deposit at the end of the sales year.

61—5.4(453D) Deadlines. Nonparticipating manufacturers required to make quarterly payments must do so as follows:

5.4(1) Payments for sales occurring in the first quarter, January 1 through March 31, are due April 30 of the same year. The attorney general's office must receive official notification of the payments no later than May 10 of the same year.

5.4(2) Payments for sales occurring in the second quarter, April 1 through June 30, are due July 31 of the same year. The attorney general's office must receive official notification of the payments no later than August 10 of the same year.

5.4(3) Payments for sales occurring in the third quarter, July 1 through September 30, are due October 31 of the same year. The attorney general's office must receive official notification of the payments no later than November 10 of the same year.

5.4(4) Payments for sales occurring in the fourth quarter, October 1 through December 31, are due January 31 of the next year. The attorney general's office must receive official notification of the payments no later than February 10 of the next year.

61—5.5(453D) Penalties. The nonparticipating manufacturer and its brands may be removed from the Iowa Directory of Certified Tobacco Manufacturers and Brands if:

1. Required quarterly escrow payments are not timely made in full; or

2. The attorney general is not timely notified that the quarterly escrow payments have been made in full.

These rules are intended to implement Iowa Code Supplement chapter 453D.

[Filed 1/15/04, Notice 12/10/03—published 2/4/04, effective 3/10/04]

CHAPTERS 6 and 7
Reserved

CHAPTER 8
DNA PROFILING

61—8.1(13) Definitions. As used in this chapter:

"Convicted." The term includes both a person's present conviction and any prior conviction, whether occurring in Iowa or another jurisdiction.

"Listed offense." A listed offense is any offense set out in these rules. It also includes similar offenses under prior laws of the state of Iowa or the laws of another jurisdiction.

"Responsible agency." The district court is the responsible agency under these rules in those cases in which a person is being considered for probation. The Iowa board of parole is the responsible agency under these rules in those cases in which a person is being considered for work release or parole. The department of corrections or the judicial district department of correctional services is the responsible agency under these rules in those cases in which a person is being committed to or discharges from the custody of the director of the department of corrections or the judicial district department of correctional services. The county sheriff is the responsible agency under these rules in those cases in which a person is being confined to the county jail. The responsible agency shall require the taking of a DNA sample.

61—8.2(13) Persons required to submit specimens.

8.2(1) A person who has been convicted at any time of a listed offense shall, prior to being granted probation, parole, work release or discharge, submit to DNA profiling under the provisions of Iowa Code section 13.10.

8.2(2) If the person has previously provided a specimen, the responsible agency shall make a determination as to whether another DNA specimen should be provided.

61—8.3(13) Listed offenses. The following are listed offenses for the purpose of these rules:

1. Murder (Iowa Code section 707.2 or section 707.3).
2. Attempt to commit murder (Iowa Code section 707.11).
3. Kidnapping (Iowa Code sections 710.1, 710.2 and 710.3).
4. Sexual abuse (Iowa Code sections 709.2, 709.3 and 709.4).
5. Assault with intent to commit sexual abuse (Iowa Code section 709.11).
6. Assault while participating in a felony (Iowa Code section 708.3).
7. Burglary in the first degree (Iowa Code section 713.3).

61—8.4 Reserved.

61—8.5(13) Prescribed sample techniques. The sample size, methods of drawing and preservation, labeling and shipping shall be as specified by the administrator of the division of criminal investigation criminalistics laboratory, department of public safety.

61—8.6(13) Effective date. Rescinded IAB 1/24/01, effective 2/28/01.

These rules are intended to implement Iowa Code section 13.10.

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CHAPTER 9
VICTIM ASSISTANCE PROGRAM
[Prior to 9/20/89, see Public Safety[661] Ch 17]

DIVISION I
ADMINISTRATION

61—9.1(912) Definitions.

"Board" means crime victim assistance board.

"Department" means Iowa department of justice.

"Director" means director of the crime victim assistance division established in the department of justice.

61—9.2(912) Board.

9.2(1) A crime victim assistance board is established pursuant to Iowa Code section 912.2A.

9.2(2) Members of the board shall serve terms for three years and are eligible for reappointment to the board by the attorney general.

9.2(3) The initial term of the board members shall commence on July 1 of the state fiscal year.

61—9.3(912) Expenses.

9.3(1) Board members shall be reimbursed from the victim's compensation fund for expenses actually and necessarily incurred in the discharge of their duties including attendance at board meetings, board committee meetings, and other activities on behalf of the board as designated by the board chair and approved by the department. Reimbursement for expenses shall conform with guidelines established by the department of revenue and finance.

9.3(2) A member of the board may receive, in addition to actual expense reimbursement, a per diem which conforms with guidelines established by the department of revenue and finance.

9.3(3) Expenses of the board and individual members shall be submitted to the director.

61—9.4(912) Chair of the board.

9.4(1) The attorney general shall select one of the members of the board to serve as chair of the board. The chair shall serve at the pleasure of the attorney general.

9.4(2) A member who is chair of the board and relinquishes or is removed as the chair may maintain board membership for the remainder of the term for which the member was originally appointed.

61—9.5(912) Resignations.

9.5(1) Resignations from the board shall be made to the attorney general.

9.5(2) Whenever a member of the board ceases to have the statutory qualifications for appointment to the board, that member shall be considered to have resigned and a vacancy shall occur on the board.

9.5(3) A board member shall be deemed to have submitted a resignation from the board if any of the following events occur:

a. The member does not attend three or more consecutive regular meetings of the board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least 30 days apart.

b. The person attends less than one-half of the regular meetings of the board within any period of 12 calendar months beginning July 1. This paragraph applies only to such a period beginning on or after the date when the person is appointed to the board.

c. If the member receives no notice and had no knowledge of a regular meeting and gives the attorney general a sworn statement to that effect within ten days after the person learns of the meeting, such meeting shall not be counted for the purposes of this rule.

d. The attorney general at the attorney general's discretion may accept or reject such resignation. If the attorney general accepts it, the attorney general shall notify the member, in writing, that the

resignation is accepted pursuant to this rule. The attorney general shall then make another appointment to fill the vacancy.

61—9.6(912) Vacancies. Barring unusual circumstances, vacancies on the board shall be filled within 45 days after the attorney general is advised of the vacancy. Vacancies shall be filled for the remainder of the vacant term.

61—9.7(912) Meetings. The board shall meet a minimum of once per quarter. The board may also meet at the call of the chair or upon the written request to the chair of at least five members of the board.

61—9.8(912) Duties of board. The board shall adopt rules pursuant to Iowa Code chapter 17A relating to the administration of the crime victim assistance division including the adoption of administrative rules relating to the following:

1. Administration of grants received under the federal Victims of Crime Act of 1984 pursuant to Pub. L. No. 98-473, Title 2, Chapter 14, 42 U.S.C. Section 10601, as amended by the Children's Justice and Assistance Act of 1986, Pub. L. No. 99-401, 100 Stat. 903 and as amended by the Anti-Drug Abuse Act of 1988, Title VII, subtitle D, Pub. L. No. 100-690.
2. Administration of the Family Violence Prevention and Services Act grant pursuant to the federal Child Abuse Amendments of 1984, Pub. L. No. 98-457, 42 U.S.C. Section 10401, reauthorized in 1988, Pub. L. No. 100-294.
3. Administration of the domestic abuse and rape crisis funds and the Iowa domestic abuse hotline funds provided in Iowa Code chapter 236.
4. Administration of other grants or funds available by public law for victim assistance and administered by the department.
5. Administration of the victim compensation program provided in Iowa Code chapter 912.
6. Administration of sexual abuse examination payments as provided in Iowa Code section 709.10.
7. Appeal procedures for victim compensation claims denied by the department.
8. Appeal procedures for grants administered by the department and denied by the board.

61—9.9(912) Director and staff. The attorney general shall employ a director and staff for the victim assistance division and they shall be employees of the department.

61—9.10(912) Duties of department. In addition to the duties contained in Iowa Code section 13.13, the department shall:

1. Administer other funds, grants, or programs for victim assistance created by public law or the department.
2. Provide administrative support to the board.
3. Enter into agreements under Iowa Code chapter 28E or other law including agreements with other state agencies and political subdivisions for the transfer to the department of funds authorized by law for victim service programs.
4. Accept, use, and dispose of contributions of money, services, and property, which are made available by an agency or department of the state or any of its political subdivisions, the federal government, a private agency, or an individual, that are specifically designated for crime victim assistance programs.

61—9.11 to **9.24** Reserved.

DIVISION II
CRIME VICTIM COMPENSATION

61—9.25(915) Administration of the crime victim compensation program. The crime victim assistance division of the department of justice shall administer the crime victim compensation program as provided in Iowa Code chapter 915. All questions, comments, requests for information, or

applications for compensation shall be directed to the crime victim assistance division. Requests should be addressed to: Crime Victim Assistance Division, Lucas State Office Building, Ground Floor, 321 East 12th Street, Des Moines, Iowa 50319; telephone (515)281-5044 or 1-800-373-5044.

61—9.26(915) Definitions. For rules of the crime victim compensation program of the crime victim assistance division of the department of justice, the following definitions apply:

"Affinity" means the relationship of persons who are related by marriage, cohabitation, or engagement to be married.

"Applicant" includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime as defined in Iowa Code section 915.80(6).
2. A person responsible for the care and maintenance of a victim.
3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and the act occurred in a state or foreign country that does not have a victim compensation program as defined in the federal law.
4. In the event of a victim's death, the spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim. An estate is not an eligible applicant for crime victim compensation. An estate shall, however, be reimbursed for funeral and burial expenses if the estate paid the costs on behalf of an eligible applicant who shall benefit from the proceeds of the estate.
5. A legal representative authorized to act on behalf of any of the persons listed above.

"Board" means the crime victim assistance board of the department of justice.

"Causal relationship" means that the crime would not have occurred without the action of the victim. A causal relationship exists if the actions of the victim result in a foreseeable injury, play a substantial role in the injury, or directly cause the injury.

"Claimant" means an applicant who has been found to be eligible for compensation.

"Cohabiting" means living in the same household. It is not necessary to establish that a sexual relationship exists between the parties.

"Compensation" means moneys awarded by the division as authorized in Iowa Code chapter 915.

"Consent" means to agree to a course of action or to voluntarily allow what is planned or done by another.

"Counseling" means problem solving and support concerning emotional issues that result from a compensable crime. Counseling is a confidential service provided in person on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person's sense of well-being and social functioning. Counseling does not include victim advocacy services such as crisis telephone counseling; conversation in a nonprivate setting such as the common area of a shelter or a courthouse; transportation; or attendance at medical procedures, law enforcement interviews or civil and criminal justice proceedings.

"Crime" as defined in Iowa Code section 915.80 includes:

1. Conduct punishable as a misdemeanor or a felony.
2. Property crimes including but not limited to robbery, residential burglary, and residential arson, where there is a threat of personal injury or harm against a person.
3. Violation of a custody order in which the custodial parent suffers injury.

"Denial" means disqualification of an application or reduction in the amount of compensation paid.

"Department" means the department of justice, attorney general's office.

"Dependent" means a person who is unable to care for himself or herself due to injury, disability, or minor age status.

"Director" means the director of the crime victim assistance division established in the department of justice.

"Division" means the crime victim assistance division of the department of justice.

"Incitement" means to urge forward or to goad to action.

"Income" or *"wages"* means gross income or gross wages.

"Medical care" means services provided by or provided under the supervision of a person licensed under Iowa law as a medical physician or surgeon, osteopathic physician or surgeon, chiropractor, podiatrist, physical therapist, acupuncturist, or dentist. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

"Medically necessary" means items and services, prescribed by a medical provider under the prescriptive authority of the medical provider's license, which are reasonably necessary to facilitate the victim's physical and emotional recovery from the compensable crime.

"Pecuniary loss" means the amount of medical or medical-related expenses and shall include, but not be limited to, eyeglasses, hearing aids, dentures, prosthetic devices including those which were taken, lost, or destroyed during the crime, home health care, medications, counseling, pregnancy-related services, equipment rental or purchase, property alteration, transportation for emergencies and medical care provided outside the victim's county of residence, or health insurance premiums covered by an employer previous to the victim's disability from the crime. Pecuniary loss shall also include the loss of income that the victim has incurred as a direct result of the injury to the extent that the victim has not been and shall not be indemnified from any other source.

"Personal injury" or *"injury"* means bodily harm or mental suffering and shall include a victim's pregnancy or miscarriage resulting from a crime.

"Program" means the crime victim compensation program of the department of justice.

"Provocation" means to cause anger, resentment, or deep feelings that cause or instigate another to take action.

"Public funds" means moneys provided by federal, state, county, city or other local government.

"Reasonable charges" means charges ordinarily charged by the provider of the service to the general public for services of a similar nature.

61—9.27(915) Duties of the division. The duties of the division shall include, but not be limited to, the duties provided for in Iowa Code sections 13.31 and 915.83, as well as:

1. To prepare appropriate forms for the filing and processing of compensation applications.
2. To conduct an administrative review of claims when a request for reconsideration is filed by an applicant with the director.
3. To receive moneys bequeathed, awarded, or donated to the crime victim assistance division by a public or private organization or individual.

61—9.28(915) Application for compensation. An applicant may file an application for compensation by telephone or in writing within two years of the occurrence or discovery of a crime pursuant to Iowa Code section 915.84(1). For a victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, the date of the discovery of the crime shall be considered to be the date when the referral was made. The department may waive the requirements of Iowa Code section 915.84(1) if good cause is shown.

9.28(1) *Application postmarked.* An application postmarked within the prescribed time period shall be considered timely filed.

9.28(2) *Good cause.* In determining whether there is good cause for waiver of the two-year application filing requirement, the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.28(3) *Multiple erroneous claims.* When two or more applications are filed by or on behalf of an individual applicant during a calendar month and the applications appear on initial review to be erroneous claims based on innocent misrepresentation or circumstances of a similar nature, the claims shall be treated as a single application. Verification shall be investigated for each crime recorded in a file with multiple erroneous applications. If any of the crimes recorded in a combined application are verified as compensable crimes, the applications for compensation for those crimes shall be separated from the combined file and assigned distinct application numbers. The department will notify the applicant whenever two or more applications have been combined as one application.

9.28(4) *Program effective date.* The effective date of the crime victim compensation program is January 1, 1983. Victims and survivors of crimes that were committed prior to the effective date are not eligible for compensation.

9.28(5) *Concurrent primary and secondary applications.* A victim may be both a primary victim and a secondary victim in the same crime. The secondary victim application shall not be opened until a benefit has been exhausted for the primary application and there is documentation of need for further benefits in that category. The secondary victim application shall be considered timely filed if the primary victim application was timely filed.

9.28(6) *Concurrent secondary victim applications.* A victim may be a secondary victim to multiple primary victims in a crime. A subsequent secondary victim application shall not be opened until a benefit has been exhausted in the first secondary victim application and there is documentation of need for further benefits in that category. Subsequent secondary victim applications shall be considered timely filed if the primary victim application was timely filed.

61—9.29(915) Report to law enforcement. A person is not eligible for compensation unless the crime is reported to law enforcement pursuant to Iowa Code section 915.84(2). The department may waive the requirements of Iowa Code section 915.84(2) if good cause is shown.

9.29(1) *Law enforcement report sources.* The department finds there is good cause to accept that the report of a crime to any of the following is a report to law enforcement pursuant to Iowa Code section 915.84(2):

a. Sheriffs and their regular deputies.

b. Marshals and police officers of cities.

c. Peace officers of the department of public safety.

d. Special security officers employed by a board of regents institution as identified in Iowa Code section 262.13.

e. Peace officers as authorized by Iowa Code section 350.5 or 456A.13.

f. Employees of the department of transportation who are designated "peace officers" by resolution of the department under Iowa Code section 321.477.

g. Correctional officers, including parole and probation officers.

h. County and state prosecutors.

i. An employee of the department of human services having jurisdiction to investigate the incident.

j. A magistrate or judge of the Iowa court system.

9.29(2) *Elements of a report.* A victim is considered to have made a report to law enforcement when the victim has provided a true and accurate report of the incident, which shall include to the best of the victim's knowledge:

a. The nature of the crime,

b. The location of the crime,

c. The name, whereabouts and description of the suspect, if known, and

d. The names of witnesses, if known.

9.29(3) *Law enforcement record.* A law enforcement trip record may satisfy the requirement that the crime be reported to law enforcement.

9.29(4) *Good cause.* In determining whether there is good cause for waiving the requirement to report a crime to law enforcement within 72 hours of the occurrence of the crime, the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.29(5) *Child victim.* If the victim is a child as defined in Iowa Code section 232.2 and is reported to be a victim of child abuse, the department finds there is good cause to waive the 72-hour reporting requirement.

9.29(6) *Dependent adult victim.* If the victim is a dependent adult as defined in Iowa Code section 235B.2(4) and is reported to be a victim of dependent adult abuse, the department finds there is good cause to waive the 72-hour reporting requirement.

9.29(7) *Sexual abuse victim.* For a victim of sexual abuse, the department finds there is good cause to waive the 72-hour reporting requirement if a sexual abuse evidentiary examination was completed within 72 hours of the crime and the victim files a subsequent law enforcement report.

9.29(8) *Domestic abuse victim.* For a victim of domestic abuse, the department finds there is good cause to waive the 72-hour reporting requirement if a pro se protection order pursuant to Iowa Code chapter 236 is entered by the court and the victim files a subsequent law enforcement report.

9.29(9) *Victim of a sexually violent predator.* For a victim of sexual abuse, the department finds good cause to waive the 72-hour reporting requirement when the offender is referred pursuant to Iowa Code chapter 229A.

61—9.30(915) Cooperation with law enforcement. To be eligible for compensation, the victim of crime must cooperate with the reasonable requests of law enforcement.

9.30(1) *Reasonable cooperation.* Reasonable cooperation by the victim may include, but is not limited to, the following:

a. Providing law enforcement with a true and accurate report of the crime.

b. Participating in the investigation of the crime to assist law enforcement in the identification of a suspect as requested including the review of photographs, composites, and lineups.

c. Participating in prosecution procedures including deposition and trial testimony as requested.

9.30(2) *Determination of cooperation.* In determining whether a victim reasonably cooperated with law enforcement, the division may consider the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.30(3) *Polygraph testing.* In determining whether a victim reasonably cooperated with law enforcement, the refusal of a victim to undergo a polygraph examination shall not be the basis of denial.

9.30(4) *Sexual abuse victim.* A victim of sexual abuse shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual abuse evidentiary examination.

9.30(5) *Domestic abuse victim.* A victim of domestic abuse shall be deemed to have reasonably cooperated with law enforcement if a report of the crime was made to law enforcement.

61—9.31(915) Contributory conduct. The division shall reduce or disqualify compensation when there is a causal relationship between the contributory conduct on the part of the victim and the victim's injury or death. Contributory conduct includes consent, provocation, or incitement of the crime on the part of the victim.

9.31(1) *Consent, provocation, and incitement.* In assessing consent, provocation or incitement on the part of the victim pursuant to Iowa Code section 915.87(2)*"a,"* the division may consider factors including, but not limited to, the following:

a. Whether charges are filed against the suspect;

b. Whether the victim attempted to withdraw from the incident;

c. Comparable or reasonable force on the part of the suspect in response to an action of the victim;

d. The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;

e. The age of the victim; and

f. Comparable size or strength of the victim and suspect.

9.31(2) *Additional assessment of consent.* In assessing the causal nature of consent pursuant to Iowa Code section 915.87(2)*"a,"* the division may consider the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.31(3) *Consent in intoxicated driving cases.* A victim who was the passenger in the vehicle of a driver who has been determined to have been legally intoxicated at the time of the crash shall not be automatically denied eligibility for compensation. The division may consider whether the victim could have reasonably known the intoxication level of the driver, the driver's behavior or judgment appeared

impaired, the victim encouraged or discouraged the driver from driving, or the victim's judgment was impaired.

9.31(4) *Additional assessment of provocation and incitement.* In assessing the causal nature of provocation or incitement pursuant to Iowa Code section 915.87(2)*"a,"* the division may consider law enforcement documentation that indicates:

a. *Retaliatory action.* The crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could have reasonably foreseen the likelihood of retaliation.

b. *Gang action.* The crime was a direct result of gang activity, including gang initiation, or was inflicted as retaliation for prior gang activity in which the victim participated in a criminal street gang as defined in Iowa Code section 723A.1(2).

c. *Mutual combat.* The crime was an incident of mutual combat if the victim:

(1) Initiated a physical altercation;

(2) Made a credible threat of bodily harm against the person, took action to indicate the intent to carry out the threat and a physical altercation immediately followed; or

(3) Accepted a verbal challenge to engage in a physical altercation, took action to indicate acceptance of the challenge and a physical altercation immediately followed.

d. *Exception to mutual combat.* Incitement and provocation are not present in an incident of mutual combat when a significant escalation of the fight, such as the introduction of a deadly weapon, is made by a person other than the victim or when a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.

9.31(5) *Victim's criminal act.* Contributory conduct includes assisting in, attempting, or committing a criminal act by the victim. A causal relationship must be documented between the injury or death for which compensation is sought and the criminal act of the victim.

61—9.32(915) Eligibility for compensation. The program shall determine the eligibility of an application for compensation.

9.32(1) *Determination of eligibility.* A denial of eligibility shall be based on written documentation that an application does not satisfy the requirements of Iowa Code chapter 915. An applicant shall be deemed eligible for compensation if the division has not obtained written documentation supporting a denial within six months of the date of the application. Notwithstanding the foregoing, the division may extend the determination of eligibility beyond six months if a court date or grand jury hearing is pending and is reasonably expected to result in information necessary to render an eligibility decision.

9.32(2) *Reopening applications.* Pursuant to Iowa Code section 915.83(2), the department may reopen and reinvestigate an application if the department determines that the decision was incorrect or incomplete. A denied application may be reopened and reinvestigated if it is discovered through a criminal trial or other investigatory source that the information relied upon for the denial decision was incorrect or incomplete. The eligibility of an approved application will be reopened for consideration if information is discovered through a criminal trial or other investigatory source that indicates that there is reason to deny the application. The reopening of a denied or approved case is at the discretion of the administrator for the compensation program.

9.32(3) *Withdrawal of application.* An applicant may withdraw the application for compensation from consideration.

9.32(4) *Maximum compensation.* Compensation shall be reduced or disqualified to the extent that the maximum compensation allowable pursuant to Iowa Code chapter 915 and these rules has been awarded.

61—9.33(915) Emergency award of compensation. Emergency awards of compensation may be made if the applicant has incurred a loss of income or pecuniary loss as a direct result of the crime.

9.33(1) *Preliminary eligibility determination.* The program must determine that the application is likely to be eligible based on documentation available including, at minimum, the law enforcement verification form provided to law enforcement by the program.

9.33(2) *Documentation.* To make an emergency award of compensation, the program must have documentation of the lost wages or the pecuniary loss.

9.33(3) *Emergency award decision.* A decision denying an emergency award shall not be appealable.

9.33(4) *Offset.* Any emergency award shall be deducted from the final award of compensation made to the claimant.

61—9.34(915) Computation of compensation. The division shall determine the amount of compensation to be awarded to an eligible applicant.

9.34(1) *Benefit limits.* Compensation shall be made up to the benefit category limits in effect on the date the application is filed. For an eligible victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, compensation shall be paid for expenses incurred after referral of the offender.

9.34(2) *Payer-of-last-resort.* The program is a payer-of-last-resort pursuant to federal law 42 U.S.C. 10602(1403). Compensation shall not be paid for services when the provision for those services is mandated by law or administrative rule to be the responsibility of another governmental unit, private agency or program. Payments shall be reduced by payments made by offenders and third parties responsible for the damages of the crime.

9.34(3) *Voluntary financial programs.* Compensation applicants will be encouraged to apply for other financial assistance programs to pay costs resulting from the crime-related injury. However, no applicant will be denied compensation benefits based on the applicant's refusal to seek funds from a voluntary financial assistance program.

9.34(4) *Insurance providers.* Eligible victims and claimants must give service providers the information necessary to bill insurance providers for crime-related treatment. Payment of compensation will not be made if the victim refuses or fails to provide information requested by the service or insurance provider or sign the required assignment of benefits within a reasonable time frame.

9.34(5) *Supplanting of funds prohibited.* Compensation shall be made only when the claimant is responsible for the cost of crime-related injury. Compensation shall not be paid when a government entity, including but not limited to a mental health facility, jail, or prison, is responsible for the costs of treatment for injury from crime.

61—9.35(915) Computation of benefit categories. The division shall determine the amount of compensation to be awarded to an eligible applicant for injury from crime for each benefit category pursuant to Iowa Code section 985.86.

9.35(1) *Medical care.* Compensation may be paid for the reasonable expenses of medical care provided to eligible crime victims by, or under the supervision of, a person licensed by the state under Iowa Code chapter 147, 148, 148A, 148E, 149, 150A, 151, 152C, or 153. When preexisting medical conditions are treated during crime-related medical care, the program may reduce payment to a percentage equal to the portion of the medical care determined to be directly related to the compensable crime. Medical care expenses include the following:

a. *Medical care sanctioned by sovereign nations and tribes.* Compensation may be paid for medical care rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

b. *Medical counseling costs.* Compensation may be paid for counseling provided under the direct supervision of a psychiatrist or other physician and shall be applied toward the medical benefit maximum.

c. *Medical care for homicide victim survivors.* Compensation may be paid to the spouse, child, parent, sibling, or person related by blood or affinity to a homicide victim for the same types of medical care which are allowable for primary victims, including but not limited to hospital and physician care, psychiatric care, prescriptions, and transportation expenses related to injury from the crime.

d. *Medical equipment and property alteration.* Compensation may be paid for equipment and property alteration which are prescribed as medically necessary care due to injury from the crime.

e. *Medical supplies.* Compensation may be paid for medical care supplies and incidental supplies necessary for medical care due to injury from the crime.

f. Medical care for pregnancy. Compensation may be paid for medical care costs related to pregnancy resulting from the crime of sexual abuse. Eligible expenses for care of the victim shall be paid. Expenses incurred for care of a newborn child are not compensable.

g. Medical devices. Compensation may be paid for the replacement of a medical device including but not limited to a sight or hearing device, dentures, prosthetic device, wheelchair, and medication that was taken, lost or destroyed during the crime.

h. Transportation for medical emergency. Compensation may be paid for the reasonable cost of transportation in a medical emergency by private vehicle at the state rate for boards and commissions per mile. Mileage will be based on mileage calculation from the most current map published by the department of transportation. Transportation within a city limits will be based on the program's estimate of mileage from the location of the injured victim to the medical facility.

i. Transportation for nonemergency care. Compensation may be paid for the cost of transportation by commercial vehicle or by private car for nonemergency medical care and counseling received outside of the victim's county of residence. Transportation provided by private vehicle for nonemergency care will be reimbursed at the state rate for boards and commissions per mile. Mileage will be based on mileage calculation from the most current map published by the department of transportation.

j. Transportation medical benefit. Compensation may be paid for transportation from the applicable medical care or counseling benefit category. The available funds to the victim from the applicable benefit category will be reduced by the amount of compensation paid for transportation.

k. Health insurance. Compensation may be paid for premiums to continue a health insurance policy that was provided in whole or in part by the victim's employer prior to the crime and the employment ceased as a result of the crime.

9.35(2) *Medical care records.* When compensation for medical care is requested, the provider shall submit medical records that document the care provided and show that the medical care is for injury from crime.

9.35(3) *Mental health counseling.* Compensation may be paid for the reasonable costs of mental health counseling for eligible crime victims and survivors of a homicide victim. When preexisting mental health issues are addressed during crime-related counseling, the program may reduce payment to a percentage equal to the portion of the counseling determined to be directly related to the compensable crime. The mental health counseling provider shall submit a vitae establishing the provider's educational qualifications for compensation. A provider who is required to be licensed under Iowa law must provide proof of licensure and good standing with the professional licensing board. Compensation shall be paid for mental health counseling provided by the following:

a. Master's level counselor. Compensation may be paid for mental health counseling provided by a person holding at least a master's degree in a mental health or counseling field including but not limited to social work, psychology, guidance and counseling, behavioral sciences, art therapy, marriage and family therapy, child life therapy, and advanced mental health registered nursing.

b. Supervised mental health counselor. Compensation may be paid for mental health counseling provided by a counselor who does not have a master's degree but is under the supervision of a counselor with a master's degree. The supervising mental health counselor must sign the session notes which must be submitted for review by the program.

c. Intern mental health counselors. Compensation may be paid for mental health counseling provided by an intern candidate for a master's degree when the counseling is provided within a course of professional education and the intern is supervised by a provider eligible for compensation.

d. Out-of-state providers. Compensation may be paid to mental health counselors outside Iowa who provide services to victims of crime eligible for the Iowa program if the mental health counselor meets the professional licensure criteria of the state in which the counselor works.

9.35(4) *Mental health counseling records.* When compensation for mental health counseling is requested, the provider shall complete verification forms related to the counseling as follows:

a. Treatment plan and certification form. Information submitted on the treatment plan and certification form shall include, but not be limited to, a summary of the initial evaluation, any preexisting

mental health diagnoses currently being treated, current diagnoses, issues addressed, counseling goals, expected length of counseling services, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

b. Treatment progress and certification form. At six-month intervals for the duration of the crime-related mental health counseling, the provider shall submit a treatment progress and certification form. Information on the form shall include progress on previously stated goals of counseling, current goals, current diagnosis, expected length of additional counseling, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

c. Session notes. The program may require submission of session notes to determine if the mental health counseling is directly related to the crime when:

(1) The counseling expenses for a victim exceed $3,000.

(2) The provider has not completed the treatment and certification plan with statement of the percentage of treatment directly related to the crime.

(3) The counseling begins, or is provided, more than one year after the crime.

(4) The treatment plan or progress summary indicates that the victim is receiving treatment for a diagnosis or issue not exacerbated by the crime.

9.35(5) *Victim service counseling.* Reasonable charges for counseling provided by a victim counselor as defined in Iowa Code sections 236A.1 and 915.20A, when fees for services to the general public for services of a similar nature have not previously been established, may be paid within the following guidelines:

a. Counselors funded with VOCA. Counseling provided by victim counselors whose position is funded, in whole or in part, or whose position is used as match requirement for federal Victims of Crime Act fund shall not be eligible for compensation payment.

b. Computation of victim service counseling expenses. Counseling services provided to an eligible victim by a victim counselor may be compensated as follows:

(1) Individual counseling at an hourly rate of $35.

(2) Group counseling at an hourly rate of $20.

c. Compensation paid, combined with other funding sources for the service, shall not be in excess of the total cost of providing the counseling hour.

9.35(6) *Victim service counseling records.* A record of each counseling session shall be maintained in the victim's file including the date of service, the length of service, the name of the victim counselor who provided the service, the general topics addressed, and referrals made.

9.35(7) *Counseling with the perpetrator.* Compensation for mental health or victim service counseling that includes the perpetrator of the crime may be payable when the perpetrator takes part only to take responsibility for the crime and apologize to the victim and the victim is allowed to confront the perpetrator regarding the effects of the crime.

9.35(8) *Family counseling.* Compensation for family mental health or victim service counseling may be paid only for sessions where the victim is present and the focus of the session is to assist the victim in recovery from a compensable crime.

9.35(9) *Lost wages or income.* Compensation may be paid for reasonable lost wages or income when an eligible crime victim is unable to work as the result of injury from crime or as a result of cooperation with the investigation or prosecution of the crime. Lost wages or income due to crime is determined as follows:

a. Gross wages computed. Lost wages are computed as the gross rate of pay times the number of scheduled hours of work missed.

b. Variable income. Income that is variable shall be computed based on the average income earned during a minimum 28-day period within the three months preceding the crime. Estimated earnings not supported by past income statements shall not be accepted.

c. Self-employment and small business income. Self-employed persons or small business employees must provide federal or state income tax forms for the most recent year completed or verification of average income for a minimum of the past six months. Work estimates, labor contracts, and affidavits from individual employers may be used to establish wages.

d. Vacation, sick, holiday and annual leave. Lost wages or income paid shall not be reduced by vacation, sick, holiday, or annual leave available or used by the victim due to the crime.

9.35(10) *Lost wages or income due to disability.* Compensation shall be paid for lost wages incurred by an eligible crime victim within two weeks after injury from crime or an eligible survivor of a homicide victim for up to five days within two weeks after the death of a victim without an authorized disability statement. Compensation for lost wages may be paid to the spouse, child, or parent of the homicide victim for up to one month without a disability statement as determined reasonable by the program. A victim or survivor of a homicide victim seeking lost wages for a longer period of time shall submit a disability statement from a licensed physician for a physical injury or an injury related to mental health, or from a licensed mental health provider as included in paragraph 9.35(3)*"a"* for an injury related to mental health. Compensation shall be made for lost wages under the following circumstances:

a. Victim injured. Compensation may be paid when the victim cannot work due to injury from crime.

b. Lost hire income. Compensation may be paid when the victim has been hired by an employer but is unable to begin employment because of injury due to the crime, until released to work. Required documentation includes a signed affidavit by the employer.

c. Employment terminated. Compensation may be paid when the victim is terminated from employment as a result of crime-related injuries, until released to seek work.

d. Unemployment eligible. Compensation may be paid for the difference between the victim's gross wage and the unemployment benefit when the victim is terminated from employment because of injury from crime and is found to be eligible for unemployment benefits.

e. Unemployment ineligibility. Compensation may be paid for the amount of the victim's unemployment benefit when the victim is rendered ineligible for unemployment benefits because of injury from the crime, until the victim is released to work.

f. Worker compensation benefit eligible. Compensation may be paid for the difference between the victim's gross wage and the worker compensation benefit when the victim is unable to work because of injury from crime and is found to be eligible for worker compensation benefits.

g. Medical and counseling appointments. Compensation may be paid to a primary victim, the parent or guardian of a minor aged primary victim, or the caretaker of a dependent adult primary victim for wages lost due to medical care or counseling appointments for the victim.

9.35(11) *Lost wages or income during investigation and prosecution.* Compensation may be paid for lost wages incurred by an eligible primary victim, survivor of a homicide victim as described in Iowa Code section 915.86(8), parent or guardian of a minor aged primary victim, or caretaker of a dependent primary victim while cooperating with the investigation and prosecution of the crime including, but not limited to, participation at identification sessions, arraignment, deposition, plea agreement meetings, trial, sentencing, parole and probation hearings, and sexually violent predator civil commitment proceedings.

9.35(12) *Residential crime scene cleanup.* Compensation may be paid for the reasonable costs of an eligible victim or applicant for cleaning a residential crime scene, which includes a home, or a private vehicle in which the crime was committed. Cleaning a residential crime scene means to remove, or attempt to remove, from the crime scene blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. Compensation shall be paid for the reasonable out-of-pocket cost of cleaning supplies, equipment rental, labor, and the value of property which is essential to the victim and which is held by law enforcement for evidentiary purposes. Cleaning a residential crime scene does not include replacement or repair of property damaged in the crime.

9.35(13) *Loss of support.* Compensation for loss of support may be paid for the dependents of an eligible homicide victim or of a victim disabled for a period of 60 days or more when the applicant documents that the dependent relied on the victim wholly or partially for physical care or financial support.

a. Period of dependency. Compensation may be paid for loss of support for the remaining period of dependency, up to the limits established in Iowa Code section 915.86(5), in an amount equal to the lost wages or income the victim was earning at the time of death or disability. The amount of compensation

shall be subject to reduction by the amount of collateral sources designated as support pursuant to Iowa Code section 915.87(1).

b. Dependent care. Compensation may be paid for loss of support at the current hourly rate of the Iowa minimum wage for dependent care provided by a person other than the victim if the victim was providing physical care to the dependent at the time of the crime.

9.35(14) *Clothing and bedding.* Compensation may be paid for clothing and bedding held as evidence by law enforcement and not returned to the victim. Compensation shall not be made for the clothing of a deceased victim which is held as evidence.

9.35(15) *Funeral and burial expenses.* Compensation may be paid for reasonable expenses incurred for the funeral and burial or cremation for an eligible crime victim. The following expenses may be paid up to the maximum expense established in Iowa Code section 915.86(4):

a. Funeral service. Compensation may be paid for expenses related to funeral and burial or cremation preparation and services.

b. Burial plot and vessel. Compensation may be paid for the cost of a burial plot, vault, casket, urn, or other permissible vessel.

c. Burial effects. Compensation may be paid for miscellaneous funeral and burial expenses including, but not limited to, flowers, burial clothing for the victim, transportation of the victim's body, and travel and lodging expenses for survivors of the homicide victim as described in Iowa Code section 915.87(8) with priority for the surviving spouse, children, and parents of the victim. Documentation must be provided for all miscellaneous funeral and burial expenses.

61—9.36(915) Appeal of compensation decisions. An applicant shall be informed in writing of the basis for the denial of eligibility or the amount of an award.

9.36(1) *Applicant appeal.* An applicant may appeal a compensation decision as follows:

a. Appeal to director. An applicant aggrieved by a denial decision or the amount of compensation awarded by the program may appeal to the director.

b. Appeal to board. An applicant may appeal the director's decision to the board.

c. Appeal to district court. An applicant who disagrees with the decision of the board has the right to appeal to the district court for judicial review within 30 days of receipt of the board's decision.

9.36(2) *Director appeal period.* An applicant shall submit to the director a written request for reconsideration within 30 days of the date the notice of the crime victim compensation program decision is mailed or otherwise issued by the division. Any request for reconsideration postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 30 days of the receipt of the request for reconsideration, the director shall issue a decision.

9.36(3) *Board appeal period.* An applicant may file with the board a request for consideration of the director's decision. This written request for consideration by the board shall be submitted within 30 days of the date the notice of the director's decision is mailed or otherwise issued by the director. Any request for review postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 90 days of the receipt of the request, the board, or a committee designated by the chair of not fewer than five members of the board, shall issue a decision.

9.36(4) *District court appeal period.* An applicant shall submit a petition for judicial review to the district court within 30 days of the receipt of the notice of the board's decision.

61—9.37(17A) Waiver from rules. This rule establishes a uniform process for granting waivers from rules adopted by the board governing the crime victim compensation program.

9.37(1) *When waiver is appropriate.* The board may grant a waiver from a rule the board has adopted if the board has rule-making authority to promulgate the rule, and no statute or rule otherwise controls the granting of a waiver from the rule. No waiver may be granted from a rule that defines a term. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

9.37(2) *Criteria for discretionary waivers.* The board may grant a waiver from a rule, in whole or in part, in response to a request from an applicant or on the board's own motion, as applied to a specific claim, if the board finds that:

a. The application of the rule to the claim at issue would result in hardship or injustice to the person seeking compensation; and

b. The waiver would be consistent with the public interest or the public interest will be protected by other means substantially equivalent to full compliance with the rule; and

c. The waiver in the specific case would not prejudice the substantial legal rights of any person.

9.37(3) *Board discretion.* The decision about whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors.

9.37(4) *Criteria for mandatory waivers.* In response to an applicant's request, the board shall grant a waiver from a rule, in whole or in part, as applied to the particular circumstances, if the board finds that the application of the rule in that specific case would not, to any extent, advance or serve any of the purposes of the rule.

9.37(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes deadlines, the board shall balance the specific individual circumstances of the applicant with the overall goal of uniform treatment of all applicants.

9.37(6) *Conditions.* The board may condition the granting of a waiver on reasonable conditions to achieve the objectives of the particular rule in question through alternative means.

9.37(7) *Public availability of waiver decisions.* A board decision granting or denying a waiver shall be included in the board minutes with reference to the following:

a. The particular case and the rule or portion thereof to which the decision pertains;

b. The relevant facts and reasons upon which the action is based; and

c. The scope and operative period of the waiver if one is issued.

Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all orders granting and denying waivers under this chapter. All waiver decisions shall be indexed and available to members of the public at the crime victim assistance division office.

9.37(8) *Voiding or cancellation.* A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver upon notice to the victim by regular mail and an opportunity to be heard, if:

a. The facts as stated in the request are not true or material facts have been withheld, or

b. The applicant has failed to comply with the conditions of the waiver.

9.37(9) *Effectiveness of waiver.* After the board issues a waiver, a person seeking compensation may rely on the terms of that waiver for the purposes of the particular case for which it was issued. A waiver shall only be effective in the case for which it is issued.

9.37(10) *Appeals from waiver decisions.* Any request for an appeal from a decision granting or denying a waiver shall be in accordance with the procedures provided in Iowa Code chapter 17A and the board's rules. An appeal shall be taken within 30 days of the issuance of the waiver decision unless a contrary time is provided by rule or statute.

These rules are intended to implement Iowa Code sections 915.80 through 915.94.

61—9.38 to **9.49** Reserved.

DIVISION III
VICTIM SERVICES GRANT PROGRAM

61—9.50(13) Administration of the victim services grant program. The victim services grant program of the Iowa department of justice shall administer the victim services grants as provided in Iowa Code chapters 13 and 236. All questions, comments, requests for information, or applications for grant funds shall be directed to the victim services grant program. Requests should be addressed to: Crime Victim Assistance Division, Iowa Department of Justice, Old Historical Building, Des Moines, Iowa 50319, telephone (515)281-5044.

61—9.51(13) Definitions. As used in this chapter:

"Applicant" means a victim service program providing direct services to crime victims or technical assistance to crime victim service providers that makes a request for funds from the victim services grant program.

"Application" means a request which complies with federal and state requirements for funds from the following:

1. The Federal Victims of Crime Act pursuant to Pub. L. No. 98-473, Title 2, Chapter 14, 42 U.S.C. Section 10601 as amended by the Federal Children's Justice and Assistance Act, Pub. L. No. 99-401, 100 Stat. 903 (1986).
2. The domestic abuse funding provided for in Iowa Code chapter 236.
3. The Family Violence Prevention and Services Act pursuant to the Federal Child Abuse Amendments of 1984 Pub. L. No. 98-457, 42 U.S.C. Section 10401.
4. Other grants or funds available by law for crime victim assistance.

"Board" means the crime victim assistance board.

"Department" means the Iowa department of justice.

"Director" means director of the crime victim assistance division of the department of justice.

"Division" means the crime victim assistance division of the Iowa department of justice.

"Grant" means a victim services grant award.

"Grantee" means the Iowa department of justice when it administers a grant from a federal or state agency.

"Grant review committee" means a department of justice committee designated to review grant applications.

"Program" means the victim services grant program in the Iowa department of justice.

"RFP" means request for proposals.

"Subgrantee" means any applicant receiving grant funds from this program.

"Victim" means a crime victim as defined in Iowa Code section 912.1(5).

61—9.52(13) Program description. Any eligible public agency or nonprofit organization or a combination thereof may apply for and receive a grant through the program. The program shall operate as a competitive grants program and be administered by the department. Contractual agreements specifying the terms of the grant award shall be executed between the department and approved applicants.

61—9.53(13) Availability of grants. In any year in which federal or state funds are available, the department shall administer grants to eligible applicants. The amount of the funds awarded shall be contingent upon the funds available. The director shall announce the opening of an application period through public notice. Applications must be submitted by the designated due date.

61—9.54(13) Application requirements. Applicants shall submit applications to: Crime Victim Assistance Division, Iowa Department of Justice, Old Historical Building, Des Moines, Iowa 50319. Applications shall be in the form prescribed by the department and shall be available upon request to all interested parties.

9.54(1) In order to be included in the review process and considered for funding, an application shall be received in the offices of the division by 4:30 p.m. on the due date. Applications may be delivered to the division during regular business hours anytime prior to the deadline. An extension of the filing deadline may be requested of the director or grant administrator prior to the deadline and may be granted for good cause. The determination of a good cause extension by the division shall be final.

9.54(2) An applicant shall have on file with the department current copies of the applicant's table of organization and articles of incorporation.

9.54(3) An applicant shall have on file with the department evidence of any insurance coverage the applicant carries for liability or property.

61—9.55(13) Contents of application. Each application shall contain the following information:

9.55(1) A brief narrative describing the agency or unit of local government requesting funding.

9.55(2) A description of services for which funding is being requested which includes, but is not limited to, the following:

a. The geographical area to be served.

b. The target population to be served.

c. Victim eligibility requirements.

d. Description of substantial financial support from other sources.

e. Intended use of volunteers, if any.

f. Stated goals and objectives of the program.

g. A description of the proposed victim service or technical assistance including a time schedule for implementation.

h. The amount of grant funds requested.

i. The amount of cash or in-kind resources or combination thereof which is committed as required by the program.

j. A description of how the proposed victim service or technical assistance will provide or improve direct services to victims of crime.

k. Proof of coordination with appropriate agencies at the local level.

l. A total program budget for all services provided by the applicant.

m. A proposed budget for the requested grant funds.

n. A list of other anticipated sources of income, including written commitments, if possible, and plans for continued funding of the grant funded activities.

o. Other information identified in the RFP.

p. Signed certified assurances as required by statute or regulation.

61—9.56(13) Eligibility requirements. Funds must be used only to provide services to victims of crime or technical assistance to victim service providers. Program grants cannot be used to supplant other available or mandated funds. An applicant must meet the following requirements:

9.56(1) Be operated by a public agency or nonprofit organization, or combination thereof, that provides services to crime victims. Services provided to victims may include but are not limited to crisis intervention services, law enforcement and court advocacy, group and individual counseling, transportation, and information and referral services. An applicant providing services to victims of domestic abuse must also have the capacity to provide or arrange safe shelter for victims and their children. An applicant providing services to victims of sexual assault must have the capacity to provide support to victims at the time of an evidentiary sexual abuse examination.

9.56(2) An existing program must be able to document results of prior programming that demonstrates that the needs of victims have been met effectively and that the applicant has financial support from other sources.

9.56(3) Promote within the community a coordinated public and private effort to assist victims.

9.56(4) Be an equal opportunity employer and provide services on an equal opportunity basis.

9.56(5) Comply with applicable federal and state statutes or rules, any requirements specified in the grant between the department and any outside funding source, and any requirements in the RFP or any other contractual document.

9.56(6) Assist victims in seeking state compensation benefits.

9.56(7) Have a grievance procedure established for victims, employees and volunteers.

9.56(8) Ensure that all employees and volunteers that provide direct services to victims are trained as victim counselors as defined in Iowa Code section 236A.1.

9.56(9) Provide services within the geographic service area without regard to a victim's ability to pay.

61—9.57(13) Selection process. The department shall conduct a preliminary review of each application to ensure that the applicant is eligible, the application is complete, and the proposed victim service or

technical assistance is consistent with the division's mission of providing assistance to crime victims and crime victim programs.

9.57(1) A grant review committee shall be established by the department for the purpose of reviewing grant applications. The committee shall submit recommendations for grant awards to the director and board.

9.57(2) The board shall determine final subgrantees and grant awards to the extent that funds are available and to the extent to which applications meet the RFP criteria. The board may reject any or all applications.

61—9.58(13) Notification of applicants. Applicants shall be notified within 60 days after the application due date whether their application has been denied or the board is interested in negotiating a contract regarding their proposal.

61—9.59(13) Request for reconsideration.

9.59(1) Applicants may file a request for reconsideration of the denial or amount of an award with the board. The request for reconsideration must be submitted within ten working days of the date the notice of decision is mailed or otherwise issued by the director to the subgrantee. The request must state adequate grounds for reconsideration. The board or a committee designated by the board chair shall review the request and evidence submitted in a timely manner. A decision of the board or designated committee shall constitute final agency action.

9.59(2) At the time a request for reconsideration is received by the director, notice that a request for reconsideration has been filed shall be sent to all approved applicants whose funds may be affected by the request.

9.59(3) Funds shall not be disbursed pending a request for reconsideration to the extent that the funds are affected by the outcome of the request. All applicants who would be adversely affected shall be notified if a request for reconsideration is approved and grant awards shall be reduced as necessary.

61—9.60(13) Contract agreement.

9.60(1) A contract shall be negotiated by the department and the applicant.

9.60(2) The department or the board may require modification of the proposed program, submission of further information or documents, or other contingency on the part of the applicant prior to entering into contract. The required modification, information, document, or contingency shall be specified in the notification of grant award.

9.60(3) The applicant or the department may request a modification of the program budget to reflect the amount, expenses and activities allowed by the grant award. Both parties must agree to any modification of the subgrantee program budget.

9.60(4) In the event of a state, federal, or other audit, the subgrantee shall be responsible for the audit and liable for payment of any funds required to conduct the audit, to compensate for any grant disallowance, or to repay any funds received or spent contrary to the contract, these rules, or applicable law.

9.60(5) Funds shall be spent to meet the program goals as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa.

9.60(6) The subgrantee shall sign the certified assurances for the grant program at the time of application and at any time requested by the division.

9.60(7) Nothing in these rules shall be construed as limiting the remedies available to the state or the program for improper use of grant funds or other breach of the subgrantee's duties under the contract and applicable law.

61—9.61(13) Performance reports. Performance reports shall be submitted to the department from all subgrantees. Failure to submit reports by the due date shall result in suspension of financial payments to the subgrantee by the grantee until such time as the report is received. Delinquent or inadequate reports from prior grants may detrimentally influence the award of grants for the following year.

61—9.62(13) Termination. Contracts may be terminated for the following reasons:

1. Termination by subgrantee. The contract may be terminated by the subgrantee at any time during the contract period by providing notice to the department.

2. Termination by department. The department may terminate a contract upon a ten-day notice when the subgrantee or any of its subcontractors fail to comply with the grant award stipulations, standards or conditions. The department may terminate a contract when there is a reduction of funds by executive order or otherwise.

3. Termination for cause. If the subgrantee fails to fulfill its obligations under the agreement properly or on time, or otherwise violates any provision of the agreement, the board may terminate the agreement by written notice to the subgrantee. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished products and services provided by the subgrantee shall, at the option of the department, become the state's property. The department shall pay the subgrantee fair and equitable compensation for the satisfactory performance prior to receipt of notice of termination minus any funds owing to the department, e.g., damages for breach, improperly spent funds.

61—9.63(13) Financial statement supplied. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

61—9.64(13) Indemnification. The subgrantee shall defend, indemnify, and hold harmless the state of Iowa, its officers, agents and employees and any of the state's federal funding sources for:

1. Subgrantee's performance or nonperformance of a contract entered into or violation of these rules.

2. Subgrantee's activities with subcontractors and all other third parties, or any other act or omission by a subgrantee, its agents, officers, and employees.

61—9.65(13) Records. Subgrantees shall keep statistical records of services provided and any other records as required by the department. The department shall have immediate access to records pertaining to the contract during working hours. No notice need be provided the subgrantee prior to inspection of the records.

61—9.66 to **9.79** Reserved.

These rules are intended to implement Iowa Code chapter 912.

DIVISION IV
SEXUAL ABUSE EXAMINATION PAYMENT
[Prior to 8/8/90, see Public Health Department 641—Chapter 8]

61—9.80(915) Administration of sexual abuse examination payment. The crime victim assistance program of the department of justice shall administer the sexual abuse examination program as provided in Iowa Code section 915.41. That section states in part:

"The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing sexually transmitted disease shall be borne by the department of justice."

Requests for payment should be addressed to: Sexual Abuse Examination Payments, Crime Victim Assistance Division, Lucas State Office Building, Ground Floor, 321 East 12th Street, Des Moines, Iowa 50319; telephone (515)281-5044 or 1-800-373-5044.

61—9.81(915) Definitions.

"Administration" means administrator of the crime victim assistance program established in the department of justice.

"Board" means crime victim assistance board.

"Department" means the Iowa department of justice.

"Eligible claimant" means a medical provider that provides a sexual abuse examination to a sexual assault victim. The following are eligible to file a claim with the crime victim assistance program in the event that they have made payment to a medical provider for the costs of a sexual abuse examination:

1. A victim of sexual abuse.
2. A person responsible for the maintenance of a sexual abuse victim.
3. A dependent of a victim who has died as a result of injuries sustained in a sexual assault.
4. The guardian of a sexual abuse victim.

"Reasonable charges" means those ordinarily charged by the provider of the service to the general public for services of a similar nature.

"Sexual abuse" means sexual abuse as defined in Iowa Code sections 709.1 and 726.2.

"Sexual abuse examination" means a medical examination provided to a woman, man, or child to collect evidence of sexual abuse victimization of that person as defined in Iowa Code sections 709.1 and 726.2 and provide treatment for the prevention of sexually transmitted disease pursuant to Iowa Code section 915.41. When applicable, the provider of a sexual abuse examination shall file a child abuse report with the Iowa department of human services as required by Iowa Code section 232.70.

61—9.82(915) Application for sexual abuse examination payment.

9.82(1) *Consideration for payment.* The department will consider payment upon receipt of a claim for reimbursement from a medical provider indicating that the claim is for the collection of evidence by sexual abuse examination. In the case that a victim, guardian of a victim, person responsible for the victim, or dependent of a victim who died of injuries sustained in a sexual assault has paid part or all of the charges incurred, a copy of the provider bill and documentation of personal payment of the bill must be submitted for reimbursement. An application for sexual abuse examination payment must include the federal identification number or social security number of the claimant.

9.82(2) *Application filing.* To apply for payment under the sexual abuse examination program, the form or bill submitted must identify the sexual assault victim by name, birth date, and patient number, indicate that the claim is for a sexual abuse examination, and itemize all services rendered and the fee for each service.

61—9.83(915) Computation of sexual abuse examination payments.

9.83(1) *Payment for examination.* The department shall make payment for sexual abuse examinations, as appropriate, for services including, but not limited to:

a. Examiner's fee for collection of:

(1) Patient's medical history;

(2) Physical examination;

(3) Collection of laboratory specimens;

(4) Return visits to test for sexually transmitted disease;

(5) Treatment for the prevention of sexually transmitted disease.

b. Examination facility.

(1) Emergency room, clinic room or office room fee;

(2) Pelvic tray and medically required supplies.

c. Laboratory collection and processing of specimens for: criminal evidence; sexually transmitted disease; and pregnancy testing.

9.83(2) *Provider payment.* The department will pay up to $300 for the examination facility and $200 for examiner fees. Any charges in excess of these amounts will require additional documentation from the provider. The crime victim assistance program will pay only those charges determined by the department to be reasonable and fair.

The Iowa department of public safety division of criminal investigation makes sexual abuse examination kits available to health care providers at no cost.

61—9.84(915) Victim responsibility for payment. A victim of sexual abuse is not responsible for the payment of the costs of a sexual abuse examination determined to be eligible for payment by the

department. A medical provider shall not submit any remaining balance after sexual abuse examination program payment to the sexual abuse victim.

61—9.85(915) Sexual abuse examination—right to restitution. In all criminal cases under Iowa Code chapter 709 and sections 726.2 and 710.2 in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, restitution may be ordered from the offender to the crime victim assistance program for the cost paid by the department for a sexual abuse examination rendered to the victim of that crime pursuant to Iowa Code section 910.2.

61—9.86(915) Erroneous or fraudulent payment—penalty. If a payment or overpayment of a reparation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipients, the recipient is liable for repayment of the reparation. However, if the department does not notify the recipient of the erroneous payment or overpayment within one year of the date of payment, the recipient is not responsible for repayment to the department.

If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment to the department.

61—9.87(915) Right to appeal. An eligible claimant who disagrees with the department's decision concerning payment or amount of payment has the right to request reconsideration of that decision by the crime victim assistance board. The request for reconsideration must be received by the department within 60 days after the decision of the department is mailed.

Rules 9.80(915) to 9.87(915) are intended to implement Iowa Code section 915.41.

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◊ Two or more ARCs

1 History transferred from 641—Chapter 8, IAC Supplement 8/8/90

2 Effective date of 61—9.50(13) to 9.65(13) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 13, 1995; delay lifted by this Committee 4/10/95.

CHAPTER 10
ORGANIZATION AND POWERS
OF THE IOWA CONSUMER CREDIT CODE ADMINISTRATOR

61—10.1(537) Authority for and division of rules. The following rules of organization and operation are adopted to describe the organization and practice of the administrator of the Iowa consumer credit code, Iowa Code chapter 537 and to otherwise implement the Iowa consumer credit code.

10.1(1) *The consumer credit code administrator.* Subject to the express provisions of Iowa Code sections 537.6106 and 537.6108, the consumer credit code administrator shall be the attorney general or an assistant attorney general who shall be designated by the attorney general to serve as the consumer credit code administrator under the control of the attorney general. A power or duty under the Iowa consumer credit code reserved solely to the attorney general shall be so indicated by use of the term "attorney general."

10.1(2) *Function.* The division head of the consumer protection division is the attorney general's designee, who, except where a power or duty is reserved to the attorney general, may act as administrator of the Iowa consumer credit code in implementing, administering and enforcing the Iowa consumer credit code.

10.1(3) *Location.* The office of the administrator of the Iowa consumer credit code is located in the Hoover State Office Building, Second Floor, 1300 East Walnut, Des Moines, Iowa 50319; telephone (515)281-5926. Office hours are 8 a.m. to 4:30 p.m., Monday to Friday.

10.1(4) *Deputy consumer credit code administrator.* The attorney general may appoint an individual as deputy consumer credit code administrator who shall serve under the control of the attorney general. If the office of the consumer credit code administrator is vacant or if the consumer credit code administrator is absent or unable to act, the deputy consumer credit code administrator shall be the acting administrator.

10.1(5) *Other personnel.* The consumer credit code administrator or the deputy consumer credit code administrator when serving as acting administrator may appoint additional employees as are necessary to perform the duties imposed by law upon the consumer credit code administrator.

61—10.2(22,537,17A) Open records. All open records of the consumer credit code administrator are available for inspection by the public during business hours. Copies can be made by the public at a reasonable cost per page with the cost to be determined by and posted by the administrator.

61—10.3(17A) Forms. Any forms prescribed by the consumer credit code administrator for use by the public in its dealings with the administrator are available to the public at the consumer credit code administrator's office without charge or may be obtained by writing to or calling the administrator of the consumer credit code. The following form may be used by the public:

Complaint form. This is a form currently used by the consumer protection division of the office of the attorney general. The form requests the name and address of the complainant and respondent and any pertinent facts concerning the complaint. Except where requested by the consumer credit code administrator, a letter containing the above information can be used instead of this form.

61—10.4(537,17A) Information. Information regarding the Iowa consumer credit code may be obtained by making a request to the consumer credit code administrator in writing, by telephone or in person. Requests should state with as much specificity as possible the legal issue(s) and the Iowa consumer credit code sections regarding which interpretation or information is sought. The consumer credit code administrator retains discretion to deny any request for advice when appropriate. Requesters should advise the consumer credit code administrator if the request involves issues which are pending in litigation. The consumer credit code administrator may respond either orally or in writing to informal requests for information. Responses of the consumer credit code administrator under this rule are for information only and are not binding upon the consumer credit code administrator.

61—10.5(537,17A) Complaints. Complaints of alleged violations of any provision of the Iowa consumer credit code may be made to the office of the consumer credit code administrator either orally

or in writing and need not be in any particular form. However, the consumer credit code administrator may, as a matter of discretion, require a complainant to submit information on a form prescribed by the consumer credit code administrator if it appears that the complaint involves significant factual detail or if the consumer credit code administrator determines for any other reason that a formal complaint would aid the consumer credit code administrator in handling the complaint. The consumer credit code administrator may dispose of a complaint by correspondence or other informal communication.

Complaints concerning supervised financial organizations. If the consumer credit code administrator receives a complaint concerning a supervised financial organization or supervised loan licensee, the administrator shall, pursuant to Iowa Code section 537.6105(2), inform the agency having supervisory authority over that person or organization.

61—10.6(537,17A) Record of complaints. The consumer credit code administrator shall keep a record of each written complaint received by the consumer credit code administrator that concerns issues under the Iowa consumer credit code. The complaint record shall include the allegations and any actions taken toward resolving the complaint, including any final disposition.

61—10.7(537,17A,22) Investigation. If it appears, upon information brought to the attention of the consumer credit code administrator, that a person has engaged in conduct or committed an act or omission in violation of the Iowa consumer credit code, the administrator may, pursuant to Iowa Code sections 537.6105 and 537.6106, begin an investigation to determine whether the conduct is being engaged in, or has been engaged in or committed, and to determine the extent of the violation. The consumer credit code administrator may utilize all investigatory powers available, including those set forth in sections 537.6105 and 537.6106 of the Iowa consumer credit code.

61—10.8(537,17A) Enforcement actions. If the consumer credit code administrator determines that a person is committing or has committed an act or omission in violation of the Iowa consumer credit code, the administrator may:

1. Take one or more of the actions provided for in Iowa Code sections 537.6108 to 537.6113.
2. Take any action the consumer credit code administrator deems appropriate which is designed to obtain voluntary compliance with the Iowa consumer credit code.
3. Take any other action which is authorized by the Iowa consumer credit code, or take no action, as the consumer credit code administrator deems appropriate.

These rules are intended to implement Iowa Code chapters 537, 17A, 13 and 22.

[Filed 6/14/85, Notice 5/8/85—published 7/3/85, effective 8/7/85]

CHAPTER 11
IOWA CONSUMER CREDIT CODE RULE-MAKING PROCEDURES

61—11.1(537) Rules in harmony with other uniform consumer credit code jurisdictions. The consumer credit code administrator shall advise and consult with consumer credit code administrators in other jurisdictions that enact the uniform consumer credit code and shall take into consideration the rules of administrators in other jurisdictions that enact the uniform consumer credit code.

61—11.2(537,17A) Procedure for adoption of rules. Subject to the power of the attorney general to adopt and amend rules, the consumer credit code administrator shall conduct rule making in accordance with the terms of the Iowa administrative procedure Act, Iowa Code sections 17A.4 to 17A.8. These procedures do not apply to rules of an emergency nature adopted under section 17A.5(2)*"b"* except to the extent that these procedures are required by law for rule making under these sections.

61—11.3(17A) Notice. Notice of intended action shall be given pursuant to the Iowa administrative procedure Act. A notice of intended action may designate a person within the agency to receive submissions and to respond to inquiries concerning the proposed rules.

61—11.4(17A) Written submissions. Interested persons may submit data, views or arguments in writing as provided in the notice.

61—11.5(17A) Hearing. As part of the notice of intended action, the consumer credit code administrator may schedule a hearing.

11.5(1) *Conduct of public hearings.* When required to do so, or in the attorney general's discretion, the consumer credit code administrator shall conduct a public hearing. The hearing shall be conducted by and be under the control of a presiding officer who shall be the consumer credit code administrator or a person designated by the administrator. The presiding officer shall have authority to take any action necessary for the orderly conduct of the hearing including continuing the hearing to a later time or date without notice other than by announcement at the hearing.

11.5(2) *Record of hearing.* A record may be made of the hearing proceedings by mechanical or other means.

61—11.6(17A) Statement of reasons. If requested to do so by an interested person either prior to adoption or within 30 days thereafter, the consumer credit code administrator shall issue a concise statement of the principal reasons for and against the adopted rule. Requests for a concise statement of reasons must be in writing addressed to the administrator of the Iowa consumer credit code and will be considered made on the date received. The request should indicate whether the statement is sought for all or part of the rule in question. The concise statement will be issued within a reasonable time from the date of the request. Where a request is received prior to adoption of the rule, the attorney general may either delay adoption until the statement is prepared or adopt the rules prior to issuance of the statement as deemed appropriate taking into account relevant factors including the need for the rule, the date the request was filed, the time required to prepare the statement, and the extent to which the statement would assist in deciding whether to adopt the rule.

61—11.7(17A) Copies of proposed consumer credit code rules. A trade or occupational association, which has registered its name and address with the administrator of the Iowa consumer credit code, may receive, by mail, copies of proposed consumer credit code rules. Registration of the association's name and address with the consumer credit code administrator is accomplished by written notification to: The Administrator of the Iowa Consumer Credit Code, Consumer Protection Division, Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319. In the written notification, the association must designate the type of proposed rules and the number of copies of each consumer credit code rule it wishes to receive. If the association wishes to receive copies of all proposed consumer credit code rules, it may make a blanket written request at the time of registration or at any time prior to the adoption of the rules.

The association will be charged a fee to cover the actual cost of providing each copy of the proposed rule.

This rule does not prevent an association which has registered with the consumer credit code administrator in accordance with this rule from changing its designation of types of proposed consumer credit code rules or number of copies of proposed rules which the association desires to receive. If an association makes such changed designation, it must do so by written notification to: The Administrator of the Iowa Consumer Credit Code, Consumer Protection Division, Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 17A.4(1)*"d."*

61—11.8(17A) Small business regulatory impact.

11.8(1) *Registration.* Small businesses as defined in Iowa Code section 17A.31, and organizations representing at least 25 such small businesses may register with the consumer credit code administrator to receive notice of proposed consumer credit code rules that may have an impact on small business and to seek qualification to request a regulatory flexibility analysis under section 17A.31. The request for registration shall be provided in writing to: The Administrator of the Iowa Consumer Credit Code, Consumer Protection Division, Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319. Entities may alternatively register with the deputy attorney general for administration if registration is desired for all departmental rules.

The request shall include the following information:

a. The name of the small business or organization requesting registration, its address and telephone number and an individual or individuals to contact regarding the request.

b. A certification that the small business meets the definition of small businesses under Iowa Code section 17A.31 or, in the case of an organization, which is also seeking qualification to request a regulatory flexibility analysis, that it represents at least 25 entities meeting the definition of a small business under that section. An organization seeking to qualify to request a regulatory flexibility analysis shall provide the name, address and telephone number of at least 25 qualifying members.

c. A statement that the small business or organization seeks registration for the purpose of seeking notification of proposed consumer credit code rules that may have an impact on small business and a statement whether it also seeks qualification to request a regulatory flexibility analysis under Iowa Code section 17A.31.

The consumer credit code administrator may request additional information to establish that the business or organization qualifies under Iowa Code section 17A.31 either at the time the entity files the request for registration or at the time it files a request for a regulatory flexibility analysis.

11.8(2) *Consideration of impact on small business.* The attorney general shall determine whether a proposed rule may have an impact on small business. If so, the notice of intended action shall so state and the attorney general shall consider the factors listed in Iowa Code section 17A.31 for reducing the impact of the proposed rule on small businesses.

11.8(3) *Requests for regulatory flexibility analysis.* The consumer credit code administrator will prepare a regulatory flexibility analysis if a written request is received by the consumer credit code administrator within 20 days after published notice of proposed rule adoption from the administrative rules review committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code section 17A.31, or an organization of small businesses, representing at least 25 persons, which is registered with the consumer credit code administrator under subrule 11.8(1). The request shall specify for which portions of a proposed rule the analysis is requested and shall provide any information, data or arguments available to the requester which would be relevant to the requested analysis.

11.8(4) *Regulatory flexibility analysis.* The analysis shall be prepared and a summary published in the Iowa administrative bulletin 20 days prior to adoption of the proposed consumer credit code rule. The summary shall provide notice of a time and place for oral presentation on the analysis and of any requirements for written submissions and shall state where persons may obtain a full text of the analysis

at cost of reproduction. The consumer credit code administrator may without further notice revise the analysis in response to comments, or summarize the comments, and append these to the analysis.

The attorney general shall consider all methods suggested in the analysis and in submitted comments in determining whether to revise the proposed rule to reduce the impact on small business as provided in Iowa Code section 17A.31.

61—11.9(17A) Petitions for adoption, amendment or repeal of a rule. Any interested person may petition the attorney general for the issuance, amendment or repeal of any consumer credit code rule.

61—11.10(17A) Form and content of petition.

11.10(1) *Content.* A petition for rule making shall contain:

a. A caption in the following form:

THE ADMINISTRATOR OF THE IOWA CONSUMER CREDIT CODE
THE IOWA DEPARTMENT OF JUSTICE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN RE: _____ (interested person's name)	)	IOWA CONSUMER CREDIT CODE
REQUEST FOR _____ (adoption,	)	PETITION FOR RULE MAKING
amendment or repeal) OF RULE NUMBER	)	Docket No. _____
_____ (if applicable)	)	(filled in by Administrator)

b. Statements in separate numbered paragraphs of the following:

1. Petitioner's name and address;
2. The text of any proposed rule or amendment identifying the section or sections of law involved or rule involved, or the rule sought to be repealed;
3. The reasons for seeking the requested action in detail, including any facts, views, data or arguments deemed relevant;
4. The nature of petitioner's interest in the subject matter;
5. The signature of the petitioner or petitioner's representative.

11.10(2) *Petition filed.* A petition for rule making shall be filed with The Administrator of the Iowa Consumer Credit Code, Consumer Protection Division, Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319. The consumer credit code administrator may request the petitioner to submit additional facts, views or data and may require the petitioner to serve a copy of the petition upon persons or agencies known to be interested in the proposed rule making.

11.10(3) *Action on petition.* The attorney general shall within 60 days following the filing of the petition or the receipt of requested additional information either deny the petition in writing or initiate rule-making procedures as set forth in this chapter. The petition shall be denied and the petitioner so notified together with reasons for such denial, if, after careful consideration, it is determined that the petition does not disclose sufficient reasons to justify the commencement of rule-making proceedings, if the petition materially fails to comply with the requirements of these rules, if it is determined the petitioner is not an interested person, or if other good reason exists. The provisions of this subrule shall not prevent discretionary action by the attorney general on any matter disclosed in any petition.

11.10(4) *Notice to the petitioner of the action by the administrator of the consumer credit code.* Notice shall be by ordinary mail with certificate of service maintained in the file or by certified mail return receipt requested.

These rules are intended to implement Iowa Code chapters 13, 17A and 537.

[Filed 6/14/85, Notice 5/8/85—published 7/3/85, effective 8/7/85]

CHAPTER 12
IOWA CONSUMER CREDIT CODE DECLARATORY RULINGS

61—12.1(17A) General. Any person who has a real and direct interest in a specific factual situation that may affect their legal rights, duties or responsibilities under any provisions of the Iowa consumer credit code or of any rule, other written statement of law, policy, decision or order issued pursuant to the Iowa consumer credit code may request a declaratory ruling from the consumer credit code administrator concerning the application or interpretation of any such statutory provision, rule or other written statement of law or policy, decision or order.

61—12.2(17A) Effect of declaratory rulings. A declaratory ruling by the consumer credit code administrator shall have a binding effect between the administrator and petitioner in situations in which the facts and applicable law are indistinguishable from those presented in the petition for declaratory ruling. As to all other parties, and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent. The declaratory ruling becomes the final act of the consumer credit code administrator on the petition.

61—12.3(17A) Petition.

12.3(1) *Format.* A petition for declaratory ruling shall be typewritten or printed and shall contain a caption in the following form:

THE ADMINISTRATOR OF IOWA CONSUMER CREDIT CODE
THE IOWA DEPARTMENT OF JUSTICE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN RE: THE PETITION OF _____	)	IOWA CONSUMER CREDIT CODE
(state petitioner's name)	)	PETITION FOR
FOR A DECLARATORY RULING ON	)	DECLARATORY RULING
_____ (state rule number, statute for	)	Docket No. _____
which interpretation sought, etc.)	)	(filled in by Administrator)

12.3(2) *Contents.* The petition shall substantially state in separate, numbered paragraphs:

a. The full name and address of the petitioner;

b. The question or questions upon which the petitioner requests a declaratory ruling;

c. The section of the consumer credit code, consumer credit code rule or written statement of law or policy, decision or order of the consumer credit code administrator and the particular aspect of it to which the request is addressed;

d. All relevant facts which give rise to the petition;

e. Any other relevant laws, rules or decisions;

f. All reasons supporting or denying the applicability of the particular section of the consumer credit code, consumer credit code rule or written statement or policy, or decision or order of the consumer credit code administrator involved;

g. The reasons prompting the petition together with a full disclosure of petitioner's interest therein.

h. Whether the question or a related question is being considered or has been considered by any other governmental entity of any state or the United States.

12.3(3) *Signatures and mailing address.* The petition shall be signed by the petitioner, or by a duly authorized officer of the petitioner, if it be a corporation, organization, or other legal entity. Also, the name and address of petitioner's counsel, agent, or representative, if applicable, shall be furnished. The petition shall be addressed to the Administrator of the Iowa Consumer Credit Code at the Department of

Justice, Consumer Protection Division, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319 (515)281-5926, and shall be sent to the administrator by certified mail.

61—12.4(17A) Procedure after petition is filed.

12.4(1) *Initial review.* Upon filing of the petition, the consumer credit code administrator shall inspect the petition for substantial compliance with the recommended form, and may, in its discretion, reject a petition that fails to contain one or more of the stated requirements. The consumer credit code administrator shall conduct an initial review of the petition and may request the petitioner to provide additional information or provide greater specificity. Additional information may include relevant written data, views, arguments, or briefs. A request shall be made within 21 days of the filing of the petition. If the requested information is not provided to the consumer credit code administrator within 30 days of the petitioner's receipt of the request, the petitioner will be deemed to have withdrawn the petition. Petitions not in substantial conformity with the above rules shall be returned to the petitioner.

12.4(2) *Acknowledgment of receipt.* The consumer credit code administrator shall acknowledge receipt of all petitions by certified or registered letter to the petitioner.

61—12.5(17A) Action on petition.

12.5(1) The consumer credit code administrator may dismiss the petition or a portion thereof and decline to issue a declaratory ruling for any reason which it deems just and proper, including but not limited to the following:

a. There is no jurisdiction under the Iowa consumer credit code.

b. The issues are not clearly presented.

c. No clear answer is determinable.

d. The issue or issues presented are currently the subject of rule making, are pending resolution by an opinion of the attorney general or are in litigation in a contested case or court proceeding.

e. The petition does not state facts showing that the petitioner is or will be aggrieved or adversely affected by an adverse declaratory ruling on the issue presented.

f. The petition does not substantially comply with the form prescribed in this rule.

g. The issuance of a declaratory ruling has been rendered unnecessary as a result of a change in circumstances, fact or law.

h. The petitioner requests a declaratory ruling which, though technically binding only upon the consumer credit code administrator and the petitioner, would necessarily determine the legal rights of other persons who have not filed such a petition and whose position on the issue may fairly be presumed to be adverse to the petitioner or who are unrepresented in the declaratory proceeding.

i. The petitioner requests the consumer credit code administrator to determine whether a section of the consumer credit code is constitutional on its face.

j. The petition does not proceed on hypothetical facts structured to aid in planning future conduct but instead described past actions in order to establish their effect or challenges a decision already made by the consumer credit code administrator.

k. The issue is more properly resolved in another manner or by another entity.

12.5(2) In the event the consumer credit code administrator declines to issue a ruling, the administrator shall notify in writing the petitioner of this fact and the reasons for the refusal.

12.5(3) When the petition is in proper form and has not been declined, the consumer credit code administrator shall issue a ruling disposing of the petition within 30 days after its filing or within 30 days of the receipt of additional information from petitioner.

61—12.6(17A) Declaratory ruling format. All declaratory rulings shall be in writing and shall state reasons in support of the ruling and shall be provided to the petitioner by certified mail. Rulings shall be mailed to other parties at the discretion of the consumer credit code administrator. Rulings shall be indexed and available for public inspection in the office of the consumer credit code administrator.

These rules are intended to implement Iowa Code chapters 17A and 537.

[Filed 6/14/85, Notice 5/8/85—published 7/3/85, effective 8/7/85]

CHAPTER 13
Reserved

CHAPTER 14
*
INSURANCE IN CONSUMER CREDIT TRANSACTIONS

61—14.1(537) Involuntary unemployment insurance—conditions of sale. Pursuant to Iowa Code section 537.2501, subsection (1), paragraph *"f,"* the administrator of the Iowa consumer credit code finds that involuntary unemployment insurance sold in conformity with the provisions of this rule is a benefit of value to the consumer debtor and that the charges are reasonable in relation to the benefits, and are of a type which is not for credit. Premiums for involuntary unemployment insurance are permissible additional charges in a consumer credit transaction if all of the following conditions are met fully:

14.1(1) *Insurance not a condition of credit.* The involuntary unemployment insurance coverage is not a factor in the extension of credit and this fact is clearly and conspicuously disclosed in writing by the creditor to the consumer debtor.

14.1(2) *Disclosures.* The creditor has clearly and conspicuously disclosed to the consumer debtor the following information:

a. The premium for the initial term of insurance coverage; provided, the creditor may disclose the premium on a unit-cost basis only in open-end consumer credit transactions;

b. The term of the insurance;

c. The number of the installments or other payments payable by the involuntary unemployment insurance covering the consumer and any limitation on the amount of such payments;

d. The length of any deductible period before the insurance benefits are payable and whether the benefits are retroactive to the commencement of involuntary unemployment;

e. The waiting period in the involuntary unemployment insurance policy during which no claim may arise;

f. The specific conditions of the consumer's right to cancel the policy.

14.1(3) *Disclosures in writing and orally.* In all consumer credit transactions, all disclosures referred to in subrules 14.1(1) and 14.2(2) herein must be made by the creditor in writing. In addition, all disclosures referred to herein shall also be made orally by the creditor in all consumer credit transactions whenever solicitation is face-to-face or by telephone.

14.1(4) *Consent secured.* Before including the cost of any involuntary unemployment insurance sold by the creditor in any quoted installment or other payment or in any document prepared for closing the credit transaction, the creditor must secure the consumer's oral and written consent for the purchase of a specific amount of involuntary unemployment insurance. In securing the consent of the consumer, the creditor must disclose orally and in writing that the purchase of involuntary unemployment insurance is entirely optional. No written consent shall be obtained until all disclosures provided for in subrules 14.1(1) and 14.1(2) of this rule have been given both orally and in writing.

14.1(5) *Right to cancel.* The involuntary unemployment insurance policy shall allow the insured consumer to cancel the policy within 30 days of the consumer's receipt of the policy with a refund of all of the premiums and without cost and to cancel the policy at any time thereafter with a refund of unearned premiums.

14.1(6) *Premium refunded.* If the insured consumer, at any time, does cancel the involuntary unemployment insurance policy, the full amount of the premium refund referred to in subrule 14.1(5) will be returned directly to the insured consumer or credited to the insured consumer's account as a partial prepayment of indebtedness.

14.1(7) *Finance charges refunded.* When a consumer cancels the involuntary unemployment insurance, if the creditor financed the involuntary unemployment insurance premiums in a precomputed consumer credit transaction, and if the creditor refunds the insurance premiums by credit to the consumer's account, then the creditor must make prompt refund to the consumer of all finance charges

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or credit service charges calculated according to the actuarial method based upon the refunded premiums and the terms of the transaction.

14.1(8) *Refunds in compliance with Iowa Code section 537.2510.* In the event of either voluntary or involuntary prepayment of the indebtedness, a refund of unearned premiums shall be made in accordance with section 537.2510.

14.1(9) *Coordination of benefits.* In the event the creditor sells both involuntary unemployment insurance and any other form of insurance to the consumer in connection with a consumer credit transaction, neither policy may provide for denial of benefits because of preexisting coverage by the other policy. If insured events under both policies lead to simultaneous claims, benefits must be coordinated until all liability is paid in full.

14.1(10) *Compliance with statutes and regulations.* The sale and financing of involuntary unemployment insurance must comply with all pertinent federal and Iowa laws and regulations concerning consumer credit insurance or concerning any insurance sold in connection with a consumer credit transaction.

14.1(11) *File with administrator.* Before advertising, offering to sell, or selling involuntary unemployment insurance, the creditor must file with the administrator of the Iowa consumer credit code:

a. A copy of all master or group policies in use in Iowa.

b. A notice which discloses:

(1) The expected loss ratio for the involuntary unemployment insurance.

(2) Whether the creditor is associated with or related to the insurance carrier in any way, and a brief description of that relationship, if any, and

(3) Whether the creditor will realize an economic benefit from the sale of the insurance and an explanation of the nature of any such economic benefit, including the amount of any commission received by the creditor.

After the initial filing, the creditor must yearly file the same notice except that in the loss ratio reported shall be the actual loss ratio for the reported year. Filing shall be on or before January 31 of subsequent filings each year in which the insurance is sold.

14.1(12) *Packaging of insurance.* If a creditor packages the sale of involuntary unemployment insurance with other insurance in connection with a consumer credit transaction, the other insurance must be a type which is authorized as an additional charge pursuant to Iowa Code section 537.2501(1) or 537.2501(2)*"b"* and must be of a type which is optional.

14.1(13) *Loss ratios.* The charges for involuntary unemployment insurance must be reasonable in relation to the benefits. In order for charges for involuntary unemployment insurance to be reasonable in relation to the benefits, the loss ratios must be at least 65 percent beginning with the first full calendar year in which the insurance is first sold in Iowa. When involuntary unemployment insurance is sold packaged with other credit insurance the package must produce at least the same loss ratio.

14.1(14) *Loss ratios less than 65 percent.* A creditor who pursuant to subrule 14.1(11), paragraph *"b,"* reports to the administrator a yearly loss ratio of less than 65 percent must within 60 days of such a report (no later than March 31 of each year) either cease selling involuntary unemployment insurance or provide a written report to the administrator. The written report must explain in detail the methods which the creditor has initiated to obtain a loss ratio of at least 65 percent in the next reporting year.

a. Any creditor who reports a loss ratio of less than 65 percent for two consecutive years and does not cease selling involuntary unemployment insurance may be subject to administrative proceedings pursuant to Iowa Code section 537.6108.

b. Any creditor who has a yearly loss ratio of less than 65 percent for sales of involuntary unemployment insurance in Iowa and thereafter continues to sell such insurance in Iowa but who does not thereafter file a report with the administrator pursuant to 14.2(11)*"b"* of this rule and does not initiate methods to obtain a 65 percent loss ratio for the next reporting period may be subject to administrative proceedings pursuant to section 537.6108.

c. Nothing provided for herein shall preclude the attorney general from commencing judicial proceedings to enjoin the sale of involuntary unemployment insurance when the loss ratio falls below 65 percent, or such insurance is otherwise sold in violation of section 537.2501(1)*"f"* or this rule.

14.1(15) *Compliance with department of insurance requirements.* Compliance with this rule shall not relieve an insurer from complying with all applicable requirements of the commissioner of insurance especially in regard to approval of rates and forms.

14.1(16) *Definitions.*

1. *"Involuntary unemployment insurance"* means insurance providing the insured borrower with coverage for consumer credit repayment obligations for a period or periods during which the borrower is involuntarily unemployed. Involuntary unemployment insurance means insurance at least providing benefits for loss of employment income caused by individual or mass layoff, general strike, termination by employer, unionized labor dispute, and lockout.

2. *"Open-end credit"* means consumer credit as defined in Iowa Code section 537.1301, subsection (29).

Nonseverable. The provisions of this rule are nonseverable.

This rule is intended to implement Iowa Code section 537.2501(1)*"f."*

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CHAPTER 15
REGULATION OF AGREEMENTS AND PRACTICES

61—15.1(537) Notice to cosigners. Pursuant to Iowa Code sections 537.3208(2) and 537.6117, the administrator of the Iowa Consumer Credit Code finds that a creditor subject to Iowa Code section 537.3208 is in compliance with Iowa Code section 537.3208 if the creditor uses a notice to cosigner which complies with any one of the following federal regulations: Reg. AA, 12 CFR Section 227.14 subchapter B; 12 CFR Section 535.3; or 16 CFR Section 444.3 as amended to December 20, 1985, provided that the written notice is given to the cosigner as a separate document and the notice contains, as additional information, an "identification of the debt provision" in substantially the form set out in Iowa Code section 537.3208(2). The "identification of the debt" provision must contain the language, "I have received a copy of this notice."

This rule is intended to implement Iowa Code section 537.3208.

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CHAPTER 16
GENERAL DEFINITIONS

61—16.1(537) Line of credit.

16.1(1) If a lender commits itself to a line of consumer credit up to an amount in excess of the amount specified in Iowa Code section 537.1301(14)*"a"*(5), the credit transaction is not subject to Iowa Code chapter 537 whether or not the amount actually advanced at any one time is above or below the amount specified in Iowa Code section 537.1301(14)*"a"*(5). For purposes of this rule, "line of credit" shall mean an arrangement whereby: (1) The lender or creditor expressly commits itself in writing pursuant to a loan agreement to permit the borrower to borrow money from time to time up to a certain maximum amount specified in the loan agreement, and (2) there is no requirement of additional credit information for any advances.

16.1(2) For purposes of this rule, the "amount financed" in a line of credit is the maximum limit on the line of credit and not the amount of any single advance.

This rule is intended to implement Iowa Code sections 537.1102(2)*"f,"* 537.1301(4)*"b,"* 537.1301(14)*"a,"* and 537.1301(25).

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CHAPTER 17
IOWA MEDIATION PROGRAM

PART I
GENERAL

61—17.1(654A,654B) Application. These rules are promulgated by the attorney general as the farm assistance coordinator on the recommendation of the Iowa Mediation Service, Inc. These rules will apply to and implement all mediation proceedings undertaken pursuant to Iowa Code chapters 654A and 654B unless otherwise noted. These rules do not apply to any other mediation proceedings which may be undertaken by the Iowa Mediation Service, Inc. pursuant to its bylaws and general corporate powers.

61—17.2(654A,654B) Definitions. As used in these rules, unless the context otherwise requires:

"Affected landowner" means a landowner who has received notice of a preliminary wetlands designation from the Iowa department of natural resources.

"Director" means the director of the mediation service or the designee of the director.

"DNR" means the Iowa department of natural resources.

"Farm borrower" means a borrower who is any of the following:

1. An individual operating a farm as a sole proprietorship or as a member of a partnership;
2. A family farm corporation as defined in Iowa Code section 172C.1(8);
3. An authorized farm corporation as defined in Iowa Code section 172C.1(9).

"Mediation agreement" means a written agreement between the parties to a mediation meeting.

"Participate" or *"participation"* in a mediation involving the designation of wetlands means that the DNR's representative attends the mediation meeting, listens to the affected landowner and the landowner's representative, and discusses the following: the definitions of wetlands and protected wetlands, the criteria for designation of protected wetlands, and the reasons why the department designated all or a portion of the affected landowner's land as protected wetlands.

"Preliminary wetlands designation" means the notice sent by certified mail to affected landowners informing the landowners that a portion of their land has been designated by the department of natural resources as a protected wetland.

"Send" means to mail by first-class mail, or certified or registered mail.

"Tentative agreement" means a written agreement reached by the parties in the course of the mediation meeting or meetings.

61—17.3(654A,654B) Mediation services. The mediation services required under these rules shall be provided pursuant to a contract with the farm assistance program coordinator.

61—17.4(654A,654B) Duties. The duties of the mediation service under these rules include, but are not limited to, the following:

17.4(1) *Training.* The mediation service shall provide training in mediation techniques to all mediators utilized by the mediation service. This training shall include at least 32 hours of initial training on the mediation process, mediation skills and agricultural farm finance issues. At the director's discretion the training period may be adapted for previously trained mediators. The mediation service shall provide training for mediators who assist in handling care and feeding contract, nuisance, and preliminary wetlands designation disputes.

17.4(2) *Support.* The mediation service shall provide support for each mediator. For purposes of these rules, support includes, but is not limited to, technical assistance in complying with these rules and applicable statutes, clerical support and supplies as necessary.

17.4(3) *Compensation.* The mediation service shall provide compensation for mediators at a rate of no more than $25 per hour and at a rate and in a manner as prescribed by the board of the mediation services. The board shall also verify and reimburse expenses incurred by the mediators, including mileage and telephone expenses upon submission of verified expense claims.

17.4(4) *Additional personnel.* The mediation service may train and utilize additional personnel to act in assisting farmers, creditors, farm residents, affected landowners, the department of natural resources and other parties in preparing for mediation. The board of the mediation service may provide for payment or reimbursement of specified expenses to these personnel upon the submission of verified expense claims.

17.4(5) *Coordination of efforts.* The mediation service shall coordinate its efforts with those of the Legal Services Corporation of Iowa and the ASSIST program of the Iowa State University extension service.

17.4(6) *Forms.* The mediation service shall adopt and utilize the forms described in these rules and provide these forms through its offices and mediators. These forms may be altered with the prior approval of the farm assistance program coordinator.

61—17.5(654A,654B) Time. Any time periods prescribed by the rules shall be computed as provided in Iowa Code section 4.1(34).

61—17.6(13,654A,654B) Fees. The mediation service fee shall not exceed $50 per hour for the borrower and $100 per hour for the creditor in farmer/creditor mediations. The hourly mediation fee may be waived for any party demonstrating financial hardship upon application to the farm mediation service. Payment shall be made at the conclusion of the mediation meeting by cash, check or preapproved voucher.

This rule is intended to implement Iowa Code section 13.15 and Iowa Code chapters 654A and 654B.

61—17.7(654A,654B) Oversight. The farm division of the attorney general's office is the designee of the attorney general to serve as the farm assistance program coordinator under the supervision of the attorney general. The farm assistance program coordinator shall monitor compliance by the mediation service with these rules and the terms of the contract and may terminate the contract upon written notice and for good cause.

61—17.8(654A,654B) Initial consultation. The mediation service shall have personnel available for initial consultation for purposes of preparing a party for the mediation proceedings. This consultation may be in person or by telephone. The consultation shall include educating the parties regarding the mediation process and the need for the party to develop proposals prior to the actual mediation meeting. There shall be no charge for the initial consultation.

61—17.9(654A,654B) Availability of assistance in preparation for mediation. The mediation service may make available for an hourly fee personnel to assist parties in the preparation for mediation. The preparation may be done by mediators of the mediation service, but in no case shall a person available through the mediation service who assists in preparation for any party act as a mediator in proceedings relating to that party. The hourly fee shall be set by the board of the mediation service.

61—17.10(654A,654B) Voluntary mediation.

17.10(1) *Request for mediation.* A borrower who owns agricultural property, a creditor of that borrower, a farm resident, or other party with a dispute with a farm resident may request mediation by applying to the mediation service on forms made available for voluntary mediation by the mediation service.

17.10(2) *Evaluation.* Upon receipt of a request for voluntary mediation, the mediation service shall review the request and contact the farm borrower, creditor, farm resident or other party and advise them that voluntary mediation has been requested. If all parties agree to enter voluntary mediation, the mediation service shall assign a mediator to meet with the parties to assist in the voluntary mediation and shall schedule a time and place convenient to the parties for the mediation.

61—17.11(654A,654B) Assignment and removal of mediators.

17.11(1) *Assignment of mediator.* The assignment of mediators shall be made by the director of the mediation service. The director of the mediation service may substitute the assigned mediator.

17.11(2) *Removal upon request.* During the mediation period, upon the written request of any party or all parties participating in mediation, removal of the mediator may be requested of the mediation service. This request must be filed in writing with the mediation service and, as soon as practicable, the director shall review the request. At the discretion of the director, a new mediator may be assigned to participate in the mediation.

17.11(3) *Effect of removal.* In the event of the removal of a mediator, the mediation service shall comply with the 42-day time period required by statute unless there is written agreement by the parties extending the time period.

17.11(4) *Self-removal.* Mediators may remove themselves from the mediation proceeding.

61—17.12(654A,654B) Appeal procedures.

17.12(1) *Notice of denial of mediation release.* If the mediator determines that a mediation release should not be issued because the creditor, party seeking to initiate a civil proceeding against a farm resident or the DNR has not participated in a mediation meeting, the mediator shall within seven days of the mediation meeting give notice by certified mail or in person that a mediation release will not be issued. The notice shall inform the party seeking the mediation release that it has seven days from the date the notice is received to appeal the mediator's decision to the director of the mediation service. The notice shall also inform the party as to the reasons for the denial of the release and that another mediation meeting may be requested. A copy of the notice of denial of mediation release shall be filed with the director and mailed to the farm borrower, farm resident or affected landowner. In addition, the mediator shall prepare a report detailing the reasons for denial of the release and file the report with the director. Copies of the report shall be served on all parties to the mediation meeting in the manner and within the time provided for service of the notice of denial of mediation release.

17.12(2) *Appeal of denial of the mediation release.* The party seeking the mediation release may appeal the denial of the mediation release to the director of the mediation service within seven days of receipt of the notice stating that the release will not be issued. The appeal should be in writing and include: a listing of the parties who attended the mediation meeting, a summary of the reasons why denial of the mediation release should be reversed by the director and a certificate or affidavit of mailing indicating that it was mailed within seven days of receipt of the notice of denial of the mediation release. The appeal should be addressed to: Iowa Mediation Service, Inc., 315 East Fifth Street, Suite 4, Des Moines, Iowa 50309.

17.12(3) *Notice of hearing.* Within 15 days of receipt of the appeal the director or designee of the mediation service shall schedule a hearing on the appeal. The hearing shall be scheduled no later than 30 days of the receipt of the notice of appeal. Written notice of the hearing shall be delivered by the mediation service by certified mail to all parties or attorneys attending the mediation meeting. The notice shall specify the time, location, date and nature of the hearing.

17.12(4) *Continuances.* The director may upon application of a party to the appeal hearing continue the hearing to a date certain. A continuance may be granted for any cause not resulting from the fault or neglect of the applicant. Notice of the rescheduled hearing shall be served in the same manner as the notice of hearing.

17.12(5) *Failure to appear.* If a party who has received notice of the appeal hearing fails to appear, the director may proceed with the hearing and render a decision.

17.12(6) *Conduct of the hearing.* Appeal hearings shall be heard by the director. The hearing shall be recorded either by mechanical or electrical means, or by a certified shorthand reporter. The proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. Hearings before the director shall follow the order established by these rules, subject to modification at the discretion of the director:

a. The director shall read the notice of appeal.

b. The party seeking the mediation release may present evidence as to why the mediation release should have been issued including any evidence which may rebut the mediator's report.

c. Any other party of the mediation meeting may present any evidence regarding the denial of the issuance of the mediation release.

17.12(7) *Burden of proof.* The burden of proof rests upon the party seeking the mediation release to prove by clear and convincing evidence that the denial of the issuance of the mediation release was an abuse of discretion. In reviewing the mediator's decision, the director shall consider the mediator's report, the evidence introduced at the appeal hearing, and any written briefs filed by the parties.

17.12(8) *Rules of evidence.* Unless noted otherwise, Iowa Code section 17A.14 shall govern the rules of evidence for appeal hearings.

17.12(9) *Decision.* The director shall render a decision no later than 30 days after the appeal hearing. The director shall forward a copy of the decision by certified mail to all parties to the mediation meeting.

17.12(10) *Arrangement to conduct hearing.* The mediation service may make arrangements with the Iowa department of inspections and appeals to conduct an appeal hearing. If the appeal hearing is heard by an administrative law judge, the hearing shall be governed by these rules. When an administrative law judge hears the appeal, the decision becomes the final decision of the director for purposes of judicial review unless there is an appeal to the director within seven days of the date of the decision. On appeal from the decision of the administrative law judge, the director has all the power which the director would initially have had in making the decision; however, the director will consider only the issues presented at the hearing before the administrative law judge.

17.12(11) *Prohibition against mediator testimony.* The mediator who denied issuance of the mediation release shall not testify at the appeal hearing.

61—17.13(654A,654B) Rules of conduct. The mediation service shall establish, subject to the approval of the coordinator, general rules of conduct to govern the proceedings at mediation meetings which shall, in part, define the process and goals of mediation. The guidelines shall be available at cost from the mediation service. The rules of conduct are incorporated by reference into these rules. The mediators shall distribute these rules to all parties in attendance at the mediation meeting and shall discuss them with the parties orally prior to the commencement of the meeting. The rules of conduct shall also provide guidelines for the conduct of attorneys representing any party at the mediation meeting. The guidelines should inform attorneys of their right to counsel clients regarding their legal rights and the implications of suggested solutions. The guidelines should advise attorneys to avoid using the mediation proceedings as a discovery technique, that mediation proceedings are not formal legal proceedings, and that the mediator controls the meeting. A person may be accompanied, represented, and advised during the mediation session by a lawyer, legal assistant, law clerk or other representative.

PART II
MANDATORY MEDIATION

61—17.14(654A,654B) Request for mediation. All parties for whom mediation is mandatory shall file a request for mediation with the Iowa Mediation Service, Inc., at 315 East 5th Street, Suite 4, Des Moines, Iowa 50309. An affected landowner may file a request for mediation at the same address within 60 days of the date of the notice of the designation of protected wetlands.

61—17.15(654A,654B) Contents of the request for mediation.

17.15(1) *Farmer/creditor.* The request for farmer/creditor mediation shall contain the following information: the name of the creditor and a person designated as the creditor's representative for service, the address and telephone number of the creditor and the creditor's representative and, where possible, the names and positions of the representatives who plan to attend the mediation proceedings. In addition, it may contain the name and address of the debtor, the telephone number of the debtor, and the location of the collateral real estate or chattel property. If the debtor's property is under the control of a third party, the creditor shall list the same information, if available, for the third party.

17.15(2) *Contract feeding and nuisance disputes.* The request for contract feeding and nuisance dispute mediation shall contain the following information: the name and address of the farm resident or other party requesting mediation and the person(s) designated as the representative for service, and the name and position of the person who will attend the mediation proceeding; if the request for mediation

concerns a contract feeding dispute, a copy of the contract, a description of the livestock, the name and address of the farm resident caring for the livestock, the name and address of the owner of the livestock if not the party requesting mediation, and a summary of the dispute; if the request for mediation concerns a nuisance dispute, the name and address of the person(s) alleged to be creating the nuisance and a description of the actions which are alleged to create the nuisance.

17.15(3) *Wetlands designation.* The request for wetland designation mediation shall contain the following information: the name, address and telephone number of the affected landowner and the person(s) designated as the representative for service, the name and position of the person(s) who will attend the mediation proceeding, a statement as to whether the affected landowner either challenges in whole or in part the designation of protected wetlands or requests the designation of additional marshes or wetlands as protected wetlands, and a copy of the DNR's notice of preliminary wetlands designation.

61—17.16(654A,654B) Failure to furnish complete information. Failure to provide a complete request for mediation may cause the initiation of the mandatory mediation time period to be delayed until complete information is furnished. If the director determines that the mediation time period shall be delayed, the director shall immediately notify the party failing to furnish complete information, specifying what information is necessary to make the request for mediation complete. Failure to complete the request for mediation within 21 days may result, at the director's discretion, in the termination of the mediation proceeding. A new request for mediation may then be initiated.

61—17.17(654A,654B) Bankruptcy. If the director learns that the creditor is barred from taking action against the farm borrower by the automatic stay provision of 11 U.S.C. Section 362, the director shall terminate the mediation proceeding, subject to reopening without filing a new request for mediation, in the event the automatic stay is lifted. The 42-day mediation period shall commence from the date the director receives notice that the stay has been lifted. The proceedings shall otherwise follow the time periods and rules applicable to mediation proceedings.

61—17.18(654A,654B) Notice of mediation request.

17.18(1) *Farmer/creditor.* Upon receipt of the mediation request, the mediation service shall, within three working days, send by regular mail notice to the borrower of the creditor's request for mediation. The notice of the request for mediation shall include the name of the creditor requesting mediation, describe the mediation process in brief, explain the availability of legal services and the ASSIST program, and set forth the procedure for the farm borrower to follow in mediation. The notice shall require the farm borrower to file a list of creditors and their addresses with the mediation service within ten days of the receipt of the notice. This list shall include all secured creditors and any unsecured creditors to whom the farm borrower owes $2,000 or more. The notice shall further require the farm borrower, where possible, to include the names of persons who will attend the mediation meeting with the farm borrower, including legal counsel and family members.

17.18(2) *Contract feeding and nuisance disputes.* Upon receipt of the contract feeding or nuisance mediation request, the mediation service has three working days in which to send by regular mail notice to the farm resident or other party of the mediation request. The notice of the request for mediation shall indicate the name of the person requesting mediation, describe the mediation process in brief, explain the possible availability of legal services, and set forth the procedure for the parties to follow in mediation. The notice shall require the farm resident or other party to file the names of persons who will attend the mediation meeting, including legal counsel or family members, within ten days of receipt of this notice.

17.18(3) *Wetlands designation.* Upon receipt of the mediation request, the mediation service has three working days in which to send by regular mail notice to the DNR of the mediation request. The notice of the request for mediation shall indicate the name of the affected landowner and set forth the procedure for the parties to follow in mediation and indicate whether the landowner challenges the designation of protected wetlands or requests the designation of additional marshes or wetlands as protected wetlands. Within ten days of receipt of the notice of mediation request, the DNR shall

designate to the mediation service the name(s) of the person(s) who, with authority to negotiate agreements, will appear at the mediation meeting on its behalf.

61—17.19(654A,654B) Failure to respond. If the farm borrower, farm resident or other party fails to respond to the notice of the request for mediation within ten days of receipt of the notice, the mediation service shall, if possible, contact the farm borrower, farm resident or other party by telephone or by registered or certified mail, to advise of the request for mediation.

61—17.20(654A,654B) Automatic waiver. Any farm borrower, farm resident or other party who fails to respond to the request for mediation within 21 days of the receipt of the request for mediation shall be deemed to have waived mediation.

61—17.21(654A,654B) Notice of automatic waiver. In the event of an automatic waiver, the mediation service shall notify, by regular mail, the creditor, farm resident or other party who made the request for mediation that there has been an automatic waiver. The mediation service shall issue a release to the initiating creditor, farm resident or other party requesting mediation stating that the creditor may proceed against the agricultural property or that a civil proceeding may be initiated to resolve the dispute. The notice of waiver and release shall be mailed within 21 days of the automatic waiver. A copy of the notice of waiver and release shall also be sent to the party who failed to respond.

61—17.22(654A,654B) Availability of legal services and ASSIST program of Iowa State University extension service. The mediation service shall, at the time notice is given of the request for mediation, advise farm borrowers, farm residents, and affected landowners of the possible availability of legal services to qualifying persons under Iowa Code section 13.23. The notice shall include the WATS telephone number of the Legal Services Corporation of Iowa with whom the farm assistance program coordinator has contracted to provide legal services to farmers. The farm borrower, farm resident or affected landowner shall be responsible for obtaining information and assistance from Legal Services Corporation of Iowa. The mediation service shall also, at the time notice is given of the request for mediation, advise farm borrowers of the availability of financial preparation services to farm borrowers through the ASSIST program offered by the Iowa State University extension service. The notice shall include the location of the nearest county extension office and a description of the services offered. The farm borrower shall be responsible for obtaining information and assistance from the ASSIST program.

61—17.23(654A,654B) Extension of time. In the event that legal services or financial preparations cannot be provided on a timely basis, the farm borrower or the Legal Services Corporation on behalf of the farm borrower, farm resident or affected landowner or the ASSIST program on the farm borrower's behalf, may file a written request for an extension of time in which to obtain these services. Upon receipt of this written request, the mediation service shall notify the creditor, other party or the DNR that the written request has been filed and shall consult with the creditor, other party or the DNR and with the provider of the legal or financial services to determine if an extension is justified. The extension may be granted by agreement of the parties or at the discretion of the director of the mediation service for good cause.

61—17.24(654A,654B) Notice of initial mediation meeting. Within 21 days after receiving the request for mediation, the mediation service shall send a mediation meeting notice to the creditor, farm borrower, all other creditors listed by the farm borrower, the farm resident, other party, affected landowner and the DNR as applicable. The notice of the initial mediation meeting shall state the time and location of the meeting, and the name of the mediator assigned to the mediation proceeding. The notice of initial mediation meeting shall also state that parties or any representatives must have authority to negotiate an agreement within the mediation proceedings.

61—17.25(654A,654B) Expedited procedure. Any party may, by filing a written request with the director, request that the time frames for mediation be expedited. The written request shall be served

on all other parties to the mediation by certified mail. Upon receipt of the written request, the director shall notify all other parties to the mediation meeting of the request and provide an opportunity for response. The opportunity to respond is limited to three days and the director shall evaluate all materials submitted concerning the request and decide whether the proceedings should be expedited within three days of the response. The burden to show irreparable harm unless the proceedings are expedited rests with the party requesting that the proceedings be expedited. If all parties agree, or if upon review of the written request and other information the director finds that the party filing the written request will suffer irreparable harm unless mediation is expedited, the director shall expedite the time frames for mediation. The director shall serve by certified mail a notification of the expedited mediation schedule within 48 hours of that decision.

61—17.26(654A,654B) Initial mediation meeting. The initial mediation meeting must be held within 21 days of the issuance of the notice of the initial mediation meeting. The initial mediation meeting may be held beyond the 21-day period only with the consent of all the parties to the mediation.

61—17.27(654A,654B) Cancellation.

17.27(1) *Farmer/creditor.* After the commencement of the mediation proceedings, the mediation service may cancel the proceedings upon any of the following grounds:

a. The receipt of notice from the creditor requesting mediation that the default has been cured;

b. The receipt of notice that an agreement has been reached between the creditor requesting mediation and the farm borrower;

c. The farm borrower has waived mediation;

d. The creditor requesting mediation withdraws the request for mediation.

17.27(2) *Contract feeding and nuisance disputes.* The mediation service may cancel the proceedings upon any of the following grounds:

a. The receipt of notice from either the farm resident or other party requesting mediation that the dispute has been resolved;

b. The farm resident has waived mediation;

c. The farm resident or other party requesting mediation withdraws the request for mediation.

17.27(3) *Wetlands designation.* The mediation service may cancel the proceedings upon either of the following grounds:

a. The receipt of notice from the affected landowner that the request for mediation is withdrawn;

b. The receipt of notice from either the affected landowner or the DNR that the parties have reached an agreement concerning the designation of protected wetlands.

61—17.28(654A,654B) Procedure for mediation meeting. At the initial mediation meeting and any subsequent meetings, the mediator shall perform the following duties:

1. Listen to all parties;
2. Mediate between all parties;
3. Encourage compromise and workable solutions;
4. Advise, counsel and assist the parties in attempting to arrive at an agreement for the future conduct of relations among them;
5. Clarify the names of all participating parties present, and facilitate agreement on the attendance of any assisting persons at the mediation meeting, as well as the extent to which these persons may participate in the proceedings;
6. Ensure that the parties understand that the mediator does not legally represent any of the parties and is neutral in the proceedings;
7. Help the parties review any proposed solution to determine if it can be effectively implemented and to help the parties understand the consequences of the proposed solution;
8. Review the rights and obligations of the participants in the mediation process including, but not limited to, the following:

- Encourage disclosure of financial data including assets, obligations, and other pertinent information;
- Indicate the duties and rights of the parties to the proceedings;
- Promote participation within the mediation proceedings.

61—17.29(654A,654B) Mediation period.

17.29(1) *Meetings.* The mediation service or the assigned mediator shall schedule the mediation meetings at a neutral and convenient place and at a time as convenient as possible for the parties including nights and weekends, if necessary.

17.29(2) *Mediation period conclusion.* The mediation period shall be concluded within 42 days after the mediation service has received the mediation request.

17.29(3) *Extension.* Upon agreement of the parties participating in mediation, the mediation period may be extended beyond 42 days. If a mediation agreement is under active consideration at the time the mediation period expires, and the parties so agree, the mediation period shall be extended and no release issued until the time that the mediation agreement has been approved or rejected.

61—17.30(654A,654B) Tentative agreement. If a tentative agreement is reached among the parties during the mediation meeting, the mediator shall draft a written statement summarizing what the parties have agreed to perform. Before the completion of the meeting the mediator and the parties shall review the specific terms of the written statement. The mediator shall utilize the assistance of the parties or their representatives as appropriate.

61—17.31(654A,654B) Review of tentative agreement. The mediator shall encourage each party to review the tentative agreement to be certain that it reflects their understanding of the agreement reached in the mediation session. The mediator may assist the parties in evaluating the potential implementation of the agreement. The mediator shall also encourage each party to have the tentative agreement reviewed by legal counsel and a tax adviser to review the legal and tax consequences of the tentative agreement. The tentative agreement may be reviewed during the session or during a specific time period agreed to by the parties. If after review, one or more of the parties rejects the tentative agreement in whole or in part, the mediator shall attempt to resolve the differences. The mediator may call the parties together for additional mediation meetings to resolve any outstanding differences on the elements and terms of the tentative agreement. Any new tentative agreement shall be signed by the parties and the mediator and sent to the mediation service. Copies shall be sent to all parties by the mediator.

61—17.32(654A,654B) Mediation agreement. After the tentative agreement has been reviewed and approved, the mediator shall formalize the mediation agreement by affixing the mediator's signature and obtaining the parties' signatures to the Mediation Agreement form. The original mediation agreement shall be retained by the mediation service and each party shall be given a copy.

61—17.33(654A) Mediation release. The following constitute a mediation release:

1. A mediation agreement;
2. A statement of waiver of mediation executed by the farm borrower, farm resident or affected landowner;
3. A notice to creditors that the farm borrower, farm resident or other party has failed to provide the required information to the mediation service within the prescribed 21 days;
4. A statement executed by the mediator indicating that a mediation meeting has been held in which the parties participated with no provision for extension of time, and that no tentative agreement is under consideration.

61—17.34(654A,654B) Participation. The mediator shall issue a mediation release unless the creditor, other party or DNR fails to participate in at least one mediation meeting. The mediator shall issue a mediation release if the borrower waives or fails to participate in at least one mediation meeting, if the farm resident waives or fails to participate in at least one mediation meeting, or if the affected landowner

withdraws the request for mediation or fails to attend the mediation meeting without seeking an extension of time, regardless of participation by the creditor, other party, or the DNR. The creditor, farm borrower, other party or affected landowner may be represented by another person, if the person participates in mediation and has authority to discuss the issues. These rules shall not be construed to require the creditor, other party or the DNR to reach an agreement to receive a mediation release.

These rules are intended to implement Iowa Code section 13.15 and chapters 654A and 654B.

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[Filed emergency 6/28/91—published 7/24/91, effective 6/28/91]

CHAPTER 18
REGULATION OF PRICE DISCRIMINATION IN THE SALE OR LEASE OF MOTOR VEHICLES BY MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS OR WHOLESALERS

Rescinded IAB 7/20/94, effective 6/20/94

CHAPTER 19
CONSUMER RENTAL PURCHASE AGREEMENTS FORMS

61—19.1(537) Agreement forms. Pursuant to Iowa Code section 537.6117 and 1987 Iowa Acts, House File 585, sections 5 and 6, the administrator of the consumer credit code finds that consumer rental purchase agreements must be substantially in the form of the model agreement contained in this rule.

The "Rental Purchase Disclosures" numbered 1 to 5 and the "Notice to Lessee" must appear on the face of the agreement. The heading or caption of each of the disclosures numbered 1, 4 and 5 must be in at least uppercase 10-point type. The headings for disclosures 2 and 3 (Cash Price and Total of Scheduled Payments) must be 10-point uppercase bold-faced type. All other material must be in at least 8-point type except for the "Notice to Lessee" which must be in at least 10-point uppercase bold-faced type.

Additional terms of the consumer rental purchase agreement should be printed on a separate page; however, printing the additional terms of agreement on a separate page may be satisfied by printing these terms on the rear of a one-page agreement. Any agreement which is printed on a single one-sided page must not alter any of the order, sequence, placement, initialing or type size requirements of this rule or of the Act.

All additional charges listed under "Terms of The Agreement" are made at the lessor's option, therefore, they must be included in the agreement only to the extent they are applicable. Only those additional charges actually disclosed in the agreement may be assessed. Lessors may determine the actual amounts to be disclosed and assessed for applicable additional charges so long as the statutory maximums for each charge are not exceeded. In addition, certain charges, one of which is in lieu of the other, shall not both be assessed; (a) if a late payment fee is assessed for a particular late payment, a "payment pickup charge" may not also be assessed for that payment, and (b) if an administrative fee is assessed on the agreement, a delivery fee may not also be assessed on the agreement. A lessor's form may include additional "Terms of Agreement" not included in the model form, provided that all such terms comply with the consumer rental purchase agreement Act and any other applicable state or federal laws, and provided that they do not detract from or contradict the required disclosures and terms of the agreement. All terms must be written in clear, plain language. All items appearing under "Terms of Agreement" must be in at least 8-point type with the title of each term appearing in bold-faced uppercase 10-point type.

Lessors using the following model form shall be deemed to be in compliance with Iowa Code sections 537.3605 and 537.3606.

[IOWA CONSUMER CREDIT CODE-MODEL FORM]

IOWA CONSUMER RENTAL-PURCHASE AGREEMENT--Date:_____ Agreement No.____

Name of Lessee(s)_____ Name of Lessor_____

Address_____ Address_____

RENTAL PURCHASE DISCLOSURES

The following disclosures are required by the Iowa Rental-Purchase Act to help you understand the terms of your rental purchase agreement.

1. DESCRIPTION OF LEASED PROPERTY

ITEM	QTY	MODEL #	SERIAL #	YEAR	NEW (Check one)	USED

2. **CASH PRICE**.....Lessee Initial [ ] $_____
This is the price at which we would sell the leased property listed above to a buyer on the date of this agreement.

3. **TOTAL OF SCHEDULED PAYMENTS**.....[ ] $_____
Lessee Initial

The total of scheduled payments means the total dollar amount of lease payments you will have to make to own the property. This total does NOT include ADDITIONAL CHARGES which might be made during the agreement such as: LATE PAYMENT CHARGES, REINSTATEMENT FEES, OPTIONAL PAYMENT PICKUP CHARGES. See the remainder of the contract for an explanation of these charges.

If you rent monthly, you will make ____ monthly payments of....$_____per month
If you rent weekly, you will make ____ weekly payments of.....$_____per week
Payments will begin on the ___ of _____, 19__ and each renewal will be due on the ____ of each _____.

4. INITIAL PAYMENTS
A. Administrative fee [if applicable].....$_____
B. Delivery charge [if applicable].....$_____
C. Security Deposit [if applicable].....$_____
Deposit will be returned under these conditions:
_____
D. Taxes or Official Fees (Itemize).....$_____

5. OWNERSHIP AND LIABILITY FOR DAMAGE OR LOSS: You will not own the property until you have made all of the payments above (unless you choose to "buy-out" early as explained below). If the property is lost, stolen, damaged or destroyed, you will be responsible for the fair market value of the property at the time of the loss or damage.

NOTICE TO LESSEE - READ BEFORE SIGNING:

1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE OR ON ADDITIONAL PAGES, EVEN IF OTHERWISE ADVISED.

2. DO NOT SIGN THIS IF IT HAS ANY BLANK SPACES.

3. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

4. ANYTIME AFTER YOU HAVE MADE YOUR FIRST WEEKLY/MONTHLY PAYMENT YOU HAVE THE RIGHT TO EXERCISE AN "EARLY BUY-OUT" OPTION AS PROVIDED IN THIS AGREEMENT. IF YOU CHOOSE THE EARLY BUY-OUT THIS OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP. IF YOU BUY-OUT EARLY YOU WILL PAY: ("TOTAL OF SCHEDULED PAYMENTS")minus(AMOUNT YOU HAVE PAID ALREADY)multiplied by ___%[creditors insert their own formula which must use a multiplier of 55% or less] (equals) = Early buy out option price.

5. IF YOU CHOOSE TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND YOU USE YOUR EARLY BUY-OUT OPTION, YOU **MAY PAY MORE** FOR THE LEASED PROPERTY.

Lessee:(Sign)_____ Lessor:(Sign)_____

Lessee:(Sign)_____ Date:_____

*[Bracketed material is explanatory and is not printed on lessor's agreement.]

TERMS OF AGREEMENT

1. ADDITIONAL CHARGES: [Charges referred to below are maximums. Lessors may insert a different amount if it is less than the maximums. Lessors need to print only those charges and terms which apply to their agreement.]

LATE PAYMENT CHARGES: A [up to $5.00] charge for monthly payments not made within five (5) business days of the date payment is due, or [up to $3.00] charge for weekly payments not made within three (3) business days of the date when payment is due. This charge may only be made when no "payment pick-up charge" has been made.

REINSTATEMENT FEES: A [up to $5.00] fee for the right to reinstate the agreement after failing to make a timely rental payment and if the conditions governing reinstatement are met.

DELIVERY FEES: A $10.00 fee for up to five (5) items and $25.00 for delivery of more than five (5) items.

ADMINISTRATIVE FEES: An initial fee of [up to $10.00] to cover administrative costs of the Agreement. [But ONLY if there is no delivery charge.]

OPTIONAL IN HOME PICK UP OF RENTAL PAYMENTS: For a charge of [$7.00 maximum] per payment, we can pick up the payment at your home. In no event will this charge be assessed in excess of three (3) times in any three (3) month period if the agreement is weekly or three (3) times in any six (6) month period if the agreement is monthly.

OPTIONAL PROPERTY INSURANCE: You do not have to carry insurance on the property. If you want property insurance to cover the property you may buy it from us or from someone else.

2. YOUR REINSTATEMENT RIGHT: If you fail to make a renewal rental payment you may have the right to reinstate this agreement by paying all rental payments past due, all applicable late charges, reinstatement fees and redelivery fees provided: 1) You voluntarily returned the property to us, if requested and 2) Not more than sixty (60) days have passed since you have returned the property.

3. YOUR TERMINATION RIGHT: You may terminate this agreement at any time without paying any charges other than those previously due. The property must be returned in its present condition, fair wear and tear excepted.

4. OUR TERMINATION RIGHT: We may terminate this agreement for a default in payment or breach of any other material term of this Agreement. If termination occurs we shall be entitled to all rental payments and other charges due up to the date of termination as well as the reasonable expenses of repossession of the property if you fail to surrender the property to us.

5. WARRANTY: [if applicable]

[Filed 10/16/87, Notice 8/26/87—published 11/4/87, effective 12/9/87]

CHAPTER 20
NONCREDIT PROPERTY INSURANCE IN CONSUMER CREDIT TRANSACTIONS

61—20.1(537) Statement of purpose. This chapter governs the sale of noncredit property insurance associated with consumer credit transactions. Pursuant to rule-making authority under Iowa Code section 537.6117, the administrator of the Iowa Consumer Credit Code finds that noncredit property insurance may be sold to consumers as directed by the requirements of this chapter.

61—20.2(537) Definitions.

"Consumer credit transaction" is as defined in Iowa Code section 537.1301(11).

"Credit property insurance" means protection or indemnity against creditor risk of loss in connection with a specific consumer credit transaction secured by collateral. The definition of "credit property insurance" is limited to property insurance insuring personal property used as collateral or security in a consumer credit transaction. Subject to the requirements in the federal Truth-in-Lending Act, 16 CFR Section 444 (1991), and the Iowa consumer credit code, credit property insurance is a permissible additional charge in a consumer credit transaction.

"Disclosure form" means the document which discloses the total cost of the noncredit insurance, contains the notice to consumers required in subrule 20.6(2), paragraph *"a,"* and includes the signature space for the borrower to purchase noncredit property insurance.

"Noncredit property insurance" means insurance protecting a borrower against risk or loss regarding personal property that is not used as collateral or security in any consumer credit transaction. For purposes of this chapter, noncredit property insurance includes insurance which is not credit property insurance sold on automobiles covering physical damage or theft of the car, but excluding insurance covering personal liability for use of the car. Noncredit property insurance may be sold to borrowers only as authorized under this chapter.

"Other credit products" means consumer credit services offered by a creditor including, but not limited to, consumer loans, consumer leases and consumer credit sales.

61—20.3(537) Exclusions. This chapter does not apply to insurers who do not engage in consumer credit transactions or to creditors who engage in consumer credit transactions only for the purpose of selling insurance products.

61—20.4(537) General conditions of sale. Noncredit property insurance may be sold in consumer credit transactions only when the sole purpose of the transaction is to finance the sale of noncredit property insurance. This single purpose requirement is satisfied when the amount financed for the transaction includes only the premium cost for the noncredit property insurance and applicable fees or taxes. Noncredit property insurance premiums may not be included within the amount financed of a consumer credit transaction that includes consumer loans or consumer credit sales for items other than the purchase of noncredit property insurance. Noncredit property insurance may also be purchased by cash, check or credit card so long as the sale of the product meets all applicable requirements of this chapter. The credit sale of noncredit property insurance premiums must also meet applicable requirements of Iowa Code section 537.3207, "Form of insurance premium loan agreement."

61—20.5(537) Sale prohibition. No verbal or written sales efforts regarding noncredit property insurance may be made until the initial loan or credit transaction has been closed and the entire proceeds of the other credit products have been received by the consumer. In addition, creditors may not prepare documents for the sale of noncredit property insurance until the entire proceeds of the other credit products have been received by the borrower.

Should a borrower independently inquire about the purchase of noncredit property insurance, the creditor may inform the borrower that the company offers such insurance for sale, but that the terms of insurance may not be discussed until after the sale of other credit products has been completed.

This prohibition does not prevent creditors from clearly disclosing to consumers that credit property insurance insures only a portion of the personal property owned by a borrower.

61—20.6(537) Disclosures. Creditors may offer for sale noncredit property insurance only after the following disclosures have been made.

20.6(1) *Initial disclosures.* Creditors must comply with the following initial disclosure requirements prior to preparing any written documents related to the sale of noncredit property insurance.

a. The creditor must first inquire about existing property insurance held by the borrower. Should the borrower indicate that he or she already owns property insurance covering the property at issue, all sales efforts must cease and the creditor may not sell the borrower any noncredit property insurance products. For the purpose of this rule, credit property insurance insuring collateral used to secure any ongoing loan or credit sale transaction is considered existing property insurance and the creditor is forbidden to sell additional noncredit property insurance to insure such property.

b. The creditor must inform the borrower that the purchase of this insurance is completely voluntary and is unrelated to any other loan or credit sale transactions which might have occurred between the creditor and borrower.

c. The creditor must explain the insurance coverage for every available noncredit insurance plan the borrower is eligible for that the creditor is authorized to sell. The creditor must also separately disclose the costs of the insurance, including both the premium cost and the finance charge applied. If more than one credit insurance plan is available to the borrower, then the borrower must be informed of the nature and costs of each such plan.

20.6(2) *Written disclosures.* After the initial disclosures in subrule 20.6(1) have been made, the creditor may prepare final documents for the sale of noncredit property insurance. The written disclosures required by this rule must be made on the front side of the disclosure form.

a. The disclosure form must contain the following notice in 12-point bold-faced type. The heading must be in uppercase.

NOTICE TO CONSUMERS:
PURCHASE OF THIS INSURANCE IS VOLUNTARY

1. The creditor is offering to sell you insurance on your personal property that is <u>not</u> used as collateral or security on a loan.

2. You do not need to purchase this insurance to obtain a separate loan from a creditor and loan approval will not depend on whether you buy this insurance.

3. Under Iowa law a creditor may not offer to sell you this property insurance until you have received your loan.

4. If you already have property insurance the creditor cannot sell you additional property insurance that duplicates the coverage of your existing policy.

b. The creditor must clearly and conspicuously disclose the premium cost of the insurance and any finance charges associated with the premium. Disclosures made in accordance with the Truth-in-Lending Act meet this requirement.

c. The creditor must maintain at least one copy of the disclosure form for the period required by the record retention requirements of the Truth-in-Lending Act. The consumer must receive at least one copy of the disclosure form and all other insurance documents referred to or associated with the sale.

61—20.7(537) Borrower signature. The creditor must obtain the borrower's signature on the disclosure form. The signature space must come after the disclosures required in subrule 20.6(2).

61—20.8(537) Additional insurer forms. In addition to the disclosure form, the creditor may use other noncredit property insurance forms considered necessary provided they are not inconsistent with the disclosure form or this chapter and, if applicable, have been approved by the insurance commissioner.

61—20.9(537) Permitted finance charges. The credit sale of noncredit property insurance pursuant to this chapter is classified as a consumer credit sale as defined by the Iowa consumer credit code. Finance charges assessed on noncredit insurance premiums may not exceed the rate authorized in Iowa Code section 537.2201. "Finance charge for consumer credit sales not pursuant to open-end credit."

61—20.10(537) Restrictions on sale to homeowners. Noncredit property insurance insuring the contents of a home may not be sold to borrowers who own a residence, unless the creditor, prior to the sale, has in the loan file documentation showing that the borrower does not already have household contents insurance.

61—20.11(537) Insurance division requirements. In addition to complying with this chapter and the Iowa consumer credit code, creditors must also comply with all applicable statutes and regulations enforced by the Iowa insurance division. These requirements include, but are not limited to: agent licensing requirements, premium rates, loss ratios, refund formulas, reporting requirements, and policy disclosure and readability provisions. Compliance with this chapter does not relieve the creditor from complying with all relevant requirements of the insurance division.

61—20.12(537) Rule violations. The failure to comply with this chapter, or the use of sales practices which are inconsistent with this chapter, is a separate violation of Iowa Code section 537.4101 (excess charges in insurance) and Iowa Code section 714.16 (consumer fraud Act). In addition, the inclusion of noncredit property insurance premiums within the sale or loan of other credit products is considered an excess charge for purposes of Iowa Code sections 536.13(6), 537.5201(3) and 537.6113. Applicable defenses available to creditors under the Iowa consumer credit code are equally available to creditors under this rule.

61—20.13(537) Severability. If any provision or clause of this chapter or its application to any person or situation is held invalid, the invalidity shall not affect any other provision or application of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

These rules are intended to implement Iowa Code sections 537.2501 and 537.6117.

[Filed 6/18/91, Notice 11/14/90—published 7/10/91, effective 8/14/91]

CHAPTER 21
Reserved

CHAPTER 22
NOTIFICATION AND FEES

61—22.1(537) Purpose. The purpose of these rules is to implement the notification and fees section of the Iowa consumer credit code, Iowa Code sections 537.6201 to 537.6203. The fees collected are used for the administration of the credit code.

61—22.2(537) Applicability.

22.2(1) *Coverage.* The following persons are included within the scope of the notification and fees sections:

a. *"Creditors"* who are engaged in consumer credit transactions and acts, practices or conduct involving consumer credit transactions to which this chapter applies pursuant to Iowa Code section 537.1201. The term "creditors" includes creditors engaged in consumer credit sales, consumer loans, refinancing or consolidation of sales or loans, consumer leases, or consumer rental purchase agreements, as these terms are defined in Iowa Code sections 537.1301 and 537.3604(8).

b. *"Debt collectors,"* as defined in Iowa Code section 537.7102(5), whose acts, practices or conduct is governed by Iowa Code chapter 537 pursuant to 537.1201. Debt collectors whose total debt collected in the preceding calendar year is less than $25,000, and in the current calendar year less than $25,000, are exempt from the notification and fees section of the consumer credit code. The term "debt collectors" is not limited to creditors or debt collectors collecting debts arising from consumer credit transactions, but also includes the collection of debts as that term is defined in Iowa Code section 537.7102(3).

22.2(2) *Exempt parties.* Creditors and debt collectors who are licensed, certified, or otherwise authorized to engage in business by Iowa Code chapter 524, 533, 534, 536, or 536A are exempt from the notification and fees section of the Iowa consumer credit code. Therefore, for purposes of this chapter, the terms "creditors" and "debt collectors" do not include parties exempted by Iowa Code section 537.6201 and this subrule.

61—22.3(537) Definitions.

"Administrator" is defined in Iowa Code section 537.6103.

"Assignee" means a person who purchases consumer credit sales contracts, consumer leases, or consumer loans from a seller, lessor or lender.

"Consumer credit sale" is defined in Iowa Code section 537.1301(12).

"Consumer credit transaction" is defined in Iowa Code section 537.1301(11).

"Consumer lease" is defined in Iowa Code section 537.1301(13).

"Consumer loan" is defined in Iowa Code section 537.1301(14).

"Consumer rental purchase agreement" is defined in Iowa Code section 537.3604(8).

"Creditor" is defined in Iowa Code section 537.1301(17).

"Debt" is defined in Iowa Code section 537.7102(3).

"Debt collection" is defined in Iowa Code section 537.7102(4).

"Debt collector" is defined in Iowa Code section 537.7102(5).

"Lender" is defined in Iowa Code section 537.1301(23).

"Lessor" means a person who issues a consumer lease.

"Seller" is defined in Iowa Code section 537.1301(39).

61—22.4(537) Notification.

22.4(1) *Coverage.* All creditors and debt collectors shall file a notification statement with the administrator. The statement should be filed at the following address: Administrator of the Iowa Consumer Credit Code, Consumer Protection Division, Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319.

22.4(2) *Filing date.* Persons required to file a notification statement shall file within 30 days after commencing business in this state, or within 30 days after April 24, 1991, whichever is applicable, and

thereafter, on or before January 31 of each year. Information filed should be based on the preceding calendar year.

22.4(3) *Contents of notification statement.* The notification statement shall contain all of the information required by Iowa Code section 537.6202.

22.4(4) *Updating.* The notification statement shall be updated annually on or before January 31 of each year. Should information provided in the statement become inaccurate after filing, no further notification is required until the following January 31.

61—22.5(537) Fees. All persons subject to the notification and fees section of the Iowa consumer credit code must pay the following fees:

22.5(1) *Annual fees.* All creditors and debt collectors, including assignees, who are required to file notification statements shall pay to the administrator an annual fee of $10. This fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

22.5(2) *Volume fees.*

a. Sellers, lessors and lenders.

(1) Amount of fee. Sellers, lessors and lenders must also pay an additional fee at the time of filing of $10 for each $100,000, or part thereof exceeding $10,000, of the average unpaid balances of obligations arising from consumer credit transactions entered into or modified by the person in this state and held on the last day of each calendar month during the preceding calendar year and held by the seller, lessor or lender. Lessors must pay an identical amount on the unpaid scheduled periodic payments for consumer leases. Sellers, lessors and lenders must also pay this amount on unpaid balances held by an immediate or remote assignee who has not filed notification. The unpaid balances of assigned obligations held by an assignee who has not filed a notification statement are presumed to be the unpaid balances of the assigned obligations at the time of their assignment by the seller, lessor or lender. Sellers, lessors and lenders who assign obligations to a party exempt under subrule 22.2(2) need not pay volume fees on these obligations after they have been assigned.

(2) Method of calculation. The average unpaid balance arising from consumer credit transactions for the preceding calendar year is determined by totaling the unpaid consumer credit balances held at the end of each month, including unpaid scheduled periodic payments under consumer leases. Included in this amount are consumer credit transactions assigned to assignees who have not filed notification statements. This total is then divided by 12. The volume fee is determined by taking this amount and assessing $10 on each $100,000 of outstanding credit. Volume amounts exceeding $100,000 by more than $10,000 are counted as an additional $100,000 for the purpose of assessing the volume fee (e.g., an average unpaid balance of $511,000 would generate a $60 volume fee: $10 for each $100,000 in volume, and $10 for the additional $11,000).

b. Assignees.

(1) Amount of fee. Assignees must also pay an additional fee at the time of filing of $10 for each $100,000, or part thereof exceeding $10,000, of the average unpaid balances of obligations arising from consumer credit transactions entered into or modified in this state, taken by the person by assignment and held by the person on the last day of each calendar month during the preceding calendar year. Assignees must pay an identical amount on assignments of unpaid scheduled periodic payments of consumer leases.

(2) Method of calculation. The average unpaid balances arising from consumer credit transactions for the preceding calendar year is determined by totaling the unpaid balances at the end of each month, including unpaid scheduled periodic payments under consumer leases. This amount is then divided by 12. The volume fee is determined by taking this total and assessing $10 on each $100,000 of outstanding credit. Volume amounts exceeding $100,000 by more than $10,000 are counted as an additional $100,000 for the purpose of assessing the volume fee.

c. Debt collectors. Debt collectors subject to the notification and fees section of the credit code who are not engaged in consumer credit transactions are exempt from the assessment of volume fees.

22.5(3) *Method of payment.* The annual fee and applicable volume fees are to be included with the notification statement and filed within 30 days after April 24, 1991, and thereafter on or before January 31 of each year. The fees should be made payable to Iowa Consumer Credit Administration Fund.

Creditors shall pay volume fees in the first year of administration of the notification and fees section. These fees shall be calculated on the average unpaid consumer balances for the 1990 calendar year. Creditors may request consideration of alternative methods of calculating volume fees for 1990 if they can demonstrate that their records are not kept in a manner permitting them to calculate the fees as required, and that the alternative method proposed would approximate or exceed the volume fees that would be paid according to the statutory calculation method. All creditors shall comply with the statutory volume fee calculation method beginning with the 1992 notification and fee period.

61—22.6(537) Sanctions. The following sanctions are available to the administrator for use against creditors and debt collectors who are not in compliance with the notification and fees section. These sanctions are cumulative.

22.6(1) *Late charge.* The administrator may collect a late charge of $25 from any party subject to Iowa Code sections 537.6201 to 537.6203 who has failed to pay the required fees in full within 30 days after their due date.

22.6(2) *Civil action.* The administrator may bring a civil action against parties subject to Iowa Code sections 537.6201 to 537.6203 who have failed to file a notification statement or to timely pay their fees in full pursuant to Iowa Code section 537.6113(3). The administrator may request the fees owed, interest on those fees at a rate of 7 percent per annum, the reasonable costs of bringing the action and a civil penalty.

These rules are intended to implement Iowa Code sections 537.6201 to 537.6203 and 537.6117.

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CHAPTER 23
Reserved

CHAPTER 24
PROFESSIONAL COMMERCIAL FUND-RAISERS

61—24.1(13C, 252J) Registration permit denial. The attorney general shall deny an application for registration as a professional commercial fund-raiser pursuant to Iowa Code section 13C.2 and Iowa Code chapter 252J, if the applicant:

1. Has failed to fully complete all required registration permit applications;
2. Has failed either to include with the registration permit application financial disclosure information requested by the attorney general or file a statement with the permit application that the fund-raiser agrees to provide, without cost, the financial disclosure information required to be disclosed by Iowa Code section 13C.2 to a person or government entity requesting the information within one day of the request;
3. Has failed to provide the attorney general with a current listing of the professional commercial fund-raiser's clients;
4. Has failed to pay the required registration permit fee to the attorney general; or
5. Is an individual and the attorney general has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the attorney general with a withdrawal of the certificate of noncompliance.

61—24.2(13C,252J) Notice of denial of registration based on nonpayment of child support. The notice required by Iowa Code section 252J.8 shall be served upon the applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rules of Civil Procedure 56.1. Alternatively, the applicant may accept service personally or through authorized counsel.

61—24.3(13C,252J) Obligation of applicants to notify attorney general concerning nonpayment of child support. Applicants shall keep the attorney general 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 attorney general 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 such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

61—24.4(13C,252J) Effective date of denial based on nonpayment of child support. The effective date of denial of registration, as specified in the notice required by 252J.8, shall be 60 days following service of the notice upon the applicant.

61—24.5(13C,252J) Calculating effective dates of denial of registration based on nonpayment of child support. In the event an applicant files a timely district court action following service of an attorney general notice pursuant to Iowa Code sections 252J.8 and 252J.9, the attorney general shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the attorney general to proceed. For purposes of determining the effective date of denial of the issuance of a registration permit, the attorney general 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.

These rules are intended to implement Iowa Code chapters 13C and 252J.

[Filed 11/12/96, Notice 8/28/96—published 12/4/96, effective 1/8/97]

CHAPTER 25
REGULATION OF MEMBERSHIP CAMPGROUND OPERATORS

61—25.1(557B) Place of filing. Information required to be filed by the membership campground statute, Iowa Code chapter 557B, or these rules shall be submitted to the Office of the Attorney General, Consumer Protection Division, Hoover Building, 2nd Floor, Des Moines, Iowa 50319. Whenever these rules state that a document be "filed," the document must be delivered to the attorney general's office by United States Postal Service or personal service and shall be considered filed on the date of the United States Postal Service mark or the date personal service is made.

61—25.2(557B) Definitions. Unless otherwise defined, the terms used in these rules have the same definitions found in Iowa Code section 557B.1.

REGISTRATION

61—25.3(557B) Registration.

25.3(1) *Who must register.* A person shall not offer or sell a membership camping contract in this state unless the membership camping contract is covered by a membership camping registration. The application for registration must be filed with the attorney general's office at the address indicated in rule 25.1(557B). The following transactions are exempt from the requirement of registration:

a. An offer, sale, or transfer by any one person of not more than one membership camping contract in any 12-month period.

b. An offer or sale by a government, government agency, or other subdivision of government.

c. A bona fide pledge of a membership camping contract.

d. Transactions subject to regulation pursuant to Iowa Code chapter 557A.

25.3(2) *Contents of application.* The application for registration must contain all of the information required by Iowa Code section 557B.3. A form which may be used by the applicant for registration is available. Copies of this form, which is designated as Form 557B-1, may be obtained from the consumer protection division at the address stated in rule 25.1(557B). If an alternative format is used, the information must be supplied in a readable, coherent, and complete manner, or the application will be denied.

25.3(3) *Fee for registration.* The application for registration must be accompanied by a nonrefundable fee of $200. Applications which are received without payment will be returned to the sender.

25.3(4) *Effective date.* Registration is effective for one year from the date the application is granted either by the attorney general's office or by operation of law. The attorney general's office will notify each registrant of the effective date of its registration.

25.3(5) *Amendments to registration and fee.* An application for registration must be amended and the amendment must be filed with the attorney general within 25 days of any material change in the information included in the application. Amendments must be accompanied by a nonrefundable fee of $50.

25.3(6) *Renewal of registration.* A membership camping operator's registration must be renewed annually by filing an application for renewal no later than 30 days prior to the anniversary of the current registration. An application for renewal must be accompanied by a nonrefundable fee of $200. The renewal application must include all changes in the information which had been provided in the previously filed application.

SANCTIONS AND HEARINGS

61—25.4(557B,252J) Sanctions.

25.4(1) *Statement of charges.* A membership campground registration may be denied, suspended or revoked or a penalty of not more than $5000 may be imposed or a combination of suspension or revocation and penalty may be imposed for any of the reasons set forth in Iowa Code section 557B.6. If any action of this type is taken, a representative of the consumer protection division shall mail by certified mail a statement of charges to the applicant or registrant. The applicant or registrant has 30 calendar days from the date of mailing the statement of charges to request a hearing. Requests for hearing must be filed within the 30-day time period or the applicant or registrant will not be permitted to contest the matter. Such requests must be filed at the address specified in rule 25.1(557B). Within this 30-day period, the applicant or registrant may also file an answer or other responsive pleading to the statement of charges.

25.4(2) *Hearings.* If a request for hearing is filed, the contested case will be referred to an independent administrative law judge. Upon request, the Iowa department of inspections and appeals will establish a time and provide an administrative law judge to conduct the contested case. A representative of the consumer protection division will prosecute these cases on behalf of the state.

25.4(3) *Notice of hearing.* The applicant or registrant shall be mailed by certified mail a notice of hearing which will include:

a. The date, time, and place of hearing.

b. A statement that the party may be represented by legal counsel.

c. A statement of the legal authority and jurisdiction under which the hearing is to be held.

d. A statement that the respondent has the right to appear at a hearing and be heard.

e. A reference to the statute or rules involved.

f. A copy of the statement of charges referred to in subrule 25.4(1).

25.4(4) *Prehearing conferences.* The administrative law judge either on the administrative law judge's own motion or at the request of either party may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. Notice by ordinary mail shall be given to each party of the date, time, and place of the prehearing conference.

25.4(5) *Informal settlement.* Nothing in these rules shall be construed to discourage or limit the parties in their right to pursue an informal settlement of the contested case. Any such settlement shall be subject to review and approval by the attorney general.

25.4(6) *Failure by respondent to appear.* If a respondent, upon whom a notice of hearing has been served, fails to appear either in person or by counsel at the hearing, the administrative law judge may proceed with the conduct of the hearing. The results of the hearing shall be binding to the same extent as if respondent had been present.

25.4(7) *Conduct of hearings.* Hearings under this rule will be held pursuant to the Iowa administrative procedure Act. These hearings will generally be conducted according to the following format, subject to modification at the discretion of the administrative law judge:

a. The representative of the consumer protection division may make an opening statement.

b. The respondent(s) may make an opening statement or may elect to reserve the opening statement until just prior to the presentation of evidence by the respondent.

c. The evidence on behalf of the consumer protection division is presented.

d. The evidence on behalf of the respondent(s) is presented.

e. Rebuttal evidence, if any, on behalf of the consumer protection division is presented.

f. Rebuttal evidence, if any, on behalf of the respondent(s) is presented.

g. Each party may make a closing argument.

25.4(8) *Continuances.* No ex parte continuance shall be granted to any party.

25.4(9) *Interlocutory appeal.* Any party to a contested case may seek an interlocutory appeal on a procedural question with the attorney general by filing a timely request.

25.4(10) *Discovery and subpoenas.* The provisions of Iowa Code section 17A.13 relating to discovery and subpoenas shall govern in contested cases held pursuant to these rules.

25.4(11) *Proposed decision.* The administrative law judge who presides over the case will render a proposed decision which shall be in writing or stated in the record. The decision may include any of the following:

a. Dismissal of the charges against respondent.

b. Denial of an application for registration.

c. Suspension of a registration for a specified period.

d. Revocation of a registration.

e. Imposition of a penalty not to exceed $5000.

25.4(12) *Further review.* Any party, including the consumer protection division, who is adversely affected by a proposed decision, may seek further review with the attorney general by complying with the following procedure:

a. A request for further review must be filed with the attorney general within 20 days of the date of the administrative law judge's decision.

b. Within ten days after filing the request for further review, the requesting party must file written exceptions to the proposed decision of the administrative law judge and must set forth the specific relief requested as well as all of the grounds upon which the request for relief is based. The party seeking further review may also file a written brief and argument along with its exceptions.

c. The opposing party has 14 days following service of the exceptions to file a responsive brief and argument if desired.

25.4(13) *Notification of decision.* All parties to a contested case shall be promptly furnished with a copy of any final or proposed decision either by personal service or by certified mail.

25.4(14) *Judicial review.* A party who has exhausted administrative remedies may seek judicial review of the decision pursuant to the Iowa administrative procedure Act.

25.4(15) *Sanctions against individual membership camping operators relating to unpaid child support.* The following shall apply to the applications or registrations of individual membership camping operators under Iowa Code chapter 557B:

a. *Registration permit denial.* Pursuant to Iowa Code chapter 252J, the attorney general shall deny an application for registration under Iowa Code chapter 557B of a membership camping operator, if the membership camping operator is an individual and the attorney general has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the attorney general with a withdrawal of the certificate of noncompliance.

b. *Registration permit suspension or revocation for nonpayment of child support.* Pursuant to Iowa Code chapter 252J, the attorney general shall suspend or revoke the registration of a membership camping operator under Iowa Code chapter 557B, if the membership camping operator is an individual and the attorney general has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the attorney general with a withdrawal of the certificate of noncompliance.

c. *Notice of suspension, revocation or denial of registration based on nonpayment of child support.* The notice required by Iowa Code section 252J.8 shall be served upon the registrant or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the registrant or applicant may accept service personally or through authorized counsel.

d. *Effective date of suspension, revocation or denial based on nonpayment of child support.* The effective date of suspension, revocation or denial of registration, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the registrant or applicant.

e. *Obligation of registrants and applicants to notify attorney general concerning nonpayment of child support.* Registrants and applicants shall keep the attorney general 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 attorney general 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 such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

f. *Payment of fees following suspension or revocation.* If the attorney general suspends or revokes a permit pursuant to Iowa Code chapter 252J, a nonrefundable permit fee of $200 for reinstatement must be paid by the applicant to the attorney general before a permit will be reinstated.

g. *Calculating effective dates of suspension, revocation or denial of registration based on nonpayment of child support.* In the event a registrant or applicant files a timely district court action following service of an attorney general notice pursuant to Iowa Code sections 252J.8 and 252J.9, the attorney general shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the attorney general to proceed. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a registration permit, the attorney general 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.

h. *Relation to other subrules of this rule.* The requirements of subrule 25.4(15) shall be in addition to those stated in subrules 25.4(1) to 25.4(14). However, the provisions of subrules 25.4(1) to 25.4(14) shall not apply to any sanctions imposed against individual membership camping operators relating to unpaid child support. Sanctions imposed against individual membership camping operators relating to unpaid child support shall be governed by the provisions of subrule 25.4(15) and Iowa Code chapter 252J.

ADVERTISING

61—25.5(557B) Advertising plans.

25.5(1) *Prohibitions.* An advertisement shall not:

a. Make any untrue statement of material fact which would make the statements misleading in light of the circumstances under which the statements were made.

b. Misrepresent either explicitly or implicitly, the size, quantity, identity, or quality of any prize, gift, amount of money, or other item of value.

c. Represent to a consumer that the consumer is being notified for the second or final time of the right to collect a prize, gift, award, or other thing of value in exchange for participating in a sales presentation if, in fact, it is not the second or final attempt to notify the consumer.

d. Refer to a prize, gift, award, or any other type of inducement as being previously claimed or awarded unless, in fact, each of those prizes, gifts, awards, or other type of inducements has been awarded during the same promotional program.

e. Offer a prize, gift, award, or other inducement unless one of each is available at the beginning of the promotional program.

f. Refer to any item as a prize, gift, award, or words of similar meaning if the consumer must purchase anything or give, or promise to give, any consideration, other than visiting the property to claim the item.

g. Offer anything of value unless, contemporaneously with the offer, all expenses the recipient must pay (excluding the cost of travel to the sales presentation) are clearly and conspicuously disclosed on the face of the advertisement and within a reasonable proximity of the offer.

h. Represent that an offered prize, gift, award, or other type of inducement has a certain value or manufacturer's suggested price unless there is, in fact, a bona fide retail market for the item.

i. Represent directly or by implication that the number of participants in an advertising plan has been significantly limited or that any person has been selected to receive a particular prize, gift, money, or other item of value, unless the representation is true.

j. Contain an offer which is represented as urgent, nor shall it convey a sense of urgency by use of description, narrative copy, or phrasing on the envelope unless there is a limited time period in which a recipient must accept the terms of the offer which is clearly stated in the advertisement.

k. Represent directly or by implication that the membership camping contracts are offered without risk or the possibility of loss.

l. Make any statement, representation, or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

m. Misrepresent in any manner the odds of receiving a particular gift, prize, amount of money, or other item of value.

n. Label any offer a notice of termination or notice of cancellation.

o. Misrepresent, in any manner, the offer, plan, or program.

25.5(2) *Required disclosures.* An advertisement shall:

a. Disclose on the face of the advertisement that, in order to claim an offered prize, gift, award, or other item of value, the recipient must listen to a sales presentation if that is the case.

b. Disclose the name and address of the owner of the real or personal property or the provider of the services which are the subject of the sales presentation, visit, or contact with a sales agent.

c. Include a general description of the business of the owner or provider so identified and the purpose of any requested visit, sales presentation, or contact with a sales agent, including a general description of the facilities or services which are the subject of the sales presentation.

d. Contain a statement of the odds, in Arabic numerals, of receiving each item offered.

e. Clearly and conspicuously disclose all restrictions, qualifications, and other conditions that must be satisfied before the recipient is entitled to receive an offered prize, gift, award, or other item of value, including, but not limited to, all of the following:

(1) Any deadline by which the recipient must visit the location, attend the sales presentation, or contact the sales agent in order to receive the item;

(2) The approximate duration of any visit and sales presentation;

(3) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife must be present in order to receive the item.

These conditions must be disclosed on the face of the advertisement or in the alternative, the conditions may be stated on the back of the advertisement or on a separate sheet if they are printed in boldfaced type of a minimum size of ten points and the following statement is printed in bold-faced type of a minimum size of ten points conspicuously on the face of the advertisement:

CHECK THE CONDITIONS OF PARTICIPATION TO SEE IF YOU ARE ELIGIBLE FOR ANY OF THE MERCHANDISE.

f. Clearly disclose that a particular promotion has multiple sponsors, if that is the case.

g. Contain a statement that the owner or provider reserves the right to provide a rain check or a substitute or like item, if these rights are reserved.

h. Contain a statement that a recipient who receives an offered item may request and will receive evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

i. Disclose all other rules, terms, and conditions of the offer, plan, or program.

25.5(3) *Vacation inducements.* If an advertisement offers a vacation or vacation certificate as an inducement to the recipient to visit or attend a sales presentation, all material conditions of the vacation must be clearly and conspicuously disclosed in the advertisement including, but not limited to, any required deposits, points of departure if outside of Iowa, the nature of the accommodation, procedures for redeeming the certificate and all charges or fees incident to the vacation. If the vacation or vacation certificate is actually provided by a person other than the membership campground operator, the advertisement must disclose the name and address of the person responsible for providing the vacation.

25.5(4) A violation of any of the advertising rules contained in subrule 25.5(1), 25.5(2), or 25.5(3) constitutes a deceptive, false, or misleading practice and may subject the violator to sanctions under subrule 25.4(1).

61—25.6(557B) Applicability of other rules. To the extent that they are not inconsistent with the provisions of this chapter, the rules found in 61—Chapters 11 and 12 regarding petitions for adoption, amendment, or repeal of a rule (61—11.9(17A) and 61—11.10(17A)) for declaratory rulings (61—12.1(17A) to 61—12.6(17A)) shall govern similar petitions which may be brought under this chapter.

These rules are intended to implement Iowa Code chapter 557B.

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CHAPTER 26
REGULATION OF PHYSICAL EXERCISE CLUBS

61—26.1(552) Filing. Information required to be filed by the physical exercise club statute, Iowa Code chapter 552, or these rules shall be submitted to the Office of the Attorney General, Consumer Protection Division, Hoover Building, Second Floor, Des Moines, Iowa 50319. When these rules require that a document be filed by a specific time, that requirement is met by delivery to this office, by delivery to an established courier service for immediate delivery, or by mailing within the required time period provided that the document is accompanied by adequate proof of mailing. Adequate proof of mailing includes the following: a legible United States Postal Service postmark on the envelope, a certificate of service signed by an attorney, or a certification in the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed a copy of (describe document) addressed to the Office of the Attorney General, Consumer Protection Division, Hoover Building, Second Floor, Des Moines, Iowa 50319, by depositing the same in a United States Post Office mailbox with correct postage properly affixed.

(Date) (Signature)

61—26.2(552) Definitions. The terms used in these rules have the definitions found in Iowa Code section 552.1.

61—26.3(552) Registration.

26.3(1) *Who must register.* A person operating or intending to open or operate a physical exercise club within this state must file a registration statement at least 30 days before the use of any services or facilities is offered for sale by the physical exercise club and annually thereafter. The registration statement must be filed with the Consumer Protection Division, 1300 East Walnut, Hoover Building, Second Floor, Des Moines, Iowa 50319.

26.3(2) *Contents of statement.* The registration statement must contain all of the information required by Iowa Code section 552.15. An Application for Registration of Physical Exercise Clubs may be obtained from the consumer protection division. If an alternative form is used, the information must be supplied in a readable, coherent, and complete manner, or the application will be denied.

26.3(3) *Fee.* The registration statement must be accompanied by a nonrefundable fee of $20. Registration statements which are received without payment will be returned to the sender.

26.3(4) *Filing date.* The registration shall be filed at least 30 days before the physical exercise club offers the use of any services or facilities for sale.

26.3(5) *Updating.* The registration statement shall be updated annually, on or before the anniversary date of the initial registration. The update must be accompanied by a nonrefundable fee of $20. The update must include all changes in the information previously filed.

61—26.4(552) Escrow.

26.4(1) *Who must establish escrow accounts.* A physical exercise club or its assignee or agent that accepts prepayments shall deposit all of the funds received as prepayments in an escrow account established with a financial institution located in this state whose accounts are insured by the federal deposit insurance corporation, the national credit union administration, or the federal savings and loan corporation, which shall hold the funds as escrow agent for the benefit of the buyers that prepay. The physical exercise club shall deposit all prepayments received at least biweekly and shall make the first deposit not later than the fourteenth day after the day on which the physical exercise club accepts the first prepayment.

26.4(2) *Material to be submitted.* A physical exercise club or its assignee or agent, as defined in Iowa Code section 552.1(5), that accepts prepayments shall submit to the attorney general's office at the address indicated in rule 26.1(552) the following:

a. If an escrow account is established, a notarized statement that identifies the financial institution in which the prepayments are held in escrow, the name and account number in which the account is held, and a copy of the escrow agreement.

b. If a bond is posted in lieu of establishing an escrow account, a copy of the bond.

c. The date the first contract was signed.

d. A customer list with current addresses and telephone numbers shall be submitted biweekly.

26.4(3) *Submission date.* The material as set forth in 26.4(2) shall be submitted not later than the fourteenth day after the first prepayment is received.

26.4(4) *Release of escrow.* The physical exercise club shall give notice to the consumer protection division at least ten days before it plans to request the release of the funds held in escrow. The financial institution shall not release the escrow account without verification from the consumer protection division that it has received this notice. Release procedures shall not begin until after verification from the consumer protection division that the physical exercise club is fully open for business. These release provisions shall be included as part of the escrow agreement.

26.4(5) *Buyer's right.* The buyer retains ownership of all moneys and interest held in escrow under these rules. These rules do not limit a buyer's right to cancel and receive a refund pursuant to Iowa Code section 552.5, or 537.3310, if applicable.

26.4(6) *Hearing.* If the escrow agent fails to make full refund to a buyer when required by Iowa Code section 552.13 or either the buyer or seller contests the consumer protection division's determination as to whether or not the physical exercise club is fully opened for business, the attorney general's designee shall hold a hearing and determine whether the physical exercise club has fully opened and has remained open for 30 days, and if not, determine those persons who, as buyers are entitled to a refund and, if appropriate, distribute the escrow proceeds. A hearing can be held on motion by the consumer protection division or a request by other parties. This rule shall not preclude the attorney general from taking other appropriate legal action to protect the interest of the buyer or other parties pending the outcome of the hearing.

26.4(7) *Notice of hearing.* The physical exercise club shall be provided notice of hearing at its place of business as shown on its registration statement. All buyers who have funds in the escrow account shall be provided notice of the hearing at their last-known address with costs assessed to the physical exercise club. Notice of hearing will include:

a. The date, time, place and nature of the hearing.

b. A statement that the party may be represented by legal counsel.

c. A statement of the legal authority and jurisdiction under which the hearing is to be held.

d. A reference to the statute or rules involved.

e. A short and plain statement of the matters asserted.

26.4(8) *Conduct of hearings.* Hearings under this rule will be conducted as contested case proceedings under the Iowa administrative procedure Act. These hearings will generally be conducted according to the following format, subject to modification at the discretion of the presiding officer:

a. The representative of the consumer protection division may make an opening statement.

b. The respondent(s) may make an opening statement or may elect to reserve the opening statement until just prior to the presentation of evidence by the respondent.

c. The evidence on behalf of the consumer protection division is presented.

d. The evidence on behalf of the respondent(s) is presented.

e. Rebuttal evidence, if any, on behalf of the consumer protection division is presented.

f. Rebuttal evidence, if any, on behalf of the respondent(s) is presented.

g. Each party may make a closing argument.

26.4(9) *Continuances.* No ex parte continuance shall be granted to any party.

26.4(10) *Discovery and subpoenas.* The provisions of Iowa Code section 17A.13 relating to discovery and subpoenas shall govern in contested cases held pursuant to these rules. If the department of inspections and appeals provides an administrative law judge to conduct the hearing, the provisions of 481—4.5(17A) shall not apply.

26.4(11) *Proposed decision.* The presiding officer will render a proposed decision which shall be in writing or stated in the record. The decision may include any of the following:

a. Finding that the physical exercise club has fully opened for business.

b. Finding that the physical exercise club has not fully opened for business.

c. Finding that the physical exercise club has not remained open for 30 days.

d. A determination of those persons who, as buyers, are entitled to a refund.

e. Distribution of the escrow proceeds.

26.4(12) *Further review.* Any party who is adversely affected by a proposed decision or the consumer protection division may seek further review with the attorney general by complying with the following procedure:

a. A request for further review must be filed with the attorney general within 20 days of the date of the proposed decision.

b. Within ten days after filing the request for further review, the requesting party must file written exceptions to the proposed decision and must set forth the specific relief requested as well as all of the grounds upon which the request for relief is based. The party seeking further review may also file a written brief and argument along with its exceptions.

c. The opposing party has 14 days following service of the exceptions to file a responsive brief and argument if desired.

d. In the event that a party does not seek further review, the proposed decision shall become the final decision.

26.4(13) *Notification of decision.* The physical exercise club shall be promptly furnished with a copy of any final or proposed decision either by personal service or by certified mail. All buyers who have funds in the escrow account shall be furnished with a copy of any final or proposed decision by ordinary mail at their last-known address.

26.4(14) *Judicial review.* A party who has exhausted administrative remedies may seek judicial review of the decision pursuant to the Iowa administrative procedure Act.

61—26.5(552) Bond.

26.5(1) *Bond required.* A physical exercise club that accepts prepayments and does not establish an escrow account must post a bond in the amount of $150,000 with the office of the attorney general, in a form deemed acceptable by the attorney general.

26.5(2) *Notice.* Notice of the existence of the bond must be disclosed to the buyer in the physical exercise club contract.

26.5(3) *Collection on the bond.* Either the attorney general or a buyer may collect on the bond in the same manner and on the same terms as provided for an escrow account. The aggregate liability of the surety for all refunds shall not exceed the amount of the bond. If refunds exceed the amount of the bond, distribution will be on a pro-rata basis.

61—26.6(552) Certification. Upon application by the physical exercise club, the attorney general may certify that a physical exercise club is fully open for business if substantially all of the promised equipment and services are available for use and the physical exercise club has made a diligent effort to provide the remaining equipment and services.

61—26.7(552) Notification to financial institution. The physical exercise club shall notify the financial institution at the time the escrow account required by subrule 26.4(1) is opened that the escrow account is being established pursuant to Iowa Code chapter 552C. After the material has been submitted by the physical exercise club as required in subrule 26.4(2), the consumer protection division shall notify the financial institution of the release procedures to be followed by the financial institution.

These rules are intended to implement Iowa Code chapter 552.

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CHAPTER 27
SALES OF FORMER SALVAGE AND DAMAGED MOTOR VEHICLES

61—27.1(714) Omission of material fact in connection with sales of former salvage vehicles and vehicles which have otherwise been damaged. Notwithstanding the obligations imposed on the transferor of a motor vehicle under Iowa Code section 321.69, information that a motor vehicle ever has been titled on a salvage certificate or title indicating prior flood or other water damage in this or any other state, or ever has been rebuilt or reconstructed due to prior damage regardless of the cause, is a material fact the concealment, suppression or omission of which at the time of sale, with intent that others rely on the concealment, suppression, or omission, is an unlawful practice under Iowa Code section 714.16(2)*"a."*

61—27.2(714) Deception or misrepresentation in connection with sales of former salvage vehicles and vehicles which have otherwise been damaged. Notwithstanding the obligations imposed on the transferor of a motor vehicle under Iowa Code section 321.69, deception or misrepresentation in connection with the sale of a motor vehicle that the seller knows, or reasonably should know, has ever been titled in this or any other state on a salvage certificate or on a title indicating prior flood or other water damage, or ever has been rebuilt or reconstructed due to prior damage regardless of the cause, is an unlawful practice under Iowa Code section 714.16(2)*"a."*

These rules are intended to implement Iowa Code section 714.16(4)*"a."*

[Filed 2/10/95, Notice 12/21/94—published 3/1/95, effective 4/5/95][1]

[1] Effective date of 61—Chapter 27 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 13, 1995; delay lifted by this Committee on 4/10/95.

CHAPTER 28
Reserved

CHAPTER 29
RECORD RETENTION REQUIREMENTS UNDER MOTOR VEHICLE SERVICE TRADE PRACTICES ACT

61—29.1(537B,714) Retention of written estimates and disclosures. A "supplier," as defined in Iowa Code section 537B.2(3), or a "repair facility," as defined in Iowa Code section 537B.4(1)*"c,"* shall retain copies of all written estimates and estimate disclosure forms for repairs or service to a motor vehicle. Such copies must be retained at the supplier's or repair facility's place of business for nine months following the date of repairs or service.

This rule is intended to implement Iowa Code section 714.16 and chapter 537B.

[Filed 5/22/91, Notice 10/31/90—published 6/12/91, effective 7/18/91]

CHAPTER 30
NEW MOTOR VEHICLE WARRANTY—PROTECTION
(LEMON LAW)

61—30.1(322G) Definitions. The term "Lemon Law" as used herein refers to Iowa Code chapter 322G. Other terms used in these rules have the same definitions as in the Lemon Law.

61—30.2(322G) Statement of consumer rights. A statement of the rights and obligations of a purchaser or lessee under the Lemon Law shall be provided, at the time of purchase or lease, to all purchasers and lessees, as defined in section 2 of the Lemon Law, for all new motor vehicles purchased or leased on or after July 1, 1991. This statement must be provided to purchasers and lessees on a sheet of paper hand-delivered to the purchaser or lessee and must be in uppercase letters in at least 12-point type. The statement must be as follows:

"THE PURCHASER OR LESSEE OF THIS VEHICLE IS PROTECTED UNDER THE WARRANTY PROVISIONS OF IOWA CODE CHAPTER 322G, COMMONLY REFERRED TO AS THE "LEMON LAW." IF THIS VEHICLE FAILS TO CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY DURING THE TERM OF THE WARRANTY, THE FIRST 2 YEARS OF OWNERSHIP, OR THE FIRST 24,000 MILES, WHICHEVER EXPIRES FIRST, AND THE NONCONFORMITY SUBSTANTIALLY IMPAIRS THE VEHICLE, YOU MAY QUALIFY FOR A REFUND OR REPLACEMENT OF THIS VEHICLE. CONTACT THE MANUFACTURER OF THE VEHICLE IF YOU BELIEVE THE VEHICLE FAILS TO CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY. FOR FURTHER INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS UNDER THE LEMON LAW, CONTACT THE CONSUMER PROTECTION DIVISION OF THE IOWA ATTORNEY GENERAL'S OFFICE AT: CONSUMER PROTECTION DIVISION, HOOVER STATE OFFICE BUILDING, DES MOINES, IOWA 50319, OR TELEPHONE (515)281-5926."

The sheet containing this disclosure must also contain the address and telephone number for the zone, district, or regional office of the manufacturer for this state where a claim may be filed by the consumer.

61—30.3(322G) Disclosure that manufacturer accepted return of vehicle. A person shall not knowingly lease or sell, either at wholesale or retail, or transfer a title to a motor vehicle returned by reason of a settlement, determination, or decision pursuant to the Lemon Law or a similar statute of any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer. The disclosure required by this rule shall be made on a separate sheet of paper in at least 12-point type and must state the following in uppercase letters: "THE FIRST RETAIL PURCHASER OR LESSEE OF THIS VEHICLE RETURNED IT TO THE MANUFACTURER AS PART OF A SETTLEMENT OR DECISION UNDER THE IOWA LEMON LAW, IOWA CODE CHAPTER 322G, OR THE LEMON LAW OF ANOTHER STATE. THE FACT THAT THE MANUFACTURER ACCEPTED RETURN OF THE VEHICLE DOES NOT NECESSARILY MEAN THAT THERE ARE STILL PROBLEMS WITH THE VEHICLE. THE FIRST RETAIL PURCHASER OR LESSEE STATED THAT THE VEHICLE HAD THE FOLLOWING PROBLEMS:

_____

_____

_____."

The disclosure required by this rule must contain the name and address of the seller and transferee, lessee or buyer, must be signed by the seller, or the seller's representative, and the transferee, lessee, or buyer and must contain the date the form was signed by the seller and transferee, lessee, or buyer. The transferee, lessee, or buyer must be provided with an adequate opportunity to review the disclosure form before signing and must be provided with a copy of the completed form at the time of signing. The seller must retain a copy of any completed form for five years following the date the form is completed. For the purposes of this rule, the term "completed" means that all disclosures required by this rule have been

made on the form and the form contains the dated signatures of seller and transferee, lessee, or buyer. Substantially similar disclosures to that required by this rule will be permitted with the prior approval of the attorney general.

61—30.4(322G) Certification of manufacturers' dispute resolution programs.

30.4(1) *Application for certification.* To apply for certification by the attorney general of a manufacturer dispute resolution program under the Lemon Law, a motor vehicle manufacturer may provide proof of certification in another state pursuant to subrule 30.4(2) or provide the following information to the attorney general at: Consumer Protection Division, Hoover State Office Building, Des Moines, Iowa 50319:

a. Records which prove that the manufacturer's dispute resolution program is in full compliance with 16 CFR Sections 703.3 and 703.4 as amended to May 28, 1991;

b. A copy of the written procedures which explain the operation of the program;

c. A copy of all written materials provided by the program to the parties to a dispute;

d. A copy of the most recent of any audits conducted of the program regarding the performance of the program;

e. The name, address, and telephone number of the entity which administers the program;

f. A copy of all written materials provided by the manufacturer to consumers which state how and where to file a claim with the program;

g. A list of the names, addresses, and positions of all program staff;

h. A list of the names, addresses, and occupations of all program decision makers;

i. Copies of all decisions entered into or decided by the program within the six months prior to the date of application;

j. Copies of decisions by other states, granting, renewing, denying, or revoking certification; and

k. Completion of the form "Application for certification of a manufacturer dispute resolution program."

30.4(2) *Alternative certification.* If a manufacturer's dispute resolution program is certified in another state under a law substantially similar to the Lemon Law, the manufacturer may apply for certification to the attorney general by providing proof of such certification. In determining whether to certify a dispute resolution program under this subrule, the attorney general may require the manufacturer to submit any of the information included in subrule 30.4(1) and may consider any information obtained from any state in which the manufacturer's dispute resolution program is or was certified or where an application for certification of the program is under consideration.

30.4(3) *Denial of certification.* The attorney general shall notify a manufacturer by regular mail of the denial of an application for certification of a dispute resolution program. The attorney general's notice to the manufacturer shall include a statement of the reasons for the denial. A manufacturer may request further review of a denial of certification. The written request must be received by the Consumer Protection Division, Hoover State Office Building, Des Moines, Iowa 50319, within 30 days following the mailing of notification of the denial or revocation of certification. Any additional information to be considered by the attorney general must be filed with the application for further review and not later. If upon further review, the attorney general affirms the denial of certification, or if the manufacturer does not request further review, the decision shall be final. The manufacturer may file a new application for certification at any time following the date the decision becomes final.

61—30.5(322G) Sanctions.

30.5(1) *Fines.* If the attorney general has probable cause to believe that a manufacturer has violated the Lemon Law or these rules, the attorney general may issue a statement of charges and notice of hearing to determine whether a fine should be imposed.

30.5(2) *Revocation of certification.* If the attorney general has probable cause to believe that certification of a manufacturer's dispute resolution program should be revoked, the attorney general may issue a statement of charges and notice of hearing to determine if certification should be revoked.

30.5(3) *Hearings.* Hearings shall be governed by the provisions of 61—25.4(577B). References to the "applicant," "registrant," or "respondent" in those rules shall include the manufacturer under these rules.

30.5(4) *Remedies.* The remedies available for violations of the Lemon Law or these rules include, but are not limited to:

a. Dismissal of the charges.

b. Imposition of a penalty against the manufacturer not to exceed $1000 per violation of the Lemon Law or of this rule.

c. Revocation of certification of a manufacturer's dispute resolution program.

61—30.6(322G) Notification of settlement or decision.

30.6(1) A manufacturer's dispute resolution program certified in this state, or a program established by a manufacturer applying for certification in this state, shall submit to the attorney general a copy of each settlement approved by the program and decision made by the decision maker within 30 days after the settlement is reached or the decision is rendered.

30.6(2) The decision or settlement shall contain the following information:

a. The year, make, model, and vehicle identification number of the vehicle in question, and a copy of the consumer's or lessee's certificate of title for the vehicle if replaced or if a refund is issued;

b. The consumer's name, address, and telephone number;

c. The manufacturer's name, address, and telephone number;

d. The name, address, and telephone number of the dealership at which the vehicle was purchased or leased and the date of the original delivery of the vehicle to a consumer;

e. A copy of the consumer's sales or lease agreement;

f. A list of all collateral charges incurred by the consumer;

g. A list of all incidental charges incurred by the consumer;

h. If a lease, a list of all factors taken into consideration in determining the lease price and lessee cost and the monetary sum for each such factor considered;

i. A list of each nonconformity alleged by the consumer to substantially impair the motor vehicle, the date of the consumer's first report of each nonconformity to the manufacturer, and, if available, the odometer reading of the vehicle on the date of the consumer's first report;

j. The date of the consumer's written notification to the manufacturer of each nonconformity for which:

(1) Three attempts have been made to repair the same nonconformity;

(2) One attempt has been made to repair a nonconformity that is likely to cause death or serious bodily injury; or

(3) The motor vehicle has been out of service by reason of repair of one or more nonconformities for 20 or more cumulative days;

k. The number of miles attributable to the consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the first attempt to repair a nonconformity that is likely to cause death or serious bodily injury, or the twentieth cumulative day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first;

l. The date the dispute was submitted to the program;

m. If a decision, the name of the decision maker, the date the decision was rendered, the reasons for the decision, the actions required of the manufacturer, if applicable, and the date by which the manufacturer was to fulfill the terms of the decision;

n. If a settlement, the date of the settlement; and

o. The terms of settlement or decision, including:

(1) Whether a refund or replacement;

(2) The sum of reasonable offset for use, if any, and a detailed explanation of the calculation of the offset;

(3) If a refund, the sum of refund;

(4) The date of delivery and year, make, model, and vehicle identification number of replacement vehicle, if any; and

(5) The odometer reading of the vehicle at the time the manufacturer accepted return of the vehicle.

30.6(3) Any records submitted, or portions thereof, may be stored by the attorney general on a computer system.

These rules are intended to implement Iowa Code chapter 322G.

[Filed emergency 6/28/91—published 7/24/91, effective 6/28/91]

[Filed 11/4/91, Notice 9/4/91—published 11/27/91, effective 1/1/92]

CHAPTER 31
PRICE GOUGING

61—31.1(714) Excessive prices. The charge of excessive prices for merchandise needed by victims of disasters is hereby declared to constitute an unfair practice under the Consumer Fraud Act, Iowa Code section 714.16 (1993), and is subject to all penalties provided therein. For purposes of this rule, a per se violation of the Act exists when it is shown that a person has charged an excessive price for merchandise to be provided to persons within an area declared to be a disaster area during the period of any declaration of emergency and for the subsequent recovery period. This includes, but is not limited to, the provision of water, food, medicines, sanitation supplies, utilities, building materials, and materials, goods, or services for cleanup or repair. For the purposes of this rule, the "subsequent recovery period" is that period when the disaster continues to cause market disruptions in the disaster area, but shall not exceed six months from the date of the declaration of emergency.

An "excessive price" is one that is not justified by the seller's actual costs of acquiring, producing, selling, transporting, and delivering the actual product sold, plus a reasonable profit. In calculating the seller's actual costs, no allowance shall be made for the replacement costs of merchandise if the seller is reasonably assured of recouping the replacement costs as a part of the price of subsequent sales of the merchandise. The existence of an excessive price shall be presumed from a substantial increase in the price of any merchandise over the price at which the merchandise was sold or offered for sale in the usual course of business immediately prior to the onset of the emergency or from a substantial increase in the markup from cost if wholesale prices or costs have increased.

This rule is intended to implement Iowa Code section 714.16(2)*"a."*

[Filed emergency 7/13/93—published 8/4/93, effective 7/13/93]
[Filed 12/2/93, Notice 10/27/93—published 12/22/93, effective 1/26/94]

CHAPTER 32
PRIZE PROMOTIONS

61—32.1(714B) Disclosures in advertisements of prize promotions that payments are not required. An advertisement in which a sponsor offers a prize not requiring a payment, purchase or donation as a condition of awarding the prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about the prize shall be deemed to have made a disclosure that a purchase, payment or donation is not required, in "immediate proximity" to each reference in the advertisement to a purchase, payment or donation, as required by Iowa Code section 714B.2(1)*"b"*(1), if:

1. The advertisement contains at least one such clear and conspicuous disclosure; and

2. The advertisement does not require a payment, purchase or donation as a condition of awarding the prize and does not contain more than one verbal or written request that a consumer debit a credit card or bank account, or mail, wire, overnight express, or similarly remit money or other property by any means directly to the sponsor or to a representative of the sponsor designated to collect payments to the sponsor in order to receive any "merchandise," as defined in Iowa Code section 714B.1(2), other than the prize, or to make a charitable or other contribution, and the disclosure that no purchase or payment is required is in close proximity to such request. Without limiting the foregoing, a verbal or written request that a consumer purchase the sponsor's product or service at a retail location or from the manufacturer of consumer goods regularly sold at retail establishments shall not be deemed a request that a consumer remit money or property covered by this paragraph.

This rule is intended to implement Iowa Code section 714.16 and chapter 714B.

[Filed emergency 7/13/94 after Notice 6/8/94—published 8/3/94, effective 7/13/94]

CHAPTER 33
FORFEITED PROPERTY

61—33.1(809A) Scope of rules. These rules apply to property forfeited under the authority of Iowa Code section 809A.25. They do not apply to property seized for forfeiture by the department of natural resources under Iowa Code section 483A.33.

61—33.2(809A) Maintenance and storage of property during pendency of proceedings. The seizing agency that initiates a seizure for forfeiture must arrange for and pay costs associated with the proper care of property seized for forfeiture within the following guidelines:

33.2(1) *Motor vehicles.*

a. Motor vehicles must be stored in a manner which will minimize deterioration due to lack of operation and maintenance.

b. The use of commercial towing and storage facilities is at the expense of the seizing agency. The department will not assume responsibility for such fees, whether before or after forfeiture, unless the department decides to retain ownership of the vehicle for its use instead of transferring title to the seizing agency.

33.2(2) *Cash.* Where possible, a seizing agency should, in cooperation with the prosecuting attorney, secure a court order authorizing cash to be deposited in an interest-bearing account. The department will not claim any interest in income derived from such account, but the interest must be accounted for as provided by these rules.

33.2(3) *Real property.*

a. Unoccupied structures of value must be equipped with alarm systems or otherwise safeguarded to protect them from unlawful entry and damage by fire. The seizing agency should consider the value of the property, the condition of existing gates and locks, and the potential threat to public safety when determining whether alarm systems or other safeguards are appropriate.

b. Real property that complies with local and state building and housing code standards at the time of seizure must be maintained to local and state building and housing code standards as well as to the standard of neighboring properties, including mowing and removal of snow as necessary. Seized property that does not comply with code standards at the time of seizure must not be allowed to degrade and should be maintained in a condition that does not present a threat to public safety.

33.2(4) *Other property.* Property other than listed above shall be cared for as appropriate, giving due consideration to the nature of the property.

61—33.3(809A) Notice to department of forfeited property.

33.3(1) An agency which seizes real property for forfeiture must notify the department within ten days of the seizure.

33.3(2) A prosecuting attorney who obtains a declaration of forfeiture or an order forfeiting property must provide the department with a copy of the declaration or the order forfeiting the property within ten working days of receiving the order.

61—33.4(809A) Disposition of forfeited property.

33.4(1) *Controlled substances.* An agency in possession of a controlled substance which has been forfeited shall dispose of it as required by Iowa Code section 124.506.

33.4(2) *Obscene materials.* Materials which violate the provisions of Iowa Code chapter 728 shall be destroyed. An inventory and a record of the destruction of obscene materials shall be maintained by the agency.

33.4(3) *Firearms and ammunition.* Forfeited firearms and ammunition must be disposed of pursuant to the rules of the department of public safety.

33.4(4) *Real property.* An agency seizing real property for forfeiture must do the following:

a. Accept transfer of title from the department.

b. Pay all costs associated with transfer of title, including abstracting costs, property taxes and assessments.

c. Indemnify the state for any expenses it might become liable for by being the owner of the property during the forfeiture and transfer process, including but not limited to environmental cleanup costs, abstracting costs, and any expenses the department incurs to comply with reasonable community standards of maintenance.

d. Indemnify the state for any expenditures incurred as a result of liability to a third party for any injury associated with the property which occurs during the period from seizure through transfer of ownership to the agency.

33.4(5) *Alcoholic beverages and beer.* Alcoholic beverages and beer shall be destroyed. An inventory and a record of the destruction of forfeited alcoholic beverages and beer shall be maintained by the agency.

33.4(6) *Motor vehicles.*

a. Orders forfeiting motor vehicles must include a physical description of the vehicle, as well as the vehicle identification number.

b. Motor vehicles must be titled to the department prior to being transferred to the seizing agency or its designee.

c. The department requires payment of a fee of $100 for processing the transfer of title to a vehicle.

61—33.5(809A) Use by the department.

33.5(1) The department will review each item of forfeited property to determine if it is of a nature that would be useful to the department in enforcement of the law. If such a use exists, the department may take possession of the property and retain ownership instead of transferring it to the seizing agency.

33.5(2) The department will retain 10 percent of forfeited cash. The balance of forfeited cash, 90 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

33.5(3) In the event of a cash forfeiture in excess of $400,000, amounts over $400,000 shall be apportioned as follows: 45 percent to the seizing agency or agencies; 45 percent to other law enforcement agencies within the region; and 10 percent to be retained by the department.

61—33.6(809A) Gifts to other law enforcement agencies.

33.6(1) If the department determines that it does not have use for an item of forfeited property, the seizing agency must accept ownership of the property and use or dispose of it under these guidelines.

33.6(2) If the department determines that property is available for gift to agencies involved in the investigation or prosecution of a case but is presented with conflicting requests for its gift, the department may refuse to give the property to any of the agencies.

33.6(3) Forfeited property, including cash, must be used to enhance the enforcement of the criminal law and cannot be used to supplant or otherwise replace normally budgeted items. Questions regarding the propriety of the disposition of forfeited assets should be directed to the department.

61—33.7(809A) Record keeping. An agency which seizes property for forfeiture shall maintain records showing the disposition, including destruction, of forfeited property for a period of three years from the date of forfeiture. The records shall comply with any recommendations of the state auditor but must, at a minimum, include the following:

1. The date of forfeiture, a description of the property and the name(s), if available, of the person(s) who owned the property and person(s) in possession of the property at the time of seizure.
2. The manner in which all forfeited property has been used by the agency.
3. The disposition of all forfeited property which has been sold or otherwise disposed of, and of the proceeds derived therefrom.
4. The manner of use of all forfeited funds and proceeds from the sale of forfeited property.

61—33.8(809A) Failure to comply. If the department determines that an agency is not in compliance with these rules, the department may suspend, temporarily or permanently, the agency's privilege of receiving gifts of forfeited property.

61—33.9(809A) Appeal. An agency may appeal a decision to suspend its privilege to receive gifts of forfeited property under rule 61—33.8(809A) or other departmental action upon the basis that it has not been done according to these rules as follows:

33.9(1) *Appeal to deputy attorney general for criminal justice.* An applicant may file a notice of appeal to the deputy attorney general within 30 days of the departmental action that forms the basis of appeal. The deputy attorney general shall review the matter, taking testimony if necessary, and issue a written decision.

33.9(2) *Appeal to attorney general.* An agency may further appeal from a denial of appeal by the supervising deputy to the attorney general within 30 days of the date the supervising deputy's written decision was mailed.

33.9(3) *Appeal to district court.* An agency which disagrees with the decision of the attorney general has the right to appeal to the district court within 30 days of receipt of the attorney general's final decision.

61—33.10(809A) Interest holders.

33.10(1) The term "interest holder" shall include an entity which owns or holds a properly perfected mortgage, security interest, or other interest in real or personal property.

33.10(2) An interest holder with an exempt interest in forfeited property may be appointed as an agent to act in disposing of forfeited property. An interest holder acting as an agent in disposing of forfeited property shall be relieved of any and all duties that would be imposed on the lienholder if it were acting in its capacity as a lienholder.

These rules are intended to implement Iowa Code chapter 809A.

[Filed 6/29/98, Notice 2/11/98—published 7/15/98, effective 8/19/98]

CHAPTER 34
ACQUISITION NEGOTIATION STATEMENT OF RIGHTS

61—34.1(78GA,HF476) Statement of property owner's rights. 1999 Iowa Acts, House File 476, section 3, mandates that an acquiring agency provide a statement of rights to owners of record who may have all or a part of their property acquired by condemnation. It also directs the attorney general to adopt rules prescribing a statement of rights which an acquiring agency may use to meet its obligation. Pursuant to that directive, the following statement of property owner's rights is adopted:

STATEMENT OF PROPERTY OWNER'S RIGHTS

Just as the law grants certain entities the right to acquire private property, you as the owner of the property have certain rights. You have the right to:

1. Receive just compensation for the taking of property. (Iowa Constitution, Article I, section 18)
2. An offer to purchase which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code section 6B.45 as amended by 1999 Iowa Acts, House File 476, section 18; Iowa Code section 6B.54 as amended by 1999 Iowa Acts, House File 476, section 20)
3. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based not less than ten days before being contacted by the acquiring agency's acquisition agent. (Iowa Code section 6B.45 as amended by 1999 Iowa Acts, House File 476, section 18)
4. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Iowa Code section 6B.54)
5. Participate in good-faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (1999 Iowa Acts, House File 476, section 3)
6. A determination of just compensation by an impartial compensation commission and the right to appeal its award to the district court if you cannot agree on a purchase price with the acquiring agency. (Iowa Code section 6B.4; Iowa Code section 6B.7 as amended by 1999 Iowa Acts, House File 476, section 8; Iowa Code section 6B.18)
7. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (1999 Iowa Acts, House File 476, section 7)
8. Payment of the agreed upon purchase price or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code section 6B.25; Iowa Code section 6B.26; Iowa Code section 6B.54(11))
9. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code section 6B.33 as amended by 1999 Iowa Acts, House File 476, section 15; Iowa Code section 6B.54(10))
10. Reimbursement of certain litigation expenses: (a) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (b) if the award on appeal in court is more than the compensation commissioners' award. (Iowa Code section 6B.33)
11. At least 90 days' written notice to vacate occupied property. (Iowa Code section 6B.54(4))
12. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of the payments. (Iowa Code section 316.9; Iowa Code section 6B.42 as amended by 1999 Iowa Acts, House File 476, section 17)

The rights set out in this statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

61—34.2(78GA,HF476) Alternate statement of rights. Rule 61—34.1(78GA,HF476) is not intended to prohibit acquiring agencies from providing a statement of rights in a different form, a more detailed statement of rights, or supplementary material expanding upon an owner's rights.

These rules are intended to implement 1999 Iowa Acts, House File 476, section 3.

[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]