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Pursuant to section 17A.6 of the Iowa Code, the Iowa Administrative Code [IAC] Supplement is published biweekly and supersedes Part II of previous publications.

The Supplement contains replacement pages to be inserted in the loose-leaf IAC according to instructions in the respective Supplement. Replacement pages incorporate amendments to existing rules or entirely new rules or emergency or temporary rules which have been adopted by the agency and filed with administrative rules co-ordinator as provided in sections 17.7, 17A.4 to 17A.6. [It may be necessary to refer to the Iowa Administrative Bulletin* to determine the specific change.] The Supplement may also contain new or replacement pages for "General Information", Tables of Rules Implementing Statutes, and Skeleton Index.

When objections are filed to rules by the Administrative Rules Review Committee, Governor or the Attorney General, the context will be published with the rule to which the objection applies.

Any delay by the Administrative Rules Review Committee of the effective date of filed rules will also be published in the Supplement.

Each page in the Supplement contains a line at the top similar to the following:

IAC 12/29/75 Agriculture[30] Ch 1, p.1

*Section 17A.6 has mandated that the "Iowa Administrative Bulletin" be published in pamphlet form which will contain material formerly published in Part I of the IAC Supplement. The Bulletin will contain Notices of Intended Action, Filed Rules, effective date delays, and the context of objections to rules filed by the Committee, Governor, or the Attorney General.

In addition, the Bulletin shall contain all proclamations and executive orders of the Governor which are general and permanent in nature, as well as other materials which are deemed fitting and proper by the Committee.

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages to IAC are listed in the column headed "Remove Old Pages". New and replacement pages in this supplement are listed in the column headed "Insert New Pages". It is important to follow instructions in both columns.

UPDATING INSTRUCTIONS
August 4, 1982 Biweekly Supplement

IOWA ADMINISTRATIVE CODE

	Remove Old Pages*	Insert New Pages
Comptroller, State[270]	Ch 4, p.1a, 2 Ch 5, p.1	Ch 4, p.1a, 2 Ch 5, p.1
Conservation Commission[290]	Analysis, p.1b—Analysis, p.2a Ch 30, p.1—Ch 30, p.4 Ch 39, p.4—Ch 46, p.1a	Analysis, p.1b—Analysis, p.2b Ch 30, p.1—Ch 30, p.4 Ch 39, p.4—Ch 46, p.1a
Energy Policy Council[380]	Ch 7, p.2—Ch 9, p.2	Ch 7, p.2—Ch 9, p.2
Health Department[470]	Analysis, p.13, 14 Ch 58, p.39, 40 Ch 59, p.1, 1a Ch 201, p.5, 6 Ch 201, p.13, 14	Analysis, p.13, 14 Ch 58, p.39, 40 Ch 59, p.1, 1a Ch 201, p.5, 6 Ch 201, p.13, 14
Livestock Health Advisory Council[565]	Ch 1, p.1	Ch 1, p.1
Merit Employment Department[570]	Ch 4, p.2, 3 Ch 5, p.1	Ch 4, p.2, 3 Ch 5, p.1
Public Instruction Department[670]	Analysis, p.1, 2 Ch 5, p.10, 11	Analysis, p.1, 2 Ch 5, p.10, 11

*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

	Remove Old Pages*	Insert New Pages
Revenue Department[730]	Analysis, p.1, 2	Analysis, p.1, 2
	Ch 6, p.20, 21	Ch 6, p.20, 21
	Ch 11, p.3—Ch 12, p.1a	Ch 11, p.3—Ch 12, p.1a
	Ch 13, p.1, 2	Ch 12, p.6—Ch 13, p.2
	Ch 30, p.1a—Ch 32, p.1	Ch 30, p.1a—Ch 32, p.1
	Ch 38, p.4—Ch 38, p.7	Ch 38, p.4—Ch 39, p.1
	Ch 46, p.4—Ch 46, p.8	Ch 46, p.4—Ch 46, p.8
	Ch 51, p.3—Ch 52,p.1	Ch 51, p.3—Ch 52, p.1
	Ch 57, p.2, 3	Ch 57, p.2, 3
	Ch 63, p.7—Ch 63, p.10	Ch 63, p.7—Ch 63, p.10
	Ch 73, p.1, 2	Ch 73, p.1, 2
	Ch 73, p.5—Ch 74, p.1	Ch 73, p.5—Ch 74, p.1
	Ch 81, p.5—Ch 81, p.8	Ch 81, p.5—Ch 81, p.8
	Ch 87, p.1, 2	Ch 87, p.1, 2
	Ch 87, p.7, 8	Ch 87, p.7, 8
	Ch 88, p.1, 2	Ch 88, p.1, 2
	Ch 88, p.7, 8	Ch 88, p.7, 8
	Ch 89, p.1, 2	Ch 89, p.1, 2
	Ch 89, p.21, 22	Ch 89, p.21, 22
	Ch 103, p.3, 4	Ch 103, p.3, 4
Social Services Department[770]	Ch 75, p.3, 3a	Objection 75.5— Ch 75, p.3a
	Correct line 10 of this agency's instructions of 7/21/82 to read as follows:	
	Ch 81, p.6—Ch 81, p.8	Ch 81, p.6—Ch 81, p.8

*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

270—4.2(8) Definitions.

4.2(1) *"Agreement"* As used in these rules shall mean the deferred compensation agreement signed by the employer and the participating employee.

4.2(2) *"Financial hardship and disability committee"* as used in these rules shall mean the committee made up of the secretary of state, insurance commissioner, state comptroller, and the industrial commissioner that rules on the "disability" and "financial hardship" claims of participating employees.

4.2(3) *"Company"* as used in these rules shall mean any insurance company which issues a policy under the deferred compensation plan authorized under section 509A.12 of the Code.

4.2(4) *"Employee"* as used in these rules shall mean an employee of the state of Iowa, including full time elective officials and members of the general assembly, except employees of the board of regents institutions. For the purposes of enrollment, elective officials-elect and members-elect of the general assembly are considered employees.

4.2(5) *"Employer"* as used in these rules shall mean the State of Iowa.

4.2(6) *"New employer"* as used in these rules shall mean any new employer to which a terminated participating employee proposes to transfer the policy held under the agreement.

4.2(7) *"Participating employee"* as used in these rules shall mean an employee participating in the plan.

4.2(8) *"Plan"* as used in these rules shall mean the deferred compensation plan authorized in section 509A.12.

4.2(9) *"Policy"* as used in these rules shall mean any retirement annuity, insurance policy or variable annuity or combination thereof provided for in the agreement.

270—4.3(8) Eligibility.

4.3(1) *Initial eligibility.* All permanent or probationary employees of the State of Iowa who regularly work thirty or more hours per week are eligible to defer compensation under the agreement. This includes full time elective officials and members of the general assembly. Final determination on eligibility, if any questions should arise, will be made by the employer. No member or member-elect of the general assembly is eligible who chooses an alternative method of salary payment other than that stated in section 2.10(5)*"a"*, The Code, where the effect of implementation of the alternative would be to make an insufficient amount available for deduction, under the method selected pursuant to rule 4.6(8), to constitute the pro rata portion of the deferred compensation for each and every pay period as to which compensation shall be paid.

4.3(2) *Eligibility after termination.* Any participating employee who terminates the deferral of compensation may re-enter the program during the next open enrollment period with reductions to start during the second month following the open enrollment period.

270—4.4(8) Enrollment and termination.

4.4(1) *Open enrollment.* An open enrollment period will be held each year for those employees who desire to participate in the plan and did not enroll at the time the plan was implemented. This open enrollment period will be from November 1 until November 30 of each year. All completed forms, including but not limited to the signed agreement and authorization to deduct from earnings, must be received by the employer on or before December 1, following the open enrollment period. Any forms not received by that date will not be processed and must be resubmitted during the next open enrollment period if the employee desires to participate in the plan. The policies will become effective February 1 of the following year and the premiums will be deducted from the paychecks received by the participating employees during the month of January. Enrollment is permitted for elective officials-elect and members-elect of the general assembly, during the enrollment period, to the same extent as if they were otherwise eligible to enroll as employees.

4.4(2) *Termination.* A participating employee may terminate his participation in the plan by giving not less than thirty days prior written notice to the employer. If participation is terminated, the withdrawal of funds will be made only in accordance with the terms of the agreement, that is death, retirement or approval of a disability or financial hardship claim. All requests will be made on forms provided by the employer.

4.4(3) *Leave without pay.* A participating employee on leave without pay is considered to be terminated in regard to participation in the deferred compensation program. There are no provisions for direct payment to the companies other than by the employer funded by reductions of current earnings of the employee. The employee may re-enter the program during the next open enrollment period, if in pay status, with reductions to start during the second month following the open enrollment period.

4.4(4) *Availability of forms.* It is the responsibility of each employee interested in participating in the deferred compensation program to obtain the necessary forms from his department. It is the responsibility of each department to inform its employees where and how they may obtain the necessary forms. The forms may be obtained by the departments from the comptroller's office, payroll division.

270—4.5(8) Tax status.

4.5(1) *FICA and IPERS.* The amount of compensation deferred under the agreement will be included in the gross wages subject to FICA and IPERS until the maximum taxable wages as established by law has been reached.

4.5(2) *Federal and state income taxes.* The amount of earned compensation deferred under the agreement is exempt from federal and state income taxes as provided in section 451 Internal Revenue Code of 1954 as amended. The six states adjoining Iowa have agreed to allow their residents who are employees of the State of Iowa to defer compensation for state income tax purposes.

270—4.6(8) Deduction from earnings.

4.6(1) *When deducted.* Each participating employee will have the option as to whether the entire amount of deferred compensation will be deducted from the first paycheck or second paycheck of the month, or whether it will be equally divided between the first and second paychecks received by the participating employee during the month. If the premium cannot be divided into two equal payments, the third option is not available.

4.6(2) *Change in amount.* A participating employee may increase or decrease this participation in the plan as of the first day of the next succeeding calendar year by giving not less than thirty days prior written notice thereof to the employer.

4.6(3) *Amount allowed to be deferred.* After making provisions for the amounts to be deducted for FICA, IPERS, voluntary deductions and the withholding tax on FICA, IPERS, and voluntary deductions, the balance of earned compensation may be deferred up to a maximum of twenty-five percent of the employee's base salary not to exceed $7,500 per year. The amount to be deferred must remain constant for one calendar year and may not in any case exceed the amount of net pay to be received by the participating employee.

4.6(4) *Minimum amount to be deferred.* The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month will be twenty-five dollars.

completion of any other form described in these rules. The completed form will show that the owner and beneficiary of the policy is the State of Iowa and that the relationship of the State of Iowa to the participating employee is employer. The completed form will be forwarded to the State Comptroller, Deferred Compensation Program, State Capitol Building, Des Moines, Iowa 50319 with a self-addressed, stamped envelope to be used in returning the approved completed form. All forms postmarked after November 30th will not be approved.

4.11(8) *Reproduction of forms.* The reproduction or printing of forms for use in the Deferred Compensation Program by any insurance company, any insurance agent, any company or individual is prohibited, except for the company application form.

These rules are intended to implement Iowa Code section 509A.12.

[Filed 6/26/75; amended 8/4/76]
[Filed 9/13/76, Notice 6/14/76—published 10/6/76, effective 11/15/76]
[Filed 8/14/80, Notice 7/9/80—published 9/3/80, effective 10/8/80]
[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/30/82]

CHAPTER 5
ADMINISTRATION

270—5.1(8) Declaratory rulings. On petition by an interested person, the state comptroller may issue a declaratory ruling with respect to the interpretation or applicability of any statutory provision, rule, or other written statement of law or policy, decision, or order.

Petitions shall be titled "Petition for Declaratory Ruling" and shall include the name and address of all persons or agencies party to the petition. The body of the petition shall include the exact words, passages, sentences or paragraphs which are the subject of inquiry and the specific set of facts involved. The petition may express the petitioner's interpretation and contain documented information in support thereof.

The state comptroller will refuse to issue a declaratory ruling if the petition does not state with enough specificity the factual situation or the question presented, or if the issuance of the ruling would not be in the best interests of the public, or for any other reason which it deems just and proper.

The state comptroller within thirty days of the receipt of a petition, shall issue a ruling or dismiss the petition except in the case where the state comptroller requests additional information from the petitioner. In that case, the ruling or dismissal will occur within thirty days following the receipt of the requested additional information.

Rule 5.1 is intended to implement section 17A.9 as it pertains to the state comptroller.

270—5.2(68A) Access to data in the personnel management information system.

5.2(1) *Definitions.*

a. "History of the state employment data" means the agencies, salaries, job classifications, and dates of employment by the state of Iowa of a named individual.

b. "Individual data" means all personally identifiable information not included in paragraph "a" above.

c. "Summary data" means information that is presented in such a manner as to preclude the identification of an individual by name or other identifier.

d. "Employing agency" means an agency or department of the state of Iowa.

5.2(2) *Organization.* There shall be a Personnel Management Information System Board of Review consisting of an appointed representative from each of (1) the state comptroller's office; (2) the institutions governed by the board of regents; and (3) the department of transportation. This board will recommend an administrator who will be the contact person for securing any information from the system. The price for the production of a requested report will be the cost as determined by the data processing division of the state comptroller's office. Billing will be accomplished under rules established by the comptroller.

5.2(3) *Steps to be taken to secure information from the system.*

a. All requests for data must be in writing and submitted to the administrator.

CHAPTER 29
PASSENGER CAPACITY

CHAPTER 30
SPEED AND DISTANCE—ZONING

290—30.1(106) Rathbun Lake, Appanoose county—watercraft use. Motorboats of outboard, inboard-outdrive, and inboard type with power not to exceed 450 horsepower shall be permitted on Lake Rathbun.

30.2 to 30.5 Reserved.

290—30.6(106) Rathbun Lake, Appanoose county—zoned areas.

30.6(1) No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading and plainly marked by the use of buoys or signs in accordance with chapter 31, rules of the state conservation commission.

30.6(2) No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by uniform marker buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area.

Such zoned areas shall be not less than 50 feet nor more than 400 feet from shore.

Said buoys or signs shall be in accordance with chapter 31, rules of the state conservation commission.

This rule is intended to implement sections 106.26 and 106.31 of the Code.

290—30.7(106) Red Rock Lake, Marion County—zoned areas.

30.7(1) No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading and plainly marked by the use of buoys or signs in accordance with chapter 31, rules of the state conservation commission.

30.7(2) No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by uniform marker buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area.

Such zoned areas shall not be less than fifty feet nor more than four hundred feet from shore.

Said buoys or signs shall be in accordance with chapter 31, rules of the state conservation commission.

290—30.8(106) Coralville Lake, Johnson County—zoned areas.

30.8(1) No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading and plainly marked by the use of buoys or signs in accordance with chapter 31, rules of the state conservation commission.

30.8(2) No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by uniform marker buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area.

Such zoned areas shall not be less than fifty feet nor more than four hundred feet from shore.

Said buoys or signs shall be in accordance with chapter 31, rules of the state conservation commission.

290—30.9(106) Saylorville Lake, Polk County—zoned areas.

30.9(1) No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading and plainly marked by the use of buoys or signs in accordance with chapter 31, rules of the state conservation commission.

30.9(2) No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by uniform marker buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area.

Such zoned areas shall not be less than fifty feet nor more than four hundred feet from shore.

Said buoys or signs shall be in accordance with chapter 31, rules of the state conservation commission.

This rule is intended to implement section 106.31, Code of Iowa, 1975.

290—30.10(106) Black Hawk Lake, Sac county.

30.10(1) No vessel, except authorized emergency vessels, shall be operated at a speed greater than ten miles per hour when operated in the following restricted speed areas:

a. The bay areas marked with buoys or signs which are in accordance with 290—chapter 31 of the IAC.

b. That area between the shore and a line 200 feet lakeward from and parallel to the shoreline.

30.10(2) The speed of vessels on the remainder of the lake is unrestricted except for the speed and distance requirements relating to other vessels or obstructed vision as given in Iowa Code section 106.26.

This rule is intended to implement Iowa Code section 106.26.

290—30.11(106) Lake Odessa in Louisa county.

30.11(1) No motorboat shall be operated at a speed exceeding five miles per hour unless vision is unobstructed at 300 feet ahead.

30.11(2) No motorboat shall be operated at a speed greater than ten miles per hour between April 1 and October 1 yearly, except that portion of Lake Odessa proper lying south of the south line of Section 17 and west and north from the east side of the Sand Run Public Access Area in Section 33, all in Township 74 North, Range 2 West of the 5th P.M.

30.12 to 30.15 Reserved.

290—30.16(106) Mississippi River lock and dam safety zone. A safety zone is hereby established in Iowa waters above and below all navigation lock and dam structures on the Mississippi river between the Iowa-Minnesota border and the Iowa-Missouri border. The established zone shall be 600 feet upstream and 100 feet downstream from the roller gate or tainter gate section of the structure.

30.16(1) The safety zone does not include the area directly above and below the navigation lock or the auxiliary lock structure.

30.16(2) The safety zone does not include the area directly above and below the solid fill portion of the dam and structure.

30.16(3) The safety zone shall be recognized by the state of Iowa only when plainly marked in accordance with the uniform marking system, as adopted by the state of Iowa, including buoys placed at the outer limits of the restricted safety zone 600 feet above and 100 feet below the structure as described in 30.16(106).

30.16(4) No boat or vessel of any type shall enter the established safety zone as recognized by the state of Iowa as described in 30.16(3).

30.17 to 30.20 Reserved.

290—30.21(106) Joyce Slough Area. The Joyce Slough Area, a portion of the Mississippi River within the city of Clinton, Iowa, is hereby zoned to be a harbor area and vessels traveling therein shall not travel at speeds in excess of five miles per hour.

290—30.22(106)* Swan Slough, Camanche, Iowa. A restricted speed zone is hereby established in all or part of the main channel of Swan Slough (Mississippi River mile 510.2 to 511.3) Camanche, Iowa as designated by buoys.

30.22(1) Two buoys establishing the restricted speed zone shall be placed at the mouth of slough channel.

*Emergency after Notice, pursuant to §17A.5(2)"*b*"(2) of the Code.

30.22(2) Buoys delineating the restricted speed zone shall be placed no more than 400 feet apart through the length of the affected portion of the channel.

30.22(3) All buoys placed shall be those of the uniform waterway marking system adopted by the state conservation commission and shall be constructed, placed and maintained in accordance with Chapter 106 of the Code and Chapter 31, rules of the state conservation commission.

30.22(4) No vessel, except authorized emergency vessels, shall be operated in marked areas at a speed greater than the limit designated by buoys marking said area.

30.22(5) The restricted speed zone shall be recognized and enforced by the state of Iowa only when plainly marked in accordance with this rule.

This rule is intended to implement section 106.17 of the Code.

30.23 to 30.25 Reserved.

290—30.26(106) Massey Slough. Operation of vessels in Massey Slough of the Mississippi River at Massey Station, Dubuque county, Iowa, extending from a northerly to southerly direction from the upper end to the lower end of the slough, encompassing the water in Section 14. Township 88N, Range 3E, of the 5th P.M., tract number NFIA-26M.

30.26(1) Water recreation restrictions within posted areas which are marked with approved buoys shall be obeyed.

30.26(2) Buoys approved by the Dubuque county conservation board shall be those of a system adopted by the state conservation commission on a state-wide uniform basis.

30.26(3) All boating accidents shall be reported to the river patrol office in addition to the state conservation commission as prescribed by the Code of Iowa.

30.26(4) All boats underway must maintain a speed of less than five miles per hour in said waters.

30.26(5) Rescinded.

30.27 to 30.29 Reserved.

290—30.30(106) Black Hawk county waters. Operation of vessels in Black Hawk County on the Cedar River within the city limits of Cedar Falls, Iowa, shall be governed by this departmental rule as well as all applicable state laws and regulations.

30.30(1) No vessel, except authorized emergency vessels, shall be operated in marked areas at a speed greater than the limit designated by buoys, signs or other approved uniform waterway marking devices marking the area.

30.30(2) All vessels, except authorized emergency vessels, shall be operated at a no-wake speed when within 600 feet of the Franklin Street bridge. This 600 foot zone shall be designated by buoys, signs or other approved uniform waterway marking devices.

30.30(3) No vessel shall tow skiers, surfboard riders or other towable devices within the zone established by 30.30(2).

30.30(4) When a vessel or vessels are involved in an accident which is reportable under section 106.7 of the Code and chapter 32 of the conservation commission rules, the operator or someone acting for him shall immediately notify the Cedar Falls Police Department. This requirement shall be in addition to the accident reporting requirements of section 106.7 of the Code and chapter 32 of the conservation commission rules.

30.30(5) No dock or other obstruction shall be placed in the Cedar River as described above without a permit from the conservation commission.

This rule is intended to implement section 106.17 of the Code.

290—30.31(106) Mitchell county waters. Operation of vessels in Mitchell county on the following impounded waters:

Cedar river from Mitchell Dam, thence upriver to the County "S" Bridge.

Cedar river from the St. Ansgar Mill Dam, thence upriver to the Newberg Bridge crossing Highway 105.

Cedar river from the Otranto Dam upriver to the Great Western Railway Bridge crossing the Cedar river.

The Stacyville Pool, on the Little Cedar river at Stacyville, Iowa.

30.31(1) Water recreation activities as restricted within posted areas which are marked with approved buoys shall be obeyed.

30.31(2) No floating docks, buoys, or manmade obstructions shall be placed in water without approval of the Mitchell county sheriff.

30.31(3) Buoys approved by the Mitchell county sheriff's office shall be those of a system adopted by the state conservation commission on a state-wide uniform basis.

30.31(4) Swimming in areas other than posted areas approved by the Mitchell county sheriff must be within 25 feet of shore.

30.31(5) All boats underway must maintain a speed less than five miles per hour if within 50 feet of a moored fishing craft in use.

30.31(6) Boating operation at speeds in excess of ten miles per hour shall not take place prior to 9:00 a.m. and after 6:00 p.m. each day.

30.31(7) The towing of more than one skier by a single boat shall be at the option of the water safety patrol and the determination of the patrol shall be based upon water congestion and safety of operations.

30.31(8) All boating accidents shall be reported to the river patrol office in addition to reporting the accident to the state conservation commission.

30.31(9) All water skiers are required to wear life jackets, life belts or preservers.

30.31(10) Any finding or establishment of areas by the Mitchell county sheriff under 30.31(1) to 30.31(3) shall be created by petition of interested persons or adjoining landowners filed with Mitchell county sheriff, who shall establish or disallow same within ten days, by written notice of such petitioners. Any party aggrieved by such findings may appeal such determination to the Mitchell county board of supervisors by written notice within ten days of such findings and a hearing shall be held thereon before such board within 30 days thereafter. The decision of such board shall be final and binding.

30.31(11) Rescinded.

30.32 to 30.36 Reserved.

290—30.37(106) Maquoketa river. Operation of vessels on the impoundment of the Maquoketa river in Delaware county, Iowa, extending westerly and northerly from the line between Sections 29 and 30 in Delhi township in said county, to the line between Sections 10 and 15 in Milo township in said county which impoundment is sometimes known and referred to as Hartwick Lake or Lake Delhi.

30.37(1) Water recreation activity restrictions shall be obeyed, including restrictions within posted areas which are marked with approved buoys.

30.37(2) No dock or obstruction of any nature shall be placed in the water without first obtaining a permit from the conservation commission.

30.37(3) Application for dock permits and ~~buoy~~ permits shall be made on forms provided by the conservation commission for that purpose.

30.37(4) Reserved.

30.37(5) Every dock or structure shall be constructed and maintained in accordance with the requirements on the permit issued by the conservation commission and shall be removed from the water on or before December 15 of each year.

30.37(6) All buoys shall be those of a system adopted by the state conservation commission and shall be constructed, placed and maintained in accordance with chapter 106 of the Code, and the applicable rules of the conservation commission.

30.37(7) Swimming or wading shall be restricted to an area within 25 feet of shore except in special areas approved by the conservation commission and marked by approved buoys.

30.37(8) No motorboat shall be operated at speeds greater than ten miles per hour at any time between the hours from one hour after sunset to one hour before sunrise.

30.37(9) No motorboat shall be operated at a speed which will create appreciable wake or roll when within 50 feet of an occupied craft at anchor or traveling at a no-wake speed.

30.37(10) Boating accidents shall be reported as required in section 106.7 and the applicable departmental rule.

30.37(11) All water skiers shall wear a life belt or life jacket.

30.37(12) Rescinded.

30.38 to 30.42 Reserved.

290—30.43(106) Zoning of off-channel waters of the Wapsipinicon river in Pinicon Ridge Park in Linn county. No motorboat shall be operated at a speed which will create a wake within the zoned area designated by regulatory buoys or signs on the off-channel waters of the Wapsipinicon river above the dam at Central City, Linn county, Iowa.

The zoned area will be the off-channel waters created in and adjacent to the developed recreation areas of the Pinicon Ridge Park on the west and south bank of the Wapsipinicon river above the dam at Central City, Linn county.

30.44 to 30.47 Reserved.

290—30.48(106) Speed restrictions on Lake Manawa. No motorboat shall be operated at a speed greater than five miles per hour within the zoned area, designated by regulatory buoys, on Lake Manawa in Pottawattamie county, Iowa.

30.48(1) Zoned Area 1—South and east of a line from the end of the area known as "Tin Can Dike" to the southern tip of the Les Peterson property on the east shore.

30.48(2) Zoned Area 2—South and west of a line from the south end of the Eleventh Street dike to the north end point of the area known as "Boy Scout Island".

30.48(3) Zoned Area 3—North and east of a line from a point 300 yards north of the entrance to the lagoon known as the "Novak Lagoon" to the existing bench mark in the west parking area of North Park.

30.48(4) Zoned Area 4—North and west of a line from the north end of the public boat ramps in North Park to the building known as the "Neal Durick boathouse" on the northeast shore.

30.49 to 30.53 Reserved.

290—30.54(106) Zoning of Little Wall Lake. No motorboat shall be operated at a speed which will create a wake within the zoned area designated by regulatory buoys on Little Wall Lake in Hamilton county.

The zoned area will not exceed approximately 20 acres in the northeast portion of the lake identified by a line from a point on the high-water mark approximately 296.6 feet west of the southeast corner of the southwest quarter of Section 10, Township 86 North, Range 24 West; thence northwest to the high-water mark which is 775 feet south and 319 feet west of the northeast corner of the northwest quarter southwest quarter of Section 10, Township 86 North, Range 24 West.

This rule is intended to implement section 106.26 of the Code.

30.55 to 30.58 Reserved.

290—30.59(106) Lake Icaria, Adams County—watercraft use. Motorboats of outboard or inboard-outdrive type with power not to exceed 200 horsepower shall be permitted on Lake Icaria. The following rules shall govern vessel operation on Lake Icaria in Adams County.

30.59(1) All vessels shall be operated at a no-wake speed when within fifty feet of another vessel which is not underway or is operating at a no-wake speed.

30.59(2) Zoned areas.

a. No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading which are plainly marked by the use of buoys or signs in accordance with chapter 31, rules of the state conservation commission.

b. No motorboats, except authorized emergency vessels, shall be operated in marked bay areas at a speed greater than the limit designated by buoys or signs marking said bay. Said buoys or signs shall be in accordance with chapter 31, rules of the state conservation commission.

c. No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by uniform marker buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area. Such zoned areas shall not be less than fifty feet nor more than four hundred feet from shore. Said buoys or signs shall be in accordance with chapter 31, rules of the state conservation commission.

This rule is intended to implement section 106.31 of the Code.

290—30.60(106) Zoning of the Des Moines River. Vessel operation on the Des Moines River from its confluence with the Mississippi River in Lee County to the northerly meander lines of both the East and West Branches, shall be governed by this departmental rule as well as all applicable state laws and regulations.

30.60(1) No vessel, except authorized emergency vessels, shall be operated in marked areas at a speed greater than the limit designated by buoys marking said area.

30.60(2) No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading which are plainly marked by the use of buoys.

30.60(3) All buoys placed shall be those of the uniform waterway marking system adopted by the state conservation commission and shall be constructed, placed and maintained in accordance with chapter 106 of the Code and chapter 31, rules of the conservation commission.

This rule is intended to implement section 106.26, Code of Iowa, 1977.

[Filed December 19, 1961; amended July 23, 1962, January 14, 1964, March 24, 1964, September 14, 1965, January 11, 1966, September 13, 1966, December 13, 1967, July 16, 1968, August 14, 1968, March 15, 1973, amended May 29, 1975]
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[Filed 7/6/79, Notice 5/30/79—published 7/25/79, effective 8/29/79]
[Filed 7/13/82, Notice 5/26/82—published 8/4/82, effective 9/8/82]

1. Vessels which are homemade from materials purchased by the builder; this does not include vessels manufactured from kits furnished by a kit boat builder.
2. Used vessels which have never been registered in this or any other state.
3. Reconstructed vessels.
4. Specially-constructed vessels.
5. Vessels which have been registered in another state for which no registration certificate is available.
6. New vessels for which the dealer can provide adequate documentation that, due to unusual circumstances, a certificate of origin cannot be obtained from the manufacturer or importer.

39.8(2) For vessels listed in 39.8(1), the commission shall cause a physical inspection to be made of the vessel upon application therefor by the owner to determine whether the vessel is in safe operating condition and that the integral component parts of the vessel are properly identified and that rightful ownership is established. Requests for certification should be made at least thirty days prior to proposed sale or use.

39.8(3) The information contained on the officer's certification shall be that required in 39.3(106).

39.8(4) Owners of vessels registered prior to the effective date of this rule for which an MCO was not furnished during the registration process which have the U.S. Coast Guard capacity plate may request certification of the certificate of origin information by an officer of the State Conservation Commission. When the officer's certification would necessitate change of any information on an existing registration certificate, the officer shall notify the county recorder in which the vessel is registered and the State Conservation Commission by furnishing those officers with a copy of the certification form.

290—39.9(106)* Vessels in dealer's stock.

39.9(1) Vessels which were delivered to a dealer prior to July 1, 1981, may be registered without an MCO through December 31, 1981, providing the dealer furnishes the following certification in writing to be utilized by the purchaser in lieu of the MCO.

Certification Regarding MCO

Dealer Firm Name_____

Dealer Address_____

_____

I hereby certify that the vessel bearing hull identification number _____ was delivered to my place of business prior to July 1, 1981, and that the manufacturer failed to provide an MCO for that vessel.

_____

Authorized Signature

Purchaser's Name and Address

_____

_____

39.9(2) Dealers shall obtain either an MCO or officer's certification for all vessels in stock as of January 1, 1982, and thereafter. An officer's certification shall not be issued unless the dealer provides adequate documentation that a reasonable effort has been made to obtain a certificate of origin from the vessel manufacturer or importer. Dealers shall notify the commission prior to December 1 of vessels in stock for which they cannot obtain an MCO so the commission may furnish an officer's certification as stipulated in 39.8.

290—39.10(106)* Vessel registration. A person shall not register a vessel after December 31, 1981, without furnishing to the county recorder a manufacturer's certificate of origin or an officer's certification.

*Emergency after Notice, pursuant to §17A.5(2)"*b*"(1) of the Code.

These rules are intended to implement sections 106.3, 106.5 and 106.56, The Code.
[Filed 10/8/80, Notice 9/3/80—published 10/29/80, effective 7/1/81]
[Filed emergency 7/7/81—published 7/22/81, effective 7/7/81]

CHAPTER 40
MOTOR REGULATIONS

290—40.1(106) Horsepower rating. The horsepower rating of an outboard motor permitted on artificial lakes under the authority of Iowa Code chapter 106, and the commission's departmental rules, shall be as determined by the manufacturer when the motor was originally produced.

290—40.2(106) Alteration of horsepower rating. An outboard motor which has been altered to increase its horsepower in excess of ten as rated by the original manufacturer shall not be permitted on artificial lakes.

290—40.3(106) Propulsion mechanism removed. A power unit on a vessel motor which does not contain a propeller or propulsion mechanism shall not be considered when determining horsepower rating for artificial lake use.

These rules are intended to implement Iowa Code section 106.9.
[Filed 7/13/82, Notice 4/28/82—published 8/4/82, effective 9/8/82]

CHAPTER 41
STATE FOREST CAMPING

290—41.1(111) Applicability. This rule governs camping activity in the following areas:
1. Yellow River State Forest, Allamakee County.
2. Stephens State Forest, Clarke, Lucas, Appanoose, Davis, and Monroe Counties.
3. Shimek State Forest, Van Buren and Lee Counties.

290—41.2(111) Camping areas established and marked.

41.2(1) Areas to be utilized for camping shall be established within each of these state forests.

41.2(2) Signs designating the established camping areas shall be posted along the access roads into these areas and around the perimeter of the area designated for camping use.

41.2(3) Areas approved for backpack camping (no vehicular access) shall be marked with appropriate signs and shall contain fire rings.

290—41.3(111) Camping restricted.

41.3(1) No person shall camp in these state forests except within the designated camping areas or at established backpack camping sites.

41.3(2) Camping within the designated camping area shall be on sites posted by numbered signs marking the location to be used by the camping unit or within the marked boundary of camping areas where sites are not posted.

290—41.4(111) Firearm use prohibited. The use by the public, except peace officers acting in the scope of their employment, of firearms, fireworks, explosives, and weapons of all kinds is prohibited within the established camping area as delineated by signs marking the area.

290—41.5(111) Camping fees.

41.5(1) The fees for camping in these state forest established campgrounds shall be the same as in all other nonmodern areas managed by the commission where fees are charged. A basic camping unit is defined as the portable shelter used by one to six persons.

41.5(2) Chaperoned, organized youth group fees are the same as in all group camp areas managed by the commission.

41.5(3) The reduced fees for aged, blind, and handicapped established by 290—45.2 are applicable to camping in state forest areas.

41.5(4) Persons using backpack camping sites shall register at the forest area check station or other designated site. No fee will be charged for the use of the designated backpack campsites.

290—41.6(111) Hours. Access into and out of the established camping areas shall be permitted from 4:00 a.m. to 10:30 p.m. During the hours of 10:31 p.m. to 3:59 a.m. only registered campers are permitted in the campgrounds.

These rules are intended to implement sections 111.35, 111.44 and 111.47 to 111.51, The Code.

[Filed 4/9/82, Notice 2/3/82—published 4/28/82, effective 6/2/82]

CHAPTER 42
Reserved

CHAPTER 43
METAL DETECTORS IN STATE PARKS AND RECREATION AREAS

290—43.1(111) Definitions.

43.1(1) *"Metal detector"* means a portable electronic device carried by an individual used only for detecting metal above or below the surface of the ground.

43.1(2) *"Beach"* or *"beach area"* means that portion of state parks or recreation areas designated for swimming activity including the water area contiguous to the beach.

290—43.2(111) Use areas. Except as provided in 290—43.3(111), metal detectors may be used in all areas of state park and recreation areas during the hours established by 290—45.1(111). From May 22 to September 7 inclusive of each year, metal detectors may be used on the designated beach area until 8:30 a.m. each day.

290—43.3(111) Prohibited operation. Metal detector use is prohibited under the following conditions:

43.3(1) In areas not mowed.

43.3(2) In designated campgrounds.

43.3(3) In recognized historic or archaeological sites.

290—43.4(111) Drained lakes. When an artificial lake has been completely drained for any reason, metal detector use consistent with the provisions of this chapter will be permitted in the entire lake area proper below the vegetation line on the lakeshore.

290—43.5(111) Found items. All items found are subject to the provisions of Iowa Code chapter 644.

290—43.6(111) Lost item search by owner. An owner of lost property may use a metal detector to search for that item in an area where such use is prohibited by 43.3 under the following conditions:

43.6(1) Approval has been granted by the Director of the Conservation Commission or designee.

43.6(2) The search is confined to a reasonable area within the park or recreation area.

43.6(3) The search is limited to twelve hours or less in length.

290—43.7(111) Tools used. Tools used to recover items detected beneath the ground level shall be limited to the following:

43.7(1) Probes not over twelve inches long, one-inch wide, and one-quarter-inch thick.

43.7(2) A sand scoop or sieve not over ten inches in diameter.

290—43.8(111) Digging limitations and restoration.

43.8(1) In recovering items located below the ground, the earth is not to be unduly disturbed with all excavations limited to less than three inches square.

43.8(2) When digging is done to search for an object, the metal detector operator shall restore the disturbed area as nearly as possible to its original condition.

290—43.9(111) Disposal of litter. Persons using metal detectors shall wear or carry a litter apron or bag, and all litter is to be disposed of in approved trash receptacles.

These rules implement Iowa Code section 111.35.

[Filed 7/13/82, Notice 4/28/82—published 8/4/82, effective 9/8/82]

CHAPTER 44
FISHING SHELTERS

290—44.1(111) When regulated. For the period beginning on the first day of November of each year and ending on the twentieth day of February of the following year, the following rules pertaining to the building or erection of fishing shelters for noncommercial purposes shall apply to all such buildings or structures placed on or over state-owned lands or waters under the jurisdiction of the state conservation commission:

44.1(1) A permit, for which no charge or fee will be made, must be secured from the state conservation commission for the erection of all buildings or structures used as fishing shelters on or over state-owned lands or waters.

44.1(2) All such buildings must be of a type and made from materials approved by the state conservation commission.

44.1(3) The permit number must be painted legibly in a color contrasting to the background on all sides of the shelter in numerals at least six inches high.

44.1(4) Failure to remove the building or structure and materials used in its construction from state-owned property on or before February twentieth of each year shall be deemed just cause for prosecution as provided for in section 111.4 of the Code.

44.1(5) Information containing the name and address of owner must be placed on door of shelter in a legible and durable manner.

44.1(6) Structures may not be locked when in use.

[Filed September 22, 1961]

CHAPTER 45
STATE PARKS AND PRESERVES

290—45.1(111) Opening time. Except by arrangement or permission granted by the director or his authorized representative the following rules shall apply; all persons shall vacate all state parks and preserves before 10:30 p.m., each day, except authorized campers in accordance with section 111.46 of the Code, and no person or persons shall enter into such parks and preserves until 4:00 a.m. the following day.

290—45.2(111) Fees.

45.2(1) *Procedure.* A reduced fee for camping sites in all state parks, where camping sites are available, shall be charged to the aged, handicapped and blind.

45.2(2) *Definitions.*

a. Aged means any person sixty-two years of age or more.

b. Blind and handicapped means any person who is confined to a wheelchair or is handicapped so that he or she has significant difficulty or insecurity in walking (immediate family or other unrelated persons may accompany such individuals).

c. Rescinded, effective 9/8/82.

45.2(3) *Certification of age or physical handicap.*

a. A valid drivers license, golden age passport or medicare card shall provide proof for entry for the aged.

b. A department of transportation handicapped identification permit or reasonable proof of handicapped condition shall provide proof for entry for the handicapped or blind.

45.2(4) The reduced fee for aged, blind, or handicapped shall be $1.00 per night per basic camping unit, plus the applicable fee if camped at an electrical site.

The reduced fee shall be one dollar per basic unit, plus electrical fee, if electricity is used.

45.2(5) *Restrictions.*

a. The reduced fee shall be valid as follows: May 14 to September 15 annually, Sunday through Thursday, with full fee payment on weekends and holidays. September 16 to May 13 annually, all days of the week shall be at the reduced fee.

b. The camping fee must be paid for and the campsite occupied by the aged, handicapped, or blind person involved.

c. Aged, handicapped and blind are permitted to have six persons in their camping unit. A charge of 25¢ per person per night shall be charged when the limit of six persons per unit is exceeded.

45.2(6) Rescinded, effective 9/8/82.

290—45.3(111) Basic unit. As used in the chapter, the words "basic unit" or "basic camping unit" means the portable shelter used by one to six persons.

290—45.4(111) Camping and electricity fees. Except as provided in 45.2(4), the established fees in state parks and recreation areas are:

45.4(1) Nonmodern area—$3.50 per night per basic unit.

45.4(2) Modern area (shower-flush toilet) $4.00 per night per basic unit.

45.4(3) Per person over the basic unit of six—25¢.

45.4(4) Chaperoned, organized youth groups—25¢ per person with a minimum of $3.50 per night in a nonmodern area and $4.00 per night in a modern area.

45.4(5) Electricity—$1.50. This fee will be charged if camping on a site where electricity is available, even when the electricity is not utilized.

290—45.5(111) Site use restrictions.

45.5(1) Camping is restricted to one basic unit per site except that a small tent or other type camping unit may be placed on a site with another basic unit so long as the persons occupying the second unit are under 18 years of age and members of the immediate family occupying the larger unit.

45.5(2) Each camping unit shall utilize only the electrical outlet fixture designated for its particular campsite. No extension cords or other means of hookup shall be used to furnish electricity from one designated campsite to another.

These rules are intended to implement Iowa Code section 111.47.

[Filed September 14, 1965]
[Filed 5/5/78, Notice 3/8/78—published 5/31/78, effective 7/6/78]
[Filed 7/13/82, Notice 4/28/82—published 8/4/82, effective 9/8/82]

CHAPTER 46
STATE PARK AND PRESERVE WILDLIFE REFUGES

290—46.1(109) Established. The following state parks and preserves under the jurisdiction of the Iowa state conservation commission are established as wildlife refuges under the provisions of Iowa Code section 109.5 for the calendar year 1962 and thereafter unless otherwise altered or amended by process of law.

PARK OR PRESERVE	*COUNTY*
A. A. Call	Kossuth
Backbone	Delaware
Beeds Lake	Franklin
Bellevue	Jackson
Big Creek	Polk
Bixby	Clayton
Black Hawk Lake	Sac
Bob White	Wayne
Browns Lake	Woodbury
Brush Creek Canyon	Fayette
Clear Lake	Cerro Gordo
Cold Springs	Cass
Dolliver Memorial	Webster
Eagle Lake	Hancock
Echo Valley	Fayette
Elk Rock	Marion
Fort Atkinson	Winneshiek
Fort Defiance	Emmet
Frank A. Gotch	Humboldt
Geode	Des Moines—Henry
George Wyth	Black Hawk
Green Valley	Union
Gull Point (Okoboji Areas)	Dickinson
Heery Woods	Butler
Honey Creek	Appanoose
Inn Area (Okoboji Areas)	Dickinson
Kearny	Palo Alto
Lacey-Keosauqua	Van Buren
Lake Ahquabi	Warren
Lake Anita	Cass
Lake Darling	Washington
Lake Keomah	Mahaska
Lake MacBride	Johnson
Lake Manawa	Pottawattamie
Lake of Three Fires	Taylor

c. "Degree-days" when used in formulas are the sum of heating degree-days and cooling degree-days. When used with energy data from a specific period of time, the degree-days should also be from that period. Otherwise an average value, preferably taken from the National Oceanographic and Atmospheric Administration official averages, may be used.

d. "Eligible application" is an application for financial assistance which has been reviewed by EPC staff and found to be complete and correct. It is eligible for ranking and recommended funding.

e. "Energy audit" means a survey of a building or complex that is conducted in accordance with the requirements of this subpart which:

(1) Identifies the type, size, energy use level and the major energy using systems.

(2) Determines appropriate energy conservation maintenance and operating procedures.

(3) Indicates the need, if any, for the acquisition and installation of energy conservation measures, including solar energy and other renewable resource measures.

f. "Energy conservation measure" means an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source.

g. "Hospital" means a public or nonprofit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and is duly authorized to provide hospital services under the laws of the state of Iowa.

h. "Hospital facilities" means buildings housing a hospital and related facilities, including laboratories, laundries, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health professions personnel operated as an integral part of the hospital.

i. "In-kind contributions" means the value of noncash contributions provided by the grantee and non-federal parties. Only when authorized by federal legislation may property purchased with federal funds be considered as the grantee's in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

j. "Preliminary energy audit" means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption, and major energy-using systems of such building.

k. "Public care institution" means a public or nonprofit institution which owns:

(1) A facility for long-term care, rehabilitation facility, or public health center, as described in Section 1633 of the Public Health Service Act (42 USC 300s-3:88 Stat. 2270.) or

(2) A residential child care center, which is an institution, other than a foster home, operated by a public or nonprofit institution and is primarily intended to provide full-time residential care with an average length of stay of at least thirty days for at least ten minor persons who are in the care of such institution as a result of a finding of abandonment or neglect or of being persons in need of treatment or supervision.

l. "School" means a public or nonprofit institution which:

(1) Provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis.

(2)(a) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

(b) Admit as students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such certificate;

(c) Is accredited by a nationally recognized accrediting agency or association; and

(d) Provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program.

(3) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in subdivisions (a), (b) and (c) of subparagraph (2) above; or

(4) Is a local education agency.

m. "Square-feet" when used in ranking formulas means the total gross conditioned floor area of a building.

n. "Unit of local government" means the government of a county, municipality, or township, which is a unit of general purpose government below the state, determined on the basis of the same principles as are used by the bureau of the census for general statistical purposes; the recognized governing body of an Indian tribe which governing body performs substantial governmental functions; libraries owned by any of the foregoing; and public libraries which serve all residents of a political subdivision below the state level, such as a community, district or region, free of charge and which derive at least forty percent of their operating funds from tax revenues of a taxing authority below the state level.

380—7.2(93) Identification of eligible institutions. In identifying eligible institutions and distributing the preliminary energy audits the council will seek assistance from statewide affected eligible institutions. The school organizations include the state department of public instruction, the Iowa association of school administrators, the Iowa association of school boards, the Iowa Catholic conference, the Iowa association of nonpublic school administrators, the Iowa association of private colleges and universities, and the state board of regents. Hospitals are represented by the following organizations: The Iowa department of health, the Iowa health care association, the Iowa association of homes for the aging, the Iowa hospital association and the state department of social services. Local governments are represented by the league of Iowa municipalities and the Iowa state association of counties.

380—7.3(93) Preliminary energy audits. Preliminary energy audits will be conducted by mailing questionnaires to all eligible institutions in Iowa which request them.

7.3(1) *Building description.* A preliminary energy audit shall provide a description of the building or complex audited and determine its energy-using characteristics, including:

a. A description of the functional use made of the building.

b. The size of the building, expressed in gross square feet.

c. The age of the building.

d. Approximate daily hours of operation, including periods of partial use, if applicable.

e. An identification of major energy-using systems.

f. Fuel use in physical units and cost data by type for a preceding twelve-month period, by month if practicable, using actual data or an estimate if actual figures are unavailable.

g. Total annual energy use expressed in Btu's per gross square foot.

7.3(2) *Conservation activities.* A preliminary energy audit shall provide a brief description of activities which have been undertaken to conserve energy in the building or complex being audited.

7.3(3) *Renewable resources.* A preliminary energy audit shall provide information regarding site, building, and heating and hot water systems related to solar energy or other renewable resource material.

380—7.4(93) Energy audits. Energy audits will be performed on some institutions for which preliminary energy audits were returned, if the owner or operators agree to the cost-sharing requirements of 7.8(1).

7.4(1) *Contents.* An energy audit shall contain the information required for a preliminary energy audit, in accordance with 7.3(93), and shall also include a description of:

a. Major changes in functional use or mode of operation planned in the next fifteen years;

b. Terminal heating and cooling, such as radiators, unit ventilators, fan coil units, or double duct reheat systems; and

c. A description of general building conditions.

7.4(2) *Conservation maintenance.* An energy audit shall:

a. Indicate that appropriate energy conservation maintenance and operating procedures have been implemented for the building; or

b. Recommend appropriate energy conservation maintenance and operating procedures, on the basis of an on-site inspection and review of any scheduled preventive maintenance plan, together with a general estimate or range of energy and cost savings, if practicable.

7.4(3) *Need.* An energy audit shall indicate the need, if any, for the acquisition and installation of energy conservation measures and shall include an evaluation of the need and potential for retrofit.

7.4(4) *Building conditions.* An energy audit shall include an indication of whether building conditions or characteristics present an opportunity for use of solar heating and cooling systems or solar hot water systems.

7.4(5) *Auditor-consultation.* An energy audit shall indicate the need for major changes requiring technical analysis prior to enactment.

380—7.5(93) Energy auditors.

7.5(1) *Participation in the energy audit workshops.*

a. Any person may attend an energy audit workshop sponsored by the energy policy council.

b. Where space is limited, priority will be given to individuals designated by an institution eligible for federal funds to conduct an energy audit and Iowa registered engineers, engineers in training and registered architects. Otherwise, applications for registration will be accepted in the order they are received.

7.5(2) *Energy auditor workshops.*

a. The workshops will instruct persons how to audit the major energy consuming systems in the building, such as hot water, lighting, heating and/or air conditioning, and the building envelope. Participants will be shown how to examine these systems for possible changes in building operation and maintenance procedures that would result in reduced energy consumption.

b. The instructors for the workshops will be professional educators, with particular expertise in the areas of energy and building systems, and professional engineers and architects.

7.5(3) *Qualifications of energy auditors.*

a. All Iowa registered architects and Iowa registered engineers who are Class A energy auditors and associate Class A energy auditors (see 6.1(3)) are qualified as energy auditors for this program.

b. Persons who are certified by the designated course instructor as having attended all phases of the energy audit workshop will be qualified as energy auditors for the building type workshop they attended.

(1) Persons who attended the schools workshop are qualified to do energy audits for schools and local governments, and

(2) Persons who have attended the hospitals workshop are qualified to do energy audits for hospitals and public care facilities.

c. Reciprocity will be recognized for persons who have attended similar workshops in other states, if those workshops have been approved by the director.

d. Energy auditors must be able to comply with the conflict of interest requirement of the United States department of energy, found at CFR 450.44, which requires the energy auditor, in part to disclose any interest greater than ten percent in a company that manufactures or installs devices that may be required as a result of the energy audit.

e. Energy auditors must be someone other than the person directly responsible for the day-to-day operations of the building.

380—7.6(93) Criteria for selection of eligible buildings.

7.6(1) *Allocation of funds.* Of the total funds allocated to the institutions for energy audits, no more than seventy percent will be allocated to any one type of institution (such as schools or hospitals) unless all other eligible applications have been allocated funds. These funds will be allocated to those institutions that returned the preliminary energy audits and agree to the cost-sharing provision in 7.8(1).

7.6(2) Rescinded, effective 2/10/82.

380—7.7(93) Audit reports.

7.7(1) *Confidentiality.* The results of a preliminary energy audit or an energy audit conducted in accordance with the requirements of this subpart, shall be contained in an audit report. Unless a claim of confidentiality is made by an audited institution based upon a specific provision of the freedom of information Act, 5 USC 552, or chapter 68A, Code of Iowa, and both the claim and reason for confidentiality are submitted with the audit report or within ten days from the date the owner receives the report, an audit report shall be considered public information and will be made available for public review upon request.

7.7(2) *Auditor's statement.* An audit report for an energy audit shall include a statement signed by the auditor that:

a. The auditor meets the applicable qualifications as set forth in 7.5(93).

b. The auditor has indicated any financial interests in accordance with 7.5(3)"*d*"; and

c. The audit was conducted in accordance with the requirements of 7.4(93).

380—7.8(93) Cost of energy audits.

7.8(1) *Restrictions.*

a. Amounts made available from the federal department of energy under this chapter, together with any other amounts made available from other federal sources, may not be used to pay more than fifty percent of the costs of an energy audit. The institution being energy audited can calculate its fifty percent share of the audit costs based on cash and in-kind services directed toward the energy audits (see 7.1(2)"*i*" for a definition of in-kind services).

b. Where special federal law allows an applicant to use federal moneys for the nonfederal portion of grant matching and the applicant intends to do so, a request to this effect must accompany the grant application.

7.8(2) *Cost of energy audits.*

a. Except as provided in paragraph *"b"* of this subrule, the allowable cost of an energy audit under this program for the purpose of calculating the federal share thereof, shall not exceed the lesser of one-half the cost of the audit or the following:

Building Gross Square Feet	Allowable Cost for Calculating Federal Share
Up to 30,000	$400.00
30,000 to 100,000	500.00
100,000 and above	600.00
Complex[1]	

[1]The sum of individual building allowances for the first 150,000 gross square feet and 80 percent of individual building allowances above 150,000 gross square feet but not to exceed $10,000.

b. Where necessary, the council may increase the allowable cost of a particular energy audit, provided that the total of all such increases does not exceed fifteen percent of the allocation for Iowa. Increases may be permitted for:

(1) The amount necessary to enable personnel from institutions having few buildings or in remote locations to attend training sessions qualifying them to perform energy audits;

(2) The amount necessary to provide transportation to perform energy audits of buildings in remote locations; and

(3) The amount necessary to conduct energy audits for a building having an unusually complicated system or configuration; however, this increase may not exceed fifty percent of the allowable cost for an individual building.

Rules 7.1(93) to 7.8(93) are intended to implement Iowa Code section 93.7, as specified by 10 C.F.R. 455.90.

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CHAPTER 8
TECHNICAL ASSISTANCE AND ENERGY CONSERVATION: GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

[Appeared as Ch 6, IAC 10/3/79]
[Appeared as Ch 7, renumbered Ch 8, IAC 12/23/81]

380—8.1(93) General. The technical assistance and energy conservation measures programs are steps two and three of the three-step energy audit and conservation program that is partially funded by the United States Department of Energy. The proposed council regulations for step one of this program are in chapter 7 of the council administrative rules. The federal regulations for this program are in 10 C.F.R. 455 and 450.

8.1(1) *Purpose and scope.* This subrule specifies:

a. What constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government and public care institutions to receive grants for technical assistance to be performed in buildings owned by such institutions; and

b. What constitutes an energy conservation measure that may receive financial assistance under this part and sets forth the eligibility criteria for schools and hospitals to receive grants for energy conservation measures; including solar and other renewable resource measures.

8.1(2) *Definitions.* All definitions from 7.1(2) are applicable to this chapter.

380—8.2(93) Eligibility.

8.2(1) *Financial assistance.* To be eligible to receive financial assistance for a technical assistance program, an applicant must:

a. Be a school, hospital, unit of local government or public care institution as defined in chapter 7 of these rules, or be a co-ordinating agency representing a group of eligible institutions and which has been granted authority by the institutions to act in their behalf;

b. Have conducted an energy audit or its equivalent in accordance with chapter 7 of these rules for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change which significantly modified energy use within the building;

c. Give assurance that it has implemented all energy conservation maintenance and operating procedures identified as a result of the energy audit, or provide a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified; and

d. Submit an application in accordance with the provisions of these rules.

8.2(2) *Contents of a technical assistance program.*

a. A technical assistance program shall be conducted by a qualified technical assistance analyst, who shall consider all possible energy conservation measures for a building, including solar or other renewable resource measures. A technical assistance program shall include a detailed engineering analysis to identify the estimated costs of, and the energy and cost savings likely to be realized from, implementing each identified energy conservation maintenance and operating procedure. A technical assistance program shall also identify the estimated cost of, and the energy and cost savings likely to be realized from, acquiring and installing each energy conservation measure, including solar and other renewable resource measures, that indicate a significant potential for saving energy based upon the technical assistance analyst's initial consideration.

b. At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a final report which shall include—

(1) A description of building characteristics and energy data including the results of the preliminary energy audit and energy audit (or its equivalent) of the building, the operating characteristics of energy using systems, and the estimated remaining useful life of the building;

(2) An analysis of the estimated energy consumption of the building, by fuel type (in total Btu's and Btu/sq. ft. • yr.), at optimum efficiency (assuming implementation of all energy conservation maintenance and operating procedures);

(3) An evaluation of the building's potential for solar conversion, particularly for water heating systems;

(4) A listing of any known local zoning ordinances and building codes which may restrict the installation of solar systems;

(5) A description and analysis of all recommendations, if any, for acquisition and installation of energy conservation measures, including solar and other renewable resource measures, setting forth a description of each recommended energy conservation measure, an estimate of the cost of design, acquisition and installation of each energy conservation measure, an estimate of the useful life of each energy conservation measure, an estimate of increases or decreases in maintenance and operating costs that would result from each energy conservation measure, if any, and estimate of the salvage value or disposal cost of each energy conservation measure at the end of its useful life, if any, an estimate of the annual energy and energy cost savings (using current energy prices) expected from the acquisition and installation of each energy conservation measure. In calculating the potential energy cost savings of each recommended energy conservation measure, including solar or other renewable resource measure, technical assistance analysts shall assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized, shall calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of all recommended energy conservation measures, taking into account the interaction among the various measures, and shall calculate that portion of the total energy and energy cost savings, as determined above, attributable to each individual energy conservation measure;

(6) A listing of energy use and cost data for each fuel type used for the prior twelve-month period; and

(7) Technical assistance analyst's statement. The report shall include a statement signed by the analyst that the analyst meets the applicable qualifications as set forth in rule 8.8(93), that the analyst has indicated any financial interests in accordance with 7.5(3)*"d"*, and that the technical assistance program was conducted in accordance with the requirements of this subrule.

c. All applications will use the following conversion factors when calculating Btu content of fuels:

Natural gas	1,030 Btu's per cubic foot;
Distillate fuel oil	138,690 Btu's per gallon;
Residual fuel oil	149,690 Btu's per gallon;
Coal	20,000,000 Btu's per standard short ton;
LP gases	95,475 Btu's per gallon;
Steam	1,050 Btu's per pound;
Electricity	3,413 Btu's per kilowatt-hour.

380—8.3(93) Energy conservation measures for schools and hospitals.

8.3(1) *Eligibility.* To be eligible to receive financial assistance for an energy conservation measure, including solar or other renewable resource measures, an applicant must:

a. Be a school or hospital, or both as defined in chapter 7 of these rules or be a coordinating agency which represents groups of eligible institutions and which has been granted authority by the institutions to act in their behalf;

b. Have completed a technical assistance program or its equivalent in accordance with these rules for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use within the building;

c. Have implemented all energy conservation maintenance and operating procedures which are identified as the result of an energy audit and a technical assistance program, or have provided a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified;

d. Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period of any energy conservation measure recommended for that building. The simple payback period shall be calculated with 10 C.F.R. 455.42(d)(5)(vii).

e. Submit an application in accordance with the provisions of these rules.

f. Demonstrate that the simple payback period of each energy conservation measure for which financial assistance is requested not less than one year nor greater than fifteen years, and the estimated useful life of the measure is not greater than its simple payback period.

8.3(2) *Contents of an energy conservation measure program.* The contents of an energy conservation measure program are at 10 C.F.R. 455.52 which describe measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources.

All applications will use conversion factors from 8.2(2)"*c*" when calculating Btu content of fuels.

380—8.4(93) Grant application submittals.

8.4(1) *Technical assistance programs.*

a. Application from schools, hospitals, units of local government, public care institutions for financial assistance for technical assistance programs shall include:

(1) The applicant's name and mailing address;

(2) A written statement certifying that the applicant is eligible under 8.2(1);

(3) The results of the preliminary energy audit and energy audit (or its equivalent) for each building for which financial assistance is requested;

(4) A project budget, by building, which stipulates the intended use of all federal and non-federal funds, and identifies the sources and amounts of non-federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments," which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in these rules:

(5) A brief description, by building, of the proposed technical assistance program.

b. Applications for financial assistance for technical assistance programs shall include a signed statement that the applicant:

(1) Has satisfied the requirements set forth in 8.4(1)"*a*";

(2) Will expend granted funds for the purpose stated in the application and in compliance with federal requirements;

(3) Has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure;

(4) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of a technical assistance analyst in accordance with these rules;

(5) Will comply with all applicable reporting requirements;

(6) In the case of local government and public care institutions, a certification that the buildings are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and that the buildings are not intended for seasonal use, and are not utilized primarily as a school or hospital;

(7) In the case of a school, a certification that financial assistance will not be used for a technical assistance program in any building of such agency which is used principally for administration.

8.4(2) *Energy conservation measures.*

a. Applications from schools or hospitals for financial assistance for energy conservation measures, including solar and other renewable resource measures, shall include:

(1) The applicant's name and mailing address;

(2) A written statement certifying that the applicant is eligible under 8.3(1);

(3) Identification of each building for which financial assistance is requested, including the name or other identification of each building and its address, the building category, description of functional use, ownership, and the size of building expressed in gross square feet;

(4) A project budget, by building, which stipulates the intended use of all federal and non-federal funds, and identifies the sources and amounts of non-federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Requirements for Grants-in-Aid to State and Local Governments," which are directly related to the project and do not include funds derived from revenue sharing or other federal sources), to be used to meet the cost-sharing requirements described in these rules;

(5) A schedule, including appropriate milestone dates, for the completion of the design, acquisition and installation of the proposed energy conservation measures for each building;

(6) A list, by building, of the specific energy conservation measures proposed for funding, indicating the cost of each measure, the estimated energy and energy cost savings of each measure, the projected simple payback period for each measure, computed in accordance with the methodology described in 10 C.F.R. 455.42(d)(5)(vii) and the average simple payback period for all measures proposed for the building. The average simple payback period of all measures proposed shall be determined by dividing the total estimated cost by the total projected annual cost savings from energy savings only;

(7) A technical assistance report, completed since the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use, for each building;

(8) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact.

b. Applications for financial assistance for energy conservation measures, including solar and other renewable resource measures, shall include a signed statement that the applicant:

(1) Has satisfied the requirements set forth in 8.4(2);

(2) Will expend granted funds for the purpose stated in the application and in compliance with federal requirements;

(3) Has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit and, those recommended in the report obtained under a technical assistance program. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure;

(4) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with an energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of a technical assistance analyst in accordance with these rules;

(5) Will not enter into any contract relating to an energy conservation measure, which requires or may require expenditure of more than $5,000 (excluding technical assistance costs), that does not conform to the provisions of the Davis-Bacon Act (40 U.S.C. section 276a to 276a-5) pertaining to minimum wages for construction in the applicant's locality;

(6) Will comply with all applicable reporting requirements; and

(7) In the case of a school, a certification that financial assistance will not be used for a technical assistance program in any building of such agency which is used principally for administration.

380—8.5(93) Grantee-records and reports.

8.5(1) Each school, hospital, unit of local government, public care institution and coordinating agency which receives a grant for a technical assistance program, energy conservation measure, including solar and other renewable resource measures, shall keep all the records required by 10 C.F.R. 455.4.

8.5(2) By the end of January and July of each year, each grantee shall until the grantee's program has been concluded, submit a report to the council which shall detail and discuss:

a. Milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions, if any, planned; and

b. Financial status reports completed in accordance with the documents listed in 10 C.F.R. 455.3. Financial status and progress reports must be submitted simultaneously to both the council and the department of energy, EPC (1 copy); DOE (2 copies).

8.5(3) Within ninety days of concluding a technical assistance program or installation of funded energy conservation measures, including solar and other renewable resource measures, the grantee shall submit a final report to the council and a summary thereof to the department of energy which shall detail and discuss, as applicable.

1. A summary of all work accomplished;
2. Problems encountered;
3. Final financial reports completed in accordance with the documents listed in 10 C.F.R. 455.3;
4. For a completed technical assistance program: the technical assistance report and a recommended plan to implement energy conservation maintenance and operating procedures, and plans to acquire and install energy conservation measures, including solar and other renewable resource measures;
5. For completed energy conservation measures including solar and other renewable resource measures: a listing and description of energy conservation measures acquired and installed, a final projected simple payback period, computed in accordance with 10 C.F.R. 455.42, for each building specifying and utilizing the actual costs for each measure and all the measures taken as a whole, and a statement that the completed modifications (material, equipment and installation) conform to the report on the technical assistance program and the approved grant application.

8.5(4) Grantees shall keep all records required by these rules for a minimum of three years after completion of the technical assistance program or energy conservation measure for which the grant was awarded.

8.5(5) Grantees shall submit annual reports to the council covering each year of the three-year period following installation of an energy conservation measure or measures, or for the life of the program, whichever is shorter. Such annual reports shall identify each building and shall provide data on the actual energy use of that building for the preceding twelve-month period. Energy use shall be presented on a monthly or quarterly, as well as an annual basis, consistent with the energy billing cycle for the building. Annual reports shall be submitted within sixty days of the close of each twelve-month period.

8.5(6) Final reports in 8.5(3) may be submitted in lieu of semiannual reports in 8.5(2) if the semiannual report becomes due within ninety days of concluding the technical assistance program or funded energy conservation measure.

380—8.6(93) Evaluation and ranking of applications.

8.6(1) *Evaluation.*

a. If an application received by the council is found to be in compliance with the provisions of this chapter, and other laws and regulations, then such application will be eligible for financial assistance.

b. The federal rules require that the council forward each application for a school or hospital to the appropriate state school facilities agency or state hospital facilities agency for review and certification that the schools and hospitals applications are consistent with state programs in these areas (455.70(b)). The council proposes to have the state department of public instruction and the state department of health be the reviewing agencies for this program.

8.6(2) *State ranking of grant applications.*

a. All eligible applications for technical assistance and energy conservation measures will be ranked by building to establish priorities for recommending federal matching funds.

b. When steam is an energy source generated outside the applicant's building or complex, the applicant may request that the EPC consider, for ranking purposes, the fuels used to generate the steam prorated by the energy entering the building. Requests will be approved only if the steam provider is willing and able to provide information on fuels used, this information accompanies the request and the EPC staff can verify this information.

c. In cases of a tie in the ranking of two or more institutions, those who have not used federal funds under Institutional Conservation Program (ICP) before will get first priority. If the tie is still unbroken, priority will be given when energy conservation measures have been implemented without federal funds.

d. For technical assistance, the following factors are considered in ranking:

(1) An energy use index, according to the formula:

(EUI/10) × 4 points,

where EUI is yearly energy requirements of the building in Btu's/ft^2 · degree-day · yr. When EUI is greater than 50, the value used for EUI will be 50. When EUI is less than 10, the value used for EUI will be 10.

(2) A yearly energy cost index, according to the formula:

ECI × 4 points,

where ECI is the yearly energy cost in \$/yr · ft^2. When ECI is greater than 5, the value used for ECI will be 5. When ECI is less than 1, the value used for ECI will be 1.

(3) The primary type of fuel used for heating, according to the formula:

Oil	20 points
Gas	18 points
Electricity	18 points
LPG	18 points
Coal	16 points
Steam	16 points
Other	14 points

(4) Ten points will be awarded if the operating authority of the building has designated a staff member to evaluate and monitor energy conservation.

(5) Ten points will be awarded if the operating authority has formally adopted a plan for energy use evaluation and change.

(6) Ten points will be awarded if the operating authority has adopted or changed operational or maintenance procedures to conserve energy.

All applications will be subject to verification. Utility data or energy planning documents may be requested of applicants, for example.

e. For energy conservation measures, the following factors are considered in ranking:

(1) The average simple payback period (ASPP) of all energy conservation measures for the building, according to the formula:

(16 − ASPP) × 2 points,

where ASPP is the total estimated cost of all energy conservation measures divided by the total annual estimated energy cost savings.

For renewable and coal conversions, estimated energy cost savings will be based on the fuel replaced.

(2) The type of energy source to which conversion is proposed, according to the formulas:
(SI + 20)/4 for solar and renewable resources,
(SI + 20)/8 for coal,
where SI is the percentage of total annual energy costs that will be saved by conversion. The upper limit for SI is ninety-six percent.

(3) The annual energy savings, according to the formula:
QSI × 4 points,
where QSI is the percentage of annual energy requirements (in Btu's) estimated to be saved from all ECMs combined, divided by 10. When the percentage is 50% or greater, the value used for QSI will be 50%. The point range for this factor is then 0-20.

(4) The type of energy saved, according to the sum of the formulas:

Oil	20 × R points
Gas	15 × R points
LPG	15 × R points
Electricity	10 × R points
Other	5 × R points

where R is the ratio of the net energy savings of that type of the gross energy savings for the building.

8.6(3) *Allocation of funds.* Of the total funds allocated to the institutions for technical assistance and energy conservation measures, no type of institution (e.g. hospitals, schools) will receive more than seventy percent of the available funding regardless of the criteria established in 8.6(2)"*a*". The sole exception is when all other eligible applications have been recommended for funding and funds remain available.

When all eligible applications do not exhaust the funding for technical assistance, energy conservation measures or hardship, the excess funds will be used as needed for one of the other two areas.

8.6(4) *Severe hardship consideration.*

a. Applicants for technical assistance and energy conservation measure grant funds who are unable to provide the fifty percent nonfederal share can apply for additional financial assistance to cover more than fifty percent, but not greater than ninety percent, of the cost of a technical assistance program or an energy conservation measure. The application for severe hardship consideration shall stipulate the amount of federal funds requested and shall include the following information in addition to the requirements of 8.4(93) of these rules:

(1) The total cost of the proposed technical assistance program or energy conservation measures;

(2) The amount expended by the applicant institution for energy in the last twelve months;

(3) The institution's present total annual operating budget, and

(4) A written statement by the department of health (in the case of hospitals) and the department of public instruction (in the case of schools) that the subject application is a hardship case deserving of special consideration.

b. The council shall rank the hardship applications on the basis of the ranking criteria contained in 8.6(2) of these rules.

c. The departments of health and public instruction shall ensure that the following two conditions are met before stating that a subject application is a hardship case deserving of special consideration.

(1) The ratio of the cost of either the institution's approved technical assistance program or the proposed energy conservation measures to the institution's present total annual budget is not less than five one-hundredths of one percent, and

(2) The ratio of the amount expended by the institution for energy in the last twelve months to the institution's present total annual operating budget is not less than one percent.

8.6(5) *State recommendations.* The council is required to recommend to the department of energy the amount of grant moneys which the council feels an applicant for technical assistance or energy conservation measures should receive.

a. Energy conservation measures. In order to determine the state recommendations, the council shall rank all buildings in accordance with 8.6(93) of these rules and insert the appropriate federal share as the state's recommendation.

b. Reserved.

380—8.7(93) Grant awards. The grant awards from the U.S. department of energy for technical assistance or energy conservation programs shall be only up to fifty percent of their cost, except in the case of severe hardship, as outlined in 8.6(4). The school, hospital, unit of local government, or public care facility must provide the remaining fifty percent from either non-federal local funds or in-kind contributions, as defined in subrule 7.1(2)"*i*" of the council rules.

380—8.8(93) Technical assistance analysts. In order to qualify for a technical assistance analyst, a person must:

1. Be a certified Class A energy auditor as prescribed in chapter 6 of these rules; or
2. Be a registered engineer, as defined in chapter 114, Code of Iowa or in the case of an architect, be registered in accordance with chapter 118, Code of Iowa and be a part of an architect-engineer team; and be knowledgeable and experienced in energy conservation matters.

Rules 8.1(93) to 8.8(93) are intended to implement Iowa Code section 93.7, as specified by 10 C.F.R. 455.90.

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CHAPTER 9
RULEMAKING PROCEDURE

[Appeared as Ch 8, renumbered Ch 9, IAC 12/23/81]

380—9.1(93) Procedure for adoption of rules. The council shall conduct rulemaking in accordance with the terms of the Iowa administrative procedure Act (sections 17A.4 and 93.7(10)).

380—9.2(93) Public hearing—procedures. The council shall hold a public hearing prior to the adoption of any rule unless the provisions of section 17A.4(2) are utilized. Prior to such a hearing, an interested person may indicate a desire to make an oral presentation by submitting a written request to the director. The director or council may designate council staff to preside over oral presentations and then have their substance summarized to council. At such a hearing any interested person may indicate a desire to make an oral presentation by signing a sheet or card distributed for that purpose. The council, council staff or presiding officer shall allow persons so indicating the opportunity to make oral presentations and shall then allow any other interested person attending the hearing such opportunity, provided, however, that the council, council staff, or presiding officer may exercise discretion to limit the time for each speaker to ten minutes and the total time of the hearing to three hours. Whenever possible, a speaker should also submit his or her testimony in written form at the public hearing.

380—9.3(93) Written submissions. Any interested person may submit data, opinions, or arguments in writing on proposed rules at any time subsequent to the notice of intended action given pursuant to 9.4(93) at the public hearing on the proposed rules, and up to ten days after the hearing is held. These should be submitted to the director who shall either transmit them to the council staff for review and summarization of substance to the council or directly transmit them to council.

380—9.4(93) Notice. The council shall give notice of its intended action in accordance with the requirements contained in 9.1(93). Such notice shall include the time and place of any public hearing held pursuant to 9.2(93). In addition to such notice, the department shall maintain a mailing list of persons who request to receive notice of public hearings. Any interested person or organization may specifically request in writing to be placed on this mailing list. Such request should be directed to the Energy Policy Council, Capitol Complex, Des Moines, Iowa 50319. The council may periodically update the list by requesting those on the list to reaffirm their desire to receive proposed rules and those who do not respond to such a request may be removed from the list.

380—9.5(93) Request for statement of reasons. Any interested person may, either prior to the adoption of the rule or within thirty days after adoption, request the council to issue a concise statement of the principal reasons for and against the rule it adopted.

380—9.6(93) Petition for rulemaking.

9.6(1) *Petitioners.* Any interested person, including any agency of the state or a governmental subdivision, may petition the council for the promulgation, amendment or repeal of a rule. Such petitions shall be sent to the director or delivered to him during normal business hours. The director shall transmit the petition to the council and may make a recommendation to the council for its disposition.

9.6(2) *Contents of petition.* The petition shall:

a. State the full name and address of the petitioner;

b. Set forth clearly and concisely the text of the proposed rule change, or as precisely as possible the substance of the proposed rule;

c. State the facts and arguments that favor the proposed rule change, including data, facts and arguments either in the petition or in a statement annexed to the petition; and

d. Be subscribed by the petitioner, or by a duly authorized officer of the petitioner if it be a corporation, organization or other legal entity, or shall be subscribed for the petitioner by his attorney, in which case the attorney shall also state his address.

9.6(3) *Disposition of petition.* Within sixty days following receipt of the petition, the council shall determine whether to grant or deny the petition.

a. If the petition is granted, the director shall notify the petitioner and the council shall initiate rulemaking proceedings in accordance with this rule.

b. If the petition is denied the director shall promptly prepare and shall send the petitioner a statement which sets forth the council's reasons for denial of the petition.

c. Notice to the petitioner may 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 chapters 17A and 93, The Code.

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CHAPTER 10
DECLARATORY RULINGS

[Appeared as Ch 9, renumbered Ch 10, IAC 12/23/81]

380—10.1(93) Petitioners. Any interested person or agency whose rights, status, or other legal relations are affected by any statutory provision, rule, or other written statement of law, policy, decision or order of the council may file a petition for a declaratory ruling as to the applicability of any such statutory provision, rule or other written statement of law or policy, decision, or order to that person or agency.

380—10.2(93) Contents of petition. The petition shall contain a caption in the following form:

BEFORE THE IOWA ENERGY POLICY COUNCIL
DES MOINES, IOWA

IN THE MATTER OF THE PETITION OF _____ (state petitioner's name) FOR A DECLARATORY RULING ON _____ (state the number of the statutory section, rule, etc. for which a ruling is requested)	))))))	PETITION FOR DECLARATORY RULING DOCKET NO. _____ (filled in by hearing officer or council staff)

CHAPTER 202
CERTIFICATE OF NEED PROGRAM

CHAPTER 203
STANDARDS FOR CERTIFICATE OF NEED REVIEW

CHAPTER 204
UNIFORM REPORTING REQUIREMENTS

physician; and in the case of a mentally retarded individual when ordered in writing by a physician and authorized by a designated qualified mental retardation professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

58.43(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

58.43(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

58.43(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

58.43(4) Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:

Type I—the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: Divided doors and totally enclosed cribs.

Type II—the application of a device to the body to promote safety of the individual. Examples: Vest devices, soft-tie devices, hand socks, geriatric chairs.

Type III—the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: Wrist, ankle or leg restraints and waist straps.

58.43(5) Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to himself/herself or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedure(s) designed to modify the behavioral problems for which the resident is restrained, or as a last resort, after failure of attempted therapy. (I, II).

58.43(6) Each time a Type II or III restraint is used documentation on the nurse's progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

58.43(7) Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

a. Physicians' orders shall indicate the specific reasons for the use of restraints. (II)

b. Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)

c. A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)

d. A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. This shall be documented on a check sheet. No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

e. Reorders are issued only after the attending physician reviews the resident's condition. (II)

f. Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

g. The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

h. Locked restraints or leather restraints shall not be permitted except in life threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)

i. Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing

assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every seven days and documented on the nurse's progress record. (II)

j. A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in his or her room. (II)

k. Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

l. Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

m. The facility shall provide orientation and ongoing education programs in the proper use of restraints.

58.43(8) In the case of a mentally retarded individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of his/her parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

a. The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

b. The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

470—58.44(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

58.44(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(3) The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

470—58.45(135C) Dignity preserved. The resident shall be treated with consideration, respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

58.45(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

58.45(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

58.45(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passers-by. Peo-

This rule is intended to implement Iowa Code section 135C.14, as amended by Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Chapter 60.

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CHAPTER 59
SKILLED NURSING FACILITIES

470—59.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in section 135C.1 of the Code shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicate those standards are mandatory. The use of the words "should" and "could" indicate those standards are recommended.

59.1(1) *"Accommodation"* means the provision of lodging, including sleeping, dining, and living areas.

59.1(2) *"Administrator"* means a person licensed pursuant to chapter 147 of the Code, who administers, manages, supervises, and is in general administrative charge of a skilled nursing facility, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

59.1(3) *"Alcoholic"* means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in chapter 125.2 of the Code.

59.1(4) *"Ambulatory"* means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

59.1(5) *"Basement"* means that part of a building where the finish floor is more than thirty inches below the finish grade of the building.

59.1(6) *"Board"* means the regular provision of meals.

59.1(7) *"Chairfast"* means capable of maintaining a sitting position but lacking the capacity of bearing own weight, even with the aid of a mechanical device or another individual.

59.1(8) *"Communicable disease"* means a disease caused by the presence of viruses or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

59.1(9) *"Department"* means the state department of health.

59.1(10) *"Distinct part"* means a clearly identifiable area or section within a health care facility, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

59.1(11) *"Drug addiction"* means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in chapter 204 of the Code.

59.1(12) *"Medication"* means any drug including over-the-counter substances ordered and administered under the direction of the physician.

59.1(13) *"Nonambulatory"* means the condition of a person who immediately and without aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

59.1(14) *"Personal care"* means assistance with the activities of daily living which the recipient can provide for himself or herself only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision over medications which can be self-administered.

201.7(2) This determination of applicability, when possible, shall be based upon the content of the letter of intent. Additional information, including the completed application may also be requested by the department.

201.7(3) When the department, with the advice of the appropriate health systems agency, has determined that a proposed capital expenditure is subject to review, the applicant, if in disagreement with this determination, should appeal in writing to the Regional Health Administrator, Department of Health, Education and Welfare, Public Health Service Region VII, Federal Building, 601 East 12th Street, Kansas City, Missouri 64106. If the applicant does appeal, the proposed capital expenditure application shall not be processed further through the 1122 review procedure until the regional health administrator has made a decision on the appeal.

201.7(4) When in the course of a medicare or medicaid audit, a capital expenditure is discovered for which a provider does not have documentary evidence of compliance with the 1122 review program, the fiscal intermediary shall have the legal obligation to immediately notify the department prior to completion of the audit and prior to submitting a recommendation to the federal bureau of health insurance regarding the allowance or disallowance of reimbursement on the costs associated with the particular capital expenditure in question.

470—201.8(PL92-603) Nonsubstantive review. A health care facility desiring a nonsubstantive review shall abide by the following procedures:

201.8(1) Upon receipt of an application for a proposed capital expenditure, the department, with the advice of the appropriate health systems agency, shall have fifteen calendar days to notify the applicant if:

a. The application is complete, and

b. Nonsubstantive review will be performed.

201.8(2) Criteria that shall determine whether a particular application is eligible for nonsubstantive review:

a. A project involving the construction of new beds, including replacement beds, whether a hospital or nursing home, shall not be reviewed on a nonsubstantive basis.

b. The capital cost proposed is less than $250,000.00 or less than 2% of the average of the last three years annual budget of the health care facility.

c. The project proposes construction, remodeling, or renovation of nonclinical hospital facilities, administrative area, lobbies, parking facilities, mechanical and heating systems, electrical systems, laundries, ambulance garages, and also satisfies paragraph "*b*".

d. The project proposes replacement of major equipment items which are fully depreciated, support routine hospital services and also satisfies paragraph "*b*".

e. The project proposes relicensure of existing beds from one level of care to another with a capital expenditure and the number of beds involved is less than 10% of the facility's total bed complement or twenty beds, whichever is less.

f. The proposed project is a change in ownership.

The eligibility of a particular project for nonsubstantive review shall not mandate such review but does allow for it.

201.8(3) A decision by the department that a nonsubstantive review shall not be conducted is binding without appeal on all parties. The applicant shall be then required to go through the regular 1122 project review cycle.

201.8(4) The department, with the advice and assistance of the appropriate health systems agency, shall conduct the nonsubstantive review in a mutually agreed upon manner. It shall be the health systems agency's responsibility to conduct its review, prepare advisory comments and recommendations and submit them to the department as expeditiously as possible, who shall then make recommendation for reimbursement or nonreimbursement of the proposed project. All nonsubstantive reviews shall be completed within ninety days of the receipt of a complete application by the department.

201.8(5) If it becomes apparent during the course of the nonsubstantive review process that the facility shall in all probability be receiving a recommendation for nonreimbursement at the conclusion of the nonsubstantive review, based either upon the health systems agency advisory comments and recommendations, or upon the probable decision of the department, the facility shall be so advised and informed of its option to withdraw from the nonsubstantive review and enter the regular 1122 review process with its attendant local health systems agency review and subsequent health facilities construction review committee. The ninety-day period in which the department must notify an applicant of a review recommendation on a particular project, shall begin again upon withdrawal from the nonsubstantive review process and entry into the regular 1122 review process with a completed application.

470—201.9(PL92-603)* Elect not to review. Upon receipt of a notice to make a capital expenditure, the department may determine that no review shall be necessary. Such nonreview action permits the facility to proceed with a capital expenditure without risk of further disallowance of reimbursement. A decision not to review may be made in the following cases:

201.9(1) Any expenditure which does not exceed $250,000 and which is associated with a substantial change in the services of a facility.

201.9(2) Any expenditure by or on behalf of an institutional health facility not exceeding $600,000, or any acquisition by lease or donation to which this rule would be applicable if the acquisition were made by purchase.

201.9(3) A capital expenditure not exceeding $400,000 made for the purchase or acquisition of a single piece of equipment.

201.9(4) An expenditure to replace equipment or to repair damage when an emergency threatens immediate operation.

201.9(5) A capital expenditure which is made for the purpose of changing ownership of a health facility including leases or donations unless such expenditure is reviewable under certificate of need.

This rule implements federal law and regulations, P.L. 92-603, 42 U.S.C. §1320-a(1) et. seq., 42 C.F.R. §100.106(a)(4), and is in accordance with the legislative intent of Iowa Code section 135.82.

470—201.10(PL92-603) Changes or amendments to application while in review process. If the health care facility proposing the capital expenditure desires to make any substantive change in the application as it was initially determined complete for review, the applicant shall withdraw the application and resubmit subsequent to revisions. The department, with the advice of the appropriate health systems agency, shall decide whether or not a proposed change is substantive in nature.

201.10(1) A substantive change shall be defined as:

a. A change in the financial or utilization projections, or

b. A change in project cost estimates, or

c. A change in the method of financing or sources of funds, or

d. A change in the number of beds or capacity of services proposed, or

e. A 10% change in the number of person power required to adequately staff the project, or

f. A change in the general design of the contemplated construction.

201.10(2) The decision by the department that a proposed change is substantive in nature shall be binding upon the applicant.

470—201.11(PL92-603) Operating procedures for 1122 review committee. Pursuant to PL 92-603.1122, the 1122 review committee has adopted the following operating procedures.

201.11(1) to 201.11(10) Rescinded, effective 8/27/79.

*Emergency, pursuant to Iowa Code § 17A.5(2)"*b*"(2).

agency that did not have an opportunity to review the original application, the original project submission, together with all new information, shall be given to these agencies. All agencies and groups involved in the review of an application because of a fair hearing remand, may hold whatever public meetings necessary to gather data and submit their respective advisory comments to the department.

201.17(8) *Post hearing duties.* Not more than thirty days after the end of the hearing, the hearing officer shall notify the applicant, the department, and other interested individuals of his or her decision. The hearing officer shall also see that the decision is published in local newspapers and local news media. Failure to notify shall have the effect of finding the expenditure in conformity with the standards, criteria, or plans. The hearing officer shall also make available on request copies of the record of the hearing and copies of any evidence introduced. These copies shall be made at the expense of the person requesting them. The original record shall be available for inspection and shall include the time, date, and place of the hearing, the parties present, the action taken, and the evidence introduced.

201.17(9) *Hearing officer's decision.* Any decision of the hearing officer, to the extent it revises the findings and recommendations of the department, shall supersede the findings and recommendations of the department. To the extent that any decision of the hearing officer requires that the department and the 1122 review committee take further action, such action shall be completed by such date as the hearing officer may specify.

470—201.18(PL92-603) Administrative review. Any person dissatisfied with a determination by the secretary of HEW pursuant to PL 92-603.1122, with respect to a particular capital expenditure may, within six months following the date of such determination, request the secretary of HEW to reconsider such determination. Such request for reconsideration shall be in writing, addressed to the Regional Health Administrator, Department of HEW, Public Health Service Region VII, Federal Building, 601 East 12th Street, Kansas City, Missouri 64106 and shall set forth the grounds, based upon the record of the proceedings of any issues of law, upon which such reconsideration is requested. Reconsideration shall be based upon the record of the proceedings, which shall consist of the findings, recommendations, and supporting materials submitted to the secretary by the division of health facilities including findings and recommendations involved, the record of the hearing provided by the designated planning agency, and such comments as the secretary may request from the department.

470—201.19(PL92-603) Request for extension. The applicant shall incur an obligation within one year of approval for a capital expenditure project. Proof of incurrence of obligation shall be submitted in writing to the department. If it is determined that the applicant has not incurred an obligation within the allotted time, the approval shall be automatically be withdrawn.

201.19(1) A request for extension of an approval shall be made to the department at least thirty days prior to the expiration date of the original approval. Request for extension received after that time shall not be considered and the approval shall automatically expire.

201.19(2) Extension requests shall be considered jointly by the department and the appropriate health systems agency, in an advisory capacity. The request for extension shall contain justification for the same. An extension request shall run for six months and shall only be granted once; if an obligation has not been incurred after this time, the approval shall automatically expire.

470—201.20(PL92-603) Application changes after approval.

201.20(1) Once a project has been approved by the 1122 review committee, no changes that vary from or alter the terms of the original completed application shall be made unless requested by the applicant and approved by the department. Requests shall be made in writing.

201.20(2) An increase in the actual cost of the project over and above that originally approved shall automatically generate a rereview if the increase exceeds the originally approved amount by:

a. 15% for projects up to $999,999.00.

b. 12% for projects from $1,000,000.00.

c. 8% for projects $5,000,000.00 and over.

201.20(3) If an applicant changes its original approval, regardless of whether a capital expenditure is involved in the change, this change must be agreed to by the department, with the advice of the appropriate health systems agency.

201.20(4) Failure to notify and receive permission of the department to change the project as originally approved may result in a denial of medicare or medicaid reimbursement on the costs associated with the change from the project as originally approved.

470—201.21(PL92-63) Notification of project progress. After approval, the applicant shall be required to submit every six months data to the department which shall contain at a minimum:

201.21(1) Projected completion date of the project when services or beds will be available for public use.

201.21(2) Costs incurred to date with projected subsequent total project cost.

201.21(3) Any architectural or contractors' changes such as bid alternates, change orders, contractors' delay request, etc.

201.21(4) Any change in the project as originally approved such as number of beds, type of services, shared services agreements, square footage, architectural configuration, site location, corporate ownership and stock changes.

201.21(5) Evidence other than that of incurred obligation, that the project as proposed will be completed by the projected completion date indicated in the original project proposal.

201.21(6) If the projected completion date upon which the original approval was based is not going to be met, justification shall be required.

201.21(7) Any change in ownership of the project as originally submitted and approved.

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LIVESTOCK HEALTH ADVISORY COUNCIL[565]

CHAPTER 1
RECOMMENDATIONS

CHAPTER 1
RECOMMENDATIONS

565—1.1(267) Recommendation for fiscal year 1982-1983. Iowa Code Chapter 267 as amended by Acts of the Sixty-ninth General Assembly, 1982 Session, Senate File 2304, makes an appropriation of $194,500.00 for fiscal year 1982-1983 to be used by the Iowa State University College of Veterinary Medicine for research into livestock disease. The livestock health advisory council recommends that this appropriation for fiscal year 1982-1983 be applied in the following manner:

1. $17,000 for pseudorabies research.
2. $20,000 for bovine respiratory diseases research.
3. $28,000 for swine transmissible gastroenteritis research.
4. $25,000 for calf and lamb viral enteritis research.
5. $12,500 for turkey coryza research.
6. $20,000 for pasteurella and hemophilus subunit research.
7. $25,000 for pinkeye research.
8. $ 7,000 for necroproliferative enteritis research.
9. $30,000 for swine mycoplasmal pneumonia and swine hemophilus research.
10. $10,000 for bovine virus diarrhea research.

This recommendation is intended to implement Iowa Code section 267.5(3).

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570—4.4(19A) Pay of employees.

4.4(1) *Employees to be paid at one of the steps in the pay plan.* Each classified employee shall be paid at one of the steps in a pay grade set forth in the pay plan for the class to which the position he/she occupies is allocated, except as provided in these rules or when otherwise authorized by the commission.

4.4(2) *Total remuneration.* No classified employee shall receive any pay other than that specifically authorized for the discharge of the duties of her/his position or additional duties which may be assigned or which he/she may undertake or volunteer to perform as a state employee.

In any case in which part of the compensation for services in a classified position, exclusive of military training leave, is paid by another department, division or an outside agency such as the city, county, or federal government or from a different fund or account, any such payments shall be deducted from the compensation of the classified employee concerned to the end that the total compensation paid to any classified employee from all sources combined for any period shall not exceed the amount payable at a rate prescribed for the class to which the classified employee is certified and appointed.

4.4(3) Reserved.

570—4.5(19A) Administration of the pay plan.

4.5(1) *Entrance rate of pay.* The entrance salary for any classified position shall be at the minimum salary for the class of position to which appointed, except:

a. Appointment based on scarcity of qualified applicants. When an appointing authority submits a written request setting forth the economic or employment conditions which make employment of eligibles at the minimum rate for a class improbable or impossible, the director may authorize appointment of qualified eligibles at a higher entrance rate within the pay grade for the class in a specific geographical area or for the class as a whole not to exceed the third step of the pay grade. The higher entrance rate shall remain in effect until the director orders such rate rescinded. All incumbent classified employees in the same class and under the same conditions necessitating the higher entrance rate, who are earning less than the higher authorized entrance rate, shall be increased to the approved entrance rate and a new review date shall be established. Thereafter all new classified employees or promoted employees subject to the same conditions shall be treated in a like manner. Requests for entrance appointment above the third step of the pay grade for a class shall be submitted to and approved by the commission.

b. Pay based on overqualification or exceptional qualifications.* An appointing authority may, with the prior approval of the director, offer appointment above the entrance rate of a pay grade for a class to eligibles who have been determined to possess significant, pertinent qualifications which exceed the minimum qualifications for a class or who possess outstanding and unusually applicable education or experience for the position, depending upon the particular demonstrated needs of the appointing authority. An appointing authority may, for those positions in classes covered by the professional/managerial pay plan, grant appointments at a rate of pay not to exceed fifteen percent above the established minimum rate for the class to eligibles meeting the same criteria set forth in this paragraph. An appointing authority may, for those employees promoted to positions in classes covered by the professional/managerial pay plan, grant advanced promotional appointment pay not to exceed fifteen percent above the amount granted on promotion based upon the same criteria set forth in this paragraph. For positions in classes covered by the professional/managerial pay plan, offers that exceed fifteen percent shall first be requested in writing and approved by the director. All other employees in the same job class possessing equivalent qualifications under the same appointing authority and in the same clearly defined organizational unit may, at the discretion of the appointing authority, be adjusted to the same rate of pay. Requests to adjust professional/managerial employees beyond fifteen percent above their current rate of pay as well as all requests to adjust other employees shall first be approved by the director. Employees who are adjusted shall have a new merit increase eligibility date established.

*Emergency after notice pursuant to Iowa Code §17A.5(2)"*b*"(2).

c. Appointment by reinstatement. A permanent classified employee who has been reinstated to his or her former class may, at the discretion of the appointing authority, be paid at any step within the pay grade for the class to which appointed which does not exceed the step in the pay grade for the class to which allocated upon separation from the classified service, except if the employee's pay rate was "red-circled" the maximum step in the pay grade shall be controlling. If a permanent classified employee is reinstated to a lower class, the merit rule for fixing pay upon demotion shall apply. Salary increases shall be in accordance with the rule provisions as to probationary and permanent classified employees. A new review date shall be established upon reinstatement.

(1) Classified employees who have been terminated due to long-term disability shall have their eligibility period for reinstatement postponed until long-term disability benefits cease.

(2) Classified employees who have been reinstated no later than one calendar month after having made application for long-term disability benefits or following the termination of long-term disability benefits, shall be given prior continuous service credit for vacation entitlement, pay increase eligibility and reduction in force purposes. Classified employees within a collective bargaining unit shall be governed by their particular contract.

d. Military and educational leave. Any probationary or permanent classified employee who returns from authorized military leave or educational leave shall be paid at the step in the pay grade for his/her class to reflect changes in the pay grade for the class, reallocation or reclassification of a position within the class, cost of living increase or other adjustment for which she/he would have been eligible if he/she had not gone on such authorized leave. The review date shall be adjusted upon return from military or educational leave crediting the period of service on step before the leave, except when educational leave was required by the appointing authority. In such cases, time spent on required educational leave shall be fully credited toward the review date.

e. Reappointment from preferred employment lists. The appointing authority shall re-employ a former classified employee from the preferred employment list in accordance with these rules at the same step in the pay grade for the class from which he/she was laid off.

f. Appointment below the minimum step of the pay grade. The director may authorize appointment below the minimum step of the pay grade for a class as follows:

(1) *Career development appointment.* When a career development appointment is made in accordance with these rules, the rate of pay shall be set one step below the minimum step for the class for each six months experience the appointee lacks in meeting the minimum experience requirements for the class to which the career development appointment is made to a maximum of one year. If the appointee is a permanent classified employee, and his/her rate of pay equals or exceeds the rate provided herein, she/he shall be permitted to accrue pay rights in the class from which he/she is appointed until such time as her/his eligibility for pay increase exceeds the rate to which he/she is entitled in her/his former class.

(2) *Co-operative training and trainee appointments.* When co-operative training and trainee appointments are made in accordance with these rules, the rate of pay shall be set one step below the minimum step for the class for each semester of training the appointee lacks in meeting the minimum training requirements for the class to which the co-operative training and the trainee appointment is made.

(3) *Budget limitation.* If the director is advised by the state comptroller that an agency is unable to make appointments at the minimum step of the pay grade for a class because of budget limitations, he/she may authorize appointment at such step below the minimum as budgetary conditions require.

570—4.15(19A) Benefits. Except for lead worker pay, extraordinary duty pay and approved "red-circled" rates, no classified employee may be granted a pay increase above the maximum step for the pay grade to which he/she is allocated.

These rules are intended to implement section 19A.9 of the Code, and Acts of the Sixty-eighth General Assembly, Chapter 2.

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Filed objection to 4.5(2) overcome, see attorney general opinion 1/21/76, 1976 OAG 410

CHAPTER 5
RECRUITMENT AND EXAMINATION

570—5.1(19A) Scheduling of open competitive and promotional examinations. The director shall from time to time conduct such open competitive examinations as necessary for the purpose of establishing and maintaining registers of eligibles and promotional registers. The examinations shall be of such character as to determine the relative qualifications, fitness and ability of the persons tested to perform the duties of the class for which a register is to be established.

570—5.2(19A) Announcement of examinations.

5.2(1) *Open competitive examinations.* Examinations for entrance to the classified service shall be conducted on an open competitive basis. The director shall give public notice of all entrance examinations at least fifteen calendar days in advance of the closing date for receiving applications and shall make every reasonable effort to attract qualified persons to compete in the examinations.

PUBLIC INSTRUCTION DEPARTMENT[670]

See also Vocational Education Advisory Council

CHAPTER 5
AREA VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES

DIVISION I
APPROVAL STANDARDS

DIVISION II
AREA SCHOOL ENERGY APPROPRIATION PROGRAM

DIVISION III
INSTRUCTION COURSE FOR DRINKING DRIVERS

TITLE IV
DRIVER AND SAFETY EDUCATION
CHAPTER 6
DRIVER EDUCATION

TITLE V
DUAL ENROLLMENT
CHAPTER 7
SHARED TIME

TITLE VI
HIGH SCHOOL EQUIVALENCY
CHAPTER 8
HIGH SCHOOL EQUIVALENCY DIPLOMA

TITLE VII
INTERSCHOLASTIC COMPETITION
CHAPTER 9
EXTRACURRICULAR INTERSCHOLASTIC COMPETITION

670—5.21(257) Application. Each area school application submitted to the department of public instruction shall include the following information to be supplied on forms distributed by the department.

5.21(1) *Certification.* A statement certifying that the area school has an energy conservation plan.

5.21(2) *Expansion of facilities.* Information providing an identification of new building utilization.

5.21(3) *Energy costs.* Information on energy costs identified for each fiscal quarter for the three-year period beginning July 1, 1980, and ending June 30, 1983.

This rule is intended to implement Acts of the Sixty-ninth General Assembly, Chapter 8, Section 8, subsection 10.

670—5.22(257) Criteria for allocating funds. The total amount from the area school energy appropriation program to be allocated to each area school shall be based on the following criteria.

5.22(1) *Increased energy costs.* The total increased energy costs for an area school in fiscal year 1982 (beginning July 1, 1981, and ending June 30, 1982) over the energy costs for fiscal year 1981 (beginning July 1, 1980, and ending June 30, 1981) for the first year of the 1981-1983 biennium. The total increased energy costs for an area school in fiscal year 1983 (beginning July 1, 1982, and ending June 30, 1983) over the energy costs for fiscal year 1982 (beginning July 1, 1981, and ending June 30, 1982) for the second year of the 1981-1983 biennium.

5.22(2) *Expansion of facilities.* The amount allocated to an area school that expands facilities during the 1981-1983 biennium shall include a determination for the expansion of facilities based on the following computation.

a. The average cost of energy per square foot for an area school for the fiscal year immediately preceding the fiscal year during which the facilities were expanded.

b. Multiplying the average cost of energy per square foot computed in 5.22(2)*"a"* by the total square feet of expanded facilities during the fiscal year prorated for the number of months of utilization of expanded facilities.

c. Subtracting the product obtained in 5.22(2)*"b"* from the total increased energy costs during the fiscal year when utilization of expanded facilities occurred.

5.22(3) The allocation for each fiscal year of the biennium for an area school shall be the increased energy costs for the fiscal year reduced by the determination calculated in 5.22(2), for area schools that expanded facilities during the fiscal year.

This rule is intended to implement Acts of the Sixty-ninth General Assembly, Chapter 8, Section 8, subsection 10.

670—5.23(257) Method of disbursing allocation. The area school energy appropriation program shall be disbursed to participating area schools by the following method.

5.23(1) *Quarterly disbursements.* The department of public instruction shall disburse funds to area schools in quarterly payments of not more than $150,000 for each of the first three quarters of each fiscal year of the 1981-1983 biennium based on the allocation determined for each area school for the quarter. If total quarterly allocations for all area schools exceed $150,000, the amount to be disbursed to area schools shall be prorated.

5.23(2) *Annual adjustment.* The fourth quarter disbursement for each area school shall be adjusted according to the following procedure.

a. If the energy appropriation is insufficient to pay the total amount of area school allocations, the amount of such allocations that do not exceed an amount of increased energy costs for an area school of more than twenty percent above the average percent of increased energy costs for all area schools over the prior fiscal year shall be paid first and prorated equally if necessary.

b. If it is determined that sufficient funds are available to pay in full the portion of the energy allocations identified in 5.23(2)*"a"*, the funds remaining in the energy appropriation shall be used to pay any area school allocation that exceeds an amount of increased energy costs of more than twenty percent above the average percent of increased energy costs for all

area schools and prorated equally if necessary.

c. Any funds remaining in the energy appropriation after full payment of the allocation claims in 5.23(2)*"a"* and *"b"* shall be used to pay the amount of increased energy costs of area schools that were reduced in 5.22(2) for area schools that expanded facilities and prorated equally if funds are insufficient to pay the full cost.

This rule is intended to implement Acts of the Sixty-ninth General Assembly, Chapter 8, Section 8, subsection 10.

670—5.24(257) Due process. An area school contesting the allocation of funds from the area school energy appropriation program by the department of public instruction based on these rules shall be required to state in writing the basis of the objection and also a request for an oral hearing to the superintendent of public instruction. The superintendent of public instruction shall appoint a three-member hearing panel consisting of administrative staff of the department and schedule a meeting within twenty days of receipt of the request giving written notice at least five days prior to the hearing, unless a shorter time is mutually agreeable. The hearing panel shall consider the evidence presented, including statements by the area school, and make written findings of its decision to the superintendent of public instruction within five days of the hearing, mailing a copy forthwith to the area school. The hearing panel decision shall be based on the above stated criteria.

This rule is intended to implement Acts of the Sixty-ninth General Assembly, Chapter 8, Section 8, subsection 10.

Rules 5.20(257) to 5.24(257) shall be rescinded on October 1, 1983.

5.25 to **5.29** Reserved.

DIVISION III
INSTRUCTION COURSE FOR DRINKING DRIVERS

670—5.30(321) Course. The instruction course for drinking drivers shall be developed and approved by the state board of public instruction for use by area schools. Each course shall include:

1. Factual information about the physical effects of alcohol;
2. Assistance to each student with self assessment and an increased awareness of drinking and drinking problems;
3. An attempt to motivate each student to select alternatives to drinking and driving; and
4. Assistance to students in establishing contact with service agencies within their communities.

670—5.31(321) Fee established. Each person enrolled in the instruction course for drinking drivers shall pay to the area school a fee of thirty dollars to defray the expenses of the course unless the person has been determined to be indigent.

Rules 5.30 and 5.31 are intended to implement Iowa Code section 321.283.

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TITLE IV
DRIVER AND SAFETY EDUCATION
CHAPTER 6
DRIVER EDUCATION

670—6.1(257) Certification and approval.

6.1(1) The instructor in driver education must have a certificate valid for teaching in secondary schools in the state of Iowa.

6.1(2) To be approved the instructor must have ten semester hours in the field of safety education including two semester hours in actual behind-the-wheel driving.

6.1(3) The instructor must have a valid Iowa operator's or chauffeur's license.

6.1(4) The instructor must have a satisfactory driving record verified by the state department of public safety.

*Rules 5.20 to 5.24 shall be rescinded on 10/1/83.

REVENUE DEPARTMENT [730]

STATE BOARD OF TAX REVIEW

encouraged to contact the field office located in his or her particular area. However, field offices do not have facilities for making available all matters available for public inspection under 6.2(17A). The field offices and auditors do have copies of all rules and will make such available to the public. Members of the public needing forms or needing assistance in filling out forms are encouraged to contact the field offices.

This rule is intended to implement sections 421.14 and 422.1, The Code.

730—6.2(17A) Public inspection. Effective July 1, 1975, section 17A.3 "*c*" and "*d*" of the Code provides that the department shall index and make available for public inspection certain information. Pursuant to this requirement the department shall:

1. Make available for public inspection all rules;
2. Make available for public inspection and index by subject all written statements of law or policy, or interpretations formulated, adopted, or used by the department in the discharge of its functions;
3. Make available for public inspection and index by name and subject all final orders, decisions and opinions.

Section 17A.3 "*c*" and "*d*" also excepts certain matters from the public inspection requirement:

Except as provided by constitution or statute, or in the use of discovery or in criminal cases, the department shall not be required to make available for public inspection those portions of its staff manuals, instructions or other statements issued by the department which set forth criteria or guidelines to be used by its 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 the disclosure of such statements would: (1) Enable law violators to avoid detection; or (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 state.

Identifying details which would clearly warrant an invasion of personal privacy or trade secrets will be deleted from any final order, decision or opinion which is made available for public inspection upon a proper showing by the person requesting such deletion as provided in 7.16(5).

Furthermore, the department shall not make available for public inspection or disclose information deemed confidential under sections 422.20 and 422.72.

Unless otherwise provided by statute, by rule or upon a showing of good cause by the person filing a document, all information contained in any petition or pleading shall be made available for public inspection.

All information accorded public inspection treatment shall be made available for inspection in the office of the Iowa Department of Revenue, Hoover* State Office Building, Des Moines, Iowa 50319 during established office hours.

These rules are intended to implement chapter 17A of the Code.

730—6.3(17A) Examination of records by other state officials. Upon the express written approval of the director or deputy director of revenue, officers or employees of the state of Iowa may examine state tax returns and information belonging to the department to the extent required as part of their official duties and responsibilities. Written approval will be granted in those situations where the officers or employees of the state of Iowa have (1) statutory authority to obtain information from the department of revenue and (2) the information obtained is used for tax administration purposes. Where information is obtained from the department of revenue on a regular basis, the director of revenue may enter into a formal agreement with the state agency or state official who is requesting the information. The agreement will cover the conditions and procedures under which specific information will be released. The following persons do not need written approval from the director or deputy director of revenue to examine state information and returns:

*Emergency, pursuant to §17A.5(2)"*b*" of the Code.

1. Assistant attorneys general assigned to the department of revenue.
2. Local officials acting as representatives of the state in connection with the collection of taxes or in connection with legal proceedings relating to the enforcement of tax laws.
3. The child support recovery unit of the department of social services to secure a taxpayer's name and address per the terms of an interagency agreement. (Also see Iowa Code section 252B.9).
4. The Iowa job service department per the terms of an interagency agreement.
5. The legislative fiscal bureau regarding sample individual income tax information to be used for statistical purposes. (Also see Iowa Code section 422.72(1).

Tax information and returns will not be released to officers and employees of the state who do not meet the requirements set forth above. [See Letter Opinions, November 25, 1981, Richards to Bair, Director of Revenue and March 4, 1982, Richards to Johnson, Auditor and Bair, Director of Revenue.]

The director may disclose state tax information, including return information, to tax officials of another state or the United States government for tax administration purposes provided that a reciprocal agreement exists which has laws that are as strict as the laws of Iowa protecting the confidentiality of returns and information.

This rule is intended to implement Iowa Code sections 252B.9, 324.63, 421.18, 421.19, 422.20, and 422.72.

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CHAPTER 7
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE

730—7.1(17A) Definitions. As used in the rules contained herein the following definitions apply, unless the context otherwise requires:

1. "*Department*" means the Iowa department of revenue.
2. "*Director*" means the director of the department or his or her authorized representative.
3. "*Act*" means the Iowa administrative procedure Act.
4. "*Hearing officer*" means the person assigned to preside over a proceeding whether that be the director or an administrative hearing officer appointed according to chapter 17A of the Code.

730—11.7(422,423) Collections. If the director determines it expedient or advisable, he may enforce the collection of the tax liability which he has determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of sales and use tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any or its officers to pursue any remedy to the exclusion of any other remedy.

This rule is intended to implement sections 422.26, 422.56 and 423.17, The Code.

730—11.8(422,423) No property exempt from distress and sale. By reference, section 422.56 of the Code makes section 422.26 a part of the sales and use tax law and provides that said section shall apply in respect to a sales and use tax liability determined to be due by the department. The department shall proceed to collect the tax liability after the same has become delinquent; but no property of the taxpayer shall be exempt from the payment of said tax.

This rule is intended to implement sections 422.26, 422.56 and 423.17, The Code.

730—11.9(422,423) Information confidential. When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. Examples of those who might seek information on a taxpayer are persons from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property.

Upon request, the department may disclose to any person whether or not a taxpayer has a sales tax permit because the law requires the taxpayer's permit to be conspicuously posted at all times in his place of business, thus becoming public information.

All other information obtained by employees of the department in the performance of their official duties is confidential and cannot be disclosed. See rule 6.3(17A).

This rule is intended to implement Iowa Code sections 422.56, 422.72 and 423.23.

730—11.10(422) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to such tax to file with the department a bond in such amount as the director may fix, or in lieu of such bond, securities approved by the director in such amount as the director may prescribe. Pursuant to the statutory authorization in section 422.52(3), the director has determined that the following procedures will be instituted with regard to bonds.

11.10(1) *When required.*

a. Classes of business. When the director determines, based on departmental records, other state or federal agency statistics or current economic conditions, that certain segments of the business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every retailer operating a business within this class unless it is shown to the director's satisfaction that a particular retailer within a designated class is solvent and that the retailer previously timely remitted the tax. If the director selects certain classes of business for posting a bond or security, rulemaking will be initiated to reflect a listing of the classes in the rules.

b. New applications for sales tax permits. Notwithstanding the provisions of paragraph *"a"* above, an applicant for a new sales tax permit will be required to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial

status that the applicant would be unable to timely remit the tax or (2) the new applicant held a permit for a prior business and the remittance record of the tax under the prior permit falls within one of the conditions in paragraph "*c*" below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior permit, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in "*c*" or such person had a previous sales tax permit which has been revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous permit holder. For example, X, a corporation, had a previous sales tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a sales tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. Existing permit holders. Existing permit holders shall be required to post a bond or security when they have had two or more delinquencies in remitting the sales tax or filing timely returns during the last twenty-four months if filing returns on a quarterly basis or have had four or more delinquencies during the last twenty-four months if filing returns on a monthly basis. However, if the director has determined that reasonable cause existed for the late filing of any return or payment of any tax, the permit holder shall be granted one additional late filing within the twenty-four-month period.

d. Waiver of bond. If a permit holder has been required to post a bond or security or if an applicant for a permit has been required to post a bond or security, upon the filing of the bond or security if the permit holder maintains a good filing record for a period of two years, the permit holder may request that the department waive the continued bond or security requirement.

11.10(2) *Type of security or bond.* When it is determined that a permit holder or applicant for a sales tax permit is required to post collateral to secure the collection of the sales tax, the following types of collateral will be considered as sufficient: Cash, surety bonds, securities or certificates of deposit. When the permit holder is a corporation, an officer of the corporation may assume personal liability as security for the payment of the sales tax. As such officer will be evaluated as provided in (1) above as if the officer applied for a sales tax permit as an individual.

11.10(3) *Amount of bond or security.* When it is determined that a permit holder or applicant for a sales tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the permit holder or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months sales tax liability will be required. If the applicant or permit holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

These rules are intended to implement Iowa Code chapters 422 and 423.

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CHAPTER 12
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

730—12.1(422) Returns and payment of tax. Every retailer collecting fifty dollars in tax in any one month shall make a deposit with the department. A retailer collecting between fifty and five hundred dollars a month shall deposit the actual amount of tax collected during the month or an amount equal to not less than thirty percent of the amount of tax collected and paid during the preceding quarter. A retailer collecting five hundred dollars or more a month shall deposit the actual amount of tax collected. This deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months in the quarter.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter.

Effective January 1, 1980, if it is expected that the total annual tax liability of a retailer will not exceed one hundred twenty dollars for a calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The returns and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

Following are nonexclusive examples the department could reasonably expect to be within the guidelines for annual reporting:

1. A person selling tangible personal property or taxable services where a major portion of the business is the selling of tangible personal property or taxable services exempt from the imposition of tax; such as a wholesaler whose sales are primarily for resale, or a contractor whose business is primarily new construction.
2. A person whose business is primarily seasonal, or a person engaged in part-time selling of tangible personal property.
3. A person whose sales are of a nontaxable service and who may, on occasion, sell tangible personal property incidental to the service.

When the due date falls on Saturday, Sunday, or a legal holiday, the return will be due the first business day following such Saturday, Sunday, or legal holiday. If a return is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to the Iowa State Excise Tax Division, Department of Revenue, Hoover* State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 421.14, 422.51 and 422.52.

730—12.2(422,423) Remittances. The correct amount of tax collected and due shall accompany the forms prescribed by the department. The name, address and permit number of the sender and amount of tax for the quarterly remittance or monthly deposit shall be stated. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer; and, when feasible, he shall use them when completing and mailing his return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

This rule is intended to implement sections 422.51, 422.52, 423.6, 423.13 and 423.14, The Code.

*Emergency, pursuant to §17A.5(2)"*b*" of the Code.

730—12.3(422) Permits. Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 29.1(423) relating to use tax may remit sales taxes collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly, semiannual or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons who have sales activity from gambling.

This rule is intended to implement section 422.53, The Code.

730—12.4(422) Nonpermit holders. Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like, shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

h. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return or monthly deposit within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he or she exercised ordinary business care and prudence in providing for payment of his or her liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if he or she paid on the due date.

A request for waiver of penalty on an assessment will be treated as timely filed with the department, if filed no later than thirty days following the date of the notice of assessment. See rule 11.6(422,423) regarding notices of adjustment and assessment.

This rule is intended to implement sections 422.58 and 423.18, The Code.

730—12.12(422) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than thirty days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, ninety percent of the estimated tax due.

This rule is intended to implement section 422.51, The Code.

730—12.13(422) Determination of filing status. Iowa Code sections 422.51(4) and 422.52, provide, based on the amount of tax collected, how often retailers file deposits or returns with the department (see rule 12.1(422)).

The department will determine if the retailer's current filing status is correct by reviewing the most recent four quarters of the retailer's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Statutory Requirement	Test Criteria
Semimonthly	$4,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds $24,000.
Monthly	$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds $150.
Annual filers	$120 or less in tax in prior year.	Retailer remits $120 or less in tax, for last 4 quarters and requests annual filing.
Quarterly	All other filers.	All other filers.

When it is determined that a retailer's filing status is to be changed, the retailer will be notified and will be given thirty days to provide the department with a written request to prevent the change.

Retailers may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

1. Incorrect historical data is used in the conversion. A business may meet the criteria based on information available to the computer, but upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.
2. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distorition must be documented and approved by the excise tax division.

Exceptions will not be granted in instances where the retailer's request is based on a decline

in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Retailers will be notified in writing of approval or denial to their request for reduced filing periods.

Retailers may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the retailer's request.

This rule is intended to implement Iowa Code sections 421.14, 422.51 and 422.52.

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CHAPTER 13
PERMITS

730—13.1(422) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales the word "permit" shall mean "a retail sales tax permit".

A person shall not engage in any Iowa business subject to tax until he has procured a permit except as provided in 13.5(422). The fee for each permit shall be one dollar and shall accompany the application. If a person makes retail sales from more than one location, each location shall be required to hold a permit.

This rule is intended to implement section 422.53, The Code.

730—13.2(422) Application for permit. An application for a permanent permit shall be made upon a form provided by the department, and the applicant shall furnish all information requested on such form.

An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole ownership by an individual; or, the trade name and the name of all partners, in the case of a partnership.

The application shall be signed by the owner, in the case of an individual business; by a partner, in the case of a partnership, although all partners' names shall appear on the application; and by the president, vice president, treasurer or other principal officer of a corporation or association, unless written authorization is given by such officers for another person to sign the application.

The application shall state the date when the applicant will begin selling tangible personal property or taxable services at retail in Iowa from the location for which the application is made.

The one dollar permit fee shall not be refunded.

This rule is intended to implement section 422.53, The Code.

730—13.3(422) Permit not transferable—sale of business. Permits shall not be transferable. A permit holder selling his business shall cancel his permit, and the purchaser of the business shall apply for a new permit in his own name.

This rule is intended to implement section 422.53, The Code.

730—13.4(422) Permit—consolidated return optional. A permit holder procuring more than one permit may file a separate return for each permit; or, if arrangements have been made with the department, he may file one consolidated return reporting sales made at all locations for which he holds a permit.

When a taxpayer makes a consolidated return, forms furnished by the department shall be required to be filed.

All working papers used in the preparation of the information required must be available for examination by the department.

This rule is intended to implement sections 422.51 and 422.53, The Code.

730—13.5(422) Retailers operating a temporary business. A person not regularly engaged in selling at retail and not having a permanent place of business but is temporarily selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like shall not be required to hold a permit. These retailers shall request an identification card from the department. The card shall be in a form prescribed by the director and shall be completed and displayed by the retailer to show authorization to collect tax. The issuance of the card by the department shall be dependent upon the frequency of sales and other conditions as each individual case may warrant.

This rule is intended to implement section 422.53(6), The Code.

730—13.6(422) Reinstatement of canceled permit. A person who previously held and canceled a permit and wishes to re-engage in business in the same county shall apply to the department for reinstatement of the permit. Upon receipt of the one dollar fee and a proper clearance for previous tax returns, a new permit shall be issued.

This rule is intended to implement section 422.53(6), The Code.

730—13.7(422) Reinstatement of revoked permit. A permit holder making application to the department for reinstatement of a revoked permit shall be charged the one dollar fee.

A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions do include payment of any tax liability which may be due the department.

Pursuant to the director's statutory authority in section 422.53(5), The Code, to restore licenses after a revocation, the director has determined that upon the revocation of a sales tax permit the initial time, the permit holder will be required to pay all delinquent sales tax liabilities, to file returns, and to post a bond and to refrain from taxable occurrences under section 422.43 as required by the director prior to the reinstatement or issuance of a new sales tax permit.

As set forth above, the director may impose a waiting period during which the permit holder must refrain from taxable occurrences pursuant to the penalties of section 422.58(2), The Code, not to exceed ninety days to restore a permit or issue a new permit after a revocation. The department may require a sworn affidavit, subject to the penalties of perjury, stating that the permit holder has fulfilled all requirements of said order of revocation, and stating the dates on which permit holder refrained from taxable occurrences.

730—30.3(423) Consumer's use tax return. A person purchasing tangible personal property or taxable service from an out-of-state source for use in Iowa subject to the use tax law shall be liable for the payment of use tax. Such person shall be required to file a consumer's use tax return with the department, reporting and remitting use tax on all property or taxable service purchased for use in Iowa during the quarterly period covered by the return, unless the seller from whom the purchase is made is registered with the department and has collected use tax on the purchase.

This rule is intended to implement section 423.14, The Code.

730—30.4(423)* Retailer's use tax return. Every retailer collecting or owing more than fifteen hundred dollars in tax in any one month shall make a monthly deposit with the department. The deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months of the quarter. The monthly deposit requirement is effective April 1, 1982.

A retailer's use tax return form shall be furnished by the department to each holder of a certificate of registration at the close of each quarterly period for use in reporting and remitting use tax due for the preceding quarterly period. The quarterly periods for the year end respectively on March 31, June 30, September 30 and December 31. One month shall be allowed immediately following the quarterly period in which to file returns and remit tax without becoming delinquent, unless the department shall otherwise provide.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter.

When the due date falls on Saturday, Sunday, or a legal holiday, the monthly deposit or return will be due the first business day following such Saturday, Sunday, or legal holiday. If a deposit or return is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to the Excise Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

30.4(1) If the certificate holder uses or consumes tangible personal property in the state of Iowa subject to the use tax law, the cost of such purchases made during a given monthly or quarterly period shall also be included on the retailer's use tax return.

30.4(2) If the certificate holder delivers property or products that results from more than one out-of-state location for use in Iowa and from which separate billings are made, a supplement to the return shall also be filed showing the amount of taxable sales made for each respective location.

30.4(3) The holder of a certificate of registration shall file a deposit or return for each monthly or quarterly period whether or not tax may be due. If no tax is due during a given monthly or quarterly period, the deposit or return shall be so noted, completed and filed.

30.4(4) Determination of filing status. Iowa Code section 423.13, provides, based on the amount of tax collected, how often certificate holders file deposits or returns with the department.

The department will determine if the certificate holder's current filing status is correct by reviewing the most recent four quarters of the certificate holder's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Statutory Requirement	Test Criteria
Monthly	$1,500 in tax per month.	Tax in 3 of most recent 4 quarters exceeds $4,500.
Quarterly	All other filers.	All other filers.

*Emergency, pursuant to §17A.5(2)"*b*" of the Code.

When it is determined that a certificate holder's filing status is to be changed, the certificate holder will be notified and will be given thirty days to provide the department with a written request to prevent the change.

Certificate holders may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

1. Incorrect historical data is used in the conversion. A business may meet the criteria based on information available to the computer, but upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

2. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the excise tax division.

Exceptions will not be granted in instances where the certificate holder's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Certificate holders will be notified in writing of approval or denial to their request for reducing filing periods.

Certificate holders may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the certificate holder's request.

This rule is intended to implement Iowa Code sections 421.14, 423.13 as amended by Acts of the Sixty-ninth General Assembly, Senate File 2080, and 423.14.

730—30.5(423) Collection requirements of registered retailers. A retailer registered with the department shall collect from his customers and remit to the department all use tax due on all tangible personal property or enumerated services rendered, furnished or performed in Iowa or the products or results of enumerated taxable services rendered, furnished, or performed, sold for use in Iowa, unless expressly authorized by the department to do otherwise.

This rule is intended to implement sections 423.9 and 423.10, The Code.

730—30.6(423) Bracket system to be used by registered vendors. A registered vendor who has occasion to sell tangible personal property or enumerated services rendered, furnished or performed in Iowa or products or results of enumerated taxable services rendered, furnished or performed may use the bracket system specified in 14.2(422), which was adopted under the provisions of the Iowa retail sales tax law.

The registered seller shall be required to remit tax to the department at the current rate applied to the purchase price of all taxable property or enumerated services rendered, furnished or performed in Iowa or the products or results or all enumerated taxable services sold

This rule is intended to implement sections 422.68(1), 423.2 and 423.23, The Code.

730—30.7(423) Sales tax or use tax paid to another state. When a person has already paid to any other state of the United States a state sales, use, or occupational tax on specifically identified tangible personal property or taxable services on its sale or use, prior to bringing the property into Iowa, and the tax is equal to or greater than the current rate of tax imposed by the Iowa use tax law, no additional use tax shall be due the state of Iowa by such person.

If the amount of tax already paid by such person to any other state of the United States on specifically identified tangible personal property or taxable services prior to bringing the property into Iowa is less than the current rate of tax imposed by Iowa law, use tax shall be due the state of Iowa on the difference in tax paid to the foreign state and the tax due under the Iowa law.

When a person claims exemption from payment of use tax on the grounds that he or she has already paid tax to any other state of the United States with respect to the sale or use of the property or service in question prior to bringing it into Iowa, the burden of proof shall be upon such person to show the department, county treasurer, or the motor vehicle division of the Iowa department of transportation, by document, that such tax has been paid.

Credits shall not be allowed for sales, use, or occupational tax already paid in any state of the United States against the Iowa use tax relating to the acquisition cost of property being brought into this state when such tax already paid was paid on the gross receipts of lease/rental payments of tangible personal property used in another state.

This rule is intended to implement section 423.25 of the Code.

730—30.8(423) Registered retailers selling tangible personal property on a conditional sale contract basis. A retailer shall report and remit to the department the full amount of tax computed on the full sale price on the return for the quarterly period during which the sale was made.

This rule is intended to implement sections 423.1 and 423.2, The Code.

730—30.9(423) Registered vendors repossessing goods sold on a conditional sale contract basis. A registered retailer repossessing tangible personal property which has been sold on a conditional sale contract basis and remitting use tax to the department on the full purchase price may take a deduction on his retailer's use tax return for the quarterly period in which the goods were repossessed in an amount equal to the credit allowed to the purchaser for the goods returned, if the retailer has returned use tax to the purchase on the unpaid balance.

This rule is intended to implement sections 423.1 and 423.2, The Code.

730—30.10(423)* Penalties for late filing of a monthly tax deposit or use tax returns. Use tax monthly deposits shall be filed on or before the twentieth of the month following the month in which the tax was collected. Use tax quarterly returns shall be required to be filed on or before the last day of the month following the close of each quarterly period.

30.10(1) Failure to file a monthly deposit or use tax return or a corrected return or to pay use tax due on or before the due date shall result in a delinquent deposit or return and be subject to penalty and interest. See rule 12.10(422,423) for computation of penalty and interest.

30.10(2) Reserved.

This rule is intended to implement section 423.18, The Code, as amended by Acts of the Sixty-ninth General Assembly, Senate File 2080.

*Emergency, pursuant to §17A.5(2)"*b*"(2), The Code.

730—30.11(423) Claim for refund of use tax. A claim for refund of use tax shall be made upon forms provided by the department. Each claim shall be filed with the department, properly executed and clearly stating the facts and reasons upon which the claim is based.

Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the person who collects the tax as an agent for purposes of receiving a refund of tax. Use tax paid to the county treasurer or motor vehicle division, Iowa department of public safety, on motor vehicles shall be refunded directly to the person paying the tax upon presentation of a properly documented claim.

When a person is in a position where he or she feels the tax, penalty or interest paid or to be paid will be found not to be due at some later date, then to prevent the statute of limitations from running, a claim for refund should be filed with the department within the statutory period provided in section 422.73(1), The Code. The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax involved and a possible refund. Nonexclusive examples of such action would be court decisions, departmental rulings, and commerce commission decisions. See rule 12.9(422) for specific examples.

This rule is intended to implement sections 422.73(1) and 423.23, The Code.

730—30.12(423) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than thirty days. The request for the extension must be received on or before the original due date of the return, and it must be signed by the retailer or his duly authorized agent.

This rule is intended to implement section 423.13, The Code.

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CHAPTER 31
RECEIPTS SUBJECT TO USE TAX

730—31.1(423) Transactions consummated outside this state. The Iowa use tax law is complementary to the Iowa sales tax law. The general rule is that when a transaction would be subject to Iowa sales tax if consummated in Iowa, such transaction, although consummated outside the state of Iowa but involving tangible personal property sold for use in Iowa and so used in Iowa, is subject to Iowa use tax. Also, when a transaction involving taxable services is subject to Iowa sales tax if rendered, furnished or performed in Iowa, such transaction, although consummated outside the state of Iowa but the product or result of such service is used in Iowa, is subject to Iowa use tax.

730—31.2(423) Goods coming into this state. When tangible personal property is purchased outside the state of Iowa for use or consumption in this state, such sale shall be subject to use tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a point of origin outside the state, and the seller is required to report all such transactions and collect and remit to this state use tax on all taxable purchases.

730—31.3(423) Sales by federal government or agencies to consumers. A consumer purchasing tangible personal property or an enumerated taxable service for use in Iowa from the federal government or any of its agencies shall be liable for the payment of Iowa consumer's use tax and shall report and remit the tax due on a consumer's tax return which is furnished by the department.

These rules are intended to implement chapter 423, The Code.

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CHAPTER 32
RECEIPTS EXEMPT FROM USE TAX

730—32.1(423) Tangible personal property and taxable services subject to sales tax. The gross receipts from the sale of tangible personal property which are subject to the imposition of sales tax under chapter 422 of the Code shall be exempt from use tax. This shall not apply to vehicles subject to registration or the purchase of a taxable service enumerated in section 422.43 of the Code of Iowa. Provided, however, that either a sales tax or a use tax, but not both, shall be imposed upon the use in Iowa of services, rendered, furnished, or performed in this state.

This rule is intended to implement section 423.6(3) of the Code.

730—32.2(423) Sales tax exemptions applicable to use tax. When an exemption is allowed for sales tax purposes the same shall apply for use tax, except for the exemptions provided in section 422.45, subsections 4 and 6, as they relate to vehicles subject to registration.

This rule is intended to implement section 423.4(4) of the Code.

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may thereby be extended for a designated period. If the request for extending the period of limitation is approved, the additional tax or refund carries a limitation of thirty-six months interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of payment.

This rule is intended to implement section 422.25, The Code.

730—38.3(422) Retention of records.

38.3(1) Every individual subject to the tax imposed by Iowa Code section 422.5 (whether or not the individual incurs liability for the tax) and every withholding agent subject to the provisions of Iowa Code section 422.16 shall retain his or her books and records as required by section 6001 of the Internal Revenue Code of 1954 and federal income tax regulation 1.6001-1(e) including the federal income tax return and all supporting federal schedules.

38.3(2) In addition, records relating to other deductions or additions to federal adjusted income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitation for audit specified in section 422.25.

This rule is intended to implement sections 422.25 and 422.70, The Code.

730—38.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative Acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction.

This rule is intended to implement section 422.7 and 422.9, The Code.

730—38.5(422) Jeopardy assessments.

38.5(1) A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

38.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement section 422.30, The Code.

730—38.6(422) Information deemed confidential. Sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information, will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 6.3(17A).

This rule is intended to implement Iowa Code sections 422.16, 422.20 and 422.72.

730—38.7(422) Power of attorney. No attorney, accountant or other representative shall be recognized as representing any taxpayer in regard to any claim, appeal, or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization or unless it appears to the satisfaction of the department, or member or agent thereof, that the attorney, accountant or representative does in fact have authority to represent the taxpayer.

This rule is intended to implement sections 422.20 and 422.72, The Code.

730—38.8(422) Delegation to audit and examine. Pursuant to statutory authority the director delegates to the director of the income tax division the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director. The power so delegated may further be delegated by the director of the income tax division to such auditors, agents, clerks, and employees of the income tax division as he or she shall designate.

This rule is intended to implement section 422.70, The Code.

730—38.9(422) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require a nonresident employer or withholding agent to file with the director a bond issued by a surety company authorized to conduct business in Iowa and approved by the insurance commissioner as to solvency and responsibility in such amount as the director may fix, or in lieu of such bond, securities approved by the director in such amount as the director may prescribe and kept in the custody of the department. Pursuant to the statutory authorization in section 422.16, the director has determined that the following procedures will be instituted with regard to bonds.

a. When required.

1. New applications by nonresident withholding agents. A new withholding agent applicant will be requested to post a bond or security if (a) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax or (b) the new applicant held a withholding agent's identification number for a prior business and the remittance record of the tax under the prior identification number falls within one of the conditions in paragraph "2" below, or (c) the department experienced collection problems while the applicant was engaged in business under the prior identification number.

2. Existing nonresident withholding agents. Existing withholding agents shall be requested to post a bond or security when they have had two or more delinquencies in remitting the withholding tax during the last twenty-four months if filing returns on a quarterly basis or have had four or more delinquencies during the last twenty-four months if filing returns on a monthly basis. However, if the director has determined that reasonable cause existed for the late filing of any return or payment of any tax, the withholding agent shall be granted one additional late filing within the twenty-four month period.

3. Waiver of bond. If a withholding agent has been requested to post a bond or security or if a withholding agent applicant has been requested to post a bond or security, upon the filing of the bond or security if the withholding agent maintains a good filing record for a period of two years, the withholding agent may request that the department waive the continued bond or security requirement.

b. Type of security or bond. When it is determined that a withholding agent or withholding agent applicant is required to post collateral to secure the collection of the withholding tax, the following types of collateral will be considered as sufficient: Surety bonds, securities or certificates of deposit. When the withholding agent is a corporation, an officer or employee of the corporation may assume personal liability as security for the payment of the withholding tax. As such, the officer or employee will be evaluated as provided in "1" above as if the officer or employee applied as the withholding agent as an individual.

c. Amount of bond or security. When it is determined that a withholding agent or withholding agent applicant is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the withholding agent or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months withholding tax liability will be required. If the applicant or withholding agent will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement section 422.16, The Code.

730—38.10(422) Indexation. Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Chapter 132 and section 422.5, provide for the adjustment of the tax brackets and civil service annuity exclusion by a cumulative inflation factor to be determined by the director.

38.10(1) The cumulative inflation factor for tax years beginning on or after January 1, 1979 and on or before December 31, 1979 was one hundred two point three (102.3) percent.

38.10(2) The cumulative inflation factor for tax years beginning on or after January 1, 1980 and on or before December 31, 1981 is one hundred two point three (102.3) percent since the unobligated state general fund balance as of June 30, 1980 did not equal or exceed sixty million dollars.

This rule is intended to implement section 422.4, The Code, as amended by Acts of the Sixty-ninth General Assembly.

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CHAPTER 39
FILING RETURN AND PAYMENT OF TAX

730—39.1(422) Who must file.

39.1(1) *Residents.* For each taxable year, every resident of Iowa, except any resident claimed as a dependent on another person's return, whose net income, as defined in section 422.7, The Code, is four thousand dollars or more, or who is required to file a federal income tax return, must make, sign and file a return. Each resident whose net income as defined in section 422.7, The Code, is three thousand dollars or more and who is claimed as a dependent on another person's return, or who is required to file a federal income tax return, must make, sign, and file a return. In determining whether returns must be filed, income from all sources, taxable under this division, must be considered.

39.1(2) *Nonresidents.* For each taxable year, every nonresident of Iowa who is not claimed as a dependent on another persons's return, but is required to file a federal income tax return and who has a net income, as defined in section 422.7, from sources within this state of four thousand dollars or more, must make, sign and file a nonresident return. Each nonresident who is claimed as a dependent on another person's return, and whose net income, as defined in section 422.7, from sources within this state is three thousand dollars or more, and who is required to file a federal income tax return, must make, sign and file a nonresident return.

39.1(3) *Part-year residents.* Every part-year resident of Iowa, except those part-year residents claimed as a dependent on another person's return, whose net income earned from all sources during the time he or she was a resident and whose net income earned from Iowa sources for the portion of the year he or she was a nonresident, totals four thousand dollars or more, or every part-year resident who is required to file a federal income tax return, must make, sign and file an Iowa resident income tax return. Every part-year resident of Iowa, who is claimed as a dependent on another person's return, and whose net income earned from all sources during the time he or she was a resident and whose net income earned from Iowa sources for the portion of the year he or she was a nonresident, totals three thousand dollars or over, or every part-year resident who is required to file a federal income tax return, must make, sign and file an Iowa resident income tax return.

See 40.16(422), 41.7(422) and 42.2(1).

39.1(4) *Returns of the handicapped.* If a taxpayer is physically or mentally unable to make his or her own return, the return shall be made by a duly authorized agent, guardian or other person charged with the care of the person or property of such taxpayer. A power of attorney must accompany a return made by an agent or guardian.

39.1(5) *Minimum income requirement.* See 40.1(422) to 40.18(422) for the computation of net income to determine if a taxpayer meets the minimum filing requirement of four thousand dollars, or three thousand dollars if the taxpayer is claimed as a dependent on another person's return.

39.1(6) *Final return.* If a taxpayer has died during the year, see 48.8(422).

39.1(7) *Returns filed for refund.* A taxpayer with net income of less than four thousand dollars, or three thousand dollars if the taxpayer is claimed as a dependent on another person's return, must file a return to receive a refund of any tax withheld.

This rule is intended to implement sections 422.5 and 422.13, The Code.

730—39.2(422) Time and place for filing.

39.2(1) *Returns of individuals.* A return of income must be filed on or before the due

reasonably be expected to be, entitled to for his taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall apply:

(1) If such number is less than the number of withholding exemptions claimed by an employee on an Iowa withholding exemption certificate in effect on such day, the employee must within a reasonable time furnish his or her employer with a new withholding exemption certificate reflecting the decrease.

(2) If such number is greater than the number of withholding exemptions claimed by the employee on an Iowa withholding exemption certificate in effect on such day, the employee may furnish his or her employer with a new withholding exemption certificate reflecting the increase.

e. Duration of exemption certificate. An Iowa withholding exemption certificate which is in effect pursuant to these regulations shall continue in effect until another withholding exemption certificate takes effect.

46.3(3) Reports and payments of income tax withheld.

**a. Returns of income tax withheld from wages.*

(1) *Quarterly returns.* Except as otherwise provided in 46.3(3)"*a*"(3) or 46.3(3)"*b*", every withholding agent required to deduct and withhold tax on compensation paid in Iowa shall make a return for the first calendar quarter in which such tax is deducted and withheld and for each subsequent calendar quarter, whether or not compensation is paid therein, until a final return is filed. The withholding agent's "Quarterly Withholding Return" is the form prescribed for making the return required under this paragraph. Monthly tax payments may also be required or semimonthly tax payments may be required instead of quarterly or monthly reports. See subparagraphs (2) and (3) of 46.3(3)"*a*". In some circumstances, only an annual return and payment of withheld taxes will be required; see 46.3(3)"*c*".

Payments shall be based upon the tax required to be withheld and must be remitted in full. Payment should not be deferred and should accompany the quarterly return.

A withholding agent is not required to list the name(s) of his or her employee(s) when filing quarterly returns, nor is the withholding agent required to show on the employee's paycheck or voucher the amount of Iowa income tax withheld.

If a withholding agent's payroll is not constant, and he or she finds that he or she has paid no wages or other compensation during the current quarter, he or she shall enter the word "none" on the return, sign, and submit the return as usual.

(2) *Monthly reports.* Every withholding agent required to file a quarterly withholding return shall also file a monthly tax payment form if the amount of tax deducted and withheld during any calendar month exceeds fifty dollars. A withholding agent need not file a monthly form if no monthly payment is due. No monthly form is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly form for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter and no monthly form need be filed for such month. The "Monthly Withholding Return" is provided for use with the payments required under this paragraph.

(3) *Semimonthly reports.* Every withholding agent who withholds more than eight thousand dollars in a semimonthly period must file a semimonthly tax payment form, instead of monthly or quarterly withholding reports. A semimonthly period is defined as the period from the first day of a calendar month through the fifteenth day of a calendar month, or the period from the sixteenth day of a calendar month through the last day of a calendar month. When semimonthly reports are required a withholding agent need not file monthly or quarterly reports. The withholding agent's "Semimonthly Withholding Return" is provided for use with the payments required under this paragraph.

(4) *Final returns.* A withholding agent, who in any return period permanently ceases doing business, shall file the returns and statements required by subparagraphs (1), (2) and (3) of this paragraph as final returns for such period. Each return shall be marked "Final Return". There shall be executed as part of each final return a statement showing the date of the last payment of compensation, the address of which the information in regard to withholding will

*Emergency, pursuant to §17A.5(2)"*b*"(2), The Code.

be kept, the name of the person keeping such records, and if the business of the withholding agent has been sold or otherwise transferred to another person, the name and address of such person and the date of which such sale or transfer took place. If no such sale or transfer took place or if the withholding agent does not know the name and address of the person to whom the business was sold or transferred, that fact should be included in the statement.

b. Time for filing returns.

(1) *Quarterly returns.* Each return required by 46.3(3)"*a*"(1) shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

(2) *Monthly tax payments.* Monthly forms required by 46.3(3)"*a*"(2) shall be filed on or before the fifteenth day of the second and third months of each calendar quarter.

(3) *Semimonthly tax payments.* Semimonthly forms required by 46.3(3)"*a*"(3) for the semimonthly period from the first day of the month through the fifteenth day of the month shall be filed with payment of the tax on or before the twenty-fifth day of the same month. The semimonthly forms required by 46.3(3)"*a*"(3) for the semimonthly period from the sixteenth day of the month through the last day of the month shall be filed with payment of the tax on or before the tenth day of the month following the month in which the tax is withheld.

(4) *Determination of filing status.* Iowa Code section 422.16, provides, based on the amount of tax collected, how often withholding agents file deposits or returns with the department.

The department will determine if the withholding agent's current filing status is correct by reviewing the most recent four quarters of the withholding agent's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Statutory Requirement	Test Criteria
Semimonthly	$8,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds $48,000.
Monthly	$50 in tax in a month	Tax remitted in 3 of most recent 4 quarters exceeds $150.
Quarterly	All other filers.	All other filers except annual filers. See rule 46.3(3)(c)(2).

When it is determined that a withholding agent's filing status is to be changed, the withholding agent will be notified and will be given thirty days to provide the department with a written request to prevent the change.

Withholding agents may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

1. Incorrect historical data is used in the conversion. A business may meet the criteria based on information available to the computer, but upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.
2. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the income tax division.

Exceptions will not be granted in instances where the withholding agent's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Withhold agents will be notified in writing of approval or denial to their request for reducing filing periods.

Withholding agents may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the withholding agent's request.

*c. *Reporting annual withholding.*

(1) Any withholding agent who does not have employee withholding, but who is required to withhold state income tax from other distributions is exempted from the provisions of subparagraphs (2) and (3) of 46.3(3)"*a*", if these distributions are made annually in one calendar quarter. These withholding agents need only comply with the reporting requirements of the one calendar quarter in which the tax is withheld, and make the required year-end reports.

(2) Every withholding agent employing not more than two individuals and who expects to employ either or both for the full calendar year, may pay with the withholding tax return due for the first calendar quarter of the year, the full amount of income taxes which would be required to be withheld from the wages for the full calendar year. The withholding agent shall advise the withholding section of the Iowa department of revenue that annual reporting is contemplated, and shall also state the number of persons employed. The withholding agent shall compute the annual withholding from wages by determining the normal withholding for one pay period and multiply this amount by the total number of pay periods within the calendar year. No lump sum of payment of withheld income tax shall be made without the written consent of all employee(s) involved. Consent may be affected by having the employee(s) complete the form "Iowa Employees Consent to Advance Annual Withholding". The withholding agent shall be entitled to recover from the employee(s) any part of such lump sum payment that represents an advance to the employee(s). If a withholding agent pays a lump sum with the first quarterly return, he or she shall be excused from filing further quarterly returns for the calendar year involved unless he or she hires other or additional employees. Information returns and the "Verified Summary Report" shall be filed at the end of the tax year.

d. Reports for employee.

(1) *General rule.* Every employer required to deduct and withhold tax from compensation of an employee must furnish to each employee with respect to the compensation paid in Iowa by such employer during the calendar year, a statement in duplicate containing the following information: The name, address, and federal employer identification number of the employer; the name, address, and social security number of the employee; the total amount of compensation paid in Iowa; the total amount deducted and withheld as tax under 46.1(1).

(2) *Form of statement.* The information required to be furnished an employee under the preceding paragraph shall be furnished on an Internal Revenue Service combined Wage and Tax Statement, Form W-2, hereinafter referred to as "combined W-2". Any reproduction, modification or substitution for a combined W-2 by the employer must be approved by the department.

(3) *Time for furnishing statement.* Each statement required by this section to be furnished for a calendar year, and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or if an employee's employment is terminated before the close of a calendar year, without expectation that it will resume during the same calendar year, within thirty days from the day on which the last payment of compensation is made, if requested by such employee. See 46.3(3)"*e*" for provisions relating to the filing of copies of combined W-2 with the Iowa Department of Revenue.

(4) *Corrections.* An employer must furnish a corrected combined W-2 to an employee if, after the original statement has been furnished an error is discovered in either the amount of compensation shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. Such statement shall be marked "corrected by the employer". See 46.3(3)"*e*" for provisions relating to the filing of a corrected combined W-2 with the department.

(5) *Undelivered combined W-2.* Any employee's copy of the combined W-2 which, after reasonable effort, cannot be delivered to an employee, shall be transmitted to the department with a letter of explanation.

(6) *Lost or destroyed.* If the combined W-2 is lost or destroyed, the employer shall furnish two substitute copies to the employee and one copy to the department. All such copies shall be clearly marked "Reissued by Employer".

*Emergency, pursuant to §17A.5(2)"*b*"(2), The Code.

e. Year-end verified summary reports.

(1) Every withholding agent required to withhold Iowa income tax under subrules 46.1(1) and 46.4(1) shall furnish to the department of revenue on or before the last day of February following the tax year, copies of the withholding statements required under subrule 46.3(3),*"d"*.

(2) The withholding statements required under subparagraph (1) of this paragraph shall be accompanied by a withholding information statement entitled "Verified Summary Report" which is also due on or before the last day of February following the tax year.

(3) The copies of wage and tax statements for the current calendar year transmitted with the "Verified Summary Report" shall be accompanied by a list of the amounts of tax withheld shown on the statements. If an employer's total payroll is made up on the basis of a number of separate units or establishments, the statements may be assembled accordingly and a separate list or tape submitted for each unit. In such case, a summary list or tape should be submitted, the total of which will agree with the corresponding entry made on the "Verified Summary Report". If the number of statements to be submitted is large, they may be forwarded in packages of convenient size. When submitted in this manner, the packages should be identified with the name of the employer and consecutively numbered, and the "Verified Summary Report" should be placed in package No. 1. The number of packages should be indicated immediately after the employer's name on the "Verified Summary Report".

(4) If an employer issues a corrected copy of a combined W-2 to an employee for a prior calendar year (see 46.3(3)*"d"*) a copy shall be submitted to the department on or before the date fixed for filing the employer's quarterly return of tax withheld for the period ending December 31 of the year in which the correction is made, or for any period in the year for which the return is made as a final return. The copies of the combined W-2 shall be accompanied by a statement explaining the corrections and submitted separately from the department's copies of the combined W-2 being submitted for the current calendar year.

(5) Upon obtaining consent of the department of revenue, an employer may submit the information contained on a combined W-2 on magnetic tape in lieu of the copies of the combined W-2 required to be submitted under subparagraph (1) of this paragraph. The consent shall be applied for in a written request to the Iowa Department of Revenue, Withholding Tax Unit, Hoover* State Office Building, Des Moines, Iowa 50319.

f. Withholding deemed to be held in trust. Funds withheld from wages for Iowa income tax purposes are deemed to be held in trust for payment to the Iowa department of revenue. The state and department shall have a lien upon all the assets of the employer and all the property used in the conduct of the employer's business to secure the payment of the tax as withheld under the provisions of this rule. An owner, conditional vendor, or mortgagee of property subject to such lien, may exempt the property from the lien granted to Iowa by requiring the employer to obtain a certificate from the department, certifying that such employer has posted with the department security for the payment of the amounts withheld under this rule.

g. Payment of tax deducted and withheld. The amount of tax shown to be due on each return required to be filed under 46.3(3) shall be due on or before the date on which such return is required to be filed.

h. Correction of underpayment or overpayment of taxes withheld.

(1) *Underpayment.* If a return is filed for a return period under 46.3 and less than the correct amount of tax is reported on the return and paid to the department, the employer shall report and pay the additional amount due by reason of the underpayment on the next quarterly return. An explanation must be attached to the return for the period in which the underpayment is corrected, and the appropriate entry made on the quarterly withholding return.

(2) *Overpayment.* If an employer remits more than the correct amount of tax for a return period under this rule and the overpayment is discovered in a subsequent return period under this rule and within the same calendar year of the overpayment, the employer may

*Emergency, pursuant to §17A.5(2)"*b*" of the Code.

correct the error on a subsequent return to be filed for a period within the same calendar year. An explanation must be attached to the return on which the error is corrected. If the overpayment is discovered in a subsequent calendar year, the employer may correct the error by filing a "Claim for Refund" form with the department.

This rule is intended to implement Iowa Code sections 421.14 and 422.16.

730—46.4(422) Withholding on nonresidents.

46.4(1) *General rules.* Payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit such tax to the department. Withholding agents should use the following methods and rates in withholding for nonresidents:

a. Wages or salaries. Use the same withholding procedures and rates as used for residents.

b. Payments other than wages or salaries. Withholding on payments other than wages or salaries shall be computed using the current withholding tables on gross receipts remitted to the nonresident if the withholding agent has no control over related expenses; or on net income if proper books and records are available to the withholding agent.

46.4(2)*Income of nonresidents subject to withholding.* Listed below are various types of income paid to nonresidents which are subject to withholding tax. The list is for illustrative purposes only and is not deemed to be all inclusive.

1. Personal service, including salaries, wages, commissions and fees for personal service wholly performed within this state and such portions of similar income of nonresident traveling salesmen or agents as may be derived from services rendered in this state.

2. Rents and royalties from real or personal property located within this state.

3. Interest or dividends derived from securities or investments within this state, when such interests or dividends constitute income of any business, trade, profession or occupation carried on within this state and subject to taxation.

4. Income derived from any business of a temporary nature carried on within this state by a nonresident, such as contracts for construction and similar contracts.

5. The distributive share of a nonresident beneficiary of an estate or trust, limited, however, to the portion thereof subject to Iowa income tax in the hands of the nonresident.

6. Income derived from sources within this state by attorneys, physicians, engineers, accountants, and similar sources as compensation for services rendered clients in this state.

7. Compensation received by nonresident actors, singers, performers, entertainers and wrestlers for performances in this state.

8. Nonresident employees rendering regular services for interstate common carrier such as railroads, trucking firms, airlines, bus companies, towing firms, etc. in more than one state shall be subject to Iowa withholding on that portion of his or her wages for services in Iowa provided more than fifty percent of the compensation paid by the carrier to such employee is earned in Iowa during the preceding calendar year. If the nonresident employee of the interstate carrier does not earn more than fifty percent of his or her compensation from said carrier in Iowa during the preceding calendar year, then withholding for Iowa income tax is not required. Similar provisions are likewise applicable to the wages received by nonresient employees of private property motor vehicle carriers. If the employee of the interstate common carrier or the private property carrier is a resident of Iowa withholding on the total wages of the resident employee is required if such resident employee does not earn more than fifty percent of his or her compensation from the carrier in any one state. (Additional information may be obtained by referring to P.L. 91-569 as passed by the U.S. Congress and signed by the President, effective January 1, 1971).

9. The Iowa gross income of a nonresident, who is employed and receiving compensation for his or her services, shall include compensation for personal services which are rendered within this state. Compensation for personal services rendered by a nonresident wholly without the state is excluded from gross income of the nonresident even though the payment of such compensation may be made by a resident individual, partnership or corporation.

10. The gross income from commissions earned by a nonresident traveling salesman, agent or other employee for services performed or sales made whose compensation depends directly on volume of business transacted by him or her, includes that proportion of the

total compensation received which the volume of business or sales by such employee within this state bears to the total volume of business or sales within and without the state.

11. Payments made to landlords by agents, including elevator operators, for grain or other commodities which have been received by the landlord as rent constitute taxable income of the landlord when sold by him or her.

46.4(3) *Nonresident certificate of release.* Where a nonresident payee makes the option to file a declaration of estimated Iowa income tax, a certificate of release from withholding will be issued by the Iowa department of revenue, estimate tax section to the designated payers. The certificate of release will be forwarded to the specified withholding agent(s) or payer(s), and will state the amount of income covered by the declaration of estimated tax. Any income paid in excess of the amount so stated will be subject to withholding tax at the current rate. See chapter 47 of these rules for information on making estimate declaration.

46.4(4) *Recovering excess tax withheld.* A nonresident payee may recover any excess Iowa income tax withheld from him or her by filing an Iowa nonresident income tax return after the close of the tax year and reporting income from Iowa sources in accordance with instructions thereon.

This rule is intended to implement Iowa Code sections 422.16 and 422.17.

730—46.5(422) Penalty and interest. See chapter 44 of these rules for application and computation of penalty and interest on withholding taxes.

This rule is intended to implement Iowa Code section 422.16.

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any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish to the satisfaction of the department the validity and correctness of such deduction. 71 Am. Jur. 2d State and Local Taxation, subsection 518 (1973).

This rule is intended to implement section 422.35, The Code.

730—51.6(422) Jeopardy assessments.

51.6(1) A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

51.6(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement section 422.30, The Code.

730—51.7(422) Information confidential. Sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information, will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 6.3(17A).

This rule is intended to implement Iowa Code sections 422.20, 422.38 and 422.72.

730—51.8(422) Power of attorney. No attorney, accountant or other representative shall be recognized as representing any taxpayer in regard to any claim, appeal or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization or unless it appears to the satisfaction of the department or member or agent thereof, that the attorney, accountant or other representative does in fact have authority to represent the taxpayer.

This rule is intended to implement sections 422.20 and 422.72, The Code.

730—51.9(422) Delegation of authority to audit and examine. Pursuant to statutory authority the director delegates to the director of the income tax division the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director. The power so delegated may further be delegated by the director of the income tax division to such auditors, agents, clerks, and employees of the income tax division as he or she shall designate.

This rule is intended to implement section 422.71, The Code.

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CHAPTER 52
FILING RETURNS, PAYMENT OF TAX AND PENALTY AND INTEREST

730—52.1(422) Who must file. Every corporation, organized under the laws of Iowa or qualified to do business within this state or doing business within Iowa, regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the corporation was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

52.1(1) *Definitions.*

a. Doing business. The term "doing business" is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization shall be deemed to be "doing business". In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or loss.

b. Business location. A "business location" includes a repair shop, parts department, purchasing office, employment office, warehouse, terminal, meeting place for directors, sales office, permanent sample or display room, research facility or a recreational facility for use of employees or customers. A residence of an employee or representative is not ordinarily considered a "business location" of the employer unless the facts indicate otherwise. It would be considered a business location under one or more of the following conditions: A portion of the residence is used exclusively for the business of the employer, the employee is reimbursed or paid a flat fee for the use of this space by the employer, the employee's phone number is listed in the telephone directory under the name of the employer; the employee uses supplies, equipment or samples furnished by the employer, or the space is used by the employee to interview prospective employees, hold sales meetings, or discuss business with customers.

c. Representative. A representative does not include an independent contractor. A person may be considered a representative even though he or she may not be considered an employee for other purposes such as the withholding of income tax from commissions. If the person is subject to the direct control of the foreign corporation, he or she may not qualify as an independent contractor. *Herff Jones Company v. State Tax Commission,* Oregon Supreme Court, August 23, 1967, 430 P 2d 998.

52.1(2) *Corporate activities not creating taxability.* Public Law 86-272, 15 U.S.C.A., sections 381-385, in general prohibits any state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state consists of the solicitation of orders of tangible personal property by or on behalf of a corporation by its employees or representatives. Such orders must be sent outside the state for approval or rejection and if approved, must be filled by shipment or delivery from a point outside the state to be within the purview of Public Law 86-272. Public Law 86-272 does not extend to those corporations which sell services, real estate or intangibles in more than one state or to domestic corporations.

If the only activities in Iowa of a foreign corporation selling tangible personal property are those described in *"a"* through *"m"* below, such corporation is not subject to the Iowa corporation income tax law under Public Law 86-272.

a. Usual or frequent activity in Iowa by employees or representatives soliciting orders for tangible personal property which orders are sent outside this state for approval or rejection.

b. Solicitation activity by nonemployee independent contractors, conducted through their own office or business location in Iowa.

c. The free distribution by soliciting sales persons of product samples and brochures which explain the use of or laud the product, or both. *Miles Laboratories v. Department of Revenue,* 1975, 274 Ore. 395, 546 P.2d 1081; *State ex rel. CIBA Pharmaceutical Products, Inc. v. State Tax Commission,* 1964, Mo., 328 S.W.2d 645.

57.2(2) *Waiver of statute of limitation.* If the taxpayer files with the department a request to waive the period of limitation, the limit of time for audit of the taxpayer's return may thereby be extended for a designated period. If the request for extending the period of limitation is approved, the additional tax or refund carries a limitation of thirty-six months interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of the payment. *Northern Natural Gas Company v. Forst,* 1973 Iowa, 205 N.W.2d 692; *Phillips Petroleum Co. v. Bair,* State Board of Tax Review, Case No. 64, May 15, 1975.

This rule is intended to implement sections 422.66 and 422.25 of the Code.

730—57.3(422) Retention of records.

57.3(1) Every financial institution subject to the tax imposed by Iowa Code section 422.60 (whether or not the financial institution incurs liability for the tax) shall retain its books and records as required by Section 60001 of the Internal Revenue Code of 1954 and federal income tax regulation 1.6001-1(e) including the federal schedules required by IAC subrule 58.3(2).

57.3(2) In addition, records relating to computation of the Iowa apportionment factor, allocable income and other deductions or additions to federal taxable income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitation for audit specified in section 422.25.

This rule is intended to implement sections 422.25 and 422.70, The Code.

730—57.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative Acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction. *71 Am. Jur. 2d State and Local Taxation, subsection 518 (1973).*

This rule is intended to implement sections 422.61 and 422.35 of the Code.

730—57.5(422) Jeopardy assessments.

57.5(1) A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

57.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement sections 422.66 and 422.30 of the Code.

730—57.6(422) Information deemed confidential. Section 422.72 applies generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above section. See rule 6.3(17A).

This rule is intended to implement Iowa Code sections 422.66 and 422.72.

730—57.7(422) Power of attorney. No attorney, accountant or other representative shall be recognized as representing any taxpayer in regard to any claim, appeal or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization or unless it appears to the satisfaction of the department, or member or agent thereof, that the attorney, accountant or other representative does in fact have authority to represent the taxpayer.

This rule is intended to implement sections 422.66 and 422.72 of the Code.

730—57.8(422) Delegation to audit and examine. Pursuant to statutory authority the director delegates to the director of the income tax division the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director. The power so delegated may further be delegated by the director of the income tax division to such auditors, agents, clerks, and employees of the income tax division as he or she shall designate.

This rule is intended to implement sections 422.66 and 422.70 of the Code.

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payer, computed on the previous four tax periods, he or she may request a refund warrant; otherwise, the distributor will be allowed a credit memorandum.

63.17(3) *Licensed special fuel dealers and users.* If a licensed special fuel user or dealer is requesting a return of taxes because of noninclusion of an exemption certificate(s), a copy of the certificate(s) must accompany the request. (The original must be retained by the user or dealer.) If a licensed special fuel user or dealer is requesting a return of taxes because of inaccurate meter readings due to meter repair, an affidavit signed by the persons responsible for the meter repair setting out the affected meter readings must accompany the request. If the request for return of taxes erroneously paid is in excess of the average monthly tax liability of the user or dealer, computed on the previous twelve tax periods, he or she may request a refund warrant; otherwise, the dealer or user will be allowed a credit memorandum.

This rule is intended to implement sections 324.72 and 324.8 of the Code.

730—63.18(324) Credentials and receipts. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee of the department, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address, and permit or license number; the purpose of the payment; and the amount of the payment. The taxpayer should retain all receipts, and the only receipts which the department will accept as evidence of a cash payment are the official receipts.

This rule is intended to implement section 324.59 of the Code.

730—63.19(324) Information confidential. Iowa Code section 324.63, which makes all information obtained from reports or records required to be filed or kept under Iowa Code chapter 324 confidential, applies generally to the director, deputies, auditors, agents, officers, or other employees of the department. The information may be divulged to the appropriate public officials enumerated in Iowa Code section 324.63. These public officials shall include (1) member(s) of the Iowa General Assembly, (2) committees of either House of the Iowa Legislature, (3) state officers, (4) persons who have responsibility for the enforcement of Iowa Code chapter 324, (5) officials of the federal government entrusted with enforcement of federal motor vehicle fuel tax laws, and (6) officials of other states who have responsibility to enforce motor vehicle fuel tax laws and who will furnish like information to the department. See rule 6.3(17A) for procedures requesting information. The department shall also make the following information public as to each distributor: (1) Name, (2) total gallons received, (3) gallons exported or sold for export, (4) gallons sold tax free to exempt entities, and (5) gallons sold to persons responsible to report and account for the tax. The department shall also make public as to each special fuel user or dealer gallons used and taxes paid.

This rule is intended to implement Iowa Code section 324.63.

730—63.20(324) Delegation to audit and examine. Pursuant to statutory authority, the director of revenue delegates to the directors of the Excise Tax Division and the Field Services Division, the power to examine returns and records, make audits, and determine the correct amount of tax due, subject to review by or appeal to the director of revenue. The power so delegated may further be delegated by the directors of the divisions to such auditors, clerks, and employees of the divisions as he or she shall designate.

This rule is intended to implement sections 324.62 and 324.76 of the Code.

730—63.21(324) Practice and procedure before the department of revenue. The practice and procedure before the department is governed by chapter 17A of the Code and chapter 7 of the department's rules and regulations.

This rule is intended to implement chapter 17A of the Code.

730—63.22(324) Time for filing protest. Any person wishing to contest an assessment, refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file a protest with the Hearing Officer pursuant to the department's rule 730—7.8(17A) within thirty days of the issuance of the assessment or other department action contested.

This rule is intended to implement section 324.64 of the Code.

730—63.23(324) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to such tax to file with the department a bond in such amount as the director may fix, or in lieu of such bond, securities approved by the director in such amount as the director may prescribe. Pursuant to the statutory authorization in sections 324.66 and 422.52(3), the director has determined that the following procedures will be instituted with regard to bonds:

63.23(1) *When required.*

a. Classes of business. When the director determines, based on departmental records, other state or federal agency statistics or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rulemaking will be initiated to reflect a listing of the classes in the rules.

b. New applications for fuel tax permits. Notwithstanding the provisions of paragraph *"a"* above, an applicant for a new fuel tax permit will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph *"c"* below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in "*c*" or such person had a previous fuel tax permit which has been revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous license holder. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. Existing license holders. Existing license holders shall be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax during the last eighteen months if filing returns on a quarterly basis or have had two or more delinquencies during the last twelve months if filing returns on a monthly basis. However, if the director has determined that reasonable cause existed for the late filing of any return or payment of any tax, the licensee shall be granted one additional late filing within the period.

d. Waiver of bond. If a license holder has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the license holder maintains a good filing record for a period of two years, the license holder may request that the department waive the continued bond or security requirement.

63.23(2) Type of security or bond. When it is determined that a license holder or applicant for a fuel tax permit is required to post collateral to secure the collection of the motor fuel tax, the following types of collateral will be considered as sufficient: Cash, surety bonds, securities or certificates of deposit. When the license holder is a corporation, an officer of the corporation may assume personal responsibility as security for the payment of the fuel tax and such officer will be evaluated as provided in (1) above as if the officer applied for a fuel tax permit as an individual.

63.23(3) Amount of bond or security. When it is determined that a license holder or appli-

cant for a fuel tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the license holder or applicant will be or is a monthly filer, a bond or securities in an amount sufficient to cover five months fuel tax liability will be required. If the applicant or license holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement sections 324.66 and 422.52(3) of the Code.

730—63.24(324) Crediting gas tax refunds. The department may apply any fuel tax refund payable to a nonlicensee against any other tax liability outstanding on its books which the non-licensee claimant has not paid.

This rule is intended to implement section 324.17 of the Code.

730—63.25(324) Time limitations on filing for credits or refunds.

63.25(1) *Time limits for licensees.*

a. Credits for nonhighway use or loss due to casualty or like cause: See subrule 64.7(5).

b. Credit for illegal or erroneous collection: See rule 63.17(324).

c. Credits or refund for gasohol blending error: See subrule 64.4(5).

63.25(2) *Time limits for nonlicensees.*

a. Refund for nonhighway use: See rule 64.8(324).

b. Income tax credit for nonhighway use: See rule 730—45.5(324) and subrule 52.4(3).

c. Refund for casualty loss: See rule 64.12(324).

63.25(3) Refund to the state and political subdivisions and contract carriers who contract with public schools to transport students. See rule 64.15(324) and 64.22(324).

This rule is intended to implement section 324.59, The Code.

730—63.26(324) Distributor licenses. There shall be two types of fuel distributor licenses which will be issued. The motor fuel distributors license will apply to motor fuel-gasoline and motor fuel-aviation. The special fuel distributors license will apply to special fuel-diesel, and special fuel-LPG. Each license issued will be separate and distinct and must be applied for and issued separately. In order to become licensed as a fuel distributor, the person must file a written application with the department. Such application shall include, but not be limited to, the following information:

(1) The name under which the distributor will transact business in the state.

(2) The location of the principal place of business of the distributor.

(3) The name and address of the owner(s) of the business, or if a corporation or association, the names and addresses of the principal officers.

(4) The type of fuel(s) to be handled.

(5) The approximate volume of fuel(s) to be handled.

(6) The source of the fuel(s).

(7) The type of customers to be served.

(8) Whether the applicant has a license for a different type of fuel, and if so, the license number.

The license must be conspicuously displayed, is valid until revoked or canceled, and is nonassignable.

The following are nonexclusive situations that are considered assignments, and the acquiring distributor must apply for a new license.

(1) A sale of the taxpayer's business, even if the new owner operates under the same name.

(2) A change of the name under which the distributor conducts business.

(3) A merger or other business combination which results in a new or different entity.

For information concerning records to be kept, see rule 63.3(324).

This rule is intended to implement sections 324.4, 324.5 and 324.36, The Code.

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CHAPTER 73
REIMBURSEMENT TO THE ELDERLY AND DISABLED FOR PROPERTY TAX PAID AND RENT CONSTITUTING PROPERTY TAX PAID

730—73.1(425) Nursing homes. A claimant whose homestead is a nursing home is eligible to file a reimbursement claim for rent constituting property tax paid.

A claimant whose homestead is a nursing home is to deduct the goods and services provided by the nursing home which are included in his rental payments when determining gross rent for purposes of calculating rent constituting property tax paid solely for the right of occupancy.

These goods and services could include, but are not limited to: Cost of nursing care, doctor's expense, medication, meals and special menus, personal items including linen and laundry service, transportation, medical equipment and recreational or rehabilitational activities; as well as charges for utilities, furniture, furnishing or personal property appliances furnished by the nursing home.

This rule is intended to implement section 425.17(8), The Code.

730—73.2(425) Separate homesteads—husband and wife property tax credit. If a husband and wife are both qualified homeowners living in and maintaining separate and distinct homesteads and each is actually liable for and will pay the property tax for their respective homesteads, each is eligible to file an individual credit claim for property tax due.

This rule is intended to implement section 425.17(5), The Code, as amended by Acts of the Sixty-eighth General Assembly, 1979 session, chapter 43.

730—73.3(425) Dual claims. A claimant changing homesteads during the base year who will make property tax payments during the fiscal year following the base year and who did make rent payments during the base year is entitled to receive both a property tax credit and rent reimbursement.

Separate claim forms for the property tax credit and the rental reimbursement shall be filed with the county treasurer and the Iowa department of revenue respectively.

The claims are to be based on the actual property tax due and rent constituting property tax paid with a combined maximum of one thousand dollars upon which the credit and reimbursement can be calculated.

Example: $800 property tax due
$400 rent constituting property taxes paid

The claim form for calculating the property tax credit shall reflect the entire eight hundred dollar amount.

The claim form for calculating the rent reimbursement shall reflect only the remaining two hundred dollars of the one thousand dollar maximum allowance.

The Iowa department of revenue will issue refund warrants for rent reimbursement claims. The county treasurer will apply the property tax credits.

This rule is intended to implement section 425.24, The Code, as amended by Acts of the Sixty-eighth General Assembly, 1979 session, chapter 43.

730—73.4(425) Multipurpose building. A multipurpose building is a building which is used for purposes other than strictly living accommodations. A homestead which has portions utilized for business purposes is considered to be a multipurpose building.

The portion of the property tax due or rent constituting property tax paid attributable to the homestead only is to be used in determining the allowable credit or reimbursement. This portion is to be calculated by determining the percentage of the homestead square footage to the square footage of the entire multipurpose structure. This percentage is then to be applied to the property tax due in the current fiscal year or rent constituting property tax paid for the base year.

This rule is intended to implement section 425.17(9), The Code, as amended by Acts of the Sixty-eighth General Assembly, 1979 session chapter 43.

730—73.5(425) Multidwelling. A multidwelling is a structure which houses more than one homestead. This includes, but is not limited to: Apartment buildings, duplexes, condominiums, town houses, nursing homes and rooming houses.

A claimant owning a multidwelling whose homestead is a portion of the multidwelling is entitled to a credit for only that portion of the property tax due attributable to the homestead.

This calculation is to be performed the same as for a multipurpose building.

This rule is intended to implement Iowa Code section 425.17(9).

730—73.6(425) Federal rent subsidies. For purposes of computing a reimbursement for rent constituting property tax paid, federal subsidies paid for rental payments for a claimant's homestead are not considered income to the claimant, spouse or any household member. Such federal payments are also not to be considered as any portion of gross rent in determining rent constituting property tax paid.

This rule is intended to implement Iowa Code section 425.17(1).

730—73.7(425) Joint tenancy. Joint tenancy for purposes of a property tax credit is the common ownership of a homestead by two or more persons either as joint tenants with right of survivorship or tenants in common.

This rule is intended to implement Iowa Code section 425.17(9).

730—73.8(425) Amended claim. An amended claim can only be filed by a claimant who has timely filed a claim for property tax credit or rent constituting property tax paid for the appropriate base year.

The amended claim must be filed within three years from October 31 of the year in which the original claim was filed.

The amended claim shall be clearly marked by the claimant with the word "AMENDED".

If the amended claim shows an additional credit or reimbursement due the claimant, upon review and approval by the Iowa department of revenue, an additional credit or reimbursement will be made.

This rule is intended to implement Iowa Code section 425.27.

730—73.9(425) Simultaneous homesteads. Any person who owns or rents one property and also owns or rents another property for a simultaneous period of time shall be limited to claiming a property tax credit or rent reimbursement on the property which is considered such person's domicile.

This rule is intended to implement Iowa Code section 425.17.

730—73.10(425) Confidential information. Income tax information contained on a property tax credit or rent reimbursement claim form shall be considered confidential with the exception that such information may be conveyed by the department of revenue to city and county assessors for purposes of eligibility verification. See rule 6.3(17A).

This rule is intended to implement Iowa Code section 425.28.

730—73.11(425) Mobile home. An eligible claimant whose homestead is a mobile home which the person owns and which was assessed as real estate resulting in property tax due may file a claim for credit for property tax due on the mobile home and land on which the mobile home is located, provided the land is owned by the claimant.

An eligible claimant whose homestead is a mobile home which is subject to the semiannual tax as provided in chapter 135D of the Code may file a claim for credit for property taxes due on the land upon which the mobile home is located providing the land is owned by the claim-

730—73.25(425) Common law marriage. A common law marriage is a social relationship between a man and a woman that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized by law to perform marriages. The necessary elements of a common law marriage are: (a) a present intent of both parties freely given to become married, (b) a public declaration by the parties or a holding out to the public that they are husband and wife, (c) continuous cohabitation together as husband and wife (this means consummation of the marriage), and (d) both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage.

This rule is intended to implement Iowa Code section 425.17.

730—73.26(425) Advance payments. The county treasurer shall refund to an eligible claimant the amount of the computed property tax credit, providing the claimant files a timely claim, in those situations where the property taxes have been paid prior to the time the claim for credit is filed.

This rule is intended to implement Iowa Code section 425.17(9).

730—73.27(425) Special assessment credit.

73.27(1) *Property taxes due.* Any person whose special assessment is paid by the department of revenue pursuant to section 425.23(3), The Code, cannot include such special assessment as property taxes due pursuant to section 425.17(10), The Code, for purposes of determining a property tax credit.

73.27(2) *Special assessments eligible for credit.* As used in section 425.23(3), The Code, the term "special assessment" shall mean special assessments made pursuant to sections 384.37 to 384.79, The Code.

73.27(3) *Special assessment credit for homestead property only.* No special assessment credit claim shall be allowed pursuant to section 425.23(3), The Code, unless at the time the application for credit is filed the lot upon which the levy is made includes a homestead dwelling as defined in section 425.17(4), The Code.

73.27(4) *Special assessment installment due in current fiscal year.* The amount of a special assessment credit claim to be reimbursed by the Iowa department of revenue pursuant to section 425.23, The Code, shall be limited to the amount of the installment payable during the current fiscal year.

73.27(5) *Audit by department of revenue.* The director of revenue may audit the books and records of the county treasurer to determine if the amounts certified by the county treasurer to the director of revenue pursuant to section 425.23(3), the Code, as amounts not collected due to the special assessment credit are true and correct. The director of revenue may also initiate investigations or assist the county treasurer's investigations into eligibility of a claimant for the special assessment credit in accordance with section 425.27, The Code. Upon investigation, the director of revenue may order the county treasurer to reimburse the state of Iowa any amounts that were erroneously paid to the county treasurer or issue a reimbursement directly to the claimant if it is determined the claimant did not receive the benefits to which entitled pursuant to section 425.23(3), The Code.

This rule is intended to implement Iowa Code section 425.23(3).

730—73.28(425) Credit applied. The county treasurer shall apply the property tax credit equally to the claimant's first and second half tax liabilities.

This rule is intended to implement Iowa Code sections 425.16 to 425.39.

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CHAPTER 74
SEMIANNUAL MOBILE HOME TAX

730—74.1(135D) Computation of semiannual mobile home tax. The computation of the semiannual mobile home tax provided in section 135D.22, subsections 1 and 2, of the Code shall be made prior to any reduction made pursuant to section 135D.22, subsections 4 and 5, of the Code.

This rule is intended to implement section 135D.22, The Code.

730—74.2(135D) Movement of mobile home to another county. If both payments of the semiannual tax for the current year have been made and subsequently the mobile home is moved to another county, the tax collected shall constitute the total semiannual tax liability for the current year and shall remain in the county in which originally collected. No reimbursement shall be made by said county either to the owner of the mobile home or to the county to which the mobile home was moved.

If only the first payment of the semiannual tax has been paid and subsequently the mobile home is moved to another county, the owner of the mobile home shall pay the second payment of the semiannual tax to the county to which the mobile home was moved. However, the entire portion of the first semiannual tax payment shall remain in the county in which paid.

This rule is intended to implement section 135D.22, The Code.

730—74.3(135D) Sale of mobile home. In the event the owner of a mobile home has paid both or either payment of the semiannual tax and subsequently sells the mobile home, no reimbursement shall be made to the seller by the county or the state of Iowa for any portion of the tax paid. The provisions of this rule shall apply to sales to private individuals and to dealers.

This rule is intended to implement section 135D.22, The Code.

730—74.4(135D) Reduced semiannual tax for the elderly and disabled.

74.4(1) *Ownership.* For purposes of receiving the reduced semiannual tax rate for the elderly and disabled, the term "owner" shall mean any person whose name appears on the title to a mobile home as the owner or one of the owners of said mobile home.

74.4(2) *Income.* In determining eligibility for the reduced tax rate, the claimant's income and that of his or her spouse shall be the income received during the base year or the income tax accounting period ending during the base year, which is the calendar year immediately preceding the year in which the claim is filed.

74.4(3) *Claims.* In the event a claimant files a valid claim for a reduced tax rate on or before February first but prior to July first sells the mobile home to a person subject to a tax rate greater than that available to the original claimant, the original reduced rate shall not be allowed for the semiannual tax payment due July first. If the original claimant had paid

730—81.9(98) Interest.

81.9(1) *Cigarettes.* There are no interest provisions for the cigarette tax.

81.9(2) *Tobacco.* The interest rate on delinquent tobacco products tax is one percent per month computed from the date the tax was originally due to the date the tax was paid. If an assessment for taxes due is not allocated to any given month, the interest shall accrue from the date of assessment.

This rule is intended to implement section 98.46(5), The Code.

730—81.10(98) Waiver of penalty or interest.

81.10(1) *Cigarette.* The director has the power to waive or reduce the penalty imposed by section 98.31 if a violation of that statute is due to reasonable cause. See rule 81.15(98).

81.10(2) *Tobacco.* Pursuant to section 98.46, subsections 5 and 6, the director has the power to waive or reduce penalty or interest for delinquent tobacco tax subject to the approval of the attorney general.

This rule is intended to implement sections 98.31 and 98.46, The Code.

730—81.11(98) Appeal—practice and procedure before the department.

81.11(1) *Procedure.* The practice and procedure before the department is governed by chapter 17A, The Code, and chapter 7 of the department's rules.

81.11(2) *Appeals—time limitations.*

a. Cigarettes. An assessment issued pursuant to section 98.28, The Code, may be appealed pursuant to departmental rule 730—7.8(17A) and the protest must be filed within thirty days of the issuance of the assessment.

b. Tobacco.

1. A taxpayer has twenty days to appeal a proposed assessment issued under section 98.46(2), The Code. If an appeal is not filed within the twenty-day period, a final assessment will be issued including all penalties accruing thereto.

2. A taxpayer has thirty days to appeal a final assessment pursuant to rule 730—7.8(17A) of the department's rules of practice and procedure.

3. Demands for payment of taxes under section 98.46(4) relating to unfiled returns must be paid within ten days. Appeals to the notice of assessment relating to unfiled returns must be made within thirty days from the date of the assessment notice.

4. If an appeal to any assessment is not made timely, the amount of unpaid tax relating thereto shall become irrevocably fixed.

This rule is intended to implement sections 98.25, 98.28, 98.29, 98.46 and 98.49 and chapter 17A, The Code.

730—81.12(98) Permit—license revocation.

81.12(1) *Cigarette permits.* Cigarette permits issued by the department must be revoked if the permittee willfully violates the provisions of section 98.2, The Code (sale or gift to minors). The department may revoke permits issued by the department for violation of any other provision of division I of chapter 98, The Code, or the rules thereunder. (Also see chapter 551A and rule 730—84.7(551A).) The revocation shall be subject to the provisions of rule 730—7.24(17A). The notice of revocation shall be given to the permittee at least ten days prior to the hearing provided therein.

The board of supervisors or the city council that issued a retail permit is required by section 98.22, The Code, to revoke the permit of any retailer violating section 98.2, The Code (sale or gift to minors). The board or council may revoke a retail permit for any other violation of division I of chapter 98, The Code. The revocation procedures are governed by section 98.22(2), The Code, and the individual council's or board's procedures. Chapter 17A, The Code, does not apply to boards of supervisors or city councils. (See rule 730—84.7(551A))

If a permit is revoked under this subrule, the permit holder cannot obtain a new cigarette permit of any kind nor may any other person obtain a permit for the location covered by the revoked permit for a period of one year unless good cause to the contrary is shown to the issuing authority.

81.12(2) *Tobacco licenses.* The director may revoke, cancel or suspend the license of any tobacco distributor or tobacco subjobber for violation of any provision in division II of chapter 98, The Code, the rules promulgated thereunder, or any other statute applicable to the sale of tobacco products. The licensee shall be given ten days notice of a revocation hearing under section 98.48(2) and rule 730—7.24(17A). No license may be issued to any person whose license has been revoked under section 98.44(11), The Code, for a period of one year.

This rule is intended to implement sections 98.22, 98.44(11) and 98.48(2), The Code.

730—81.13(98) Permit applications. The application forms for all permits issued under chapter 98, The Code, are available from the department upon request. The applications shall include, but not be limited to:

1. The nature of the applicant's business,
2. The type of permit requested,
3. The address of the principal office of the applicant,
4. The place of business for which the permit is to apply,
5. The names and addresses of principal officers or members not to exceed three, if the business is not a sole proprietorship,
6. A list of persons who will be the applicant's suppliers or customers or both (whichever is applicable),
7. If the applicant intends to operate as a cigarette distributor, a certificate from a manufacturer of cigarettes indicating an intention to sell unstamped cigarettes to the applicant,
8. Whether or not the applicant possesses any other permit issued under chapter 98, The Code, and
9. The signature of the person making the application.

Applications for retail cigarette permits are supplied by the department to city councils and county board of supervisors. The application must be obtained from and filed with the individual council or board.

This rule is intended to implement sections 98.13, 98.16, 98.17, 98.23 and 98.44, The Code.

730—81.14(98) Confidential information. The release of information contained in any reports filed under chapter 98, The Code, is governed by the general provisions of chapter 68A, The Code, since there are no specific provisions relating to confidential information contained in chapter 98. Any requests for information must be made pursuant to departmental rule 730—6.2(17A) and subrule 6.1(5). See rule 6.3(17A).

Any request for information contained in a cigarette and tobacco report must be made in writing to the director of the excise tax division. The taxpayer who filed the report will be notified of the request for information and will be allowed two weeks to respond as to whether the information requested, if released, would give advantage to competitors and serve no public purpose. The taxpayer who filed the report must substantiate any claim of confidentiality. If substantiated, the request will be denied, otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement sections 98.25 and 98.49, The Code.

730—81.15(98) Request for waiver of penalty. Any taxpayer who believes he or she has good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, or pay the tax as required by law.

The following are examples of situations that may be accepted by the director as being reasonable causes:

1. Showing that the delay in filing was caused by the death or serious illness of the taxpayer or the person charged by the taxpayer to prepare and timely file the report on the taxpayer's behalf.
2. Showing that the delay in filing was caused by destruction by fire or other casualty of the taxpayer's records.
3. Showing that the delay in filing was due to erroneous information given to the taxpayer by an authorized employee of the department.
4. Showing that the delay in filing was caused by a prolonged unavoidable absence of the taxpayer responsible for the filing.
5. Showing that the report or remittance was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.
6. If the taxpayer has had no late filed reports or late payments in the past thirty-six months, the department will allow one late return to be filed without penalty. However, this does not apply to a penalty established by audit.
7. If the return is filed on time, but the face of the return contained a mathematical error and if the taxpayer has had no late filed reports including mathematical errors in the past thirty-six months. However, this does not apply to a penalty established by audit.
8. Showing that the delinquency existed even though the taxpayer exercised ordinary business care and prudence to ensure that the filing of the return or remittance of the tax would occur timely.
9. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time. Failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he or she exercised ordinary business care and prudence in providing for payment of his or her liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if he or she paid on the due date.

Penalty which results from a check given in payment of tax not being honored because of insufficient funds in the account upon which the check is drawn shall not be waived.

730—81.16(98) Inventory tax. All persons required to be licensed under section 98.13, The Code, as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax has been affixed and all unused cigarette and little cigar tax stamps and unused metered imprints in their possession at the close of business on June 30, 1981.

Persons required to take an inventory shall remit the tax due on all cigarette stamps or metered imprints and all cigarettes and little cigars with revenue affixed in their possession prior to delivery for resale. The tax is equal to the difference between the amount paid for cigarette stamps or metered imprints purchased prior to July 1, 1981 (six and one-half mills per cigarette) and the amount that is to be paid for cigarette stamps or metered imprints after June 30, 1981 (nine mills per cigarette).

In computing the inventory tax, any discount allowed or allowable under Iowa Code section 98.8, shall not be considered.

This rule is intended to implement Acts of the Sixty-ninth General Assembly, First Session, Senate File 576 and Iowa Code sections 98.8 and 98.31.

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CHAPTER 82
CIGARETTE TAX

730—82.1(98) Permits required. Every person selling or distributing cigarettes or using or consuming untaxed cigarettes within the state of Iowa must first obtain the appropriate permit.

CHAPTER 87
IOWA ESTATE TAX

730—87.1(451) Administration.

87.1(1) *Definitions.* The following definitions cover chapter 87 and are in addition to the definitions contained in section 451.1, The Code.

a. "Department" means the Iowa department of revenue.

b. "Director" means the director of revenue.

c. "Administrator" means the administrator of the estates and trusts division of the department of revenue.

d. "Estates and trusts division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

e. "Taxpayer" means the personal representative of the decedent's estate as defined in section 633.3(29), The Code, and any other person or persons liable for the payment of the federal estate tax under 26 U.S.C. section 2002.

f. "Tax" means the Iowa estate tax imposed by chapter 451, The Code.

87.1(2) *Delegation of authority.* The director delegates to the administrator of the estates and trusts division, subject always to the supervision and review by the director, the authority to administer the Iowa estate tax. This delegated authority specifically includes, but is not limited to, the determination of the correct Iowa estate tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; the determination of reasonable cause for failure to file and timely pay the tax due and granting extensions of time to file the return and pay the tax due.

The administrator of the estates and trusts division may delegate the examination and audit of tax returns to the supervisors, examiners, agents and clerks of the division as he or she may designate.

This rule is intended to implement sections 421.2, 421.4 and chapter 451, The Code.

730—87.2(451) Confidential and nonconfidential information.

87.2(1) *Confidential information.* Federal tax returns, federal return information, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the Iowa estate tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule 6.3(17A).

87.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department. The total amount of the tax paid is a matter of public record and is not confidential. The return on which the tax is reported is a matter of public record.

This rule is intended to implement Iowa Code chapters 68A and 451.

730—87.3(451) Tax imposed, tax returns, and tax due.

87.3(1) *Tax imposed and tax due.* Sections 451.2 and 451.8, The Code, impose a tax equal to the maximum amount of credit allowable under 26 U.S.C. section 2011 of the Internal Revenue Code for state death taxes paid on property included in the gross estate of the decedent. The credit allowable under the federal statute is not limited to the Iowa inheritance tax imposed under chapter 450, The Code, on the property in the decedent's gross estate, but also includes any other estate, legacy or succession taxes imposed by the state on the property. The Iowa estate tax qualifies as an estate tax specified in the federal credit statute. However, the tax due and payable, as distinguished from the tax imposed, is the maximum credit allowable under 26 U.S.C. section 2011, less the Iowa inheritance tax paid on the property included in the gross estate of the decedent.

Therefore, the Iowa estate tax due and payable is the amount which the maximum credit allowable under 26 U.S.C. section 2011 exceeds the Iowa inheritance tax paid.

87.3(2) *Duty of the taxpayer.* The taxpayer does not have the option of electing on the federal estate return, to claim only the Iowa inheritance tax paid on property included in the gross estate of the decedent, or to claim the maximum credit allowed under 26 U.S.C. chapter 2011 of the Internal Revenue Code. The maximum credit allowable under the federal statute must be claimed on the federal estate tax return. If the taxpayer has filed a federal estate tax return claiming an amount of credit less than the maximum credit allowable, the taxpayer has the duty to amend the federal estate tax return and claim the maximum credit allowable.

If there is a change in the amount of inheritance tax paid or in the amount of the maximum federal credit allowable for state death taxes paid (such as the result of a federal audit or an audit of the inheritance tax return) which results in an estate tax, or additional estate tax due, the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See section 451.8, The Code.

87.3(3) *Form of return.* The final inheritance tax return form provided for in subrule 86.2(6) shall be the return for reporting the Iowa estate tax due. The amount of the Iowa estate tax due shall be listed separately on the return from the amount of the inheritance tax shown to be due.

87.3(4) *Liability for the tax.* The personal representative of the decedent's estate and any person, including a trustee, in actual or constructive possession of any property included in the gross estate, have the duty to file the return with the department and pay the tax due. The shares of heirs and beneficiaries abate for the payment of the tax as provided in sections 633.436 and 633.437, The Code, in the same manner as they abate for the payment of the federal estate tax. See *Bergren v. Mason,* 163 N.W.2d 374 (Iowa 1968) for the proper method to abate shares to pay the federal estate tax.

87.3(6) *Value to use.* For the purpose of computing the amount of the tax imposed in both resident and nonresident estates, the value of the property in the gross estate as determined for federal estate tax purposes, and not the value for state inheritance tax, or other state succession taxes, shall be the value on which the tax is computed.

87.3(7) *Return and payment due date.* The return shall be filed with the department and the tax due paid within twelve months after the decedent's death, unless an extension of time has been granted by the department, in which case, the return shall be filed and the tax paid within the time prescribed by the extension of time.

87.3(8) *Extension of time.* The extension of time form for inheritance tax provided for in subrule 86.2(14) shall be the extension of time form for the Iowa estate tax. Unless the extension of time specifically states to the contrary, an extension of time to file the final inheritance tax return and pay the tax due, shall also be an extension of time for the same period, to pay the Iowa estate tax. Provided however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit for state death taxes paid under 26 U.S.C. section 2011 of the Internal Revenue Code. Provided, further, if the federal estate tax liability is paid prior to the expiration of an extension of time to pay the Iowa estate tax, the tax shall be due and payable at the time the federal estate tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax must be filed with the department prior to the time the return is required to be filed and the tax paid.

87.3(9) *Penalty—delinquent return and payment.* Effective for estates of decedents dying on or after January 1, 1981, a penalty of five percent per month, not to exceed twenty-five percent in the aggregate, is imposed for failure to file the return or failure to pay the tax due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. The penalty imposed is based on the tax due and is in addition to the penalties imposed by chapter 450 for failure to file or pay the inheritance tax due. A request for waiver of penalty must be in writing and submitted to the Estates and Trusts Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319 and must identify the estate and set forth the reasons for the failure. All tax not paid within the time prescribed by law (taking into consideration any extensions of time to pay) draws interest at the rate of eight percent per annum. All payments are first credited to penalty and interest and the balance, if any, to the tax due. For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of eight percent per annum. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981. For interest accruing after January 1, 1982, see rule 730—10.2(421) for the statutory interest rate.

87.3(10) *What constitutes reasonable cause.* What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

a. When the return and payment of the tax was timely filed, but filed erroneously with the internal revenue service or another state agency.

b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).

c. When the delay was caused by the death or serious illness of the taxpayer.

d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.

e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

f. When no Iowa estate tax was shown to be due when the federal estate tax return was filed and the taxpayer had reasonable cause to believe none was due, but then as a result of either a federal audit or an audit of the inheritance tax return, an estate tax, or additional estate tax, was due.

87.3(11) *What does not constitute reasonable cause.* Factors which do not tend to establish reasonable cause are, but not limited to:

a. Negligence of the tax return preparer in timely preparing or mailing the return. The duty of the taxpayer to timely file a return and pay the tax due is a nondelegable responsibility.

b. Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

87.3(12) *Interest—during an extension of time.* During the period of an extension of time, any unpaid tax shall draw interest at the rate of six percent per annum until December 31, 1981. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made during an extension of time shall first be credited to interest and the balance, if any, to the tax due. Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate of eight percent per annum from the date of the extension expiration until paid if paid on or before December 31, 1981. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

Discount. No discount is allowed for early payment of the tax due.

This rule is intended to implement sections 451.2, 451.5, 451.6, 451.8 and 451.12, The Code.

730—87.4(451) Audits, assessments and refunds. Subrules 86.3(1), 86.3(2) and 86.3(3) providing for the audit, assessment and refund of the Iowa inheritance tax shall also be the rules for the audit, assessment and refund of the Iowa estate tax.

This rule is intended to implement sections 451.3, 451.6, 451.8, 451.10 and 451.12, The Code.

730—87.5(451) Appeals.

Rule 730—86.4(450) providing for an appeal to the director and a subsequent appeal to district court under the Iowa Administrative Procedure Act in inheritance tax disputes, shall also be the rule for appeals in Iowa estate tax disputes. See chapter 7 of the department's rules.

This rule is intended to implement chapter 17A and sections 451.12 and 450.94, The Code.

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CHAPTER 88
GENERATION SKIPPING TRANSFER TAX

730—88.1(450A) Administration.

88.1(1) *Definitions.* The following definitions cover chapter 88 and are in addition to the definitions contained in section 450A.1, The Code.

a. "Department" means the Iowa department of revenue.

b. "Director" means the director of revenue.

c. "Administrator" means the administrator of the estates and trusts division of the department of revenue.

d. "Estates and trusts division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

e. "Taxpayer" means the distributee of property included in a generation skipping transfer which occurs at the same time as, or after, the death of the deemed transferor, and the trustee of the property included in a taxable termination defined in 26 U.S.C. section 2613, to the extent of the property subject to tax under the control of the trustee.

f. "Tax" means the generation skipping transfer tax imposed by chapter 450A, The Code.

88.1(2) *Delegation of authority.* The director delegates to the administrator of the estates and trusts division, subject always to the supervision and review by the director, the authority to administer the generation skipping transfer tax. This delegated authority specifically includes, but is not limited to, the determination of the correct generation skipping transfer tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; the determination of reasonable cause for failure to file and timely pay the tax due and granting extensions of time to file the return and pay the tax due. The administrator of the estates and trusts division may delegate the examination and audit of tax returns to such supervisors, examiners, agents and clerks of the division as he or she may designate.

This rule is intended to implement sections 421.2, 421.4 and chapter 450A, The Code.

730—88.2(450A) Confidential and nonconfidential information.

88.2(1) *Confidential information.* Federal tax returns, federal return information, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the generation skipping transfer tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule 6.3(17A).

88.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department. The return on which the tax is reported is a matter of public record.

This rule is intended to implement Iowa Code chapters 68A and 450A.

730—88.3(450A) Tax imposed, tax due and tax returns.

88.3(1) *Tax imposed—general rule.* Section 450A.2, The Code, imposes tax equal to the maximum federal credit allowable under 26 U.S.C. section 2602(c)5C of the Internal Revenue Code for state estate, inheritance, legacy or succession taxes paid on property included in certain generation skipping transfers. The tax imposed by section 450A.2, The Code, qualifies as a succession tax specified in the federal credit statute. The federal credit is not available for every generation skipping transfer taxable under 26 U.S.C. section 2601 of the Internal Revenue Code. The credit is available only on those generation skipping transfers occurring at the same time as, or after, the death of the deemed transferor. Those transfers occurring within three years of the deemed transferor's death are considered to have been made at the time of the deemed transferor's death. Generation skipping transfers occurring prior to three

years of the death of the deemed transferor are not within the scope of chapter 450A, The Code, and are not subject to the Iowa generation skipping transfer tax.

88.3(2) *Tax imposed—exception to general rule.* Section 450A.14, The Code, imposes a limitation on the amount of tax imposed under section 450A.2, The Code. The taxpayer's total federal and state tax liability cannot be greater than the tax payable had chapter 450A not been enacted. Therefore, if the amount of the federal generation skipping transfer tax remaining after the deduction of the credit for prior transfers allowed under 26 U.S.C. section 2602(c)4, is less than the maximum credit allowable for state death and succession taxes paid (the Iowa generation skipping transfer tax), such lesser amount (it could be zero) is the Iowa generation skipping transfer tax. The credit for tax on prior transfers allowed by 26 U.S.C. section 2602(c)4 of the Internal Revenue Code is applied against the federal generation skipping transfer tax before the credit for state death and transfer tax is applied. This order of applying the two credits is the reverse of the order of application in computing the Iowa estate tax imposed by chapter 451, The Code.

88.3(3) *Tax due—no credit for inheritance tax paid.* Inheritance tax paid on property included in the deemed transferor's estate is not a credit against the generation skipping transfer tax imposed by section 450A.2, The Code, although it is a credit against the Iowa estate tax imposed by chapter 451, The Code, on the property in the deemed transferor's estate.

Nor is the inheritance tax paid on the property in a prior estate which is now included in a taxable generation skipping transfer, a credit against the tax imposed by section 450A.2, The Code. Therefore, the tax due is the maximum credit allowable under 26 U.S.C. section 2602(c)5C of the Internal Revenue Code, subject to the limitation in subrule 88.3(2).

88.3(4) *Duty of the taxpayer.* It is the duty of the taxpayer to file the return prescribed by subrule 88.3(5) and pay the tax due within the time prescribed by law (taking into consideration any extension of time to file and pay). A copy of the federal generation skipping transfer tax return must be submitted to the department at the time the Iowa return is filed. The taxpayer shall keep such books, records and accounts as are reasonably necessary to substantiate the amount and value of the property included in a generation skipping transfer subject to tax, and upon request the taxpayer shall furnish such information to the department as may be reasonably necessary to enable the department to determine the correct tax due. It is the duty of the taxpayer to claim the maximum amount of the federal credit allowable on the federal generation skipping transfer tax return, subject to the limitation in subrule 88.3(2).

If there is a change in the amount of the maximum federal credit allowable, or the amount allowable under subrule 88.3(2), against the federal tax on a generation skipping transfer (such as a result of a federal audit of the deemed transferor's estate or in the amount and value of the property included in a generation skipping transfer) the taxpayer has the duty to promptly report such change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See section 450A.11, The Code.

88.3(5) *Form of the return.* The form of the return for reporting the generation skipping tax to the department shall be in such form as may be prescribed by the director. It shall provide for such schedules of property subject to tax, deductible expenses, losses, and tax computation tables to conform as nearly as possible to the form of the federal generation skipping transfer tax return.

88.3(6) *Liability for the tax.* The distributee of property in a generation skipping transfer subject to tax, is personally liable for the tax to the extent of the fair market value of the property received. In addition, the trustee of property in a taxable termination is personally liable for the tax attributable to such termination to the extent of the fair market value of the property under his or her control. Fair market value for the purpose of determining the extent of the liability of a distributee or trustee is determined at the time of the distribution. Neither the deemed transferor's estate, nor its personal representative is liable for the tax imposed (unless the personal representative is also the distributee or trustee of the property subject to tax).

88.3(7) *Situs of property.* For the purpose of the tax imposed by chapter 450A, The Code, the situs of intangible personal property included in a generation skipping transfer subject to tax, is the state in which the deemed transferor was a resident at the time of death. The situs of

Proration of the Tax

Ratio that the value of the Iowa property included in the gross generation skipping transfer bears to the total gross value of the generation skipping transfer:

448,000 = 81.75%
548,000

Iowa generation skipping transfer tax owed by C and D:

$8,600 x .8175 = $7,030.50

NOTE: Both the trustee and the distributees are liable for payment of the tax.

88.3(11) *Value to use.* For the purpose of computing the amount of the tax imposed on generation skipping transfers attributable to both residents and nonresident deemed transferors, the value of the transferred property as determined for federal generation skipping transfer tax purposes shall be the value on which the tax is computed.

88.3(12) *Return and payment due date.* The return shall be filed with the department and the tax due paid within twelve months after the death of the deemed transferor, if the taxable generation skipping transfer occurs at the same time as the deemed transferor's death. If the taxable transfer occurs after the death of the deemed transferor, the return shall be filed and the tax due paid on or before the day which is twelve months after the day on which the taxable transfer occurs. If an extension of time has been granted to file the return and pay the tax due, the return must be filed and payment made on or before the expiration of the extension.

88.3(13) *Extension of time.* For good cause, the director may grant an extension of time to file the return and pay the tax due for a period not to exceed ten years after the death of the deemed transferor, if the taxable transfer occurs at that time, or if the taxable transfer occurs after the death of the deemed transferor, ten years after the date the transfer occurred, as the case may be. Provided however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit allowed for state death or succession taxes paid, allowable under 26 U.S.C. section 2602(c)5C of the Internal Revenue Code. Provided further, if the federal generation skipping transfer tax liability is paid prior to the expiration of an extension of time to pay the Iowa generation skipping transfer tax, the tax shall be due and payable at the time the federal generation skipping transfer tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax due shall be in such form as the director may prescribe and must be filed with the department prior to the time the return is required to be filed and the tax due paid.

88.3(14) *Penalty—delinquent return and payment.* Effective for taxable transfers occurring on or after January 1, 1981, a penalty of five percent per month, not to exceed twenty-five percent in the aggregate, is imposed for failure to file the return or failure to pay the tax due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless such failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. The penalty imposed is based on the tax due and is in addition to the penalties imposed by chapters 450 and 451, The Code, for failure to file the returns or pay the inheritance tax and Iowa estate tax in the deemed transferor's estate. A request for waiver of penalty must be in writing and submitted to the Estates and Trusts Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319 and must identify the deemed transferor's estate, the taxable transfer, and set forth the reasons for the failure. All tax not paid within the time prescribed by law (taking into consideration any extensions of time to pay) draws interest at the rate of eight percent per annum until December 31, 1981. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. All payments are first credited to penalty and interest and the balance, if any, to the tax due. For taxable transfers occurring on or after April 30, 1976, but prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of eight percent per annum if paid on or before December 31, 1981. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. There is no penalty for failure to file and pay the tax on taxable transfers occurring prior to January 1, 1981.

88.3(15) *What constitutes reasonable cause.* What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

a. When the return and payment of the tax was timely filed, but filed erroneously with the internal revenue service or another state agency.

b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).

c. When the delay was caused by the death or serious illness of the taxpayer.

d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.

e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

88.3(16) *What does not constitute reasonable cause.* Factors which do not tend to establish reasonable cause are, but not limited to:

a. Negligence of the tax return preparer in timely preparing or mailing the return. The duty of the taxpayer to timely file a return and pay the tax due is a nondelegable responsibility.

b. Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

88.3(17) *Interest—during an extension of time.* During the period of an extension of time, any unpaid tax shall draw interest at the rate of six percent per annum until December 31, 1981. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made during an extension of time shall first be credited to interest and the balance, if any, to the tax due. Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate of eight percent per annum from the date of the extension expiration until paid, if paid on or before December 31, 1981. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

88.3(18) *Discount.* No discount is allowed for early payment of the tax due.

This rule is intended to implement sections 450A.2, 450A.3, 450A.4, 450A.5, 450A.8, 450A.9, 450A.11, 450A.12, 450A.13, and 450A.14, The Code.

730—88.4(450A) Audits, assessments and refunds. Subrules 86.3(1), 86.3(2) and 86.3(3) providing for the audit, assessment and refund of the Iowa inheritance tax shall also be the rules for the audit, assessment and refund of the Iowa generation skipping transfer tax.

This rule is intended to implement sections 450A.2, 450A.4, 450A.5, 450A.8, 450A.9, 450A.10, 450A.11, 450A.12 and 450A.14, The Code.

730—88.5(450A) Appeals. Rule 730—86.4(450A) providing for an appeal to the director and a subsequent appeal to district court under the Iowa Administrative Procedure Act in inheritance tax disputes, shall also be the rule for appeals in Iowa generation skipping transfer tax disputes. See chapter 7 of the department's rules.

This rule is intended to implement chapter 17A and sections 450A.12 and 450.94, The Code.

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CHAPTER 89
FIDUCIARY INCOME TAX

[Formerly fiduciary rules ch 49]

730—89.1(422) Administration.

89.1(1) *Definitions.* The following definitions cover chapter 89 and are in addition to the definitions contained in section 422.4, The Code.

a. "Department" means the Iowa department of revenue.

b. "Director" means the director of revenue.

c. "Administrator" means the administrator of the estates and trusts division of the department of revenue and the personal representative of an intestate estate.

d. "Estates and trusts division" is the organizational unit of the department created by the director to administer the inheritance, estate, generation skipping transfer and fiduciary income tax laws.

e. "Taxpayer" means the executor, administrator or other personal representative of a decedent's estate required to file a return for the estate and the decedent under sections 422.14 and 422.23, The Code. "Taxpayer" also means the trustee of a trust subject to tax under 26 U.S.C. section 641 and required to file a return under 26 U.S.C section 6012(b), as well as the trustee of the bankrupt estate of an individual under chapter 7 or 11 of Title 11 of the United States Code.

f. "Tax" means the income tax imposed on estates and trusts under section 422.6, The Code.

g. "Personal representative" means the executor, administrator or trustee of a decedent's estate.

89.1(2) *Delegation of authority.* The director delegates to the administrator of the estates and trusts division, subject always to the supervision and review of the director, the authority to administer the fiduciary income tax. This authority specifically includes, but is not limited to: Determining the correct fiduciary income tax liability; making tax liability assessments; issuing refunds; releasing tax liens; filing tax liability claims in probated estates and releasing the claims upon payment of the tax; determining reasonable cause for failure to file and make timely tax payment; granting extensions of time to file the return and pay the tax due and issuing the certificate of acquittance authorized by section 422.27, The Code. The administrator of the estates and trusts division may delegate the examination and audit of tax returns to the supervisors, examiners, agents and clerks of the division as he or she may designate.

This rule is intended to implement sections 421.2, 421.4, 422.6, 422.23, 422.25, 422.26, 422.27 and 422.73, The Code.

730—89.2(422) Confidentiality.

89.2(1) *Confidential information.* The state and federal returns, accompanying schedules, as well as the taxpayer's books, records, documents and accounts of any person, firm or corporation, are held confidential, except the information which is deemed a public record by the state and federal law. See 26 U.S.C. section 6103 of the Internal Revenue Code pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See departmental rules 730—6.3(17A) and 38.5(422) for the confidentiality of a decedent's individual income tax returns.

89.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not confidential. The fact alone that a return has or has not been filed with the department is not confidential information. 1976 Op. Att'y Gen. 679.

89.2(3) *Documents to be filed.*

a. Estates of Iowa decedents. A copy of the preliminary inheritance tax report and probate inventory required by section 633.361, The Code, and departmental subrule 86.2(2) (relating to inheritance tax) and a copy of the decedent's will in testate estates shall be filed with the first fiduciary return of income, unless previously filed with the department for inheritance tax purposes.

b. Nonresident decedents—ancillary administration. If ancilliary administration has been opened for the estate of a nonresident decedent, a copy of the preliminary inheritance tax report and probate inventory and a copy of the decedent's will in testate estates, shall be filed with the department, subject to the same conditions and requirements in estates of resident decedents. If ancillary administration has not been opened for a nonresident decedent with Iowa taxable income, a copy of the inventory filed in the primary estate, or the portion of the inventory listing the property generating the Iowa income and the decedent's will in testate estates, must be filed with the department with the first fiduciary return of income.

c. Inter vivos trusts. Inter vivos trusts with a situs in Iowa and inter vivos trusts with a situs outside Iowa with Iowa taxable income, shall submit to the department with the first fiduciary return the following: (1) A copy of the trust instrument; (2) a list of the trust assets (those generating Iowa taxable income in case of trusts with a situs outside Iowa); and (3) an estimate of the fair market value of each asset. If the trust instrument is amended or additional assets are added to the trust corpus (additional assets which generate Iowa taxable income in case of trusts with a situs outside Iowa), a copy of the amended items must be submitted to the department with the first fiduciary return of income following the change.

d. Testamentary trusts. If the estate was not reported for inheritance tax purposes, a copy of the decedent's will and a list of assets in the trust corpus in testamentary trusts with a situs both within and without Iowa must be submitted to the department with the first fiduciary return of income.

89.2(4) *Required records.* The taxpayer shall keep records and accounts necessary to substantiate reportable income and deductions. Upon request, the taxpayer shall furnish the department documents, such as copies of tax returns, court orders, trust instruments, annual reports, canceled checks and like information as may be reasonably necessary to enable the department to determine the correct tax liability. *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971).

This rule is intended to implement sections 422.25, 422.27, 422.28 and 422.73, The Code.

730—89.3(422) Situs of trusts.

89.3(1) *Testamentary trusts.* The situs of a testamentary trust for tax purposes is the state of the decedent's residence at the time of death until the jurisdiction of the court in which the trust porceedings are pending is terminated. In the event of termination and the trust remains open, the situs of the trust is governed by the same rules as pertain to the situs of inter vivos trusts.

89.3(2) *Inter vivos trusts.* If an inter vivos trust is created by order of court or makes an accounting to the court, its situs is the state where the court having jurisdiction is located until the jurisdiction is terminated. The situs of an inter vivos trust which is subject to the grantor trust rules under 26 U.S.C. sections 671 to 679 is the state of the grantor's residence, or the state of residence of the person other than the grantor deemed the owner, to the extent the income of the trust is governed by the grantor trust rules.

If an inter vivos trust (other than a trust subject to the grantor trust rules in 26 U.S.C. sections 671 through 679) is not required to make an accounting to and is not subject to the control of a court, its situs depends on the relevant facts of each case. The relevant facts include, but are not limited to: The residence of the trustees or a majority of them; the location of the principal office where the trust is administered; and the location of the evidence of the intangible assets of the trust (such as stocks, bonds, bank accounts, etc.). The residence of the grantor of a trust, not subject to the grantor trust rules under 26 U.S.C. sections 671 to 679, is not a controlling factor as to the situs of the trust, unless he or she is also a trustee. A statement in the trust instrument that the law of a certain jurisdiction shall govern the administration of the trust is not a controlling factor in determining situs. The residence of the beneficiaries of a trust is also not relevant in determining situs.

This rule is intended to implement sections 422.6, 422.8, and 422.14, The Code.

Decedent "A" died a resident of Webster City, Iowa, on February 15, 1980. "A" at the time of death owned income producing property both in Iowa and the State of Missouri. For the short taxable year ending December 31, 1980, "A's" estate had the following income and expenses:

Interest	$ 5,000
Dividends	7,500
Iowa farm income	20,000
Missouri farm income	10,000
Iowa gross income	$42,500
Less allowable deductions	8,000
Iowa taxable income	$34,500
Iowa computed tax	$2,587.87
Less personal credit	17.00
Tax subject to credit for foreign taxes paid	$2,570.87
Less credit for tax paid Missouri	413.00
Iowa tax due	$ 2,157.87

"A's" estate paid $413.00 income tax to the State of Missouri on the $10,000 Missouri farm income.

The Iowa tax on the foreign source income is $604.91 computed as follows:

Foreign income included in gross income $10,000 / Total Iowa gross income $42,500 × $2,570.87* = $604.91

*$2,570.87 is the Iowa computed tax less the $17,000 personal credit.

The allowable credit for taxes paid the State of Missouri is $413.00, because it is less than the Iowa tax paid on the Missouri income. If the Missouri tax paid had been greater than the Iowa tax on the Missouri income, the allowable credit would have been the Iowa tax on the Missouri income.

See subrule 42.3(3) for the computation of the credit allowed Iowa resident individuals for income tax paid to another state or foreign country.

c. Motor vehicle fuel tax credit. An estate or trust incurring Iowa motor vehicle fuel tax expense attributable to nonhighway uses may, in lieu of obtaining an Iowa motor vehicle fuel permit, claim as a credit against its Iowa income tax liability, the Iowa motor vehicle fuel taxes paid during the taxable year.

A copy of the Iowa motor vehicle fuel tax credit form IA 4136 must be submitted with the fiduciary return of income to substantiate the claim for credit. Any credit in excess of the income tax due shall be refunded to the estate or trust, subject to the right of offset against other state taxes owing.

This rule is intended to implement sections 422.4, 422.5, 422.6, 422.7, 422.8, 422.9, 422.12, 422.14, 422.23, 633.471 and chapter 324, The Code.

730—89.9(422) Audits, assessments and refunds. Department rules 43.1(422) to 43.4(422), governing the audit of individual income tax returns, the assessment for tax or additional tax due, and the refund of excessive tax paid shall also govern the audit of the fiduciary income tax return and the assessment and refund of fiduciary income tax.

This rule is intended to implement sections 422.16, 422.25, 422.30, 422.70 and 422.73, The Code.

730—89.10(422) The income tax certificate of acquittance.

89.10(1) In general. Section 422.27, The Code, requires the income tax obligation of an estate or trust to be paid prior to approval of the final report by the court. Section 422.27, The Code, refers only to the report of the executor, administrator or trustee. Therefore, other fiduciaries, such as a conservator or guardian, are not within the scope of the statute and are not required to obtain the director's certificate of acquittance. In addition, the statute makes reference only to a trustee's final report that is approved by a court. A trust that does not

report to and is not subject to the supervision of a court is not required to obtain a certificate of acquittance. However, the statute's reference to a trustee who must report to the court would also include, but is not limited to, a referee in partition and the trustee of the estate of an individual bankrupt under chapter 7 or 11 of Title 11 of the United States Code. What constitutes a trust is a matter of the trust law of the state of situs.

89.10(2) *The application for certificate of acquittance.* The final fiduciary return of income serves as an application for an income tax certificate of acquittance.

89.10(3) *Requirements for a certificate of acquittance.* The issuance of an income tax certificate of acquittance is dependent upon full payment of the income tax liability of the estate or trust for the period of administration. This includes the obligation to withhold income tax on distributions to nonresident beneficiaries. In the case of an estate, the income tax liability of the decedent for both prior years and the year of death must be paid to the extent of the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's income tax liability according to the order of payment of an estate's debts and charges specified in section 633.425, The Code (Probate Code). If the probate property of the estate is insufficient to pay the decedent's income tax obligation in full, the department, in lieu of a certificate of acquittance, shall issue a certificate stating that the probate property is insufficient to pay the decedent's income tax liability and that the department does not object to the closure of the estate. In the event the decedent's income tax obligation is not paid in full, the closure of the decedent's estate does not release any other person who is liable to pay the decedent's income tax obligation.

89.10(4) *The extent of the certificate.* An income tax certificate of acquittance is a statement of the department certifying that all income taxes due from the estate or trust have been paid in full to the extent of the income and deductions reported to the department. The certificate fulfills the statutory requirements of section 422.27, The Code, and the Iowa income tax portion of the requirements of sections 633.477 and 633.479, The Code (Probate Code). Providing all other closure requirements are met, the certificate permits the closure of the estate or trust by the court. However, the certificate of acquittance is not a release of liability for any income tax or additional tax that may become due, such as the result of an audit by the Internal Revenue Service or because of additional income not reported. See subrule 38.2(1) for the limitations on the period of time to conduct income tax audits.

This rule is intended to implement sections 422.27, 633.425, 633.477 and 633.479, The Code.

730—89.11(422) Appeals to the director. An estate or trust has the right to appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the denial of a request for an income tax certificate of acquittance. The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within ninety days of the notice of assessment and the other matters which are subject to appeal. Chapter 7 of the department's rules of practice and procedure before the department shall govern appeals to the director. See specifically rules 7.8(17A) to 7.23(17A) governing taxpayer protests.

This rule is intended to implement section 422.28 and chapter 17A, The Code.

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CHAPTER 90
Reserved

TITLE XII
GAMES OF SKILL, CHANCE, BINGO AND RAFFLES

through correspondence, all matters of fact and law which he or she considers relevant to the situation. This person may also ask for a conference with the Excise Tax Division, Des Moines, Iowa. Documents and records supporting his or her position may be requested.

c. Power of agent, auditor or employee to compromise tax claim. Only the director has the power to compromise any tax claims. The power of the agent, auditor, clerk or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

103.6(2) *Notice of assessment.* If, after following the procedure outlined in subrule 103.6(1) "*b*", no agreement is reached and the person does not pay the amount determined to be correct within twenty days, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by certified mail.

If the notice of assessment is timely protested according to the provisions of rule 7.8(17A) and section 422.54(2), proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by such appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than thirty days following the date of the assessment notice. See rule 7.8(17A).

730—103.7(422A) Collections. If determined expedient or advisable, the director may enforce the collection of the tax liability which has been determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of hotel and motel tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

730—103.8(422A) No property exempt from distress and sale. The provisions of section 422.26 of the Code shall apply with respect to a hotel-motel tax liability determined to be due by the department. The department shall proceed to collect the tax liability after the same has become delinquent; and no property of the taxpayer shall be exempt from the process whereby the tax is collected.

730—103.9(422A) Information confidential. When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situaiton, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. The director may also authorize the examination of returns filed by a retailer by (1) other officers of the state of Iowa, (2) tax officers of another state if a reciprocal arrangement exists or (3) tax officers of the federal government if a reciprocal arrangement exists. The director is also empowered to publish annual statistical reports relating to the operation of the hotel and motel tax. See rule 6.3(17A).

All other information obtained by employees of the department in the performance of their official duties is confidential as provided by law and cannot be disclosed.

This rule is intended to implement Iowa Code sections 422A.1 and 422.72.

730—103.10(422A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the hotel and motel tax, require any person subject to such tax to file with the department a bond in such amount as the director may fix, or in lieu of such bond, securities approved by the director in such amount as the director may prescribe.

The determination of when and in what amount a bond is required will be determined pursuant to rule 730—11.10(422). The bond required under this rule and rule 730—11.10(422) shall be a single requirement with the amount to be determined with reference to both the potential retail sales tax and the hotel and motel tax liabilities. Whether or not the person required to post the bond files a monthly deposit for sales tax purposes, the basis for determining the hotel and motel tax portion of the bond shall be an amount sufficient to cover nine months or three quarters of tax liability.

730—103.11(422A) Sales tax. The hotel and motel tax is levied in addition to the state sales tax imposed in chapter 422 of the Code. Additionally, the director of revenue is required to administer the hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax. See chapters 12, 13 and 14 of the department's rules for details. The computation of the hotel and motel tax shall be based on the price of the room excluding the sales tax.

730—103.12(422A) Judicial review. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa Administrative Procedure Act in a manner similar to that provided for review of sales tax matters. See chapter 7 of the department's rules of practice and procedure for details.

730—103.13(422A) Registration. All persons who are required to collect and remit the local option hotel and motel tax are required to hold an Iowa retail sales tax permit. No hotel/motel tax permit is required although persons may be required to register with the department in the future as a hotel and motel tax collector. Persons shall register as a retailer and hold the retail sales tax permit prior to the time they begin collecting the hotel and motel tax.

730—103.14(422A) Notification. Before a city or county's local option hotel and motel tax can become effective, be revised, or be repealed, sixty days notice of such action must be given to the director in writing by certified mail.

These rules are intended to implement chapter 422A, The Code.

730—103.15(422A) Certification of funds. Within forty-five days after the date that the quarterly returns and payments are due, the director of revenue will certify to the treasurer of state the amount of hotel and motel tax to be transferred from the general fund to the local transient guest tax fund which is to be distributed to each city and county which has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.

This rule is intended to implement section 422A.2(2), The Code.

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CHAPTER 104
FILING RETURNS, PAYMENT OF TAX, PENALTY, AND INTEREST

730—104.1(422A) Returns, time for filing. On the quarterly sales tax return, every retailer shall report the gross sales subject to the hotel and motel tax for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. The information required for the computation of the hotel and motel tax liability shall be separate from that required for the computation of the retail sales tax liability. Such information and computation must be stated and computed separately, even though the total tax liability may be paid with a single remittance.

At its 14 July 1982 meeting, the administrative rules review committee objected to the "emergency" adoption and implementation of ARC 2949, on the grounds that action constituted an abuse of the "emergency" rule-making powers of §§17A.4 and 17A.5, and was therefore unreasonable. ARC 2949 appears in IV IAB 25 (6-9-82) and is codified as 770 IAC rule 75.5. The rule relates to the division of income between spouses when one or both spouses are placed in a care facility. In essence the rule provides that when a spouse enters a facility there is no longer an obligation to support, or be supported by, the spouse remaining at home.

The department supports its action by stating 1) that it was impracticable to provide notice and public participation since the substance of the rule was mandated by the United States Supreme Court in Herwig v. Ray; and 2) that the rule conferred a benefit on the public by removing the burden of supporting an institutionalized spouse.

It was the opinion of the committee that while the rule does confer a benefit on some individuals, it places a burden on others; specifically, those who rely on the income or pension of the institutionalized spouse for their sole support. Under the provisions of ARC 2949, these individuals would receive only enough income from their institutionalized spouses to raise their personal income to the federal supplemental security income rate. This is a radical change from the earlier policy, which allowed the non-institutionalized spouse to retain sufficient income to maintain the current standard of living. The committee believes that such a major change, possibly adversely affecting more persons than are benefited by it, should be preceded by notice and public participation. This would serve several important functions: 1) it would warn non-institutionalized spouses that substantially less income may be available to maintain their home, and provide them with a period of time to adjust their finances accordingly; 2) it would provide an opportunity to accurately determine whether the majority of affected persons are benefited or harmed by the rule.

The committee is aware of the need to speedily implement the rulings of the Supreme Court. In this case, the committee questions whether an "emergency" rule is necessary. The change did not go into effect until 1 July 1982, over three months after the Supreme Court issued its opinion. If immediate implementation was necessary the department could have adopted by reference the federal standard, 42 CFR §435.723. Instead the department took three months to re-draft the language and provide additional detail. If there is time for this there should also be time to provide public notice of the impending change and to elicit public comments on the impact it will have upon affected individuals. It is the opinion of the committee that the opportunity for notice and public participation is essential when a proposal will have a substantial and adverse impact, and that the time taken by the department to re-draft the federal provisions and adopt them into the Iowa administrative code indicates that the need to speedily implement the Supreme Court decision was not so pressing as to render an additional delay, for notice and public comment, impracticable.

770—75.5(249A)*† Computation of countable income and resources for persons in a medical institution.

75.5(1) *Individual with no spouse.* All income and resources available to an applicant or recipient in a medical institution shall be considered in determining eligibility and financial participation by the resident.

75.5(2) *Member of couple whose noninstitutionalized spouse is eligible for medical assistance as aged, blind or disabled.*

a. The resources of the couple shall be considered as available to each other for the first six months after the month they cease to live together and evaluated against the resource limitation for a couple. After this six-month period, each member of the couple shall be treated as an individual with respect to resources.

b. The income of each spouse shall be used to determine eligibility for medical assistance for that spouse effective the month following the month the couple ceases to live together. No diversion of the institutionalized spouse's income shall be made for the maintenance needs of the noninstitutionalized spouse in determining the financial participation by the institutionalized spouse.

75.5(3) *Member of a couple whose noninstitutionalized spouse is ineligible for medical assistance as aged, blind, or disabled.* The institutionalized individual shall be treated as an individual with regard to income and resources after the month in which the couple ceases to live together, except that if the institutionalized spouse is determined to be eligible for medical assistance, a diversion from the institutionalized spouse's income shall be made for the maintenance needs of the noninstitutionalized spouse or the noninstitutionalized spouse and dependent children of the institutionalized spouse, not to exceed the following amounts:

a. For the maintenance needs of a noninstitutionalized spouse only, an amount which, when combined with the noninstitutionalized spouse's own income, equals the supplemental security income federal benefit rate for an individual in his/her own home.

b. For the maintenance needs of a noninstitutionalized spouse and dependent children, an amount which, when combined with the income of the noninstitutionalized spouse and dependent children, equals the payment level for a family of the same size in the aid to dependent children program.

75.5(4) *Members of a couple who are both institutionalized.*

a. Members of a couple who are residing in the same room in a medical institution shall be subject to the resource limitation for a couple and the combined income of the couple shall be less than twice the amount of the income limit established in 75.1(7) to establish financial eligibility for medical assistance. Financial participation in the cost of care for each member of the couple shall be based on one-half of the couple's combined income.

b. Members of a couple who are both institutionalized, although not residing in the same room of the institution, shall be treated as individuals effective the month after the month the members of the couple cease living together.

This rule is intended to implement section 249A.3(2)"*a*", The Code.

770—75.6(69GA,ch82) Disposal of resources for less than fair market value.

75.6(1) In determining eligibility for medical assistance of individuals described in 75.1(4), 75.1(6), 75.1(7), 75.1(9) and 75.1(13), resources which were not exempt at the time of transfer which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance shall be counted as resources still available to the individual for the following period of time:

a. For uncompensated value of $12,000 or less: 24 months from the date of transfer.

b. For uncompensated value between $12,001 and $24,000: 36 months from the date of transfer.

c. For uncompensated value between $24,001 and $36,000: 48 months from the date of transfer.

d. For uncompensated value between $36,001 and $50,000: 60 months from the date of transfer.

*Emergency, pursuant to Iowa Code § 17A.5(2)"*b*"(2).
†Objection filed 7/19/82, see "Objection to 75.5" herein.

75.6(2) Transfers of resources as described in 75.6(1) shall be presumed to be for the purpose of establishing eligibility for medical assistance unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition to giving away or selling for less than fair market value, examples of transferring resources include but are not limited to establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the supplemental security income program.