State of Iowa

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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
January 4, 1984 Biweekly Supplement

IOWA ADMINISTRATIVE CODE

	Remove Old Pages*	Insert New Pages
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*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
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*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] (cont'd)	Ch 86, p.19, 20 Ch 86, p.41	Ch 86, p.19—Ch 86, p.20 Ch 86, p.41—Ch 86, p.51
Social Services Department[770]	Chs 10 to 24—Ch 25, p.6 Ch 54, p.1—Ch 64, p.2 Ch 109, p.1—Ch 109, p.8	Chs 10 to 25 Ch 64, p.1, 2 Ch 108, p.4
Voter Registration Commission[845]	Ch 2, p.1—Ch 2, p.4	Ch 2, p.1—Ch 2, p.4

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COLLEGE AID COMMISSION[245]

[Formerly Higher Education Facilities Commission]

*Omitted pursuant to §17A.5(3). Copies available from the College Aid Commission.

CHAPTER 16
IOWA SCIENCE AND MATHEMATICS GRANT PROGRAM

CHAPTER 1
FEDERAL GRANTS FOR UNDERGRADUATE FACILITIES

245—1.1(261) The construction and equipment grants programs.

1.1(1) The "state plan for higher education facilities Act of 1963" adopted by the higher education facilities commission on September 23, 1964, and as amended from time to time by the commission, constitutes the basis for carrying out its functions under title I of the higher education facilities Act of 1963 (public law 88-204), as amended, and applicable federal regulations.

1.1(2) Under part "A" title VI (public law 89-329), as amended, ties in obtaining federal grants for equipment and materials to improve undergraduate instruction. The commission assigns priorities, recommends grants and provides for hearings to applicants for funds.

1.1(3) Applicants for construction grants under Title I and instruction equipment grants under part "A", Title VI may obtain state plans and application instructions from the Iowa college aid commission, 201 Jewett Building, Des Moines, Iowa 50309.

[Filed 1/20/66; amended 1/28/71, 6/29/72, 10/15/73]
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CHAPTER 2
STATE OF IOWA SCHOLARSHIP PROGRAM

245—2.1(261) A state-supported and administered scholarship program.

2.1(1)* *Application requirements.* All high school graduates who rank in the upper fifteen percent of their class at the end of their junior year and who take a designated standard national test during the period specified by the commission are eligible to apply for State of Iowa Scholar recognition awards.

2.1(2) *Eligibility for honorary scholarship.* An applicant for a state of Iowa scholarship must meet the following initial requirements:

a. Be a resident of Iowa according to the rules established by the board of regents, IAC 720—1.4(262) and adopted by the commission.

b. Release test scores and rank in class to the commission on a form specified by the commission, with date of receipt by the commission as stated in the application instructions.

2.1(3) *Eligibility for monetary scholarship.* Having qualified academically as a state of Iowa scholar, an applicant applying for a monetary award must meet the following requirements:

a. Complete requirements for the high school diploma or its equivalent by the end of the summer preceding entrance into college.

b. In the case of an applicant who has earned a general equivalency diploma, class rank will be waived and academic potential will be judged on the basis of the test scores alone.

c. Plan to enroll as a full-time freshman student at a participating college, university or other postsecondary institution in Iowa. Applicants who have fulfilled requirements for the freshman year of college, either by advanced placement examination or by entry into college prior to receipt of a high school diploma, will be considered for awards on an individual basis.

d. File a statement of family financial circumstances on forms designated by the commission for the purpose of assessing need for financial assistance, such statement to be received at the specified processing center by the date indicated in the application instructions.

*Objection, see filed rules published IAC Supp. 1/26/77, 3/9/77.

2.1(4) *Criteria for awards.*

a. * Academic rank of an applicant is determined by two factors, percentile rank in high school class and scores on the designated standard national test, combined in a six to four weighting ratio, respectively, to produce an academic index score. The commission determines the minimum academic index score for state of Iowa scholar honorary awards.

b. Financial need, defined as the difference between the applicant's resources and anticipated expenses at the Iowa institution of his/her choice, is evaluated on the basis of the confidential statement of family income and assets.

(1) A dependent applicant's resources include the estimated amount of the parents' contribution toward college costs; a minimum contribution in summer earnings, the amount to be dependent upon the year of undergraduate study; and a portion of the applicant's personal assets, if any. A self-supporting applicant's resources include a minimum contribution, dependent upon the year of undergraduate study plus an additional expected contribution based on income and assets of the student and his/her spouse. For purposes of determining financial independence, the commission has adopted the definition currently in use by the U. S. Department of Education for the federally-funded programs of student assistance.

(2) College expenses include tuition and mandatory fees, room and board and a uniform allowance established by the commission for other college-related costs.

2.1(5) *Honorary and monetary awards.*

a. All applicants designated state of Iowa scholars on the basis of academic rank are awarded certificates of achievement and are eligible for monetary award consideration if they meet the requirements set forth under 2.1(3).

b. Monetary state scholarships are awarded by order of academic rank to those designated state of Iowa scholars who demonstrate financial need insofar as the appropriated funds permit.

(1) Monetary awards range from two hundred to six hundred dollars, not to exceed tuition and mandatory fees at the institution selected by the recipient.

(2) Awards are prorated on a quarterly or semester basis and are paid directly to the institution on the student's behalf after certification that the recipient is in attendance.

(3) If a recipient is dismissed or withdraws from college before completion of the term, his/her award or portion thereof shall be refunded to the state of Iowa in conformity with the institution's accepted policy on refunds.

(4) Upon the written request of the recipient by the specified deadline, a scholarship may be transferred from one participating institution to another. The amount of the scholarship may be changed, if expenses differ significantly from those at the original college choice.

(5) A recipient may request a leave of absence for a maximum of one calendar year if illness, financial circumstances or other reasons beyond his/her control prevent enrollment or force withdrawal from college.

(6) A student who is in default on a guaranteed student loan or a national direct student loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the state of Iowa scholarship program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

*Objection, see filed rules published in IAC Supp. 1/26/77, 3/9/77.

2.1(6) *Acceptance forms.* A monetary scholarship recipient is required to return an acceptance form to the commission by the date specified, reporting financial aids from other sources and agreeing to the terms of the award. If the total nonrepayable aid from other sources in addition to the state award exceeds the student's financial need, the commission may adjust or withdraw the scholarship. The commission may require that a state aid applicant apply for the Federal Basic Grant.

2.1(7) *Eligible institutions.* The following categories of Iowa postsecondary institutions are eligible to participate in the state of Iowa scholarship program:

a. Institutions holding accreditation by the North Central Association of Colleges and Secondary Schools.

b. State-supported area community colleges and vocational-technical schools accredited by the state department of public instruction.

c. Schools of professional nursing accredited by the state board of nursing.

d. Institutions which, in the absence of one of the above accreditations, are registered as nonprofit educational institutions with the corporations division of the secretary of state and are eligible for participation in the Federal Basic Pell Grant Program or have fulfilled the requirements for Iowa tuition grant participation set forth in section 261.9(5), paragraphs "*b*" and "*c*", The Code.

2.1(8) *Renewal of state scholarship.*

a. A state scholarship recipient may receive renewal of the award for succeeding years of undergraduate study, to the extent that funds are available and as authorized by the commission, provided that the student is in satisfactory standing with his/her postsecondary school and continues to demonstrate need for financial assistance.

b. Renewal applications may be obtained from the college financial aid office or the commission office and must be filed by the date indicated thereon.

c. Renewal awards will be re-evaluated annually on the basis of changes in college costs and financial circumstances of the student.

d. Acceptance forms. A renewal recipient is required to return an acceptance form to the commission by the date specified, reporting financial aids from other sources and agreeing to the terms of the award. If the total nonrepayable aid from other sources in addition to the state award exceeds the student's financial need, the commission may adjust or withdraw the scholarship.

e. Award transfers. Upon the written request of the recipient by no later than twenty-one calendar days after classes begin at the college to which the student transfers, a grant may be transferred from one participating institution to another. The amount of the grant will be adjusted based on the student's award eligibility and available funding.

f. A renewal applicant who is in default on a guaranteed student loan or a national direct student loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the state of Iowa scholarship program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

This rule is intended to implement Iowa Code section 261.2(4).

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CHAPTER 3
IOWA MEDICAL TUITION LOAN PLAN

245—3.1(261) Tuition loans for Iowa resident students who agree to become general practitioners (family doctors) and practice in Iowa. Funding discontinued in 1973.

3.1(1) *Loan contract.* A separate loan contract with the executive director of the higher education facilities commission has been negotiated for each academic year in which tuition loans were made under this plan. The signed and notarized contract affirms the following conditions:

a. The borrower plans to practice general medicine in Iowa for at least five years after completion of his/her training, such training to include one year of internship either within or outside the state.

b. The borrower will notify the commission within thirty days of any change of address or intent to terminate the agreement.

c. If the borrower enters military service after completion of medical training, the first two years of such service shall be applied toward cancellation of the debt, provided that he/she enters general practice in Iowa upon completion of his/her military tour of duty.

d. The full amount of the loan, less any portion cancelled as the result of partial fulfillment of the contract, plus interest dating from issuance of the loan shall become due and payable according to the terms of the contract if the borrower discontinues medical training, enters a specialized field of medicine or establishes practice outside the state of Iowa.

e. Repayment shall be made in not more than ten equal semiannual installments beginning within one month after termination of the agreement.

3.1(2) *Family practice residency.* A borrower who enters a "family practice residency" at an Iowa hospital shall be granted a maximum of three years of exemption before entering general practice in Iowa and shall receive loan cancellation benefits for up to three years. A borrower who enters "family practice residency" outside the state of Iowa shall be granted a maximum of up to three years deferral on fulfillment of the loan contract.

[Filed 1/28/71; amended 6/29/72, 10/15/73]
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CHAPTER 4
IOWA TUITION GRANT PROGRAM

245—4.1(261) Tuition grant based on financial need to Iowa residents enrolled as full-time eligible private institutions of postsecondary education in Iowa.

4.1(1) *Financial need.* The need of an applicant for financial assistance under this program shall be evaluated annually on the basis of a confidential statement of family finances filed on forms designated by the commission. The form must be received by the processing agent by the date specified in the application instructions.

4.1(2) *Tuition and mandatory fees.* Tuition and mandatory fees shall be defined as those college costs paid annually by all students enrolled on a full-time basis, such costs to be reported annually to the commission by each participating institution.

4.1(3) *Iowa residency.* The criteria used by the state board of regents to determine residency for tuition purposes, IAC 720—1.4(262) are adopted for this program.

4.1(4) *Self-supporting applicants.* For purposes of determining financial independence, the commission has adopted the definition in use by the U. S. Department of Education for the federally-funded student assistance program. Self-supporting applicants under twenty-one years of age are required to have their parents certify to their self-support by signing the financial statement.

4.1(5) *Priority for grants.* Applicants are ranked in order of the estimated amount which the family reasonably can be expected to contribute toward college expenses and awards are granted to those who demonstrate need in order of family contribution, from lowest to highest, insofar as funds permit.

4.1(6) *Acceptance forms.* A grant recipient is required to return an acceptance form to the commission by the date specified, reporting financial aids from other sources and agreeing to the terms of the award. If the total nonrepayable aid from other sources in addition to the state award exceeds the student's financial need, the commission may adjust or withdraw the grant.

4.1(7) *Award transfers.* Upon the written request of the recipient by no later than twenty-one calendar days after classes begin at the college to which the student transfers, a grant may be transferred from one participating institution to another. The amount of the grant will be adjusted based on the student's award eligibility and available funding.

4.1(8) *Restriction.* A student who is in default on a guaranteed student loan or a national direct student loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa tuition grant program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedure set forth in chapter 11.

This rule is intended to implement Iowa Code sections 261.15(2) and 261.16(3).

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CHAPTER 5
IOWA VOCATIONAL-TECHNICAL TUITION GRANT PROGRAM

245—5.1(261) Tuition grant based on financial need to Iowa residents enrolled as full-time students in vocational or technical (career education) programs at public area schools in the state.

5.1(1) *Financial need.*

a. Financial need is defined as the difference between the estimated amount of family resources available for college expenses and the total costs at the institution the student plans to attend.

b. Financial need shall be evaluated annually on the basis of a confidential financial statement filed on forms designated by the commission which must be received by the processing agent by the date specified in the application instructions.

5.1(2) *Iowa residency.* The criteria used by the state board of regents to determine residency for tuition purposes, IAC 720—1.4(262) are adopted for this program.

5.1(3) *Self-supporting applicants.* For purposes of determining financial independence, the commission has adopted the definition in use by the U. S. Department of Education for the federally-funded student assistance program. Self-supporting applicants under twenty-one years of age are required to have their parents certify to their self-support by signing the financial statements.

5.1(4) *Priority for grants.* Applicants are ranked in order of the estimated amount of the student's family contribution toward college expenses and awards are granted to those who demonstrate need in order of family contribution from lowest to highest, insofar as funds permit.

5.1(5) *Acceptance forms.* A grant recipient is required to return an acceptance form to the commission by the date specified, reporting financial aids from other sources and agreeing to the terms of the award. If the total nonrepayable aid from other sources in addition to the state award exceeds the student's financial need, the commission may adjust or withdraw the grant.

5.1(6) *Full year of study.* For purposes of this program, the commission has defined full year of study as either four quarters or two semesters plus a summer session. Grant payments are prorated according to this definition.

5.1(7) *Award transfers.* Upon the written request of the recipient by no later than twenty-one calendar days after classes begin at the college to which the student transfers, a grant may be transferred from one participating institution to another. The amount of the grant will be adjusted based on the student's award eligibility and available funding.

5.1(8) *Restriction.* A student who is in default on a guaranteed student loan or a national direct student loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa vocational-technical tuition grant program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

This rule is intended to implement Iowa Code section 261.17.

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CHAPTER 6
ADVISORY COUNCIL FOR STUDENT AID PROGRAMS

245—6.1(261) Advisory council. An advisory council selected from officers of Iowa secondary schools, public area schools, Iowa independent colleges and universities, and state-supported universities, shall be established by the commission. Members are appointed to serve two-year terms with the exception of the elected presidents of the Iowa personnel and guidance association, the Iowa association of college admissions counselors, and the Iowa association of student financial aid administrators, who serve only for their one year in office. The council shall meet at least annually to review the state-supported student aid programs and make recommendations to the commission for revisions in policies and procedures.

This rule is intended to provide schools with representation in the administration of student aid programs implemented under chapter 261, The Code.

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CHAPTER 7
OSTEOPATHIC SUBVENTION PROGRAM

245—7.1(261) A state-supported subvention program to be used for admission and education of Iowa residents at the College of Osteopathic Medicine and Surgery.

7.1(1) *Iowa residency.* The criteria used by the state board of regents to determine residency for tuition purposes, IAC 720—1.4(262) are adopted by the commission for purposes of this program.

adopts the criteria used by the state board of regents to determine Iowa residency for tuition purposes, IAC 720—1.4(262).

8.1(2) *Contracts.* Contracts with colleges of optometry and podiatry shall be renegotiated annually by the commission, subject to the availability of appropriated funds.

8.1(3) *Payment of contracted funds.* The commission shall authorize payment of contracted funds after the following requirements have been fulfilled by the college:

a. The college will submit to the commission prior to the beginning of the academic year a list of all Iowa residents applying for admission, indicating those who have been accepted for admission.

b. Two weeks after the beginning of the academic year, the college will submit to the commission a list of names by class of Iowa residents who are officially enrolled in the optometric and podiatric degree programs respectively.

8.1(4) *Selection of Iowa residents.* Iowa residents to be admitted to the college under contract shall be selected by the college on the basis of their qualifications and without discrimination because of sex, color or creed.

These rules are intended to implement Iowa Code sections 261.22 and 261.23.

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CHAPTER 9
NATIONAL GUARD EDUCATIONAL BENEFITS PROGRAM

245—9.1(261) Benefits. A state-supported program to provide educational benefits for Iowa residents enlisted in the Iowa National Guard.

9.1(1) *Eligibility.*

a. Applicant must be an Iowa resident, according to the residency criteria adopted by the state board of regents.

b. Applicant must be serving currently as a member of the Iowa National Guard.

c. Applicant must be accepted for admission at an Iowa postsecondary institution which is approved by the U.S. Office of Education for purposes of federal student aid programs.

d. Applicant must apply on a form approved by the commission and bearing certification by the Iowa National Guard.

e. Applicant must not be receiving federal bonus or education benefits funded by the military.

f. Applicant must be in good standing at his/her institution and must meet the institution's minimum standards of academic progress.

g. Applicants pursuing or planning to pursue a correspondence course of study are not eligible to receive awards under this rule.

h. An applicant who is in default on a guaranteed student loan or a national direct student loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the national guard educational benefits program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

9.1(2) *Priority for awards.* Grants will be awarded to eligible applicants in order of receipt of application by the commission to the extent of available funds.

9.1(3) *Amount and payment of awards.*

a. Amount of award will be based on anticipated period of enrollment and on enrollment as a full-time or a half-time student.

b. Payment of total award will be made through the financial aid office at the recipient's college after certification of enrollment to be applied to any education-related expenses.

c. If recipient is dismissed or withdraws from college before completion of anticipated period of enrollment, the award or portion thereof shall be refunded to the state of Iowa in conformity with the institution's accepted policy on tuition refunds.

This rule is intended to implement Iowa Code sections 261.1 and 261.15.

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CHAPTER 10
IOWA GUARANTEED STUDENT LOAN PROGRAM*

These rules are intended to implement Iowa Code sections 261.35 and 421.17.

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*Omitted pursuant to §17A.6(3). Copies available from College Aid Commission.

CHAPTER 14
IOWA GUARANTEED LOAN PAYMENT PROGRAM

245—14.1(261) Iowa guaranteed loan payment for new teachers of advanced mathematics and specified science programs in approved Iowa postsecondary schools.

14.1(1) *Application for loan payments.*

a. Application forms shall be provided by the commision for distribution through school districts and teacher preparation institutions in the state.

b. In the appropriate section of the application form the superintendent of the school district which has contracted with the applicant shall certify the teaching assignment of the applicant for the forthcoming school year.

c. The appplicant shall file the completed application with the commission.

14.1(2) *Criteria for selection of beneficiaries.* Eligible teachers who file completed applications shall be granted loan payment benefits in rank order of the date the application was received by the commission.

14.1(3) *Definitions.*

a. For purposes of this program, a "sequential mathematics course at the advanced algebra level or higher" (1983 Iowa Acts, chapter 184, section 2, subsection 4, paragraph "a") shall be defined as a course which requires, as a minimum prerequisite, two courses in the mathematics sequence.

b. For purposes of this program, "graduated from college" is defined as the occasion of the individual's award of the first baccalaureate degree.

c. For the purposes of this program, a major in mathematics or science is defined as a major in one or more of the courses of study specified in 670—16.17(257) or 670—16.23(257) of the Iowa administrative rules adopted by the department of public instruction, as amended from time to time.

d. "Outstanding debt" is defined as an Iowa guaranteed student loan insured by the commission.

14.1(4) *Certifications required for reimbursement of loan payments.*

a. After the close of the school year and before July 15, the superintendent of the school district which has employed the teacher shall certify to the commission that the teacher served throughout the school year in an eligible teaching assignment. The certification form provided by the commission for this purpose shall include a section in which the superintendent will indicate renewal status of the teacher's contract and anticipated teaching assignment for the forthcoming school year.

b. After the close of the school year and before July 15, the lending institution which holds the teacher's student loan notes shall certify to the commission the total amount paid on principal and interest during the preceding state fiscal year. The form provided by the commission for this purpose shall include a section to report any delinquencies in loan payment. If two or more lenders are holders of the teacher's Iowa guaranteed student loan notes, all lenders must provide certification.

14.1(5) *Reimbursement of loan payments.*

a. Upon receipt of the necessary certifications, the commission shall reimburse the teacher for loan payments made during the preceding fiscal year within the limitations of the maximum amount specified by law.

b. A teacher shall not be reimbursed for payments made more than sixty days after the due date.

This rule is intended to implement 1983 Iowa Acts, chapter 184, sections 2 and 6.

[Filed emergency 7/1/83—published 7/20/83, effective 7/1/83]
[Filed 12/16/83, Notice 7/20/83—published 1/4/84, effective 2/8/84]

CHAPTER 15
IOWA SCIENCE AND MATHEMATICS LOAN PROGRAM

245—15.1(261) Cancelable loans to aid teachers in obtaining authorization to teach mathematics and science.

15.1(1) *Application for mathematics and science loans.*

a. Application forms shall be provided by the commission for distribution through school districts and approved teacher preparation institutions in the state.

b. In the appropriate section of the application form, the educational institution shall certify the applicant's enrollment or acceptance for enrollment in a course of study eligible for loan benefits, the anticipated period of enrollment, the number of credit hours to be earned, and the related tuition and fees.

c. In the appropriate section of the application form, the board of educational examiners shall certify the applicant's current teaching authorization and the number of credit hours needed by the applicant in order to receive authorization as a teacher of mathematics or science.

d. The applicant must file the completed application form and college transcripts for receipt by the commission by December 1, 1983, and by May 1 in subsequent years in order to receive priority consideration.

15.1(2) *Criteria for selection of loan recipients.*

a. If available loan funds are insufficient to aid all eligible applicants who file by the deadline date, priority rankings shall be established according to the number of credit hours needed for approval as a teacher of a sequential mathematics course at the advanced algebra level or higher, chemistry or advanced chemistry, physics or advanced physics. Applicants who need the fewest credit hours for approval shall receive highest priority.

b. In the event of tied rankings, applicants shall be given priority in rank order of the date their applications were received.

c. If loan funds are available after all eligible applicants filing by the deadline date have been aided, loans shall be offered to applicants who filed after the deadline date in rank order of the date their applications were received.

15.1(3) *Promissory note.* The recipient of a loan under this program shall sign a promissory note payable to the commission agreeing to repay the loan on terms established by the commission in conformity with statutory provisions. A repayment schedule shall be agreed upon between the commission and the borrower within three months after completion of the course of study for which the loan was made.

15.1(4) *Interest rate.* The rate of interest on loans under this program shall be equivalent to the interest rate paid by first-time borrowers under the guaranteed student loan program at the time the promissory note is signed.

15.1(5) *Disbursement of loan proceeds.*

a. The loan will be disbursed only after the educational institution certifies that the borrower is enrolled and in good standing. The necessary certification forms will be provided to the institution by the commission.

b. The loan check made payable to the borrower will be sent to the educational institution by the commission promptly after enrollment certification is received.

c. The institution will deliver the check to the student if the student has already paid tuition for the course of study. If tuition has not been paid, the institution may require that the loan check be endorsed to the educational institution.

d. If the student withdraws from attendance and is entitled to a refund on tuition and fees, the pro rata share of the refunds attributable to the state loan must be refunded to the commission.

15.1(6) *Eligible courses of study.* Courses of study eligible for the loan benefits shall be designated by the board of education examiners as set forth in 670—Chapter 16 of the Iowa Administrative Code.

15.1(7) *Loan cancellations.*

a. Ten months following completion of the course of study for which assistance under this program was received, the borrower shall notify the commission of the nature of the borrower's employment during the preceding year. To certify eligibility for cancellation the teacher must submit an affidavit from the superintendent of an Iowa school district verifying that the teacher has been employed for at least four months of the period as a teacher of eligible subject matter in an approved school. Such affidavit shall entitle the teacher to cancellation of fifty percent of the loan and accumulated interest.

b. If the borrower qualifies for partial loan cancellation, the commission shall notify the borrower promptly and revise the repayment schedule accordingly.

15.1(8) *Loan payments.*

a. Prior to the start of the repayment period the commission shall provide the borrower with a repayment schedule, modified to reflect any applicable cancellation benefits.

b. It shall be the borrower's responsibility to remit payments to the commission by the twentieth day of each month.

c. In the event of a delinquency in loan payment exceeding one hundred twenty days, the account will be referred to the attorney general or a collection agency for appropriate legal action.

d. The borrower is responsible for notifying the commission immediately of any change in name, place of employment, or home address.

15.1(9) *Loan payment reimbursement.*

a. At the end of the second year after completion of the educational program for which assistance under this program was received, the teacher shall notify the commission of the nature of the teacher's employment during the preceding year. If the teacher provides an affidavit from the superintendent of an Iowa school district verifying the teacher's employment for at least nine months of the year as a teacher of eligible subject matter in an approved Iowa school, the remainder of the loan balance will be canceled and the payments made during the second year will be refunded.

b. Eligibility for refund of loan payments shall be limited to a period of three years.

c. Any payments made more than sixty days after the date due shall not be subject to reimbursement by the commission.

This rule is intended to implement 1983 Iowa Acts, chapter 184, sections 2 and 6.

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CHAPTER 16
IOWA SCIENCE AND MATHEMATICS GRANT PROGRAM

245—16.1(261) State funded grants for Iowa high school graduates who have earned a specified number of credits in science and mathematics courses and who are enrolling at eligible Iowa postsecondary institutions.

16.1(1) *Definitions.*

a. Science and mathematics courses which may be included among the seven units required for grant eligibility will be defined by the department of public instruction in its rulemaking capacity.

b. For purposes of this program, a "sequential mathematics course at the advanced algebra level or higher" shall be defined as a course which requires, as a minimum prerequisite, two courses in the mathematics sequence.

c. The term "high school" shall be defined as grades nine to twelve.

d. Courses taken at the ninth grade level or above shall be eligible for inclusion among the seven mathematics and science units required of grant recipients.

e. Mathematics and science courses completed at Iowa postsecondary institutions under special contract with the school district and credited on the student's high school transcript shall be eligible for inclusion among the seven mathematics and science units required of grant recipients.

16.1(2) *Application procedure.*

a. No later than October of each year the Iowa college aid commission will provide application forms and instructions to all Iowa high school guidance offices. Application forms shall be distributed to all high school seniors who have successfully completed the required number of mathematics and science courses or who anticipate completing the required number of courses before graduation.

b. Eligible students who plan to enroll at eligible Iowa postsecondary institutions shall complete the appropriate section of the application form and, if they are minors, their parent(s) or guardian shall sign the authorization for the high school to release the requested information to the commission or the department of public instruction.

c. The students shall return the application forms to the counselor, who shall complete the school section of the form and mail the application forms to the commission by December 1.

d. Refugee students enrolled at Iowa secondary schools may be credited with an appropriate number of units in mathematics and science if, in the professional judgment of the school administration, the student has completed the equivalent of these units before immigrating to the United States.

16.1(3) *Announcement of awards.*

a. The Iowa college aid commission shall notify the student and each of the Iowa colleges or universities indicated by the student on the application form of the approval of the grant. If a grant is denied, the applicant also shall be notified. Such notifications will be mailed in January prior to the recipient's matriculation in college.

b. Award approvals shall be subject to confirmation that the student has graduated from high school and has completed the required number of mathematics and science courses. Such confirmation shall be secured by the department of public instruction and provided to the commission no later than July 1 of each year.

16.1(4) *Acceptance of awards.* It is the responsibility of the recipient to notify the commission of acceptance or rejection of the grant within thirty days following the date of award approval. The student also is responsible for informing the commission promptly of any change in college plans. Failure to fulfill these responsibilities on a timely basis may result in withdrawal of the award.

16.1(5) *Certification of enrollment.* At the beginning of the third week of each school term the postsecondary institution will be asked to certify to the Iowa college aid commission that the grant recipient is enrolled and in attendance.

16.1(6) *Payment of awards.*

a. Upon receipt of enrollment certification from the postsecondary institution, the Iowa college aid commission shall disburse the portion of the award which is due for each school term.

b. The grant payment may be credited toward the student's tuition, fees, room and board, or any other education expenses which are due the school. If the student has no unpaid balance due the school, the grant payment will be transmitted by the school to the student.

16.1(7) *Extension of grant.* Grants may not be reserved for future use but must be used during the year following the recipient's graduation from high school.

16.1(8) *Award transfers.* Upon the written request of the recipient by no later than twenty-one days after classes begin at the college to which the student has transferred, a grant may be transferred from one eligible institution to another.

16.1(9) *Funding.* If funding is not sufficient to provide maximum grants to all eligible applicants, the commission shall ratably reduce each award.

This rule is intended to implement 1983 Iowa Acts, chapter 184, section 11.

[Filed 12/16/83, Notice 10/12/83—published 1/4/84, effective 2/8/84]

CHAPTER 17
ASSESSMENTS

CHAPTER 18
UTILITY RECORDS

CHAPTER 19
SERVICE SUPPLIED BY GAS UTILITIES

CHAPTER 20
SERVICE SUPPLIED BY ELECTRIC UTILITIES

CHAPTER 21
SERVICE SUPPLIED BY WATER UTILITIES

CHAPTER 22
RATES CHARGED AND SERVICE SUPPLIED BY TELEPHONE UTILITIES

CHAPTER 19
SERVICE SUPPLIED BY GAS UTILITIES

250—19.1(476) General information.

19.1(1) *Authorization of rules.* Chapter 476, The Code, provides that the Iowa state commerce commission shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers necessary to carry out the provisions of this law.

Chapter 479 provides that the Iowa state commerce commission shall have full authority and power to promulgate rules as it deems proper and expedient in the supervision of the transportation or transmission and underground storage of gas within the state of Iowa.

19.1(2) *Application of rules.* The rules shall apply to any gas utility operating within the state of Iowa as defined in chapter 476 and shall supersede all rules on file with this commission which are in conflict with these rules. These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities. If unreasonable hardship to a utility or to a customer results from the application of any rule herein prescribed, application may be made to the commission for the modification of the rule or for temporary or permanent exemption from its requirements. The adoption of these rules shall in no way preclude the commission from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions. These regulations shall in no way relieve any utility from any of its duties under the laws of this state.

19.1(3) *Definitions.* The following words and terms, when used in these rules shall have the meaning indicated below:

The abbreviations used, and their meanings, are as follows:

BTU—British Thermal Unit

LP-Gas—Liquefied Petroleum Gas

psig—Pounds per Square Inch, Gauge

W.C.—Water Column

"Appliance" refers to any device which utilizes gas fuel to produce light, heat or power.

"Commission" means the Iowa state commerce commission, sometimes hereinafter referred to as "ISCC."

"Complaint" as used in these rules is a statement or question by anyone, whether a utility customer or not, alleging a wrong, grievance, injury, dissatisfaction, illegal action or procedure, dangerous condition or action, or utility failure to fulfill an obligation.

"Cubic foot" of gas has the following meanings:

1. Where gas is supplied and metered to customers at the pressure (as defined in 19.7(2)) normally used for domestic customers' appliances, a cubic foot of gas shall be that quantity of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot, except that where a temperature compensated meter is used, the temperature base shall be 60°F.

2. When gas is supplied to customers at other than the pressure in (1) above, the utility shall specify in its rules the base for measurement of a cubic foot of gas (see 19.2(4)*"c"*,(6)). Unless otherwise stated by the utility, such cubic foot of gas shall be that quantity of gas which, at a temperature of 60°F. and a pressure of 14.73 pounds per square inch absolute, occupies one cubic foot.

3. The standard cubic foot of gas for testing the gas itself for heating value shall be that quantity of gas, saturated with water vapor, which, at a temperature of 60°F. and a pressure of 30 inches of mercury, occupies one cubic foot. (Temperature of mercury = 32°F.; acceleration due to gravity = 32.17 ft. per second per second density = 13.595 grams per cubic centimeter.)

"Customer" means any person, firm, association, or corporation, any agency of the federal, state or local government, or legal entity responsible by law for payment for the gas service or heat from the gas utility.

"Delinquent account or delinquency" means the customer has not paid a service bill or service payment agreement amount in full on or before the last day for timely payment.

"Gas", unless otherwise specifically designated, means manufactured gas, natural gas, other hydrocarbon gases, or any mixture of gases produced, transmitted, distributed or furnished by any gas utility.

"Gas plant" means all facilities including all real estate, fixtures and property owned, controlled, operated or managed by a gas utility for the production, storage, transmission and distribution of gas and heat.

"Heating and calorific values." The following values shall be used:

1. *"British thermal unit"* (BTU) is the quantity of heat that must be added to one avoirdupois pound of pure water to raise its temperature from 58.5°F. to 59.5°F. under standard pressure.

2. *"Dry calorific value"* of a gas (total or net) is the value of the total or the net calorific value of the gas divided by the volume of dry gas in a standard cubic foot.

NOTE: The amount of dry gas in a standard cubic foot is .9826 cu. foot.

3. *"Net calorific value"* of a gas is the number of British thermal units evolved by the complete combustion, at constant pressure, of one standard cubic foot of gas with air, the temperature of the gas, air, and products of combustion being 60°F. and all water formed by the combustion reaction remaining in the vapor state.

NOTE: The net calorific value of a gas is its total calorific value minus the latent heat of evaporation at standard temperature of the water formed by the combustion reaction.

4. *"Therm"* means 100,000 British thermal units.

5. *"Total calorific value"* of a gas is the number of British thermal units evolved by the complete combustion, at constant pressure, of one standard cubic foot of gas with air, the temperature of the gas, air and products of combustion being 60°F. and all water formed by the combustion reaction condensed to the liquid state.

"Interruption of service" means any disturbance of the gas supply whereby the pilot flame on the appliances of at least fifty customers in one segment or in a portion of a distribution system shall have been extinguished.

"Loss factor" as used in rule 19.10(476) means test-year purchases less test-year sales. A five-year average of purchases less sales may be used if the test year is determined by the commission to be abnormal.

"Main" means a gas pipe, owned, operated, or maintained by a utility, which is used for the purpose of transmission or distribution of gas, but does not include "service line".

"Meter", without other qualification, shall mean any device or instrument which is used by a utility in measuring a quantity of gas.

"Meter shop" is a shop where meters are inspected, repaired and tested, and may be at a fixed location or may be mobile.

"Meter test flows" shall have the following meanings:

1. *"Check flow"* means a flow between twenty percent and fifty percent of the rated capacity of a meter, except that with rotary displacement meters, it shall be ten percent or twenty percent of the rated capacity of the meter.

2. *"Full-rated flow"* means a flow of one hundred percent of the rated capacity of a meter. As applied to meter testing it refers to the "restricted open" flow of air or gas which results in the rated pressure drop across the meter that is normally caused by a full-rated flow of 0.6 specific gravity gas.

"Pressure", unless otherwise stated, is expressed in pounds per square inch above atmospheric pressure, i.e., gauge pressure (abbreviation-psig).

"Rate-regulated utility" means any utility as defined in definition "*v*" below which is subject to rate regulation provided for in chapter 476, The Code.

"Service line" means a distribution line that transports gas from a common source of supply to a customer meter or the connection to a customer's piping, whichever is farther downstream, or the connection to a customer's piping if there is not a customer meter. A customer meter is the meter that measures the transfer of gas from a utility to a customer.

"Tap" or *"town border station"* means the delivery point or measuring station at which a gas distribution utility receives gas from a natural gas transmission company.

"Tariff" means the entire body of rates, tolls, rentals, charges, classifications, rules, procedures, policies, etc., adopted and filed with the commission by a gas utility in fulfilling its role of furnishing gas service.

"Timely payment" is a payment on a customer's account made on or before the date shown on a current bill for service or on a form which records an agreement between the customer and a utility for a series of partial payments to settle a delinquent account, as the date which determines application of a late payment charge to the current bill or future collection efforts.

"Utility" means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing gas or heat to the public for compensation.

250—19.2(476) Records, reports and tariffs.

19.2(1) *Location and retention of records.* Unless otherwise specified in this chapter, all records required by these rules shall be kept and preserved in accordance with the applicable provisions of Chapter 18 of the commission's rules, Utility Records.

19.2(2) *Tariffs to be filed with the commission.* The utility shall file its tariff with the commission, and shall maintain such tariff filing in a current status.

The schedules of rates of rate-regulated utilities and rules of all utilities shall be filed with the commission and shall be classified, designated, arranged and submitted so as to conform to the requirements of this chapter. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Utilities which are not subject to the rate regulation provided for by chapter 476 shall not be required to file schedules of rates, or contracts primarily concerned with a rate schedule, with the commission but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the commission in the performance of the commission's duties upon request to do so by the commission.

19.2(3) *Form and identification.* All tariffs shall conform to the following rules:

a. The tariff shall be printed, typewritten or otherwise reproduced on 8½ x 11 inch sheets of durable white paper so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding. In the case of utilities subject to regulation by any federal agency the format of sheets of tariff as filed with the commission may be the same format as is required by the federal agency provided that the rules of the commission as to title page; identity of superseding, replacing or revision sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue, effective date; and the words "Gas Tariff Filed with ISCC" shall apply in the modification of the federal agency format for the purposes of filing with this commission.

b. The title page of every tariff and supplement shall show:

(1) The first page shall be the title page which shall show:

(Name of Public Utility)
Gas Tariff
Filed with
Iowa State Commerce Commission
_____ (date)

(This requirement does not apply to tariffs or amendments filed with the commission prior to April 1, 1982.)

(2) When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on the upper right corner of its title page that it is a revision of a tariff on file and the number being superseded or replaced, for example:

Tariff No. _____
Supersedes Tariff No. _____

(This requirement does not apply to tariffs or amendments filed with the commission prior to April 1, 1982.)

(3) When a new part of a tariff eliminates an existing part of a tariff it shall so state and clearly identify the part eliminated.

(4) Any tariff modifications as defined in "3" above replacing tariff sheets shall be marked in the right margin with symbols as herein described to indicate the place, nature and extent of the change in text.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. The notice shall also state the final date by which the account is to be settled or other specific action taken. In determining the final date, the days of notice for the causes shall be concurrent.

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 19.4(15)*"a," "b," "c"* and *"d,"* no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

a. Without notice in the event of a condition determined by the utility to be hazardous.

b. Without notice in the event of customer use of equipment in such a manner as to adversely affect the utility's equipment or the utility's service to others.

c. Without notice in the event of tampering with the equipment furnished and owned by the utility.

d. Without notice in the event of unauthorized use.

e. For violation of or noncompliance with the utility's rules on file with the commission.

f. For failure of the customer or prospective customer to furnish such service equipment, permits, certificates or rights of way as are specified to be furnished, in the utility's rules filed with the commission, as conditions of obtaining service, or for the withdrawal of that same equipment or for the termination of those same permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed upon him as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the commission.

g. For failure of the customer to permit the utility reasonable access to its equipment.

h. For nonpayment of bill or deposit, except as restricted by 19.4(16), provided that the utility has:

(1) Made a reasonable attempt to effect collection;

(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least twelve days in which to make settlement of the account, together with a written summary of the rights and remedies available to avoid disconnection. The written notice shall also include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide their name to the caller, and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) The summary of the rights and remedies must be approved by this commission. Any utility providing gas service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below shall submit to the commission an original and six copies of its proposed form for approval.

CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION

The following is a summary of your rights and remedies under the rules of the Iowa State Commerce Commission to avoid disconnection of utility service.

Disconnection can be avoided by paying the past due amount or by making arrangements to pay on or before the date listed on the notice.

Disconnection for nonpayment may occur only after we have sent a written notice of disconnection by regular mail postmarked at least 12 days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be placed on the door of the home at least one day before service is disconnected.

Disconnection may not take place unless we are prepared to reconnect your service that same day if payment or other arrangements are made. Between November 1 and April 1, we cannot

require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.

Delinquent bill. If you are unable to pay a past due bill in full, you will be given an opportunity to enter into a payment agreement to avoid disconnection of service. The agreement will be negotiated to meet your individual needs and you may spread payments for the past due bill over at least twelve months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be told in writing why we refused, and you may continue to pay under your proposed agreement without disconnection of service if you ask the Commission (within 10 days after receiving the written refusal) for assistance in working out an agreement with us. (Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-5979). If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.

Health. Disconnection for nonpayment will be delayed thirty days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. At our request, a telephone call from the physician or public health official to our office must be followed up by a letter within five days. During the thirty-day delay, you must work out a payment agreement. If the physician or health official states that the health problem still exists at the end of the initial thirty days, you may receive additional thirty-day delays.

Disputed bill. If you disagree with the accuracy of your bill, you may pay the undisputed portion and notify our office of the disagreement. Disconnection will be delayed for up to forty-five days from the date the bill was mailed so that the disagreement may be settled. If you file a written complaint with the commission (address and telephone number listed previously), disconnection may be further postponed, should the commission request the extension.

Winter energy assistance (November 1 - April 1). You may be eligible for low-income energy assistance or weatherization funds. If you tell us that you may qualify for energy assistance, disconnection will be postponed for thirty days to allow you time to apply for and obtain assistance. During this period, you must also enter into a payment plan for the part of your bill not paid by assistance funds. For further information on how to apply for assistance and qualifications, contact our business office, your local community action agency, or the Iowa Energy Policy Council, Lucas State Office Building, Des Moines, Iowa 50319 (1-800-532-1584).

(4) When disconnecting service to a residence, made a diligent attempt to contact, by telephone or in person, the customer responsible for payment for service to the residence to inform the customer of the pending disconnection and his or her rights and remedies; if an attempt at personal or telephone contact of a customer occupying a unit which a utility knows or should know is a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, his or her present location. The landlord shall also be informed of the date when service may be disconnected.

During the period November 1 to April 1, if the attempt at customer contact fails, the premises must be posted with a notice informing the customer of the pending disconnection, and rights or remedies available to avoid disconnection, at least one day prior to disconnection; if the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons therefor.

(5) Given the customer a reasonable opportunity to dispute the reason for the disconnection and, if to the extent applicable, complied with each of the following:

Disputed bill. In the event there is a dispute concerning a bill for natural gas service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid discontinuance of service for nonpayment of the disputed bill for up to forty-five days after the rendering of the bill. The

forty-five days shall be extended by up to sixty days if requested of the utility by the commission in the event customer files a written complaint with the commission.

Special circumstances. Disconnection of a residential customer may not take place on a weekend, a holiday or after 2:00 p.m. unless the utility is prepared to reconnect the same day, and in the case of a customer who has entered into a reasonable payment agreement, may not take place where gas is used as the only source of space heating or to control or operate the only space heating equipment at the residence, on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with subrule 19.4(15) "*h*" (4) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provision of this rule.

Health of a resident. Disconnection of a residential customer shall be postponed if the discontinuance of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if one appears to be seriously impaired and may, because of mental or physical problems, be unable to manage his or her own resources, carry out activities of daily living or protect oneself from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: Age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation. The utility may require written verification of the especial danger to health by a physician or a public health official, including the name of the person endangered, a statement that he or she is a resident of the

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay for merchandise purchased from the utility.

c. Failure to pay for a different type or class of public utility service.

d. Failure to pay the bill of another customer as guarantor thereof.

e. Failure to pay back bill rendered in accordance with 19.4(13)*"b"* (Slow meters).

f. Failure to pay adjusted bills based on the undercharges set forth in 19.4(13)*"e"*.

g. Failure of a residential customer to pay a deposit during the period November 1 through April 1 for the location at which he or she has been receiving service.

h. Failure of a disconnected residential customer to pay the full amount due for past service if financial difficulty is confirmed and the residential customer is willing to enter into a reasonable agreement to pay the delinquent amount as required by 19.4(10).

19.4(17) *Change in character of service.* The following shall apply to a material change in the character of gas service:

a. Changes under the control of the utility. The utility shall make such changes only with the approval of the commission, and after adequate notice to the customers (see 19.7(6)*"a"*).

b. Changes not under control of the utility or customer. The utility shall adjust appliances to attain the proper combustion of the gas supplied. Due consideration shall be given to the gas heating value and specific gravity (see 19.7(6)*"b"*).

c. Appliance adjustment charge. The utility shall make any necessary adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customers.

19.4(18) *Customer complaints.* Each utility shall investigate promptly and thoroughly and keep a record of written complaints and all other reasonable complaints received by it from its customers in regard to safety, service, or rates, and the operation of its system as will enable it to review and analyze its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date thereof. All complaints caused by a major outage or interruption shall be summarized in a single report.

a. Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of all customer complaints.

b. The utility shall take reasonable steps to ensure that customers unable to travel shall not be denied the right to be heard.

c. The final step in a complaint hearing and review procedure shall be a filing for commission resolution of the issues.

This rule is intended to implement Iowa Code sections 476.2, 476.6 and 476.8.

250—19.5(476) Engineering practice.

19.5(1) *Requirement for good engineering practice.* The gas plant of the utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice in the gas industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

19.5(2) *Acceptable standards.* Unless otherwise specified by the commission, the utility shall use the applicable provision in the publications listed below as standards of accepted good practice:

a. Code of Federal Regulations, Title 49, Part 191-Transportation of Natural and Other Gas by Pipeline: Reports of Leaks, Part 192-Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, insofar as the same may be applicable, and as said regulations may be hereafter altered, amended or modified by the Department of Transportation, United States of America.

b. Gas Displacement Meters, 500 Cubic Foot per Hour Capacity and Under, ANSI B109.1-1973, except sections 4.3.2.1, 4.3.2.2 and 4.3.2.3.

c. Gas Transmission and Distribution Piping Systems, ANSI B31.8-1975.

d. Liquefied Natural Gas (LNG), Production, Storage, and Handling of, ANSI/NFPA No. 59A-1975.

e. "Testing Large Capacity Rotary Gas Meters," Research Paper No. 1741, National Bureau of Standards Journal of Research, September, 1946.

f. Liquefied Petroleum Gases at Utility Gas Plants, ANSI/NFPA No. 59-1976.

g. National Fuel Gas Code, ANSI Z223.1-1974; (supplement to ANSI Z223.1-1974) ANSI Z223.1a-1978.

h. Orifice Metering of Natural Gas, ANSI/API 2530-1975.

i. Test for Calorific Value of Gaseous Fuels by the Water-Flow Calorimeter, ANSI/ASTM D900-55 (1970).

19.5(3) *Acceptable references.* The following publications have not been designated as standards but they may be used as guides for acceptable practice:

a. "Accuracy of the Recording Gas Calorimeter When Used with Gases of High BTU Content", by John H. Eiseman, National Bureau of Standards, and Elwin A. Patter, Gas Inspection Bureau of the District of Columbia, AGA publication No. CEP-55-13.

b. "Orifice Metering of Natural Gas", Report No. 3 of the AGA Gas Measurement Committee—April, 1955, as reprinted with revisions in January, 1956.

c. Reports prepared by the Practical Methods Committee of the Appalachian Gas Measurement Short Course, West Virginia University, as follows:

(1) Report No. 1, "Methods of Testing Large Capacity Displacement Meters"—1960.

(2) Report No. 2, "Testing Orifice Meters"—1940 as revised, 1958.

(3) Report No. 3, "Designing and Installing Measuring and Regulating Stations" as revised, 1956.

(4) Report No. 4, "Useful Tables for Gas Men"—1950.

(5) Report No. 5, "Prover Room Practices"—1954.

d. Quick Disconnect Devices for Use with Gas Fuel, ANSI Z21.41-1978.

19.5(4) *Adequacy of gas supply.* The gas supply regularly available from pipe-line sources supplemented by production or storage capacity must be sufficiently large to meet all reasonable demands for firm gas service.

19.5(5) *Gas transmission and distribution facilities.* The utility's gas transmission and distribution facilities shall be designed, constructed and maintained as required to reliably perform the gas delivery burden placed upon them. Each utility shall be capable of emergency repair work on a scale consistent with its scope of operation and with the physical conditions of its transmission and distribution facilities.

19.8(3) *Turning on gas.* Each utility upon the installation of a meter and turning on gas or the act of turning on the gas alone shall take the necessary steps to assure itself that there exists no flow of gas through the meter which is a warning that the customer's piping or appliances are not safe for gas turn on. (Ref: Sec. 1.2.13 Leakage Check After Gas Turn On, ANSI Z223.1-1974.)

19.8(4) *Gas leaks.* A report of a gas leak shall be considered as an emergency requiring immediate attention.

19.8(5) *Odorization.* Any gas distributed to customers through gas mains or gas services or used for domestic purposes in compressor plants, which does not naturally possess a distinctive odor to the extent that its presence in the atmosphere is readily detectable at all gas concentrations of one-fifth of the lower explosive limit and above, shall have an odorant added to it to make it so detectable. Odorization is not necessary, however, for such gas as is delivered for further processing or use where the odorant would serve no useful purpose as a warning agent. Suitable tests must be made to determine whether the odor meets the aforementioned standards.

250—19.9(476) Energy conservation strategies.

19.9(1) *Coverage.* Standards for energy conservation strategies shall apply to all rate and service regulated gas utilities in Iowa. Nothing in this rule subjects the rates of municipal utilities to the regulatory authority of the commission.

19.9(2) *Load management techniques.* Each rate or service regulated gas utility shall offer to its customers load management techniques that are determined by the commission to:

a. Be reliable,

b. Provide useful energy or capacity management advantages to the gas utility, and

c. Be practicable and cost-effective. The technique is cost-effective if it is likely to reduce maximum demand on the utility, and the long-run cost-savings to the utility to the reduction are likely to exceed the long-run costs to the utility associated with implementation of the technique.

19.9(3) *Other energy conservation strategies:* Each rate regulated gas utility shall offer to its consumers other energy conservation strategies that are determined by the commission to:

a. Be reliable,

b. Provide useful energy conservation advantages to utilities, and

c. Be practicable and cost-effective. The strategy is cost-effective if long-run cost savings to the utility of the energy conservation strategy are likely to exceed the long-run costs to the utility associated with implementation of the strategy.

19.9(4) *Pilot projects.* The commission may initiate programs related to these standards as pilot projects to accumulate sufficient data to determine if the programs meet the requirements of this rule.

Pilot projects approved by the commission may include as participants all or part of any existing customer class or classes. Customers may volunteer to participate in pilot projects.

Only if necessary to ensure the validity or success of a pilot project, and if approved by the commission, the pilot project may be made mandatory for all or part of any existing customer class or classes. In these cases, the participants shall be selected on a reasonable and nondiscriminatory basis, from all or part of those customers. Where participation in a pilot project is mandatory, participants shall be given notice as required in Iowa Code section 476.6, shall be provided with an opportunity to contest the reasonableness of the proposed energy conservation strategy or load management technique, or the propriety of the selection process, and shall be allowed to request an exemption from participation based on individual hardship.

19.9(5) *New structure energy conservation standards.* Each utility providing gas service shall not provide such service to any structure completed after January 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under Iowa Administrative Code subrule 680—16.800(3) as amended and updated by subrule 680—16.800(4). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by gas service.

This rule is intended to implement Iowa Code section 476.1.

250—19.10(476) Purchased gas adjustments.

19.10(1) A rate-regulated utility's automatic adjustments for the cost of gas purchased shall be based on purchased gas adjustment clauses for each originating pipeline supplier (or for each pipeline supplier zone, if appropriate).

If some components of purchased gas adjustment clauses for an originating pipeline supplier are estimated because the information for those components is unavailable, the utility must provide the methodology by which the estimates are derived.

19.10(2) *Applicability.* Unless otherwise ordered by the commission, a rate-regulated utility's purchased gas adjustment rate factors may be adjusted upward by the rate-regulated utility, but shall be adjusted downward if costs decrease, as purchased gas costs change and shall recover from customers only the costs of purchased gas, which costs are reflected in a pipeline supplier's tariffed filings which have been allowed to become effective by the Federal Energy Regulatory Commission or its successor entities, or such other costs which are expressly approved for inclusion in purchased gas adjustments on tariff filings with the commission.

In its filing of the proposed purchased gas adjustments, the utility shall file the expenses charged to each account of the Uniform Systems of Accounts, individually.

19.10(3) *Purchased gas adjustment clause for rate-regulated utility.* A rate-regulated utility shall determine and file with the commission proposed purchased gas adjustments by pipeline supplier (or by pipeline supplier zone, if appropriate), reflecting changes in costs of gas.

a. Purchased gas adjustments shall be computed separately for directly assigned and nondirectly assigned customers. Directly assigned customers are those to which applicable demand and storage service costs are individually assigned and charged and may include both firm and interruptible customers. Nondirectly assigned customers are those to which applicable demand and storage service costs are assigned to a group of customers and not to individual customers. The rate-regulated utility may choose to utilize a single purchased gas adjustment clause, PGA_A.

The calculation of the purchased gas adjustments on a 0.001 cent per ccf or therm basis, or on the basis of the rate-regulated utility's tariffed gas rates shall be according to the following formulas:

NONDIRECTLY ASSIGNED CUSTOMER

$$PGA_A = \frac{P_C \times R_C}{S} + \frac{(P_{D_A} \times R_{D_A}) + (P_{T_A} \times R_{T_A})}{S - S_B} + E_A - K_A$$

DIRECTLY ASSIGNED CUSTOMER

$$PGA_{B_n} = \frac{P_C \times R_C}{S} + \frac{[P_{DB_n} \times (R_{DB_n} - K_{DB_n})] + [P_{TB_n} \times (R_{TB_n} - K_{TB_n})]}{S_{B_n}} + E_{B_n} - K_{B_n}$$

PGA_A is the purchased gas adjustment by pipeline supplier (by pipeline supplier zone, if appropriate), per ccf or therm, for customers whose demand and storage components of PGA-related rates are not directly assigned to individual customers.

PGA_{B_n} is the purchased gas adjustment by n-th directly assigned customer(s) by pipeline supplier (by pipeline supplier zone, if appropriate), per ccf or therm, for customers whose demand and storage components of PGA-related rates are directly assigned.

P_C is the total quantity of applicable commodity purchases required to meet anticipated commodity sales included in accounts 728 and 729 (including only those expenses cleared through account 151) and 800 to 812 of the Uniform System of Accounts.

R_C is the weighted average of the applicable commodity rates corresponding to purchases P_C. This weighted average shall be adjusted as applicable commodity rates are changed.

P_{DA} is the total quantity of applicable demand purchases required to meet anticipated sales, including applicable demand components of overrun purchases and demand-related components of penalty purchases, included in accounts 728 and 729 (including only those expenses cleared through account 151) and 800 to 812 of Uniform System of Accounts, which demand purchases are not directly assigned to individual customers.

R_{DA} is the weighted average of applicable demand rates corresponding to purchases P_{DA}. This weighted average shall be adjusted as applicable demand rates are changed.

P_{DB_n} is the total quantity of applicable demand purchases required to meet anticipated demand sales, including applicable demand components of overrun purchases and demand-related components of penalty purchases, included in accounts 728 and 729 (including only those expenses cleared through account 151) and 800 to 812 of the Uniform System of Accounts, which demand purchases are directly assigned to the n-th individual customer(s).

R_{DB_n} is the weighted average of applicable demand rates corresponding to purchases P_{DB_n} for the n-th customer(s). This weighted average shall be adjusted as applicable demand rates are changed.

P_{TA} is the total quantity of applicable storage service purchases required to meet anticipated sales, included in accounts 728 and 729 (including only those expenses cleared through account 151), 800 to 812, and 813 (those expenses relating to storage service purchases only) of the Uniform System of Accounts, which storage service purchases are not directly assigned to individual customers.

R_{TA} is the weighted average of applicable storage service rates corresponding to purchases P_{TA}. This weighted average shall be adjusted as applicable storage service rates are changed.

P_{TB_n} is the total quantity of applicable storage service purchases required to meet anticipated sales, included in accounts 728 and 729 (including only those expenses cleared through account 151), 800 to 812, and 813 (those expenses relating to storage service purchases only) of the Uniform System of Accounts, which storage services are directly assigned to the n-th individual customer(s).

R_{TB_n} is the weighted average of applicable storage service rates corresponding to purchases P_{TB_n}. This weighted average shall be adjusted as applicable storage service rates are changed.

S is the total anticipated yearly gas commodity sales volume which would be included in accounts 480 to 484 and 929 of the Uniform System of Accounts.

S_B is the total anticipated yearly gas commodity sales volume to directly assigned customers which would be included in accounts 480 to 484 and 929 of the Uniform System of Accounts. S_B is the sum of individual sales volumes, the S_{B_n}'s, of directly assigned firm and interruptible customers.

S_{B_n} is the total anticipated yearly gas commodity sales volume to the n-th directly assigned customer(s) which would be included in accounts 480 through 484 and 929 of the Uniform System of Accounts.

K is the base cost of gas for each PGA class.

K_A is the cost of gas per ccf or therm included in the nondirectly assigned customer base rates as reflected in tariffs filed with the commission.

K_{B_n} is the cost of gas per ccf or therm included in the directly assigned customer commodity base rates for the n-th customer(s) as reflected in tariffs filed with the commission.

K_{DB_n} is the cost of gas demand per applicable unit of demand included in the directly assigned customer demand base rates for the n-th customer(s) as reflected in tariffs filed with the commission.

K_{TB_n} is the cost of gas storage service per applicable unit of storage service included in the directly assigned customer storage service base rates for the n-th customer(s) as reflected in tariffs filed with the commission.

E_A is the per therm or ccf applicable over or under collection adjustment for nondirectly assigned customers calculated using the guidelines in 19.10(4).

E_{B_n} is the per therm or ccf applicable over or under collection adjustment for the n-th directly assigned customer(s) calculated using the guidelines in 19.10(4).

b. A rate-regulated utility shall file with a proposed purchased gas adjustment change that portion of a pipeline supplier's tariff and the docket number of the applicable Federal Energy Regulatory Commission proceeding and those documents which specify rate changes for applicable adjustments authorized under tariff filings with the commission.

c. Each rate-regulated utility shall determine and file with the commission on or before August 1 of each year for its approval, for the prospective twelve-month period beginning September 1:

(1) The sales volumes S, S_B, and S_{B_n}, and their components by account number to be used in calculation of purchased gas adjustments for the prospective twelve-month period beginning September 1, calculated by determining gas sales as defined in 19.10(3)*"a"* for the prior twelve-month period ending June 30, with necessary degree day adjustments, and further adjusting these sales volumes for anticipated gas sales for the prospective twelve-month period beginning September 1.

(2) The purchase volumes, P_C, P_{DA}, P_{DB_n}, P_{TA}, and P_{TB_n} to be used in calculation of purchased gas adjustments for the prospective twelve-month period beginning September 1,

calculated by determining anticipated applicable sources of gas defined in 19.10(3)"*a*" for the prospective twelve-month period which will be necessary to meet sales as determined in 19.10(3)"*c*"(1).

(3) The annual loss factors expected for directly assigned and nondirectly assigned customer classes. This loss factor shall not include gas which is included in sales volumes in the applicable accounts of the Uniform System of Accounts specified above.

(4) The cost of gas included in the base rate factors K_A and K_{B_n} as defined in 19.10(3)"*a*". However, adjustments in the cost of gas included in the base rates, resulting from a final decision and order of the commission in a contested case proceeding, shall be made if not previously considered in the commission's final order.

(5) The calculations of the over or under collection reconciliation adjustment factors E_A and E_{B_n} specified in 19.10(4)"*a*".

(6) The calculation of the rate factors R_C, R_{DA}, R_{DB_n}, R_{TA}, and R_{TB_n}, proposed to be effective September 1.

(7) The calculation of the cost savings associated with utilizing penalty purchases relative to peak shaving avoided costs.

(8) All worksheets and accompanying data used to determine the purchased gas adjustment volumes and factors, including sales and purchase data from bills or internal reports, and contracts for purchases and sales.

19.10(4) *Reconciliation.*

a. The rate-regulated utility shall file with the commission on or before October 1 of each year a purchased gas adjustment reconciliation. This reconciliation shall be the actual net invoiced costs of purchased gas less the actual revenue collected through its purchased gas adjustment clause net of the prior year's reconciliation dollars. Actual net costs for purchased gas shall be applicable costs associated with the time period of usage, included in accounts 728 and 729 (including only those expenses cleared through account 151) and 800 to 813 of the Uniform System of Accounts less the cost of gas included in the base rates for that same period as defined in 19.10(3)"*a*". Negative differences in the reconciliation shall be considered overcollections by the utility and positive differences shall be considered undercollections, for the prior twelve-month period which began September 1 of the previous year. This reconciliation shall be filed with accompanying data and worksheets, under 19.10(3)"*c*", including a listing of the costs of gas according to accounts 728 and 729 (including only those expenses cleared through account 151) and 800 to 813 of the Uniform System of Accounts and any remainder due to losses. Penalty purchases shall only be includable where the utility clearly demonstrates a cost savings over peak shaving avoided costs.

Any overcollections (up to a specified "maximum" limit) or undercollections determined from the reconciliation shall be refunded or collected, respectively, through ten-month adjustments to the particular purchased gas adjustment clauses from which they were generated. The overcollection or undercollection generated from each purchased gas adjustment clause shall be divided by: The anticipated sales volume for the prospective ten-month period beginning November 1 for the class of customers or individuals served by that particular purchased gas adjustment clause. The negative or positive quotient, determined to the nearest .001 cent per therm or ccf or on the decimal basis of the rate-regulated utility's tariffed gas rates, shall be added to that particular purchased gas adjustment clause for the prospective twelve-month period beginning September 1.

If, for a purchased gas adjustment clause, the net overcollection from the purchased gas adjustment annual reconciliation exceeds the "maximum" limit amount, the rate-regulated utility shall refund the overcollection by bill credit or check, with interest as stated in 19.10(5)"*a*"(6) for the time period beginning November 1 of the current year to the date of the refund. The "maximum" limit amount shall be two percent of the annual cost of purchased gas subject to recovery.

b. If a utility uses automatic adjustments of rates and charges, the adjustment must be reduced to zero with the September 1 filing and all appropriate charges collected by the automatic adjustment shall be incorporated in the utility's other rates at that time.

19.10(5) *Refunds.*

a. The rate-regulated utility shall refund to customers, by bill credit or check, an amount equal to a refund received from a supplier, plus accrued interest, if the refund exceeds one dollar per average pipeline residential customer. The rate-regulated utility may retain undistributed refund amounts in a special commodity, demand, or storage refund accounts, for each pipeline supplier; which shall all subsequently be refunded when the balance of a given refund account exceeds the one dollar per average pipeline residential customer refund minimum.

Within thirty days of receipt of a refund from a pipeline supplier, the rate-regulated utility shall file with the commission for its approval a refund plan which shall include the following information:

(1) The amount of the supplier refund received.

(2) A statement of the reason for the supplier refund.

(3) The supplier refund report.

(4) The intended period of refund distribution; or a statement of intention to retain a refund amount in special applicable commodity, demand, or storage refund accounts, to accrue interest at the rates specified in this subrule, until refunded.

(5) For refund retentions: The interest accrued to the date of filing (including interest calculations) for both the present refund amount and any applicable refund account amounts.

(6) For refund distributions: The estimated interest accrued through the proposed refund period (including interest calculations) for both the present refund amount and any applicable refund account amounts.

(7) For refund distributions: The total amount to be refunded, and the amount of refund per ccf or therm, to be distributed to nondirectly assigned customers and to each directly assigned customer class.

The supplier commodity refund to each customer shall be calculated by dividing an amount equal to the total amount of the commodity refund, plus any amount from the commodity refund account, by the total ccf or therms of gas consumed by that customer during the same period.

The supplier demand or storage refund(s) to each directly assigned customer shall be calculated by multiplying the total amount of the demand or storage refund(s), plus any amount(s) from the demand or storage refund account(s), by each directly assigned customers' proportion of the total demand quantity sold by the rate-regulated utility during the period for which the refund is applicable or the last twelve months for which records are available.

The demand or storage refund(s) to each nondirectly assigned customer shall be calculated by subtracting the amount of the demand or storage refund(s) to directly assigned customers from the total refund(s) amount, dividing this remainder by the total ccf or therms of gas consumed by nondirectly assigned customers during the period for which the refund is applicable or the last twelve months for which records are available, and multiplying this resulting quotient by the ccf or therms of gas consumed by that nondirectly assigned customer during the same period.

b. The rate-regulated utility shall refund to customers by bill credit or check, an amount equal to an overcollection due to a rate-regulated utility's inability to track the proper cost of gas prior to billing from supplier, plus accrued interest, if the refund exceeds one dollar per average pipeline residential customer. The rate-regulated utility may retain undistributed refund amounts in special commodity, demand, or storage refund accounts, for each pipeline supplier; which shall all subsequently be refunded when the balance of a given refund account exceeds the one dollar per average pipeline residential customer refund minimum. Within thirty days of first knowledge of such an overcollection, the rate-regulated utility shall file with the commission for its approval a refund plan which shall include the following information:

(1) The amount of overcollection.

(2) A statement of the reason for the overcollection.

(3) Supporting documentation from supplier and rate-regulated utility billing records, showing overcollections.

(4) The intended period of refund distribution.

(5) The estimated interest accrued through the proposed refund period.

(6) The total amount to be refunded, and the amount of refund per ccf or therm to be distributed to nondirectly assigned customers and to each directly assigned customer class.

For overcollections associated with the rate-regulated utility's inability to track the proper cost of gas, the refund to each customer shall be determined by the amount that customer was overcharged.

c. The interest rate on refunds distributed under this subrule, compounded annually, shall be the quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures (as set forth in the Federal Reserve Statistical Release G.19). This federal reserve quarterly rate shall be deemed to be effective for these purposes as of the first day of the month following the availability of the published data to the rate-regulated utility. For time periods less than a year, a weighted average of the published quarterly rates is applicable. Interest shall accrue from the date the rate-regulated utility receives the refund or billing from the supplier to the date the refund is distributed to customers.

Administrative costs of refund processing shall not be deducted from refund amounts.

d. Any other refunds from the rate-regulated utility to its customers attributable to purchased gas adjustments (excluding incremental pricing refunds) shall be filed and calculated according to the provisions in 19.10(5)*"a"*.

e. The rate-regulated utility shall make a reasonable effort to forward refunds, by check, to eligible recipients who are no longer customers.

f. The minimum amount to be refunded by check shall be one dollar.

19.10(6) ***Purchased gas adjustments annual reports.*** Each rate-regulated utility shall file with the commission on November 1 of each year a summary report specifying the different

types of refunds made, by directly assigned and nondirectly assigned customer classes, during the twelve-month period which began September 1 of the previous year.

This rule is intended to implement Iowa Code sections 476.1, 476.2, 476.6, and 476.8.

250—19.11(70GA,ch127) Gas procurement and requirement forecast.

19.11(1) *Procurement plan.* A rate-regulated utility shall prepare and file with the commission between July 1 and August 1 of each year a complete natural gas procurement plan for the period commencing September 1. A utility's initial procurement plan shall include all required information and documents. If any of the information or documents required to be filed under this subrule in a subsequent procurement plan has been filed in a previous procurement plan with the commission, the utility may specifically identify the document or information by reference in lieu of refiling it in its procurement plan. A utility's procurement plan shall be organized and shall include information required as follows:

a. Introduction. An introductory paragraph shall preface the plan stating on whose behalf the report is filed.

b. Index. An index of all documents and information required to be filed in the plan and the identification of the commission file(s) in which the document(s) incorporated by reference is located.

c. Purchase contracts and arrangements. The initial procurement plan shall include all contracts and gas supply arrangements entered into by the utility or in effect for obtaining gas during the previous twelve-month period, and all contracts or supply arrangements which the utility is planning to enter into during the prospective twelve-month period. All subsequent plans filed by the utility shall include all contracts and gas supply arrangements to be entered into by the utility during the prospective twelve-month period.

d. Other reasonably available contracts. The initial procurement plan shall include a list and description of all other contracts or arrangements for obtaining gas reasonably available to the utility during the previous twelve-month period which the utility did not enter into and all contracts or arrangements for obtaining gas which are or may be reasonably available to the utility during the prospective twelve-month period which the utility will not enter into.

All subsequent plans filed by the utility shall include all other contracts or arrangements for obtaining gas reasonably available to the utility during the prospective twelve-month period which the utility will not enter into.

e. Studies or investigation reports. The initial procurement plan shall include all studies or investigation reports considered by the utility in deciding whether to enter into a gas purchase contract or arrangement in the previous or prospective twelve-month period. All subsequent plans filed by the utility shall include all studies or investigation reports which have been considered by the utility in deciding whether to enter into gas purchase contracts or arrangements in the prospective twelve-month period.

f. Legal and regulatory actions. An explanation of the legal and regulatory actions taken by the utility to minimize cost.

19.11(2) *Gas requirement forecast.* A rate-regulated utility shall prepare and file with the commission between July 1 and August 1 of each year a complete five-year gas requirement forecast for the period commencing September 1. A utility's initial requirement forecast report shall include all required information and documents. If any of the information or documents required to be filed under the subrule in a subsequent requirement forecast report have been filed in a previous requirement forecast report with the commission, the utility may specifically identify the document or information by reference in lieu of refiling it in its requirement forecast report. A utility's gas requirement forecast report shall be organized and shall include information required as follows:

a. Introduction. An introductory paragraph shall preface the forecast report stating on whose behalf the forecast report is filed.

b. Index. An index of all documents and information required to be filed in the forecast and the identification of the commission file(s) in which the document(s) incorporated by reference is located.

c. Chapter 1—Existing system capacity. Chapter 1 of the report shall include the following information, presented in the same order as required herein, specifying existing system capacity in each of the five plan-years:

(1) System pipeline delivery capacity in volume.

(2) Additional capacity in volume through existing or expected interconnection to other systems.

(3) Certified storage capacities in volume for underground storage and storage in liquefied form.

d. Chapter 2—Demand forecast. Chapter 2 of the report shall include the following information, presented in the same order as required herein, specifying forecasted growth in demand within each utility's system. All forecasts shall include the gas requirements of the utility in matrix form by pipeline supplier and by customer classes of: Residential; commercial; and industrial, and if applicable, into subclasses of interruptible, off-peak and firm:

(1) The forecast of total demand, peak demand, and weather-normalized demand for each of the five years.

(2) A statement of the utility's actual total, peak, and weather-adjusted demand, and a statement of what that demand was forecasted to be in the year preceding the experienced peak(s) reported. The first report filed pursuant to this rule shall also include a statement of what that demand was forecasted to be in each of the four years preceding the previous year.

(3) An explanation of any significant differences between the utility's current five-year forecast and the five-year forecast made in the preceding year and, in the first report filed pursuant to this rule, between the current five-year forecast and the five-year forecasts made in the four years preceding the previous year. A table of previous and present year-by-year forecasts should be provided for comparison.

(4) An explanation of all forecasting methodology/technique used, types and sources of data used, as well as all major assumptions made in the current five-year forecast(s) and all significant changes in any method, data or assumptions from previous reports or being considered by the utility filing the report. This explanation should be complete and detailed and may be provided by reference to an attachment including reports, excerpts from authoritative treatises or other documents available to the utility.

e. Chapter 3—Supply forecast. Chapter 3 of the report shall include the following information, presented in the same order as required herein, specifying what alternative supply options are available and how they were evaluated:

(1) A list of all alternative suppliers available or expected to be available.

(2) A list of supplier-mix options (combination of one or more sources of supply) available with supply forecast and financial projections of purchase costs for each mix.

(3) A list of major supply contracts, arrangements, or both entered into or contemplated between the utility and its suppliers for the supplier-mix option selected.

(4) A description of all gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the utility's principal pipeline suppliers and their major sources of gas.

f. Chapter 4—Sensitivity analysis. Chapter 4 of the report shall include the following information, presented in the same order as required herein, specifying what analysis has been made of the sensitivity to error of forecasts and quantifications of planning options:

(1) A list of all assumptions or forecasts which could significantly alter either the demand for gas, the estimate of the supply of gas, or projections of purchase costs, or all of the above.

(2) A statement of the reasonable margins of error for each assumption or forecast listed in response to the requirement of subparagraph (1) above.

(3) A statement in quantified terms of the effect of potential errors and assumptions in forecasts exceeding the reasonable margin levels set forth in response to subparagraph (2) above on projected delivery of service.

(4) A description of any contingency situations and plans to meet those situations possible from changes in:

i. Major contracts, arrangements, or both with the utility's suppliers; and

ii. The utility's suppliers' contracts, arrangements, or both with its suppliers.

g. Chapter 5—Conclusion and recommendation. Chapter 5 of the report shall include a statement describing the supply option each utility has decided is best to meet the demand forecast in the subsequent five-year period, and explain the basis for that decision.

19.11(3) *Omitted information.* The report shall include all information required by this rule. If the utility filing the report is unable to provide all information required by the subrules above, a statement explaining why the information has not been included shall be set out in the report in place of the information omitted therefrom. Supplemental filings of omitted information may be required by the commission on its own motion or upon request of any other party to the proceeding.

19.11(4) *Summary of report.* The report of forecasting information filed pursuant to this rule shall be accompanied by a five-page summary briefly and accurately summarizing all essential information included in the report.

19.11(5) *Evidence submitted.* The utility shall submit all factual evidence and exhibits in support of its evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in its procurement plan and its gas requirement forecast with the filing of its gas procurement plan and requirement forecast.

19.11(6) *Annual review proceeding.* The commission shall annually conduct a proceeding to evaluate the reasonableness and prudence of a rate-regulated utility's natural gas procurement practices and to evaluate the five-year gas requirement forecast filed by the utility. The commission shall docket the matter as a contested case within thirty days of the utility's filing of its procurement plan and requirement forecast in accordance with subrules 19.11(1) and 19.11(2).

a. On or before October 15 each year, the office of consumer advocate and any intervenors shall file prepared direct testimony and exhibits.

b. On or before November 15 of each year the rate-regulated utility shall file prepared rebuttal testimony and exhibits.

c. The commission will schedule a public hearing to be held within five months after the filing of the procurement plan for the purpose of cross-examining all filed testimony. The hearing shall be conducted in accordance with the provisions of rule 250—7.7(476). The commission shall establish briefing schedules on a case-by-case basis. The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchase gas costs, consistent with assuring long-term supply of natural gas.

d. The commission may, in its discretion, modify the procedural schedule for an annual review proceeding.

This rule is intended to implement Iowa Code sections 476.1 and 476.6 as amended by 1983 Iowa Acts, chapter 127, sections 21 and 25.

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CHAPTER 20
SERVICE SUPPLIED BY ELECTRIC UTILITIES

250—20.1(476) General information.

20.1(1) *Authorization of rules.* Chapter 476 of the Code provides that the Iowa state commerce commission shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, content and filing of reports, documents and other papers necessary to carry out the provisions of this law.

Chapter 478 provides that the Iowa state commerce commission shall have power to make and enforce rules relating to the location, construction, operation and maintenance of certain electrical transmission lines.

20.1(2) *Application of rules.* The rules shall apply to any electric utility operating within the state of Iowa subject to chapter 476, and to the construction, operation and maintenance of electric transmission lines to the extent provided in chapter 478, and shall supersede all conflicting rules of any such electric utility which were in force and effect prior to the adoption of their superseding rules.

These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

If unreasonable hardship to a utility or to a customer results from the application of any rule herein prescribed, application may be made to the commission for the modification of the rule or for temporary or permanent exemption from its requirements.

The adoption of these rules shall in no way preclude the commission from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions.

These rules shall in no way relieve any utility from any of its duties under the laws of this state.

20.1(3) *Definitions.* The following words and terms when used in these rules, shall have the meaning indicated below:

a. "Commission" means the Iowa state commerce commission, sometimes hereafter referred to as "ISCC".

b. "Complaint" as used in these rules is a statement or question by anyone, whether a utility customer or not, alleging a wrong, grievance, injury, dissatisfaction, illegal action or procedure, dangerous condition or action, or utility obligation.

c. "Customer" means any person, firm, association, or corporation, any agency of the federal, state or local government, or legal entity responsible by law for payment for the electric service or heat from the electric utility.

d. "Delinquent or delinquency" means an account for which a service bill or service payment agreement has not been paid in full on or before the last day for timely payment.

e. "Distribution line" means any single or multiphase electric power line operating at nominal voltage in either of the following ranges: 2,000 to 26,000 volts between ungrounded conductors or 1,155 to 15,000 volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

f. "Economy energy" is energy bought or sold in a transaction wherein the supplier's incremental cost is less than the buyer's decremental cost, and the differential in cost is shared in an equitable manner by the supplier and buyer.

g. "Electric plant" includes all real estate, fixtures and property owned, controlled, operated or managed in connection with or to facilitate production, generation, transmission, or distribution, in providing electric service or heat by an electric utility.

h. "Electric service" is furnishing to the public for compensation any electricity, heat, light, power, or energy.

percent registration at ten percent of rated test current and at one hundred percent of rated test current giving the one hundred percent of rated test current registration a weight of four and the ten percent of rated test current registration a weight of one.

b. Determination of adjustment. Recalculation of bills shall be on the basis of actual monthly consumption except that if service has been measured by self-contained single-phase meters or three-wire network meters and involves no billing other than for kilowatt-hours, the recalculation of bills may be based on the average monthly consumption determined from the most recent thirty-six months consumption data.

When the average error cannot be determined by test because of failure of part or all of the metering equipment, it shall be permissible to use the registration of check metering installations, if any, or to estimate the quantity of energy consumed based on available data. The customer must be advised of the failure and of the basis for the estimate of quantity billed. The periods of error shall be used as defined in immediately following subparagraphs (1) and (2).

(1) Over-registration. If the date when over-registration began can be determined, such date shall be the starting point for determination of the amount of the adjustment. If the date when over-registration began cannot be determined it shall be assumed that the error has existed for the shortest time period calculated as the time since July 4, 1963, one-half the time since the meter was installed, or one-half the time elapsed since the last previous meter installation test.

The over-registration due to creep shall be calculated by timing the rate of creeping and assuming that the creeping affected the registration of the meter for twenty-five percent of the time since the more recent of either metering installation or last previous test.

(2) Under-registration. If the date when under-registration began can be determined, it shall be the starting point for determination of the amount of the adjustment except that billing adjustment shall be limited to the preceding six months. If the date when under-registration began cannot be determined, it shall be assumed that the error has existed for one-half of the time elapsed since the more recent of either metering installation or last previous test, except that billing adjustment shall be limited to the preceding six months.

The under-registration due to creep shall be calculated by timing the rate of creeping and assuming that this creeping affected the registration for twenty-five percent of the time since the more recent of either metering installation or last previous test, except that billing adjustment shall be limited to the preceding six months.

c. Refunds. If the recalculated bills indicate that one dollar or more is due an existing customer or two dollars or more is due a person no longer a customer of the utility, the tariff shall provide refunding of the full amount of the calculated difference between the amount paid and the recalculated amount. Refunds shall be made to the two most recent customers who received service through the metering installation found to be in error. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount subject to refund shall be mailed to such previous customer at the last known address, and the utility shall upon demand made within three months thereafter refund the same.

Refunds shall be completed within six months following the date of the metering installation test.

d. Back billing. A utility may not back bill due to under-registration unless a minimum back bill amount is specified in its tariff. The minimum amount specified for back billing shall not be less than one dollar for an existing customer or two dollars for a former customer. All recalculations resulting in an amount due equal or greater than the tariff specified minimum shall result in issuance of a back bill.

Back billings shall be rendered no later than six months following the date of the metering installation test.

e. Overcharges. When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation or other similar reasons, the amount of the overcharge shall be adjusted, refunded or credited to the customer.

f. Undercharges. When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation or other similar reasons, the tariff may provide for billing the amount of the undercharge to the customer.

20.4(15) *Refusal or disconnection of service.* Notice of a pending disconnection shall be rendered, and electric service refused or disconnected as set forth in the tariff.

The notice of pending disconnection required by these rules shall be a written notice setting forth the reason for the notice, and the final date by which the account is to be settled or specific action taken. The notice shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail the notice shall be considered rendered when delivered to the last known address of the person responsible for payment for the service. The final date shall be not less than twelve days after the notice is rendered.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. The notice shall also state the final date by which the account is to be settled or other specific action taken. In determining the final date, the days of notice for the causes shall be concurrent.

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 20.4(15)*"a", "b", "c"* and *"d"*, no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

a. Without notice in the event of a condition on the customer's premises determined by the utility to be hazardous.

b. Without notice in the event of customer use of equipment in such a manner as to adversely affect the utility's equipment or the utility's service to others.

c. Without notice in the event of tampering with the equipment furnished and owned by the utility.

d. Without notice in the event of unauthorized use.

e. For violation of or noncompliance with the utility's rules on file with the commission.

f. For failure of the customer or prospective customer to furnish such service equipment, permits, certificates or rights of way as are specified to be furnished, in the utility's rules filed with the commission, as conditions of obtaining service, or for the withdrawal of that same equipment or for the termination of those same permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed upon him as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the commission.

g. For failure of the customer to permit the utility reasonable access to its equipment.

h. For nonpayment of a bill or deposit, except as restricted by 20.4(16), provided that the utility has:

(1) Made a reasonable attempt to effect collection;

(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least twelve days in which to make settlement of the account, together with a written summary of the rights and remedies available to avoid disconnection. The written notice shall also include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide their name to the caller, and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) The summary of the rights and remedies must be approved by this commission. Any utility providing electric service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below shall submit to the commission an original and six copies of its proposed form for approval.

CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION

The following is a summary of your rights and remedies under the rules of the Iowa State Commerce Commission to avoid disconnection of utility service.

Disconnection can be avoided by paying the past due amount or by making arrangements to pay on or before the date listed on the notice.

Disconnection for nonpayment may occur only after we have sent a written notice of disconnection by regular mail postmarked at least twelve days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be placed on the door of the home at least one day before service is disconnected.

Disconnection may not take place unless we are prepared to reconnect your service that same day if payment or other arrangements are made. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.

Delinquent bill. If you are unable to pay a past due bill in full, you will be given an opportunity to enter into a payment agreement to avoid disconnection of service. The agreement will be negotiated to meet your individual needs and you may spread payments for the past due bill over at least twelve months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be told in writing why we refused, and you may continue to pay under your proposed agreement without disconnection of service if you ask the Commission (within ten days after receiving the written refusal) for assistance in working out an agreement with us. (Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-5979). If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.

Health. Disconnection for nonpayment will be delayed thirty days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. At our request, a telephone call from the physician or public health official to our office must be followed up by a letter within five days. During the thirty-day delay, you must work out a payment agreement. If the physician or health official states that the health problem still exists at the end of the initial thirty days, you may receive an additional thirty-day delay.

Disputed bill. If you disagree with the accuracy of your bill, you may pay the undisputed portion and notify our office of the disagreement. Disconnection will be delayed for up to forty-five days from the date the bill was mailed so that the disagreement may be settled. If you file a written complaint with the Commission (address and telephone number listed previously), disconnection may be further postponed, should the Commission request the extension.

Winter energy assistance. (November 1 - April 1) You may be eligible for low-income energy assistance or weatherization funds. If you tell us that you may qualify for energy assistance, disconnection will be postponed for thirty days to allow you time to apply for and obtain assistance. During this period, you must also enter into a payment plan for the part of your bill not paid by assistance funds. For further information on how to apply for assistance and quali-

fications, contact our business office, your local community action agency, or the Iowa Energy Policy Council, Lucas State Office Building, Des Moines, Iowa 50319 (1-800-532-1584).

(4) If the utility has adopted a service limitation policy pursuant to subrule 20.4(22), the following paragraph shall be appended to the end of the standard form for the summary of rights and remedies, as set forth in subparagraph 20.4(15)*"h"*(3):

Service limitation: We have adopted a policy of service limitation before disconnection. You may be qualified for service limitation rather than disconnection. To see if you qualify, contact our business office.

(5) When disconnecting service to a residence, made a diligent attempt to contact, by telephone or in person, the customer responsible for payment for service to the residence to inform the customer of the pending disconnection and his or her rights and remedies; if an attempt at personal or telephone contact of a customer occupying a unit which a utility knows or should know is a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, his or her present location. The landlord shall also be informed of the date when service may be disconnected.

During the period November 1 to April 1, if the attempt at customer contact fails, the premises must be posted with a notice informing the customer of the pending disconnection and rights or remedies available to avoid disconnection at least one day prior to disconnection; if the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons therefor.

(6) Given the customer a reasonable opportunity to dispute the reason for the disconnection and, if to the extent applicable, complied with each of the following:

Disputed bill. In the event there is a dispute concerning a bill for electric utility service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid discontinuance of service for nonpayment of the disputed bill for up to forty-five days after the rendering of the disputed bill. The forty-five days shall be extended by up to sixty days if requested of the utility by the commission in the event the customer files a written complaint with the commission.

Special circumstances. Disconnection of a residential customer may not take place on a weekend, a holiday or after 2:00 p.m. unless the utility is prepared to reconnect the same day, and in the case of a customer who has entered into a reasonable payment agreement, may not take place where electricity is used as the only source of space heating or to control or operate the only space heating equipment at the residence, on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with subrule 20.4(15)*"h"*(5) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provision of this rule.

Health of a resident. Disconnection of a residential customer shall be postponed if the discontinuance of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if one appears to be seriously impaired and may, because of mental or physical problems, be unable to manage his or her own resources, carry out activities of daily living or protect oneself from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: Age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation. The utility may require

written verification of the especial danger to health by a physician or public health official, including the name of the person endangered, a statement that he or she is a resident of the premises in question, the name, business address, and telephone number of the certifying party, the nature of the health danger and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for thirty days; however, the postponement may be extended by a renewal of the verification. In the event service is terminated within fourteen days prior to verification of illness by or for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. The customer must enter into a reasonable agreement for the retirement of the unpaid balance of the account within the first thirty days and keep the current account paid during the period that the unpaid balance is to be retired.

Reasonable payment agreement. If financial difficulty of a residential customer is confirmed, disconnection may not take place until after the utility has offered the customer an opportunity to enter into a reasonable payment agreement as required by 20.4(10). Disconnection shall be delayed thirty days for the making of a reasonable payment agreement and the thirty days shall be extended to sixty days if requested of the utility by the commission upon receipt of a complaint that the utility has arbitrarily refused a payment agreement offered by the customer and upon a finding the customer has made payment as provided for in the offered agreement.

Winter energy assistance. If the utility is informed that the customer's household may qualify for available winter energy assistance funds, there shall be no disconnection of service between November 1 and April 1 each year unless the utility has first offered the customer an opportunity to apply for and obtain assistance. In addition to the notification procedure required herein, the utility shall prior to November 1, mail customers a notice describing the availability of winter energy assistance funds and advising the customer how assistance may be obtained.

The utility shall determine what household income eligibility standards are used by agencies administering energy assistance programs and shall, at the time of telephone or personal contact, inform a customer subject to disconnection of the availability of assistance and the standards applied to determine qualification for assistance. If the customer informs the utility that the household may be qualified for energy assistance, the utility shall provide the customer with income verification forms prepared by the agency administering the assistance program. The utility shall inform the customer that the forms must be completed and returned to the administering agency no later than thirty days after receipt; however, if the customer has recently been qualified for energy assistance, the utility shall direct the customer to supply the utility, within ten days, with written confirmation from the administering agency. The utility may request confirmation that the customer has, within ten days after receipt of income verification forms, applied for winter energy assistance and, unless the request results in a determination that no application has been made, utility service shall be continued during the period of time allowed for return of household income verification forms.

The provisions of this rule allowing time for energy assistance qualification shall not preclude the utility and customer from entering into a reasonable agreement for payment of the customer's delinquent account. Energy assistance funds shall be applied to the customer's delinquent account and a reasonable agreement shall be entered into establishing terms for payment of any amount owed to the utility and not covered by energy assistance funds. If, within the thirty-day period allowed by this rule, income verification documents are not returned, or if the customer's household is determined to be ineligible for energy assistance, and no reasonable payment agreement has been reached with payment made toward the delinquent account, the utility may proceed with disconnection.

Abnormal electric consumption. A customer who is subject to disconnection for nonpayment of bill, and who has electric consumption which appears to the customer to be abnormally high, may request the utility to provide assistance in identifying the factors

contributing to this usage pattern and to suggest remedial measures. The utility shall provide assistance by discussing patterns of electric usage which may be readily identifiable, suggesting that an energy audit be conducted, and identifying sources of energy conservation information and financial assistance which may be available to the customer.

i. Without the written twelve-day notice, for failure of the customer to comply with the terms of a payment agreement, provided that:

(1) In the case of a customer owning or occupying a residential unit that will be affected by disconnection, the utility has made a diligent attempt, at least one day prior to disconnection, to contact the customer by telephone or in person to inform the customer of the pending disconnection and his or her rights and remedies; if an attempt at personal or telephone contact of a customer occupying a unit which a utility knows or should know is a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, his or her present location. The landlord shall also be informed of the date when service may be disconnected.

During the period November 1 to April 1, if the attempt at customer contact fails, the premises must be posted with a notice informing the customer of the pending disconnection and rights or remedies available to avoid disconnection at least one day prior to disconnection; if the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons therefor.

(2) The disconnection of a residential customer may not take place on a weekend, a holiday or after 2:00 p.m., unless the utility is prepared to reconnect the same day, and may not take place where electricity is used as the only source of space heating or to control or operate the only space heating equipment at the residence, on any day when the National Weather Service forecast for the following twenty-four hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with subrule 20.4(15)*"h"*(5) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection pro-

cedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provision of this rule.

(3) Disconnection of a residential customer shall be postponed if the discontinuance of service would present an especial danger to the health of the customer or any permanent resident of the premises. An especial danger to health is indicated if one appears to be seriously impaired and may, because of mental or physical problems, be unable to manage his or her own resources, carry out activities of daily living or protect oneself from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: Age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation. The utility may require written verification of the especial danger to health by a physician or a public health official, including the name of the person endangered, a statement that he or she is a resident of the premises in question, the name, business address, and telephone number of the certifying party, the nature of the health danger and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for thirty days; however, the postponement may be extended for a renewal of the verification. In the event service is terminated within fourteen days prior to verification of illness by or for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. The customer must pay the unpaid balance under the payment agreement within the first thirty days and keep the current account paid during the period that disconnection is postponed.

(4) No disconnection of a residential customer qualified for winter energy assistance funds shall be made, during the period between November 1 and April 1 each year, without prior notice to the agency administering the assistance program of the customer's default on a reasonable payment agreement and receipt of verification from the agency within five days thereafter, that additional assistance is unavailable.

If customer default is attributable to the agency, in whole or in part, disconnection shall be delayed thirty days for renegotiation of the reasonable payment agreement to include terms for customer payment of amounts that were to have been contributed by the agency, and the thirty days shall be extended to sixty days if requested of the utility by the commission upon receipt of a complaint that the utility has arbitrarily refused a payment agreement offered by the customer.

j. Without the written twelve-day notice, for failure of a residential customer who has had service limited in accordance with subrule 20.4(22) to pay the full amount due for past service or to enter into a reasonable payment agreement, provided that:

(1) The minimum time period, as specified in the utility's tariff, for the service limiter to remain in place prior to initiation of the disconnection procedure has elapsed;

(2) The requirements of subrule 20.4(15)*"i"*(1), relating to in-person, telephone or posted notice, have been satisfied;

(3) The requirements of subrule 20.4(15)*"i"* (2), relating time and temperature restrictions on disconnection are satisfied, to the extent applicable; and

(4) The requirements of subrule 20.4(15)*"i"* (3), relating to health restrictions on disconnection are satisfied, to the extent applicable.

20.4(16) *Insufficient reasons for denying service.* The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay for merchandise purchased from the utility.

c. Failure to pay for a different type or class of public utility service.

d. Failure to pay the bill of another customer as guarantor thereof.

e. Failure to pay a back bill rendered in accordance with 20.4(14)*"d"*.

f. Failure to pay a bill rendered in accordance with 20.4(14)*"f"*.

g. Failure of a residential customer to pay a deposit during the period November 1 through April 1 for the location at which he or she has been receiving service.

h. Failure of a disconnected residential customer to pay the full amount due for past service if financial difficulty is confirmed and the residential customer is willing to enter into a reasonable agreement to pay the delinquent amount as required by 20.4(11).

20.4(17) *Estimated demand.* Upon request of the customer and provided the customer's demand is estimated for billing purposes, the utility shall measure the demand during the customer's normal operation and use the measured demand for billing.

20.4(18) *Servicing utilization control equipment.* Each utility shall service and maintain any equipment it uses on customer's premises and shall correctly set and keep in proper adjustment any thermostats, clocks, relays, time switches or other devices which control the customer's service in accordance with the provisions in the utility's rate schedules.

20.4(19) *Customer complaints.* Complaints concerning the charges, practices, facilities or service of the utility shall be investigated promptly and thoroughly. The utility shall keep such records of customer complaints as will enable it to review and analyze its procedures and actions.

a. Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of customer complaints.

b. The utility shall take reasonable steps to ensure that customers unable to travel shall not be denied the right to be heard.

c. The final step in a complaint hearing and review procedure shall be a filing for commission resolution of the issues.

20.4(20) *Temporary service.* When the utility renders temporary service to a customer it may require that the customer bear all the cost of installing and removing the service facilities in excess of any salvage realized.

20.4(21) *Change in type of service.* If a change in the type of service, such as from 25- to 60-cycle or from direct or alternating current, or a change in voltage to a customer's substation, is effected at the insistence of the utility and not solely by reason of increase in the customer's load or change in the character thereof, the utility shall share equitably in the cost of changing the equipment of the customer affected as determined by the commission in the absence of agreement between utility and customer. In general, the customer should be protected against or reimbused for the following losses and expenses to an appropriate degree:

a. Loss of value in his electrical power utilization equipment.

b. Cost of changes in wiring, and

c. Cost of removing old and installing new utilization equipment.

20.4(22) *Limitation of service.* The utility shall have the option of adopting a policy for limiting the service of a residential customer for nonpayment of a bill or deposit, or for noncompliance with the terms of a payment agreement, as a measure to be taken prior to disconnection of the customer. Electric-heating residential customers shall not have limited service between November 1 and April 1. For purposes of this rule, "electric-heating" shall mean heating by means of a fixed-installation electric appliance which serves as the primary heat source.

A service limitation policy, if adopted by the utility, shall be set forth in the utility's tariff and shall specify some minimum time period for the service limiter to remain in place prior to the initiation of the disconnection procedure set forth in subrule 20.4(15)*"j"*. A service limitation policy, if adopted by the utility, shall be applied uniformly to all of the utility's residential customers, as specified above, to the extent that adaptation of service limiters to customer meters is feasible, and to the extent that customer meters are readily accessible to those installing the service limiters and to the customers. Any other exceptions to uniform application of

this policy must be on the basis of rational, specific criteria set forth in the utility's tariff receiving prior approval by the commission.

Notice of a pending service limitation shall be rendered, and electric service limited, as set forth in the tariff.

Upon installing a service limiter, the utility shall post the premises with a notice informing the occupant of the installation of the service limiter, its purpose, how it operates, and how it can be reset by the occupant.

The notice of pending service limitation required by these rules shall satisfy the requirements of subrule 20.4(15), substituting "service limitation" for "disconnection" or "refusal or disconnection of service" throughout the rule.

Service may be limited for nonpayment of bill or deposit, except as restricted by subrule 20.4(16), relating to insufficient reasons for denying service, provided that the utility has satisfied the requirements of subrule 20.4(15)*"h"*, excluding the portion of subparagraph (4) "special circumstances" relating to same-day reconnection, and substituting "service limitation" for "disconnection" (and all other forms of that term) throughout that subrule. An installed service limiter shall be removed no later than the next working day after the residential customer has paid the delinquent bill or deposit in full or has entered into a reasonable payment agreement with the utility.

Service may be limited without the written twelve-day notice for failure of the customer to comply with the terms of a payment agreement, provided that the requirements of subrule 20.4(15)*"i"* have been satisfied, excluding the portion of subparagraph (2) relating to same-day reconnection, and substituting "service limitation" for "disconnection" (and all other forms of that term) throughout that subrule.

These rules are intended to implement Iowa Code sections 476.6 and 476.8.

These rules are intended to implement Iowa Code sections 17A.3, 474.5, 476.1, 476.2 and 476.8 as amended by 1983 Iowa Acts, House File 312, sections 31 and 37.

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CHAPTER 21
SERVICE SUPPLIED BY WATER UTILITIES

250—21.1(476) General information.

21.1(1) *Authorization of rules.* Chapter 476, The Code, provides that the Iowa state commerce commission shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers necessary to carry out the provisions of this law.

21.1(2) *Application of rules.* The rules shall apply to any water utility operating within the state of Iowa under the jurisdiction of the Iowa state commerce commission and are made pursuant to chapter 476.

These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

If unreasonable hardship to a utility or to a customer results from the application of any rule herein prescribed, application may be made to the commission for the modification of the rule or for temporary or permanent exemption from its requirements.

The adoption of these rules shall in no way preclude the commission from altering or amending them, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions.

These rules shall in no way relieve any utility from any of its duties under the laws of this state.

DENTAL EXAMINERS, BOARD OF[320]

CHAPTER 6
INFORMATION AND RECORDS
[Ch 6, IAC 7/1/75 renumbered as Ch 51, IAC 9/20/78]

320—6.1(153) Availability of information. All information regarding rules, orders, forms, time and place of meetings, minutes of meetings, records of hearings, and examination of records are available to the public at the department between the normal working hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. The department may charge its usual fee, if any, for the copying of information. Written information may be obtained from: Iowa Board of Dental Examiners, Iowa Department of Health, Lucas State Office Building, Des Moines, Iowa 50319. Requests for information should be in writing, dated, and signed. Submissions of materials to the board should be made to the department unless stated otherwise and should enclose a cover letter stating the use for which the materials are intended.

This rule is intended to implement section 17A.3(1) of the Code.

320—6.2(153) Records of board. The department shall maintain the following records of the board for public inspection:

6.2(1) All rules, proposed or adopted.

6.2(2) Written statements or interpretations of law or policy formulated, adopted or used by the board, as are required to be disclosed by chapter 17A of the Code.

6.2(3) Final orders, decisions, and opinions indexed by name and subject.

6.2(4) Alphabetical list of applicants for licensure to practice dentistry who have failed the examination and are eligible for re-examination.

6.2(5) Alphabetical list of applicants for licensure to practice dental hygiene who have failed the examination and are eligible for re-examination.

6.2(6) Alphabetical list of persons licensed to practice dentistry in Iowa who are in good standing with the board.

6.2(7) Alphabetical list of dental hygienists licensed to practice dental hygiene in Iowa who are in good standing with the board.

6.2(8) Alphabetical list of dentists licensed to practice in but who are not practicing in Iowa.

6.2(9) Alphabetical list of resident dentist licensees.

6.2(10) Alphabetical list of dental college faculty permit holders.

6.2(11) Alphabetical list of licensees in federal services.

This rule is intended to implement section 17A.3(1) of the Code.

320—6.3(153) Change of address. Persons licensed in this state to practice dentistry or dental hygiene shall notify the department within ten days of any change of office address.

This rule is intended to implement section 147.9 of the Code.

320—6.4(153) Forms. The following board forms are the official forms to be used for the purposes indicated and are available from the board office.

1. Board Form 1: Dental License
2. Board Form 2: Application for Dental License
3. Board Form 3: Dental Hygiene License
4. Board Form 4: Application for Dental Hygiene License
5. Board Form 5: Application for Dental License by Credentials
6. Board Form 6: Faculty Permit
7. Board Form 7: Application for Faculty Permit
8. Board Form 8: Resident Dental License
9. Board Form 9: Application for Resident Dental License
10. Board Form 10: Application for Renewal of Dental License
11. Board Form 11: Application for Renewal of Dental Hygiene License

12. Board Form 12: Application to be an Approved Sponsor of Continuing Education Courses and Programs
13. Board Form 13: Application for Prior Approval of Continuing Education Course or Program (by an organization or person other than an approved sponsor)
14. Board Form 14: Application for Post Approval of Continuing Education Course or Program
15. Board Form 15: Attendance Record Report (by sponsor) of Iowa Licensees in Attendance at Courses and Programs Presented
16. Board Form 16: Annual Report of Educational Programs Presented (by sponsor)
17. Board Form 17: Continuing Education Record for Dentists and Dental Hygienists
18. Board Form 18: Annual Sponsor Recertification Form
19. Board Form 19: Applicaton for Waiver of Continuing Education Requirements (extension of time or exemption)
20. Board Form 20: Application for Certificate of Exemption (by inactive practitioner)
21. Board Form 21: Application for Reinstatement of Inactive Practitioner
22. Board form 22: Rules and Regulations of the Board
23. Board Form 23: Directory of Licensed Dentists and Dental Hygienists

This rule is intended to implement Iowa Code sections 17A.3(1)"*b*" and 147.10.

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CHAPTER 7
RULES

320—7.1(153) Petition for rulemaking.

7.1(1) An interested person may petition the board for the adoption, amendment or repeal of administrative rules.

7.1(2) The petition shall be in writing, signed by or on behalf of the petitioner, and contain the following information:

a. A general statement of the rule the petitioner is requesting the board to adopt, amend, or repeal. Where amendment or repeal of an existing rule is sought, the rule number should be included but is not required. The petitioner is not required to enclose a draft of the proposed rule or proposed amendment to a rule he or she is requesting.

b. A statement of sufficient detail setting forth reasons for adoption, amendment, or repeal.

This rule is intended to implement sections 17A.3(1) and 17A.9 of the Code.
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CHAPTERS 8 AND 9
Reserved

TITLE III
LICENSING

CHAPTER 10
GENERAL

320—10.1(153) Licensed personnel. Persons engaged in the practice of dentistry in Iowa must be licensed by the board as a dentist and persons performing services under section 153.15 of the Code must be licensed by the board as a dental hygienist.

This rule is intended to implement sections 147.2 and 153.17 of the Code.

320—10.2(153) Display of license and license renewal. The license to practice dentistry or dental hygiene and the current license renewal must be prominently displayed by the licensee at the principal office of employment.

10.2(1) Additional license certificates shall be obtained from the department whenever a licensee practices at more than one address. No more than two additional license certificates shall be issued.

10.2(2) Duplicate licenses shall be issued by the department upon satisfactory proof of loss or destruction of original license.

This rule is intended to implement sections 147.7, 147.10 and 147.80(17) of the Code.

320—10.3(153) Supervision of dental hygienist.

10.3(1) All professional services of a dental hygienist shall be performed under the general supervision of a licensed dentist.

10.3(2) General supervision of the professional services of a dental hygienist shall mean that the hygienist is performing procedures prescribed by a dentist currently licensed and actively practicing in Iowa to implement the dentist's diagnosis and treatment plan. General supervision shall not require the dentist be present at all times while the dental hygienist is performing prescribed procedures.

10.3(3) A dental hygienist shall not practice independent from the supervision of a dentist nor shall a dental hygienist establish or maintain an office or other work place separate or independent from the office or other work place in which the supervision of a dentist is provided.

This rule is intended to implement section 153.15 of the Code.

320—10.4(153) Unauthorized practice. A dental hygienist who assists a dentist in practicing dentistry in any capacity other than as an employee supervised by a licensed dentist in a dental office, a public or private school, public health agency, hospital or the armed forces or who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor or director of a dental office as a guise or subterfuge to enable such dental hygienist to engage in the practice of dentistry, or who renders dental service directly or indirectly on or for members of the public other than as an employee supervised by a licensed dentist in a dental office, a public or private school, public health agency, hospital or the armed forces for an employing dentist shall be deemed to be practicing dentistry without a license.

This rule is intended to implement Iowa Code sections 147.10, 147.57 and 153.15.
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CHAPTER 11
APPLICATIONS

320—11.1(153) Examination required for licensure to practice dentistry. Any person desiring to take the examination to qualify for licensure to practice dentistry in this state must make application to the Central Regional Dental Testing Service, Inc. (CRDTS), 2715 West Twenty-ninth Street, Topeka, Kansas 66614, and meet such other requirements as CRDTS may establish for purposes of the examination.

This rule is intended to implement sections 147.29 and 147.34 of the Code.

320—11.2(153) Application to practice dentistry.

11.2(1) Applications for licensure to practice dentistry in this state shall be made to the board on the form provided by the board and must be completely answered.

11.2(2) Applications for licensure must be filed with the board along with:

a. Satisfactory evidence of graduation from an accredited dental college approved by the board.

b. Certification by the dean or other authorized representative of the dental school that the applicant has been a student in good standing while attending that dental school. If the applicant is a dentist licensed by another jurisdiction, he or she shall furnish certification from the board of dental examiners of that jurisdiction that he or she is a licensed dentist in good standing.

c. Certificate signed by the secretary of the Council of National Board of Dental Examiners evidencing successful completion of Part I and Part II of the examination administered by the council. At the discretion of the board, any dentist who has lawfully practiced dentistry in another state or territory for five years may be exempted from presenting this certificate.

d. Certification by the Central Regional Dental Testing Service, Inc. of successful completion of the examination administered by CRDTS.

e. A fee of fifty dollars which is refundable to applicants who are ineligible to take the exam or whose application is incomplete. A statement of the reasons for rejection shall be sent to the applicant. The fee as specified in chapter 15 of these rules is nonrefundable to applicants whose applications are considered by the board. A statement of reasons for rejection shall be sent to the applicant.

11.2(3) The board may require additional information be provided by the applicant relating to character, education and experience as may be necessary to pass upon the applicant's qualifications.

11.2(4) Applications must be signed and verified as to the truth of the statements contained therein.

This rule is intended to implement section 147.3 of the Code.

320—11.3(153) Application for dental licensure by credentials. The following requirements must be satisfied prior to licensure to practice dentistry in Iowa through the procedure of licensure by credentials:

11.3(1) Applications for licensure by credentials to practice dentistry in this state shall be made to the board on the form provided by the board and must be completely filled out.

11.3(2) Applications must be filed with the board along with:

a. Satisfactory evidence of graduation from an accredited dental college approved by the board.

b. Evidence of successful completion of Parts I and II of the examination of the Council of National Board of Dental Examiners with resulting scores, or evidence of having passed a written examination during the last ten years that is comparable to the examination given by the Council of National Board of Dental Examiners.

c. Evidence that the applicant has not failed the clinical examination of CRDTS or comparable state board examination within the last three years.

d. Evidence of a current, valid license to practice dentistry in another state, territory or district of the United States issued upon clinical examination.

e. Certification by the state board of dentistry or equivalent authority in which applicant has engaged in the practice of dentistry of having engaged in such practice for at least five years immediately preceding the date of application.

f. Certification by the state board of dentistry or equivalent authority in which applicant has engaged in the practice of dentistry that the applicant has not been the subject of final or pending disciplinary action.

g. List of professional societies or organizations of which the applicant is a member.

h. Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as a dentist.

i. Evidence that the state, territory or district from which the applicant comes, extends licensure without examination to Iowa dentists who hold a current license, graduated from an accredited dental school, and have had five consecutive years in the practice. Submission of a copy of the dental licensing law and regulations of the jurisdiction will satisfy this requirement.

j. A fee of two hundred fifty dollars for credential verification payable to the Iowa State Department of Health. This fee is not refundable.

The fee for licensure by credentials verification as specified in chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners. Applications considered by the board are nonrefundable.

11.3(3) Applicant shall appear for a personal interview conducted by the board.

11.3(4) The board may also require such examinations as necessary to evaluate the applicant for licensure by credentials, including jurisprudence, oral diagnosis and treatment planning.

11.3(5) Applications must be signed and verified as to the truth of the statements contained therein. The license, if issued, may be revoked upon evidence of misinformation or substantial omission. All information given will be investigated for verification. A minimum of sixty days will be required for the investigation.

320—11.4(153) Examination required for licensure to practice dental hygiene. Any person desiring to take the examination to qualify for licensure to practice dental hygiene in this state must make an application to the Central Regional Dental Testing Service, Inc. (CRDTS), 2715 West Twenty-ninth Street, Topeka, Kansas 66614, and meet such other requirements as CRDTS may establish for purposes of the examination.

This rule is intended to implement sections 147.29 and 147.34 of the Code.

320—11.5(153) Application to practice dental hygiene.

11.5(1) Applications for licensure to practice dental hygiene in this state shall be made to the board on the form provided by the board and must be completely answered.

11.5(2) Applications for licensure must be filed with the board along with:

a. Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the board.

b. Certification by the dean or other authorized representative of the school of dental hygiene that the applicant has been a student in good standing while attending that dental hygiene school. If the applicant is licensed as a dental hygienist by another jurisdiction, he or she shall furnish certification from the appropriate examining board of that jurisdiction that he or she is a licensed dental hygienist in good standing.

c. Certification by the Council of National Board of Dental Examiners of successful completion of the examination administered by that council.

d. Certification by the Central Regional Dental Testing Service, Inc., of successful completion of the examination administered by CRDTS.

e. A fee of twenty-five dollars which is refundable to applicants who are ineligible to take the exam or whose application is incomplete. A statement of the reasons for rejection shall be sent to the applicant. The fee as specified in chapter 15 of these rules is nonrefundable to

applicants whose applications are considered by the board. A statement of reasons for rejection shall be sent to the applicant.

11.5(3) The board may require additional information be provided by the applicant relating to character, education and experience as may be necessary to pass upon the applicant's qualifications.

11.5(4) Applications must be signed and verified as to the truth of the statements contained therein.

This rule is intended to implement section 147.3 of the Code.

320—11.6(153) Character references. The board may require any applicant to submit two character references from persons who are not licensed members of the profession.

This rule is intended to implement section 147.3 of the Code.

320—11.7(153) Felonies. The board may consider the past felony record of any applicant if the felony conviction relates to the practice of dentistry or dental hygiene.

This rule is intended to implement Iowa Code sections 147.3 and 147.10.

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CHAPTER 12
EXAMINATIONS

320—12.1(153) Examination procedure for dentistry.

12.1(1) Unless otherwise notified in writing, applicants shall appear at the time and place fixed by the board to take the examination.

12.1(2) Each applicant shall be assigned a number for identification purposes during the examination. The examination shall be conducted so as to conceal the identity of the applicant as best as possible.

12.1(3) The ability of an examinee to read and interpret instructions shall be evaluated and considered by the board as a part of the examination.

12.1(4) Any examinee who gives or receives unauthorized assistance in any portion of the examination may be dismissed from the examination. Any examinee who violates any of the applicable rules or instructions may be declared by the board to have failed the examination.

12.1(5) An examinee must be present punctually at the time designated for commencing each session of the examination.

12.1(6) The examinee must attain an average grade of not less than seventy percent on each clinical portion of the examination and seventy percent on the written portion of the examination.

12.1(7) Each examinee shall be required to perform such clinical operations as may be required by the Central Regional Dental Testing Service, Inc., for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dentistry.

12.1(8) The examinee must furnish his or her own patients, all needed materials, supplies and instruments. The director of the dental clinic at the college of dentistry may aid in the procurement of patients.

12.1(9) All operations must be performed by the examinee in the presence of the board members assigned for such purpose.

320—12.2(153) Examination procedure for dental hygiene.

12.2(1) Unless otherwise notified in writing, applicants shall appear at the time and place fixed by the board to take the examination.

12.2(2) Each applicant shall be assigned a number for identification purposes during the examination. The examination shall be conducted so as to conceal the identity of the applicant as best as possible.

12.2(3) The ability of an examinee to read and interpret instructions shall be evaluated and considered by the board as a part of the examination.

12.2(4) Any examinee who gives or receives unauthorized assistance in any portion of the examination may be dismissed from the examination. An examinee who violates any of the applicable rules or instructions may be declared by the board to have failed the examination.

12.2(5) An examinee must be present punctually at the time designated for commencing each session of the examination.

12.2(6) The examinee must attain an average grade of seventy percent on the examination.

12.2(7) Each examinee shall be required to perform such practical demonstrations as may be required by the Central Regional Dental Testing Service, Inc., for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dental hygiene.

12.2(8) The examinee must furnish his or her own patients, all needed materials, supplies and instruments. The director of the clinic at the school of dental hygiene may aid in the procurement of patients.

320—12.3(153) Re-examination.

12.3(1) If the examinee for dentistry or dental hygiene fails the first examination and desires to take a second examination, he or she shall notify the Central Regional Dental Testing Service, Inc., at least thirty days prior to the first day of the next examination. The examinee shall be required to certify that the material statements contained in the original application are currently true and correct.

12.3(2) If the examinee for dentistry or dental hygiene fails a second examination, additional formal education or clinical experience must be obtained before he or she will be allowed to take another examination.

320—12.4(153) Additional requirements. Examinees for dentistry or dental hygiene shall be required to meet such other requirements as may be imposed by the Central Regional Dental Testing Service, Inc.

This chapter is intended to implement section 147.36 of the Code.

[Filed 8/23/78, Notice 6/28/78—published 9/20/78, effective 10/25/78]

CHAPTER 13
SPECIAL LICENSES

320—13.1(153) Resident dentist license.

13.1(1) All persons granted permission by the Iowa board of dentistry to practice as residents, interns or graduate students in board approved teaching or educational institutions offering specialty oriented courses shall be required to furnish to the board the following:

a. A signed written statement from the superintendent, director or head of the institution in which the applicant seeks to enroll.

b. A signed written statement of a licensed Iowa dentist who proposes to exercise supervision and direction over said applicant, specifying in general terms the time and manner thereof.

c. Satisfactory evidence of graduation from an accredited school of dentistry or other school approved by the board.

d. All applicants shall be required to furnish to the board such additional information as the board may deem necessay to enable it to determine the proficiency of such applicant.

13.1(2) If a resident dentist licensee leaves the service of such institution during the tenure of residency, internship or graduate study, the license shall be returned immediately to the department of health and the authority granted by the board to licensee shall be automatically canceled.

13.1(3) Application for the resident dentist license shall be on official board forms and shall be filed with the board together with the appropriate fee as specified in chapter 15 of these rules.

13.1(4) The resident dentist license shall be valid for one year and may be renewed annually for no more than three years.

13.1(5) No examination shall be required for this license.

13.1(6) The resident dentist licensee shall be subject to all applicable provisions of chapters 147 and 153 of the Code and the rules of the board. Any violations of these laws or rules or the failure of the licensee to perform and progress satisfactorily or receive effective supervision as determined by the board, shall be grounds for revocation of the license after proper notice and hearing.

This rule is intended to implement section 153.22 of the Code.

320—13.2(153) Dental college faculty permits.

13.2(1) The board may issue to members of the faculty of the college of dentistry a faculty permit entitling the holder thereof to practice dentistry or dental hygiene within the college of dentistry and its affiliated teaching facilities as an adjunct to the faculty members' teaching positions and associated responsibilities and functions therein.

13.2(2) The dean of the college of dentistry shall certify to the board those bona fide members of the college's faculty who are not licensed and registered to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing his or her duties in the college of dentistry, make written application to the board for such permit.

13.2(3) Such permit shall expire on the first day of July next following the date of issuance and may, at the sole discretion of the board, be renewed on a yearly basis.

13.2(4) A fee of fifteen dollars shall be paid by the applicant for issuance and renewal of the faculty permit.

13.2(5) The faculty permit shall be valid only so long as the holder thereof remains a member of the faculty of the college of dentistry and shall subject the holder to all provisions of the law regulating the practice of dentistry and dental hygiene in this state.

This rule is intended to implement Iowa Code sections 147.10 and 153.37.

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[Filed emergency 12/16/83—published 1/4/84, effective 12/16/83]

CHAPTER 14
RENEWAL

320—14.1(153) Renewal of license to practice dentistry or dental hygiene. A license to practice dentistry or a license to practice dental hygiene must be renewed biennially.

14.1(1) Application for renewal must be made in writing to the board at least thirty days before the current license expires.

14.1(2) The appropriate fee as specified in chapter 15 of these rules shall accompany the application for renewal of a license at least thirty days before the current license expires. A penalty shall be assessed by the board for late renewal.

14.1(3) Completion of continuing education is required for renewal of an active license. Failure to comply will automatically result in an inactive renewal.

This rule is intended to implement Iowa Code section 147.10 and Acts of the Sixty-seventh General Assembly, chapter 95.

320—14.2(153) Notice of renewal. The department will notify each licensee by mail of the expiration of his or her license. A penalty may be assessed by the board for late renewal.

This rule is intended to implement section 147.10 of the Code.

320—14.3(153) Grounds for nonrenewal of license to practice dentistry or dental hygiene. The board may refuse to renew, after proper notice and hearing, a license on the following grounds:

14.3(1) Violation of chapter 147 or 153 during the term of the last license or renewal of license.

14.3(2) Commission of any acts of unprofessional conduct during the term of the last license or renewal of license.

14.3(3) Failure to obtain required continuing education.

This rule is intended to implement section 153.23 of the Code and Acts of the Sixty-seventh General Assembly, chapter 95.

320—14.4(153) Reinstatement.

14.4(1) Application for reinstatement of a license not renewed by the board shall be made on the official form and filed with the board.

14.4(2) The application shall be accompanied by payment of all renewal fees then due and reinstatement fee as specified in chapter 15 of these rules.

14.4(3) The board may require the former licensee to take an examination prior to reinstatement.

14.4(4) The application shall include the following:

a. Name and address of applicant.

b. Date of admission to practice in Iowa.

c. Dates and places of practice.

d. License number for which reinstatement is sought.

e. Reasons for seeking reinstatement and why license was not maintained.

f. List of all study clubs and professional meetings attended since license lapsed, with dates and places thereof.

g. List of postgraduate courses taken since license lapsed, with dates and places thereof.

h. Other states in which licensed and the identifying number of each license.

14.4(5) The applicant shall also submit two character references from persons who are not licensed in the profession concerned and such other information as the board may require to evaluate the applicant.

This rule is intended to implement sections 147.11 and 153.30 of the Code.

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CHAPTER 15
FEES

320—15.1(153) License application fees. Applications considered by the board are nonrefundable.

15.1(1) The fee for a license application to practice dentistry shall be one hundred dollars.

15.1(2) The fee for a license application to practice dental hygiene shall be fifty dollars.

15.1(3) The fee for a resident dentist license application shall be forty dollars.

15.1(4) The fee for a faculty permit application shall be fifty dollars.

15.1(5) The fee for a reciprocal license application to practice dentistry issued on the basis of credentials shall be two hundred seventy-five dollars.

15.1(6) The fee for a reciprocal license application to practice dental hygiene issued on the basis of credentials shall be one hundred dollars.

15.1(7) The fee for a reinstatement application shall be fifty dollars.

320—15.2(153) Renewal fees. All fees are nonrefundable.

15.2(1) The fee for renewal of a license to practice dentistry for a biennial period shall be one hundred dollars for an active practitioner and fifty dollars for an inactive practitioner.

15.2(2) The fee for renewal of a license to practice dental hygiene for a biennial period shall be fifty dollars for an active practitioner and twenty-five dollars for an inactive practitioner.

320—15.3(153) Late renewal fees. All fees are nonrefundable.

15.3(1) Failure to renew a dentist license within thirty days after expiration shall require a renewal fee of one hundred fifty dollars for active practitioners and seventy-five dollars for inactive practitioners.

15.3(2) Failure to renew a dental hygiene license within thirty days after expiration shall require a renewal fee of seventy-five dollars for an active practitioner and thirty-five dollars for an inactive practitioner.

320—15.4(153) Miscellaneous fees.

15.4(1) The fee for issuing a duplicate license shall be ten dollars.

15.4(2) The fee for a certification of the Iowa license shall be ten dollars.

These rules are intended to implement Iowa Code sections 147.10, 147.80 and 153.22.

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CHAPTERS 16 to 19
Reserved

TITLE IV
AUXILIARY PERSONNEL

CHAPTER 20
AUXILIARY PERSONNEL

320—20.1(153) Auxiliary personnel. A licensed dentist may employ unlicensed auxiliary personnel to perform any acts not considered to be the unauthorized practice of dentistry or dental hygiene. Auxiliary personnel shall not include commercial dental laboratories or dental laboratory technicians who are employees or independent contractors of licensed dentists.

320—20.2(153) Unauthorized practice of dentistry or dental hygiene.

20.2(1) It shall be considered the unauthorized practice of dentistry or dental hygiene for any person not licensed to practice dentistry or dental hygiene to perform any acts other than those acts which meet the following criteria:

a. The acts are mechanical in nature and require limited judgment; and

b. The acts are performed only under the authorization and direct supervision of a licensed dentist; and

c. The acts are performed in a dental office by an employee for an employing dentist; and

d. The acts are an adjunct to services provided by the dentist and require no diagnosis, prescription or treatment.

20.2(2) The following acts would constitute the unauthorized practice of dentistry or dental hygiene when performed by unlicensed auxiliary personnel:

a. Preparing, placing, carving or contouring restorations including acid etch restorations.

b. Any removal or addition to hard or soft tissue.

c. Removal of subgingival and supragingival calculus deposits.

d. Placement and removal of temporary crowns and restorations.

e. Injection of local anesthetics.

f. Making impressions except for study models.

g. Induction and monitoring of nitrous oxide or other inhalation agent when used as an analgesia or anesthesia.

20.2(3) Coronal polishing of teeth by a dental assistant using only a rotary instrument and a rubber cup for such purpose at the direction and under the immediate personal supervision of an Iowa licensed dentist in the latter's dental office is deemed not to be the giving of prophylactic treatment within the purview of section 153.13(2), Code of Iowa.

320—20.3(153) Direct supervision required. Direct supervision shall mean that the dentist is present at all times while the auxiliary personnel are performing acts prescribed by the supervising dentist which do not constitute the unauthorized practice of dentistry or dental hygiene.

320—20.4(153) Unlawful practice by auxiliary personnel. Auxiliary personnel who assist a dentist in practicing dentistry in any capacity other than as an employee directly supervised by a dentist in a dental office, or who directly or indirectly procure a licensed dentist to act as nominal owner, proprietor or director of a dental office as a guise or subterfuge to enable such auxiliary personnel to engage directly or indirectly in the practice of dentistry, or who perform dental service directly or indirectly on or for members of the public other than as an employee for an employing dentist shall be deemed to be practicing dentistry without a license.

320—20.5(153) Advertising and soliciting dental services prohibited. No auxiliary

able clinical proficiency of that person observed over not less than one month, which shall be, for the purpose of this rule only, deemed a continuation of the person's status as a student under subrule 22.4(3)

320—22.7(153) Application for board qualification.

22.7(1) Each person engaged in dental radiography except a licensed dentist or dental hygienist shall submit documentation of his or her training, experience, and credentials to the board within thirty days following the effective date of this chapter or prior to engaging in dental radiography, which documentation shall show:

a. That the requirements of these rules have been read and understood by the applicant.

b. The training and experience that qualify the applicant to engage in dental radiography.

22.7(2) The application shall be made on the form furnished by the board and the applicant shall fully and accurately supply all information required by the application form and accompanying instructions. Renewal of the board qualification shall be obtained three years from the initial qualification and each three-year period thereafter.

320—22.8(153) Confirmation of qualifications. The board shall issue an appropriate certificate of qualification to those applicants meeting the requirements of this chapter, which certificate must be conspicuously displayed in the office of applicant's employment.

320—22.9(153) Enforcement.

22.9(1) It is unlawful for any individual except a licensed dentist or dental hygienist to operate X-ray equipment for purposes of dental radiography unless the requirements of rule 22.4(153) or 22.6(153) have been met.

22.9(2) It is unlawful for any person including a licensed dentist to employ any individual to engage in dental radiography if that individual does not meet the requirements of this chapter.

320—22.10(153) Qualification by endorsement of equivalency training. Any person who is the holder of a current certificate in dental radiology issued by another state, jurisdiction, agency, or recognized professional registry may, upon presentation of the certificate to the board be considered to meet the requirements of subrules 22.3(1) to 22.3(3) provided that the board finds that the standards and procedures for qualification in the state, jurisdiction, agency, or recognized professional registry which issued the certificate, afford protection to the public equivalent to that afforded by this chapter.

These rules are intended to implement sections 136C.3 and 153.33(5), The Code.

[Filed 12/3/81, Notice 9/16/81—published 12/23/81, effective 7/1/82]

CHAPTERS 23 TO 24
Reserved

TITLE V
PROFESSIONAL STANDARDS

CHAPTER 25
CONTINUING EDUCATION

320—25.1(153) Definitions. For the purpose of these rules on continuing education, definitions shall apply:

25.1(1) *"Board"* means the board of examiners for dentistry.

25.1(2) *"Licensee"* means any person licensed to practice dentistry or dental hygiene in the state of Iowa.

25.1(3) *"Hour"* of continuing education means a clock-hour spent after December 31, 1978, by a licensee in actual attendance at and completion of an approved continuing education activity.

25.1(4) *"Approved program or activity"* means a continuing education program activity

meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

25.1(5) *"Approved sponsor"* means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such person or organization may be deemed automatically approved.

320—25.2(153) Continuing education requirements.

25.2(1) Beginning January 1, 1979, each person licensed to practice dentistry or dental hygiene in this state shall complete during each calendar year a minimum of fifteen hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal year.

Beginning January 1, 1984 each person licensed to practice dentistry or dental hygiene in this state shall complete during the biennium ending December 31, 1986 and each biennium thereafter a minimum of thirty hours of continuing education approved by the board.

25.2(2) The continuing education compliance year shall extend from January 1 to December 31, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent license renewal year beginning July 1 and expiring June 30.

The biennial continuing education compliance period shall extend from January 1 to December 31 of the second following year during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent biennial license renewal period beginning July 1 and expiring June 30 of the second year thereafter.

25.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously approved by the board or which otherwise meets the requirement herein and is approved by the board pursuant to subrule 25.4(3) of these rules.

25.2(4) It is the responsibility of each licensee to finance his or her costs of continuing education. All fees for continuing education courses shall be remitted by licensee directly to the sponsor or as the board may otherwise direct.

320—25.3(153) Standards for approval. A continuing education activity shall be qualified for approval if the board determines that:

25.3(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

25.3(2) It pertains to common subjects or other subject matters which relate integrally to the practice of dentistry or dental hygiene; and

25.3(3) It is conducted by individuals who have a special education, training and

experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and is accompanied by a paper, manual or written outline which substantively pertains to the subject matter of the program.

Except as the board may allow pursuant to subrule 25.4(3) or rule 25.8(153) hereof, no licensee shall receive credit exceeding ten percent of the annual total required hours for self-study, including television viewing, video or sound-recorded programs, correspondence work, or research, or by other similar means as authorized by the board.

320—25.4(153) Approval of sponsors, programs and activities.

25.4(1) *Approval of sponsors.* An organization or person not previously approved by the board, which desires approval as a sponsor of courses, programs, or other continuing education activities, shall apply for approval to the board stating its education history for the preceding two years, including approximate dates, subjects offered, total hours of instruction presented, and names and qualifications of instructors. All applications shall be reviewed by the Advisory Committee on Continuing Education prior to final approval or denial by the board. By January 31 of each year, commencing January 31, 1980, all approved sponsors shall report to the board in writing the education programs conducted during the preceding calendar year on a form approved by the board.

The board may at any time on its own motion or at the recommendation of the Advisory Committee on Continuing Education re-evaluate an approved sponsor. If after such re-evaluation, the board finds there is basis for consideration of revocation of the approval of an approved sponsor, the board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least thirty days prior to said hearing. The decision of the board after such hearing shall be final.

25.4(2) *Prior approval of activities.* An organization or person other than an approved sponsor, which desires prior approval of a course, program or other continuing education activity or who desires to establish approval of such activity prior to attendance thereat, shall apply for approval to the board at least ninety days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny such application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information. All applications shall be reviewed by the Advisory Committee on Continuing Education prior to final approval or denial by the board.

25.4(3) *Post approval of activities.* A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor nor otherwise approved shall submit to the board, within sixty days after completion of such activity, its dates, subjects, instructors, and their qualifications and the number of credit hours requested therefor. Within ninety days after receipt of such application the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed therefor. All requests shall be reviewed by the Advisory Committee on Continuing Education prior to final approval or denial by the board. A licensee not complying with the requirements of this subparagraph may be denied credit for such activity.

25.4(4) *Review of programs.* The board on its own motion or at the recommendation of the Advisory Committee on Continuing Education may monitor or review any continuing education program already approved by the board and upon evidence of significant variation in the program presented from the program approved may disapprove all or any part of the approved hours granted to the program.

25.4(5) *Advisory committee.* An Advisory Committee on Continuing Education shall be formed to review and advise the board with respect to applications for approval of sponsors or activities and requests for post approval of activities. Its members shall be appointed by the board and consist of a member of the board, two licensed dentist with expertise in the area of professional continuing education, and two licensed dental hygienists with expertise in the area of professional continuing education. The Advisory Committee on Continuing

Education may tentatively approve or deny applications or requests submitted to it pending final approval or disapproval of the board at its next meeting.

320—25.5(153) Hearings. In the event of denial, in whole or in part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right, within twenty days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within sixty days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified hearing officer designated by the board. If the hearing is conducted by a hearing officer, the hearing officer shall submit a transcript of the hearing with the proposed decision of the hearing officer. The decision of the board or decision of the hearing officer after adoption by the board shall be final.

320—25.6(153) Report of licensee. Each licensee shall file a signed continuing education record form with the biennial renewal application no later than April 1 following the end of the two-year period in which claimed continuing education hours were completed. The form shall be sent to the Iowa State Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

320—25.7(153) Attendance record report. The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance and send a signed copy of such attendance record to the secretary of the board upon completion of the education activity, but in no case later than March 1 of the following calendar year. The report shall be sent to the Iowa State Department of Health, Licensing and Certification Section, Lucas State Office Building, Des Moines, Iowa 50319.

320—25.8(153) Physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of the waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

320—25.9(153) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of dentistry or dental hygiene in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

320—25.10(153) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of dentistry or dental hygiene in the state of Iowa satisfy the following requirements for reinstatement:

25.10(1) Submit written application for reinstatement to the board upon forms provided by the board; and

25.10(2) Furnish in the application evidence of one of the following:

a. The full-time practice of dentistry or dental hygiene in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under the rules; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying fifteen by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of CRDTS or other Iowa state license examination conducted within one year immediately prior to the submission of such application of reinstatement.

This rule is intended to implement Iowa Code section 147.10.

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CHAPTER 26
ADVERTISING

320—26.1(153) General.

26.1(1) No advertising or other public announcements of any kind or character or through any mode or media shall be printed except as is expressly authorized by these rules.

26.1(2) Advertising shall mean paying for, sponsoring, or participating in the use of, directly or indirectly, any form of public communications on behalf of oneself, one's partner, one's associate or any person affiliated with oneself or a professional service facility under one's control.

26.1(3)* Dentists are prohibited from advertising in print or broadcast media which do not offer similar advertising opportunities on similar terms to all dentists.

320—26.2(153)* Media. A licensed dentist may advertise only by means of the following media:

26.2(1)* *Print media.* For purposes of these rules, print media includes only regularly published newspapers, magazines and other periodicals of general circulation, professional journals, and telephone directories.

26.2(2)* *Broadcast media.* For purposes of these rules, broadcast media includes only FCC approved radio or television.

320—26.3(153)* Form.

26.3(1)* Advertising authorized by these rules must not be sensational or flamboyant because of size, color or use of trademarks, pictures, graphics, design work, logos, drawings or other similar signs or symbols.

26.3(2)* Broadcast advertisements shall be prerecorded and approved for broadcast by the advertising dentist.

320—26.4(153) Contents.

26.4(1)* Only the following information, in words or numbers, may be communicated to the public through an advertisement:

a. Name of the dentist who will personally perform dental services upon a person responding to the advertisement and, if applicable, the assumed name of the professional corporation or association. If the advertisement is on behalf of the professional corporation or association, the names of all dentists affiliated therein shall be listed in addition to the assumed name.

b. Address or addresses if more than one office location.

c. Telephone number or numbers.

d. Office hours.

*Objection filed, see insert IAC 11/28/79.

e. Notation of degrees held.

f. Notation of specialty or limitation of practice by using the phrase "Practice Limited to" and provided the requirements of chapter 28, Designation of Specialty, are met.

g. Statement of dentist's fee for initial consultation.

h. Statement of dentist's fixed fee, including materials, for a precisely described specific service as listed in the American Dental Association Uniform Code on Dental Procedures and Nomenclature, provided that the service is usually performed at the set fee and includes all professionally recognized components within generally accepted standards. Any advertisement which includes a statement of the fixed fee shall also state that the fee includes all materials or services necessary to obtain the advertised services from the dentist.

i. Statement of the dentist's range of fees, including materials, for a precisely described dental service as listed in the American Dental Association Uniform Code on Dental Procedures and Nomenclature, provided that the advertisement contains a full disclosure of all relevant variables and considerations pertaining to the fee the patient will actually pay and that the dentist in fact charges the minimum fee advertised in a substantial portion of cases when he or she performs the dental service. Any advertisement which includes a statement of the range of fees shall also state that the fee includes all materials or services necessary to obtain the advertised services from the dentist.

j. Statement of the availability of credit arrangements, provided that the availability of credit shall not be decreased throughout the effective life of the advertisement.

26.4(2)** A dentist who advertises in accordance with these rules shall:

a. Maintain a copy or recording of the advertisements for a period of three years.

b. Be required to substantiate the truthfulness of all information contained in the advertisement should the advertisement be the subject of a complaint or investigation.

c. Provide services at the advertised fee throughout the effective life of the advertisement.

26.4(3) No advertisement shall contain:

a. Any information which is in any manner misleading, untruthful, fraudulent, confusing or deceptive to the public.

b. Any promises of cure.

c. Any claim of superiority over any other practitioner or reference to the quality of care provided.

This chapter is intended to implement section 153.33 of the Code, and Bates v. Arizona 97SCt2691(1977).

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CHAPTER 27**
PROFESSIONAL NOTICES

320—27.1(153) Professional cards. A dentist may announce by way of a professional card containing name, degrees, specialty if the requirements of chapter 28 of these rules have been met, office location, office hours, office telephone number and residence telephone number and address, if desired.

320—27.2(153) Professional announcements. The information contained on the professional card may be inserted in public print for the purpose of advertising, or to announce that a dentist is commencing a new practice, is changing office location, is to be temporarily absent from practice or to announce the return to practice.

320—27.3(153) Signs.

27.3(1) A dentist may display no more than two signs, name plates or other professional announcements at his or her place of business or elsewhere. These signs may be in addition to a listing on the building directory and the entrance door to the dental office which listing may

*Effective date of chapter 26 delayed by the administrative rules review committee seventy days.

**Objection filed, see insert IAC 11/28/79.

139.212(9) Failure to report a change of name or address within thirty days after it occurs.

139.212(10) Submission of a false report of continuing education or failure to submit the annual report of continuing education.

139.212(11) Failure to notify the board within thirty days after occurrence of any judgment or settlement of a malpractice claim or action.

139.212(12) Failure to comply with a subpoena issued by the board.

139.212(13) Failure to report to the board as provided in rule 470—139.201(258A) any violation by another licensee of the reasons for disciplinary action as listed in this rule.

470—139.213(258A) Peer review committees.

139.213(1) Each peer review committee for the profession, if established, may register with the board of examiners within thirty days after the effective date of these rules or within thirty days after formation.

139.213(2) Each peer review committee shall report in writing within thirty days of the action, any disciplinary action taken against a licensee by the peer review committee.

139.213(3) The board may appoint peer review committees as needed consisting of not more than five persons who are licensed to practice podiatry to advise the board on standards of practice and other matters relating to specific complaints as requested by the board. The members of the peer review committees shall serve at the pleasure of the board. The peer review committees shall observe the requirements of confidentiality provided in chapter 258A of the Code.

These rules are intended to implement sections 258A.4 to 258A.6 of the Code.

139.214 to **139.299** Reserved.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

470—139.300(28A) Conduct of persons attending meetings.

139.300(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

139.300(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board person presiding at the meeting.

This rule is intended to implement section 28A.7 of the Code.

[Filed prior to July 1, 1952]
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CHAPTER 140
BOARD OF PSYCHOLOGY EXAMINERS

470—140.1(154B) General definitions.

140.1(1) *"Law"* means chapters 147 and 154B of the Code of Iowa.

140.1(2) *"Board"* means the board of psychology examiners.

140.1(3) *"Original license"* means, when used relative to renewal of lapsed license, the license which has lapsed.

140.1(4) *"Year"* means, when used in connection with fees for a license, the fiscal year commencing on July 1 and ending on the following June 30.

140.1(5) *"Waiver"* means, the granting of a license without examination, conditions for which are defined in the law.

140.1(6) Rescinded effective 8/1/80.

470—140.2(154B) Availability of information.

140.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, record of hearings, and examination results are available to the public between the hours of 8:00 a.m. and 4:30 p.m., Monday to Friday, except holidays.

140.2(2) Information may be obtained by writing to the Board of Psychology Examiners, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319. All official correspondence shall be in writing and directed to the board at this address.

470—140.3(154B) Organization and proceedings.

140.3(1) A chairperson, vice-chairperson, and secretary shall be elected at the first meeting of each fiscal year.

140.3(2) Four board members actually present constitute a quorum.

140.3(3) The board shall hold an annual meeting and at least three interim meetings and may hold additional meetings called by the chairperson or by a majority of its members. Meetings shall be scheduled so as to enable applicants to meet the requirements of subrule 140.4(4). The chairperson shall designate the date, place, and time prior to each meeting of the board. Notice of time and place of all meetings shall be given to board members by the secretary at least fourteen days before the meeting is to be held. However, in case of emergency requiring the board to meet before such notice can be given, verbal or telephone notification may be given no later than three days before the meeting. The board shall follow the latest edition of Robert's Revised Rules of Order at its meeting whenever any objection is made as to the manner in which it proceeds at a meeting.

140.3(4) All issues, requests, or submissions to the board will be considered. However, official action will be taken only in response to written requests.

140.3(5) The board shall have both formal and informal procedures for use where appropriate in conducting the business of the board. Such procedures may involve, but are not limited to, hearings for individuals, questions of legal policy, inquiries concerning board policies or decisions, or other board business. Informal procedures shall be preferred unless either the board or requesting party requests a formal procedure. When a formal procedure is elected, a full transcript or audio tape recording of the procedure shall be made.

140.3(6) Any interested person may petition the board requesting the promulgation, amendment, or repeal of a rule.

140.3(7) Any interested person may petition the board for a declaratory ruling regarding the application of a statute, rule, decision or other written statement of law or policy to a specific factual situation.

a. The petition shall be in writing and shall include:

(1) The name and address of the petitioner

(2) A statement of the specific factual background of the question

(3) The statute, rule, decision, or other written statement of law or policy and the reasons for the question.

b. The petition shall be submitted to the Board of Psychology Examiners, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

c. Within sixty days of the board's receipt of the petition, the chairperson, with the concurrence of the majority of the board members present, shall issue a written decision unless a decision cannot be reached based on the facts as presented.

d. Should the facts be found to be insufficient:

(1) A decision will not be issued.

(2) The chairperson shall request the facts be clarified by an amendment to the petition.

(3) Failure by the petitioner to amend the petition within fifteen days will cause the chairperson to dismiss the petition.

e. The board may decline to rule on any statute, rule, decision, or policy which is outside its realm of authority.

470—140.4(154B) Application.

140.4(1) Any person seeking a license must complete and submit to the board the approved application form not later than sixty days prior to the date of the written examination.

140.4(2) The application form must be completed in accordance with instructions contained in the application.

140.4(3) Each application must be accompanied by a check or money order for one hundred dollars, nonrefundable, payable to the Iowa state department of health.

140.4(4) Applicants shall be notified in writing of deficiencies. If the requested information to remedy such deficiencies is not received thirty days before the date of the scheduled written examination and found acceptable by the board, the application may be held until the next examination.

140.4(5) No application will be considered by the board until certified copies of academic transcripts have been received by the board, and satisfactory evidence of the candidate's qualifications has been supplied in writing on the prescribed forms by the candidate's supervisors.

140.4(6) An applicant whose licensing application has been denied may reapply for licensing when the applicant believes the conditions stated by the board as requirements have been met.

140.4(7) The board will review each application for licensing to determine that the candidate meets all requirements as provided in the law and these rules.

140.4(8) Since a license to practice a profession may be refused on any of the grounds for which a license may be revoked by the district court in section 147.4 of the Code, the board will make special inquiries whenever a question arises concerning section 147.55 of the Code. In considering unethical practices, the board will be guided by the code of ethics.

140.4(9) Psychologists residing outside the state of Iowa and intending to practice in Iowa under the provisions of Iowa Code section 154B.3(5) shall file an application for a limited permit to practice at least sixty days in advance of such practice on a form provided by the board. The limited permit expires one year after issuance and may be renewed only once for an additional twelve-month period.

The following fees, which are nonrefundable, shall be submitted payable to the Iowa state department of health:

a. The application for a limited permit to practice shall be accompanied by a check or money order in the amount of one hundred dollars.

b. The renewal fee of seventy dollars by check or money order shall be submitted at least thirty days prior to the expiration of the initial limited permit if the person intends to continue to practice in Iowa under the provisions of Iowa Code section 154B.3(5).

This rule is intended to implement Iowa Code section 147.80.

140.6(5) Employment experience of any kind gained prior to meeting the educational qualifications for licensing found in rule 470—140.5(154B) will not apply to the provisions of the law concerning professional employment experience.

140.6(6) Predoctoral employment experience that meets the requirements of subrules 140.6(5) and 140.6(7) will be considered "professional employment experience" unless the employment experience was part of a doctoral training program such as an internship, assistantship, practicum, or personal therapy.

140.6(7) In the event that the employment experience being offered can be considered the performance of some other profession or discipline as well as psychology, the board will consider such employment experience acceptable if it meets such criteria as listed in subrule 140.6(1).

140.6(8) "A year of professional employment experience" shall mean twelve months, including regularly scheduled vacation periods, during which the applicant was employed on a full-time basis.

a. In the case of academic employment, "year" shall mean the period normally associated with the full-time employment at the employing institution.

b. Full-time employment for self-employed applicants shall mean at least 1800 hours during a twelve-month period.

c. Part-time employment experience credit shall be determined by the board on a prorated basis.

140.6(9) Supervisors must be licensed psychologists in the state of Iowa or licensed in another state having comparable licensing requirements at the time of supervision. The supervision must meet the following criteria:

a. The supervisor regularly reviewed the psychological practice of the supervisee.

b. The supervisor and the supervisee met on a face-to-face basis and discussed matters pertinent to the psychological practice for a minimum of one hour on at least a biweekly basis. From and after January 1, 1980 the supervisor and the applicant shall meet for a minimum of one hour at each meeting and averaging at least one meeting per week.

c. Documentation acceptable to the board indicating that the applicant has met the requirements of this rule and has performed in a professional, competent, and ethical manner must be submitted.

This rule is intended to implemennt section 147.76 of the Code.

470—140.7(154B) Waiver of examinations.

140.7(1) Persons applying for licensing under the waiver provisions of the law must so specify in their application and need not meet the application deadlines specified in rule 140.4(154B).

140.7(2) Determination of psychological practice will be based on the professional experience requirements aforementioned in rule 140.6(154B).

470—140.8(154B) Examinations.

140.8(1) The examination may be composed of three sections:

a. A written, objective section,

b. A written, essay examination,

c. An oral examination conducted by the board or its duly constituted representative(s).

140.8(2) In order to qualify for licensing, the applicant will be required to perform satisfactorily on all required sections of the examination.

140.8(3) Examination dates will be announced by the board. The schedule for the written examination will establish the time, place, the final date by which the board must

receive the applicant's written intention to be examined, and other pertinent information or instructions. The examination fee is one hundred dollars and is to be paid by check or money order to the Iowa State Department of Health.

140.8(4) An applicant who fails to appear for the scheduled examination will forfeit the examination fee unless an explanation acceptable to the board is provided in writing not later than fifteen days after the examination.

140.8(5) Application for any required examination will be denied or deferred if the applicant lacks the required education or supervised experience.

140.8(6) An oral examination, if required, will be scheduled only for those applicants who pass the written examination(s).

140.8(7) The board will notify the applicant in writing of examination results.

140.8(8) Beginning January 1, 1984, persons determined by the board not to have performed satisfactorily may apply for re-examination no more than three times.

This rule is intended to implement section 147.80 of the Code.

470—140.9(154B) License renewal.

140.9(1) At least two months before the renewal date, a renewal notice will be sent to each license holder at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay renewal fees on or before the renewal date. The biennial renewal fee is one hundred forty dollars.

140.9(2) Renewal fees shall be received by the board on or before the end of the last month of the renewal period. Whenever renewal fees are not received as specified, the license lapses and the practice of psychology must cease until all renewal fees are received by the board. In addition thereto a penalty fee of fifty dollars shall be paid.

140.9(3) If the renewal fees are not received by the board within one hundred eighty days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee of seventy dollars in addition to the renewal fee and the penalty.

This rule is intended to implement Iowa Code section 147.80.

470—140.10(154B) Other fees. All fees are nonrefundable.

140.10(1) Delinquent penalty for failure to submit the report of continuing education within the time required by rule 470—140.105(258A) is twenty-five dollars.

140.10(2) Fee for a certified statement that a licensee is licensed in this state is ten dollars.

140.10(3) Fee for a duplicate license is ten dollars.

140.11 to 140.99 Reserved.

PSYCHOLOGY CONTINUING EDUCATION

470—140.100(258A) Definitions. For the purpose of these rules, the following definitions shall apply:

140.100(1) *"Board"* means the board of examiners for psychology.

140.100(2) *"Licensee"* means any person licensed to practice psychology in the state of Iowa.

140.100(3) *"Hour"* of continuing education means a clock-hour spent after December 31, 1978 by a licensee in actual attendance at and completion of an approved continuing education activity. Graduate level psychology courses offered by a department of psychology in a regionally accredited university are defined as the equivalent of fifteen continuing education hours for one semester-hour credit or ten continuing education hours for one-quarter hour credit.

140.100(4) *"Approved program or activity"* means a continuing education program activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

(5) Ethical practice requires the investigator to respect the individual's freedom to decline to participate in or withdraw from research. The obligation to protect this freedom requires special vigilance when the investigator is in a position of power over the participant, as, for example, when the participant is a student, client, employee, or otherwise is in a dual relationship with the investigator.

(6) Ethically acceptable research begins with the establishment of a clear and fair agreement between the investigator and the research participant that clarifies the responsibilities of each. The investigator has the obligation to honor all promises and commitments included in that agreement.

(7) The ethical investigator protects participants from physical and mental discomfort, harm, and danger. If a risk of such consequences exists, the investigator is required to inform the participant of that fact, secure consent before proceeding, and take all possible measures to minimize distress. A research procedure must not be used if it is likely to cause serious or lasting harm to a participant.

(8) After the data are collected, the investigator provides the participant with information about the nature of the study and to remove any misconceptions that may have arisen. Where scientific or human values justify delaying or withholding information, the investigator acquires a special responsibility to assure that there are no damaging consequences for the participant.

(9) When research procedures may result in undesirable consequences for the individual participant, the investigator has the responsibility to detect and remove or correct these consequences, including, where relevant, long-term after effects.

(10) Information obtained about the individual research participants during the course of an investigation is confidential unless otherwise agreed in advance. When the possibility exists that others may obtain access to such information, this possibility, together with the plans for protecting confidentiality, should be explained to the participants as part of the procedure for obtaining informed consent.

(11) A psychologist using animals in research adheres to the provisions of the rules regarding animals, drawn up by the committee on precautions and standards in animal experimentation as adopted by the American psychological association in 1971.

(12) Investigations of human participants using drugs should be conducted only in such settings as clinics, hospitals, or research facilities maintaining appropriate safeguards for the participants.

These rules are intended to implement sections 147.76, 147.55(3), 258A.4 and 258A.10, The Code.

470—140.213(258A) Peer review committees.

140.213(1) Each peer review committee for the profession, if established, may register with the board of examiners within thirty days after the effective date of these rules or within thirty days after formation.

140.213(2) Each peer review committee shall report in writing within thirty days of the action, any disciplinary action taken against a licensee by the peer review committee.

140.213(3) The board may appoint peer review committees as needed consisting of not more than five persons who are licensed to practice psychology to advise the board on standards of practice and other matters relating to specific complaints as requested by the board. The members of the peer review committees shall serve at the pleasure of the board. The peer review committees shall observe the requirements of confidentiality provided in Acts of the Sixty-seventy General Assembly, chapter 95 [chapter 258A of the Code].

470—140.214(258A) Immunity. A person shall not be civilly liable as a result of filing a report of complaint with a licensing board or peer review committee, or for the disclosure to a licensing board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of a health care board. However, such immunity from civil liability shall not apply if such act is done with malice.

These rules are intended to implement sections 258A.4 to 258A.6 of the Code.

140.215 to **140.299** Reserved.

PROCEDURES FOR USE OF CAMERAS
AND RECORDING DEVICES
AT OPEN MEETINGS

470—140.300(28A) Conduct of persons attending meetings.

140.300(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

140.300(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board member presiding at the meeting.

These rules are intended to implement section 28A.7 of the Code.

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d. The specific questions presented for declaratory ruling.

e. A consecutive numbering of each multiple issue presented for declaratory ruling.

f. A statement as to how the agency should rule and why. A brief may be attached thereto.

141.10(5) The petition shall be filed either by serving it personally to the executive secretary or by mailing it to the Executive Secretary, Lucas State Office Building, Des Moines, Iowa 50319.

141.10(6) The executive secretary shall acknowledge receipt of petitions or return petitions not in substantial conformity with the above rules.

141.10(7) The board may decline to issue a declaratory ruling for the following reasons:

a. A lack of jurisdiction.

b. A lack of clarity of the issue and facts presented.

c. The issue or issues presented are pending resolution by a court of Iowa or by the attorney general.

d. The issue or issues presented have been resolved by a change in circumstances or by other means.

e. The issue or issues are under investigation for purposes of formal adjudication.

f. The petition does not comply with the requirements imposed by subrules 141.10(1) to 141.10(5).

g. Where a ruling would necessarily determine the legal rights of other parties not represented in the proceeding.

141.10(8) In the event the board declines to make a ruling, the executive secretary shall notify the petitioners of this fact and the reasons for the refusal.

141.10(9) When the petition is in proper form and has not been declined, the board shall issue a ruling disposing of the petition within a reasonable time after its filing.

141.10(10) Rulings shall be mailed to petitioners and to other parties at the discretion of the executive secretary. Rulings shall be indexed and available for public inspection.

141.10(11) A declaratory ruling by the board shall have a binding effect upon subsequent board decisions and orders which pertain to the party requesting the ruling and in which the factual situation and applicable law are indistinguishable from that presented in the petition for declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent.

470—141.11(151) Rules pertaining to schools.

141.11(1) Rules pertaining to the practice of chiropractic at a chiropractic college clinic shall be equal to the standards established by the Council on Chiropractic Education existing as of July 1, 1982 or one that meets equivalent standards thereof.

141.11(2) All chiropractic colleges in order to be approved by the board of chiropractic examiners shall first have status with the Commission on Accreditation of the Council on Chiropractic Education as recognized by the U.S. Office of Education existing as of July 1, 1982 or one that meets equivalent standards thereof.

141.11(3) The following procedures are established for an institution to obtain equivalent approval by the board of examiners:

a. Standards. The standards against which the institution will be evaluated shall be equivalent to, or exceeding those published and utilized by the Council on Chiropractic Education existing as of July 1, 1982.

b. Self-study. A comprehensive self-study shall be required of the applying institution which measures its performance against the objectives of the institution and the standards of the board of examiners. After review of the self-study the board shall render a decision that the self-study is either: (1) Satisfactory, (2) unsatisfactory in terms of the report, or (3) unsatisfactory in terms of content. If unsatisfactory, the board will furnish the institution with a bill of particulars. An inspection of the institution shall not be made until the self-study is satisfactory.

c. Inspection. Inspection of the institution shall be conducted by an examining team selected by the board and shall consist of a minimum of five members. Two shall have doctorates in the basic sciences; one shall have a doctorate in college administration, and two shall be doctors of chiropractic.

(1) The inspection team shall determine firsthand if the applicant institution meets the established standards and is meeting its own institutional objectives.

(2) Expenses of the inspection team shall be borne by the applicant institution.

(3) The inspection team shall furnish the board with a comprehensive report of the team findings after having provided the institution with opportunity to comment on its findings.

d. Decision. The board of examiners will make its decision on the basis of the comprehensive report of the inspection team after providing the institution opportunity for a hearing on the report. If a member of the board has participated in the inspection, he shall not participate in the decision-making process.

141.11(4) The student enrolled at an approved chiropractic college in the state of Iowa will be able to treat patients under the license of the clinic director or designated licensed doctor associated with the clinic of the college who must be a currently licensed Iowa chiropractor and the board so notified of the name of the doctor. The clinic will operate under the license of the clinic director or designated licensed doctor associated with the clinic.

This rule is intended to implement Iowa Code section 151.4.

470—141.12(151) General requirements.

141.12(1) Beginning July 1, 1982, the licensure period shall be from July 1 of the even-numbered year to June 30 of the subsequent even-numbered year.

141.12(2) The board shall assess a penalty equal to the renewal fee if more than thirty days have passed since the expiration date.

141.12(3) Any licensee who allows the license to lapse by failing to renew within one year of the expiration date shall be required to pay the penalty set forth in 141.12(2) and all past renewal fees then due. Said licensee may be reinstated without examination upon approval by the board.

141.12(4) The board may affiliate with the Federation of Chiropractic Licensing Boards.

141.12(5) Any official action or vote of the board taken by mail or by other means shall be preserved by the executive secretary in the same manner as the minutes of the regular meetings.

141.12(6) Any legal proceedings where applicable shall be conducted in a manner as stipulated in chapters 17A, 147, 151.

141.12(7) Every person licensed to practice chiropractic shall keep his license publicly displayed in the place in which he or she practices, and when a person licensed to practice chiropractic changes one's residence, notification shall be sent to the Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319.

141.12(8) Every license to practice chiropractic shall expire in multiyear intervals and be renewed as determined by the board upon application by the licensee, without exception. Application for renewal shall be made in writing to the board accompanied by the required fee at least thirty days prior to the expiration of such license. Every renewal shall be displayed in connection with the original license. The board shall notify each licensee by mail prior to the expiration of a license. Failure to renew the license within a reasonable time after the expiration shall not invalidate the license, but a reasonable penalty may be assessed by the board.

This rule is intended to implement Iowa Code sections 147.7, 149.9 and 147.10.

470—141.13(151) Rules for conducting examinations.

141.13(1) Applicant shall submit a completed application on a form prescribed by the board with required credentials and fee. The completed application must be on file at least thirty days prior to the date of the examination and must include the following:

a. A photostatic copy of chiropractic diploma (no larger than 8½ x 11 inches) from an approved college or a letter of graduation intent from a college registrar within one hundred twenty days of examination date. However, no license to practice will be issued until the board secretary has received a copy of the signed diploma.

b. A photostatic copy of high school diploma (no larger than 8½ x 11 inches)

c. Official transcript of grades of the National Board.

d. The applicant shall have received certification from the National Board of Chiropractic Examiners attesting to the successful completion of the required examination after July 1, 1973, or a basic science certificate issued prior to July 1, 1973; and after August 1, 1976 it shall include all electives of the National Board, existing as of July 1, 1976.

e. Each applicant shall attach three written character references to the application. Said references shall not be from members of the chiropractic profession.

f. Each applicant must include a record of the number and date of chiropractic license obtained in other states, if any, the manner in which such license or licenses were obtained, and a statement as to whether or not any license so issued has ever been suspended or revoked.

g. Each application shall include a chronologic statement as to all the places where the candidate has practiced, if any, type of practice engaged in and the period of time so engaged.

141.13(2) Any candidate applying for licensure shall be required to appear for a personal interview before the board or before a member thereof, unless waived by the board.

141.13(3) The board shall require written, oral or practical examinations of any applicant.

141.13(4) Any candidate who fails the examination may take a second examination at a regularly scheduled examination upon payment of the examination fee. The candidate shall be required to repeat the entire examination if a previous examination is failed. Additional repeats of the examination are permitted at the discretion of the board.

141.13(5) Examinations given by the board will be held in February and August at a location and time specified by the board. Additional examinations may be held at the discretion of the board.

141.13(6) All applicants matriculating after October 1, 1975 will be graduated from a college having status with the C.C.E. (Council on Chiropractic Education) or its successor, or from a college which meets or exceeds equivalent standards thereof existing as of July 1, 1982. (See 141.11(151))

141.13(7) The board shall examine the applicant's practical, clinical and technical abilities in the practice of chiropractic.

141.13(8) The passing grade for each subject of the practical examination given by the board shall be seventy percent and an overall average of seventy-five percent shall be attained.

141.13(9) An applicant detected seeking or giving improper help with the examination will be dismissed and the examination collected. The person may reapply and return for examination following a waiting period of one year. A new examination fee will be required.

141.13(10) Examination number. Before commencing the examination each applicant will be given a confidential number which shall be inscribed at the left-hand corner of each page of the manuscript; no other marks shall be placed on any paper whereby the identity of the candidate may become known. Pages are to be numbered in the upper right hand corner.

141.13(11) Any failing examination must be reviewed by the professional members of the board but public members shall be allowed to attend any review.

470—141.14(151) Licensure by reciprocity or endorsement.

141.14(1) Each applicant shall submit a completed application form accompanied by a fee of one hundred dollars.

141.14(2) A license to practice chiropractic by reciprocity or by endorsement may be issued on the basis of an examination in substantially all of the subjects required by this board given by a state examining board having reciprocal or endorsement relations with the board, provided, however, that the applicant must comply with all other requirements for licensure by examination in this state.

141.14(3) If any state with which this state has reciprocal or endorsement relations, places any limitations or restrictions upon licentiates of this state, the same limitations or restrictions may be imposed upon licentiates of such state applying for admission to practice in this state on the basis of reciprocity or endorsement.

141.14(4) The statement made in the application must be reviewed and verified by the state examining board issuing the original license, certifying under seal as to the subjects in which the applicant was examined, the grade obtained in each subject and the general average attained in the entire examination.

141.14(5) In all cases the board reserves the right to review the examination papers and grades upon which reciprocal or endorsement certification may be granted before accepting the same.

141.14(6) No reciprocal license or license by endorsement shall be issued except on the basis of a license received by examination. The applicant must have had two years of full-time practice before applying for license by reciprocity or endorsement.

141.14(7) No reciprocal license or license by endorsement shall be issued to an applicant who has failed the examination more than two times in another state.

141.14(8) A candidate who has not passed a chiropractic examination in another state in one sitting shall not be eligible for licensure by endorsement in this state.

141.14(9) The chiropractic examiners may require written, oral or a practical examination of any applicant for licensure by reciprocity or endorsement.

470—141.15(151) License renewal date. A license to practice chiropractic shall expire on the thirtieth of June following the date of issuance of the license.

470—141.16(151) License-examination-renewal fees. The following fees shall be collected by the board:

141.16(1) For a license to practice chiropractic, issued upon the basis of examination given by the chiropractic examiners, one hundred dollars.

141.16(2) For the biennial renewal fee of a license to practice chiropractic, eighty dollars. Renewal fees shall be received by the board before the end of the last month of the renewal period.

141.16(3) For a certified statement that a licensee is licensed in this state, ten dollars.

141.16(4) For a duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department of health has been destroyed or lost, ten dollars.

470—141.17(151) Specified forms to be used. All applications for examinations, certificates and licenses shall be on forms prescribed by the board. These forms may include, but not be limited to, the following, and where practicable, any one or more of the following forms may be consolidated into a single form.

Board Form:	Form Title:
1.	Application for a license to practice chiropractic on the basis of examination.
2.	Application for reinstatement of license to practice chiropractic.
3.	Application for renewal of a chiropractic license.
4.	Complaint form.
5.	Report of continuing chiropractic education.
6.	Certificate of exemption from continuing education requirements.
7.	Application for waiver of minimum education requirements due to disability or illness.

141.18 to **141.20** Reserved.

DISCIPLINE

470—141.21(151, 258A) General. The board has authority to impose discipline for any violation of the chiropractic practice Acts or the rules promulgated thereunder. The board also has authority to impose discipline for violations of other provisions of the Code and the other rules promulgated thereunder to the extent said provisions concern the practice of chiropractic.

470—141.22(151, 258A) Method of discipline. The board has authority to impose the following disciplinary sanctions:

a. Revocation of license.

b. Suspension of license until further order of the board or for a specified period.

c. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.

d. Probation.

e. Require additional education or training.

f. Require a re-examination.

g. Impose civil penalties not to exceed one thousand dollars ($1,000.00).

h. Issue citation and warning.

i. Such other sanctions allowed by law as may be appropriate.

470—141.23(258A) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.

b. The facts of the particular violation.

c. Any extenuating circumstances or other countervailing considerations.

d. Number of prior violations or complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

470—141.24(258A) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 141.22(151,258A) including civil penalties in an amount not to exceed $1,000.00, when the board determines that the licensee is guilty of the following acts or offenses:

141.24(1) Fraud in procuring a license.

a. Fraud in procuring a license includes, but is not limited to an intentional perversion of the truth in making application for a license to practice chiropractic and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the state department of health any false or forged diploma, or certificate or affidavit or identification or qualification in making an application for a license in this state.

b. Reserved.

141.24(2) Professional incompetency.

a. Professional incompetency includes, but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the chiropractor's practice;

(2) A substantial deviation by the chiropractor from the standards of learning or skill ordinarily possessed and applied by other chiropractors in the state of Iowa acting in the same or similar circumstances;

(3) A failure by a chiropractor to exercise in a substantial respect that degree of care which is ordinarily exercised by the average chiropractor in the state of Iowa acting in the same or similar circumstances;

(4) A willful or repeated departure from or the failure to conform to the minimal standard or acceptable and prevailing practice of chiropractic in the state of Iowa.

b. Reserved.

141.24(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to an intentional perversion of the truth, either orally or in writing, by a chiropractor in the practice of chiropractic and includes any representation contrary to his or her legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another.

b. Engaging in unethical conduct includes, but is not limited to a violation of the standards and principles of chiropractic ethics and code of ethics as set out in rule 141.51(147, 258A) as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to the failure of a chiropractor to possess and exercise that degree of skill, learning and care expected of a reasonable prudent chiropractor acting in the same or similar circumstances in this state or when a chiropractor is unable to practice chiropractic with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse.

141.24(4) Habitual intoxication or addiction to the use of drugs.

a. Habitual intoxication or addiction to the use of drugs includes, but is not limited to the inability of a chiropractor to practice chiropractic with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair a chiropractor's* ability to practice his or her profession with reasonable skill and safety.

b. Reserved.

141.24(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect his or her ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

a. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect his or her ability to practice within a profession includes, but is not limited to the conviction of a chiropractor who has committed a public offense in the practice of his or her profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of chiropractic, or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon him or her as a chiropractor in this state.

b. Reserved.

141.24(6) Fraud in representations as to skill or ability.

a. Fraud in representations as to skill or ability includes, but is not limited to a chiropractor having made misleading, deceptive or untrue representations as to his or her competency to perform professional services for which he or she is not qualified to perform by training or experience.

b. Reserved.

141.24(7) Use of untruthful or improbable statements in advertisements.

a. Use of untruthful or improbable statements in advertisements includes, but is not limited to an action by a chiropractor in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

(1) Inflated or unjustified expectations of favorable results.

(2) Self-laudatory claims that imply that the chiropractor is a skilled chiropractor engaged in a field or specialty of practice for which he or she is not qualified.

(3) Representations that are likely to cause the average person to misunderstand; or

(4) Extravagant claims or to proclaim extraordinary skills not recognized by the chiropractic profession.

b. Reserved.

141.24(8) Willful or repeated violations of the provisions of this Act.

a. Willful or repeated violations of the provisions of this Act includes, but is not limited to a chiropractor having intentionally or repeatedly violated a lawful rule or regulation promulgated by the board of chiropractic examiners or the state department of health or violated a lawful order of the board or the state department of health in a disciplinary hearing or has violated the chiropractic practice Acts or rules promulgated thereunder.

b. Reserved.

141.24(9) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of chiropractic.

141.24(10) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the board of chiropractic examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

141.24(11) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice chiropractic.

141.24(12) Being guilty of a willful or repeated departure from, or the failure to conform to the chiropractic practice Acts or rules promulgated therein. An actual injury to a patient need not be established.

The board may at any time re-evaluate an accredited sponsor. If after such re-evaluation, the board finds there is basis for consideration of revocation of the accreditation of an accredited sponsor, the board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least thirty days prior to said hearing. The decision of the board after such hearing shall be final.

141.64(2) Rescinded, effective August 12, 1981.

141.64(3) Rescinded, effective August 12, 1981.

141.64(4) *Review of programs.* The board may monitor or review any continuing education program already approved by the board and upon evidence of significant variation in the program presented from the program approved may disapprove all or any part of the approved hours granted in the program.

141.64(5) When it is necessary to monitor a sponsor of continuing education, the sponsor shall reimburse the board member for necessary traveling and other expenses in accordance with the guidelines of the state of Iowa for board members and per diem at the rate of forty dollars per day for each day actually spent in travel and monitoring of the program.

This rule is intended to implement section 258A.2, The Code.

470—141.65(258A) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right within twenty days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within sixty days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified hearing officer designated by the board, in substantial compliance with the hearing procedure set forth in rule 141.41(147, 151, 17A, 258A). If the hearing is conducted by a hearing officer, the hearing officer shall submit a transcript of the hearing including exhibits to the board after the hearing with the proposed decision of the hearing officer. The decision of the board or decision of the hearing officer after adoption by the board shall be final.

470—141.66(258A) Reports and records. Each licensee shall file evidence of continuing chiropractic education satisfactory to the board previous to the date of relicensure in which claimed continuing education hours were completed. A report of continuing chiropractic education on a form furnished by the board shall be sent to the Executive Secretary, Iowa State Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319, or to any other address as may be designated on the form.

141.66(1) The board relies upon each individual licensee's integrity in certifying to his or her compliance with the continuing chiropractic education requirements herein provided. Nevertheless the board reserves the right to require, if it so elects, any licensee to submit, in addition to such report, further evidence satisfactory to the board demonstrating compliance with the continuing chiropractic education requirements herein provided. Accordingly, it is the responsibility of each licensee to retain or otherwise be able to have, or cause to be made, available at all times, reasonably satisfactory evidence of such compliance.

141.66(2) The licensee shall maintain a file in which records of the activities are kept, including dates, subjects, duration of programs, registration receipts where appropriate and other appropriate documentations for a period of three years after the date of the program.

470—141.67(258A) Attendance record. The board shall monitor licensee attendance at approved programs by random inquiries of accredited sponsors.

470—141.68(258A) Attendance report. The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance at each activity and send a signed copy of the attendance record to the executive secretary of the board upon completion of the educational activity, but in no case later than February 1 of the following calendar year.

The report shall be sent to the Iowa Chiropractic Board of Examiners. Lucas State Office Building, Des Moines, Iowa 50319.

470—141.69(258A) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of chiropractic in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

470—141.70(258A) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of chiropractic in the state of Iowa, satisfy the following requirements for reinstatement:

141.70(1) Submit written application for reinstatement to the board upon forms provided by the board; and

141.70(2) Furnish in the application evidence of one of the following:

a. The practice of chiropractic in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of accredited continuing education hours substantially equivalent under these rules computed by multiplying twenty by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of such application for reinstatement.

470—141.71(258A Exemptions for active practitioners. A chiropractor* licensed to practice chiropractic shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services, or for periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and meets all requirements of that state or district for practice therein, or for periods that the licensee is a government employee working in his or her licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the board. Prior to engaging in active practice in Iowa, the licensee shall submit for board approval evidence of continuing education obtained in another state or district.

470—141.72(258A) Physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and a physician licensed in the state of Iowa. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

470—141.73(258A) Noncompliance. A licensee who in the opinion of the board does not satisfy the requirements for license renewal stated in this chapter will be placed on probationary status and notified of the fact within sixty days after the renewal date. Within sixty days after such notification, the licensee must submit evidence to the board demonstrating

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

that the deficiencies have been satisfied. If the deficiencies are not made up within the specified period of time, the licensee's license will be classified as lapsed without further hearing.

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CHAPTER 142
Reserved

CHAPTER 143
BOARD OF OPTOMETRY EXAMINERS

470—143.1(154) General definitions.

143.1(1) *"Board"* means the board of optometry examiners.

143.1(2) *"Department"* means the Iowa state department of health.

470—143.2(154) Availability of information.

143.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, record of hearings, and examination results are available to the public between the hours of 8:00 a.m. and 4:30 p.m., Monday to Friday, except holidays.

143.2(2) Information may be obtained by writing to the Board of Optometry Examiners, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319. All official correspondence shall be in writing and directed to the board at this address.

470—143.3(154) Organization of the board and procedures.

143.3(1) A chair, vice-chair, and secretary shall be elected at the first meeting after April 30 of each year.

143.3(2) Four board members present shall constitute a quorum.

143.3(3) The board shall hold an annual meeting and may hold additional meetings called by the chair or by a majority of the members of the board.

This rule is intended to implement Iowa Code section 147.22.

470—143.4(154) Petition to promulgate, amend or repeal a rule.

143.4(1) An interested person may petition the board to promulgate, amend or repeal a rule.

143.4(2) The petition shall be typed, signed by or on behalf of the petitioner, and contain a detailed statement of:

a. The rule the petitioner is requesting the board to promulgate, amend or repeal. Where amendment of an existing rule is sought, that rule shall be set forth in full with matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining.

b. Facts in sufficient detail to show the reasons for adoption, amendment or repeal.

c. All propositions of law to be asserted by petitioner.

d. Sufficient facts to show how petitioner will be affected by the requested action.

e. The name and address of the petitioner.

143.4(3) The petition shall be deemed filed when received by the board.

HIGH TECHNOLOGY COUNCIL, IOWA[485]

CHAPTER 1
GENERAL DESCRIPTION

485—1.1(70GA,ch207) Authority and function. The Iowa high technology council was created by 1983 Iowa Acts, chapter 207, division VII. The purpose of the council is to encourage the development of high technology industries and research in Iowa which will establish net new employment opportunities for Iowa workers, assist in improving the efficiency, productivity, and viability of family farm operations or other existing operations, encourage the development of research capabilities, and improve the quality of life in an environmentally sound manner.

485—1.2(70GA,ch207) General definitions. The following definitions shall serve to clarify 1983 Iowa Acts, chapter 207, division VII:

"Commission" means the Iowa development commission created by Iowa Code section 28.1.

"Council" means the Iowa high technology council.

"Eligible applicant" means an Iowa educational institution or a commercial entity in Iowa in which an educational institution has an ownership interest. Commercial entities, private citizens, and venture capitalists are encouraged to discuss their interests with educational institutions to arrive at collaborative research and development projects.

"Eligible project" means a project which shall emphasize research and development of an idea, process or product with potential for commercially feasible application, development of new technologically advanced products, analysis of capability for development, and public and private investment in the development of high technology products.

"Grant proposal" means the written document submitted to the council as part of the application for funding.

"High technology" means research, development, technology, or production which requires a higher level of scientific orientation and which is in fields including but not limited to biotechnology, microelectronics, productivity enhancement, and energy alternatives.

"Presiding officer" means the chairperson of the council or their designee if the chairperson is not present at the meeting.

"Technology transfer" means a mechanism to transfer information on technology and research from existing services to Iowa's industry.

485—1.3(70GA,ch207) Powers and duties. In addition to any other powers and duties of the council granted by statute or these rules, the council shall do the following:

1.3(1) *Award of grants.* The award of grants shall be determined by majority vote of the council based on their review of the grant proposals and the recommendations of the evaluators.

1.3(2) *Contracts.* The council shall have the right to enter into contracts with the educational institution, company or person who will be the recipient of a grant award under the provisions of the Act or chapters 3 and 4 of these rules. The contract shall set forth the terms and conditions of the grant award and shall be agreed to and signed by all concerned parties prior to any disbursement of funds by the council.

1.3(3) *Annual report.* The council shall submit a report to the governor and the general assembly on or before September 1 of each calendar year outlining all grants awarded by the council during the previous fiscal year. The report shall include an analysis of how the grants meet the purposes of 1983 Iowa Acts, chapter 207, section 36, reports on projects completed during the fiscal year, and status reports on current projects.

1.3(4) *Right to audit.* The council shall have at all times the right to audit the records of the recipient of a grant award related to the grant proposal to ensure that the grant is being used in accordance with the grant proposal and the contract. The council or a designee acting under the instruction of the council may exercise this right. The council shall conduct a post-grant audit of all projects upon their completion, or in the event a contract is terminated for any reason prior to completion, and shall include the results of any audits conducted in the annual report prepared pursuant to subrule 1.3(3).

These rules are intended to implement 1983 Iowa Acts, chapter 207, division VII.

[Filed emergency 12/15/83—published 1/4/84, effective 12/15/83]

CHAPTER 2
ORGANIZATION AND OPERATION

485—2.1(70GA,ch207) Organization. The Iowa high technology council is a separate and distinct entity of the state of Iowa, however it is administratively integrated into the Iowa development commission for staff support and assistance.

485—2.2(70GA,ch207) Membership. The council is composed of thirteen members appointed by the governor and confirmed by the senate to serve four-year terms. The chairperson shall be designated by the governor from the membership of the council. The council may elect other officers as necessary.

485—2.3(70GA,ch207) Location and method of obtaining information. For administrative purposes the council is located in the offices of the commission at 600 East Court Avenue, Suite A, Des Moines, Iowa 50309; telephone 515/281-3925. The official mailing address for the council shall be David H. Swanson, Chairperson, Iowa High Technology Council, 205 Engineering Annex, Iowa State University, Ames, Iowa 50011, 515/294-3420. Requests for information or assistance may be made to the chairperson personally, by telephone, mail or any other medium available, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, excluding state and university holidays. Special arrangements for accessibility to the council at other times may be provided as needed.

485—2.4(70GA,ch207) Meetings. The council meets at least once each quarter and shall hold special meetings at the call of the chairperson. Notice of a meeting will be given not less than twenty-four hours prior to the meeting. The notice will contain the specific date, time and place of the meeting and a tentative agenda. The notice will be posted at the commission office and will be mailed to any interested person who has filed a request for notice with the chairperson of the council. All meetings will be open to the public, unless a closed session is voted by two-thirds of the entire membership or by all members present pursuant to Iowa Code section 28A.5. The operation of the council meetings will be governed by the following rules of procedure:

2.4(1) Seven members of the council constitute a quorum.

2.4(2) An affirmative vote of the majority of the members of the council is necessary before an action may be taken by the council.

2.4(3) Members of the public who wish to appear before the council shall contact the chairperson. Requests must be received by the chairperson not less than twenty-four hours prior to the meeting and shall outline the subject to be addressed. The chairperson or designee shall notify the requester by telephone call or other appropriate means as to their approximate placement on the agenda. Presentations may be made at the discretion of the presiding officer. The council may take up matters not appearing on the agenda.

2.4(4) At the discretion of the chairperson, a public forum may be scheduled on the agenda of a regularly scheduled meeting.

2.4(5) Members of the public who wish to submit written material, other than grant proposals as described in rules 3.4(70GA,ch207) and 4.4(70GA,ch207), should do so at least seven days prior to the scheduled meeting to assure the council has adequate time to receive and evaluate the material.

2.4(6) At the conclusion of each meeting the council shall set the time, date and place of the next meeting.

2.4(7) Special or electronic meetings may be called by the chairperson upon a finding of good cause and shall be held in accordance with Iowa Code section 28A.4 or 28A.8.

2.4(8) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. The presiding officer may request a person using such a device to discontinue its use when it is obstructing the meeting. If the person fails to comply with this request, the presiding officer shall order that person excluded from the meeting.

2.4(9) The presiding officer may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

2.4(10) Cases not covered by these rules shall be governed by Roberts Rules of Order, Revised (1970 ed.).

485—2.5(70GA,ch207) Minutes. Minutes of council meetings are prepared and are available at the office of the commission or the office of the chairperson for inspection during normal business hours. Copies may be obtained without charge by contacting the commission or the chairperson.

485—2.6(70GA,ch207) Rulemaking. The council will promulgate rules and provide the opportunity for public participation under the provisions of Iowa Code chapter 17A. Any interested person or legal entity may petition the council requesting promulgation, amendment or repeal of a rule.

2.6(1) *Petition to promulgate, amend or repeal a rule.* The petition shall be in writing signed by or on behalf of the petitioner and filed with the chairperson. The petition shall include:

a. A statement of the rule proposed to be promulgated, amended or repealed. A rule proposed to be amended shall be stated in full with the proposed deletions enclosed in brackets and proposed additions underlined.

b. A statement of why the rule is being proposed, amended or repealed.

c. The name and address of the petitioner.

2.6(2) *Action on petition.* The petition shall be deemed filed when received by the chairperson. Upon receipt of the petition the chairperson or designee shall:

a. Within seven days, acknowledge receipt of the petition to the petitioner.

b. Submit the petition to the council at the next scheduled meeting with a recommendation for action. However, if the petition is received less than seven days prior to the next scheduled meeting the chairperson may delay the submission to the following meeting. If delayed, the chairperson or designee will provide a copy of the petition and recommendation to the council members prior to the following meeting.

c. Within sixty days after the receipt of the petition, the council shall either deny the petition or initiate rulemaking proceedings in accordance with Iowa Code chapter 17A. In the event of a denial of a petition, the council shall issue an order setting forth the reasons in detail for denial of the petition. The decision of the council shall be mailed to the petitioner within seven days of its issuance.

485—2.7(70GA,ch207) Declaratory rulings. Upon petition by an interested person the council may issue a declaratory ruling as to the applicability of any statutory provision, rule or other written statement of law or policy, decision or order of the council.

2.7(1) *Filing of petition.* Requests for declaratory ruling shall be submitted in writing to the chairperson of the council and shall include:

a. The name and address of the person requesting the declaratory ruling. If the request is at the behest or order of a corporation, association, governmental subdivision, public or private organization, educational institution, or state agency, it shall be noted on the request.

b. A detailed statement of the question presented for declaratory ruling including references to specific section of law or administrative rule. If multiple issues are presented for declaratory ruling, they should be so numbered.

2.7(2) *Action on petition.* The petition shall be deemed filed when received by the chairperson. Upon receipt of the petition the chairperson or designee shall:

a. Within seven days, acknowledge receipt of the petition to the petitioner.

b. Within sixty days of receipt, the council shall consider the petition. If, upon consideration of the petition, the council determines additional facts and information are required, it shall, within seven days, make a written request of the person or organization to supply needed information. The council shall make a declaratory ruling within sixty days of receiving such

additional information. The declaratory ruling shall be in writing and shall be mailed to the person or organization requesting it within seven days of its issuance. Rulings shall be available for public inspection.

c. The council may decline to rule in whole or in part when, in the judgment of the council, the ruling would be beyond the statutory jurisdiction of the council, when no clear answer is determinable, when a ruling is not in the best public interest, or when the issue presented is pending resolution by a court or an opinion of the attorney general. In the event the council declines to make a ruling, the petitioner shall be notified in writing that the request has been declined in whole or in part and the reasons therefor.

2.7(3) *Effect of declaratory ruling.* A declaratory ruling by the council shall have a binding effect upon subsequent council decisions and orders which pertain to the party requesting the ruling and in which the factual situation and applicable law are indistinguishable from that presented in the petition for declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent.

485—2.8(70GA,ch207) Informal settlements in contested cases. Unless precluded by statute, informal settlement of disputes over rules of the council that may result in contested case proceedings as prescribed in Iowa Code section 17A.12 shall be encouraged. All such informal settlements shall be made by the chairperson, subject to ratification by the council, and by the parties contesting the rule in question. The settlement shall be expressed in written stipulation representing an informed mutual consent. If the stipulation provides for the amendment or repeal of a rule, rulemaking procedures under Iowa Code section 17A.4 shall be followed.

These rules are intended to implement 1983 Iowa Acts, chapter 207, division VII.

[Filed emergency 12/15/83—published 1/4/84, effective 12/15/83]

CHAPTER 3
GRANTS PROGRAM

485—3.1(70GA,ch207) Grant awards. Consistent with the purposes defined in the Act and these rules, the council shall award grants on a project basis to eligible applicants to further the overall development and growth of technology in Iowa.

485—3.2(70GA,ch207) Amount of individual grants. There are no minimum or maximum amounts specified for individual awards and no specific limitations are set on the size of a total budget that may be considered as part of a grant proposal.

485—3.3(70GA,ch207) Timing and submission of proposals. Proposals will be accepted and grant awards will continue to be made until all funds are expended or committed.

3.3(1) *Deadline for submission.* Proposals may be submitted for consideration at any time during the year. However, to apply for a grant for the fiscal year ending June 30, 1984, all proposals must be received by the chairperson no later than May 1, 1984.

3.3(2) *Procedure for submission.* The submission shall include a summary data sheet and a grant proposal containing the information required by rule 3.4(70GA,ch207).

a. Fifteen copies of each proposal shall be forwarded to David H. Swanson, Chairperson, Iowa High Technology Council, 205 Engineering Annex, Iowa State University, Ames, Iowa 50011.

b. Proposals shall be single stapled in the upper left-hand corner of the document with the summary data sheet as the first page and all additional pages typed on one side only, double spaced. Proposals shall not be enclosed in plastic covers or notebooks.

c. Researchers shall follow routine procedures for routing their proposals through their educational institution or company prior to submission.

485—3.4(70GA,ch207) Grant proposal. The grant proposal shall contain a summary data sheet and supporting documentation defining and describing the proposed research, the investigator(s) and justification for consideration of the proposal within the scope of the council's stated purposes. Manufacturers' brochures should not be included. The summary data sheet and biographical data sheet may be obtained from the chairperson or the commission. The following information shall be required as a part of the grant proposal:

3.4(1) Summary data sheet.

a. Title of project.

b. Name, address and telephone number of educational institution, company or person submitting the proposal.

c. Name, address and telephone number of principal investigator(s) including designation of investigator with primary responsibility.

d. Proposed budget.

e. Description of major equipment or instrumentation requested and its proposed use.

f. Anticipated starting and completion dates.

g. Signature of person authorized by the educational institution or company to sign grant proposals; or signature of applicant if a private citizen.

3.4(2) Abstract. A concise summary, not to exceed one page, describing the proposal, its significance and how it will be accomplished.

3.4(3) Table of contents.

3.4(4) Narrative. A description, not to exceed fifteen pages, including:

a. Specific objectives.

b. Background of the project including prior research undertaken or completed by this investigator or others on the topic.

c. Facilities and equipment available.

d. Work plan including procedures to be used, timetable describing activity schedule and significant milestones, and key decisions necessary to execute the program.

e. Specific areas of risk.

f. How the proposal meets the purposes of the council including an indication of potential opportunities that exist to introduce the proposed product or idea into a business venture including qualitative estimates of size, potential customers and market needs to be fulfilled.

3.4(5) Bibliography of relevant literature.

3.4(6) Budget. List in detail proposed income, including income from other sources, and proposed expenditures. Proposed expenditure categories shall include, at the minimum:

a. Personnel, including salary and fringe benefits. If student or other outside support is requested, it must be justified.

b. Equipment and instrumentation. If equipment costing in excess of $500.00 for any one item is included, include a justification for the equipment and a current price quotation.

c. Supplies.

d. Animals for experimentation, if required.

e. Miscellaneous expenditures including printing, computer time, etc. If the project will have continuing maintenance costs, state by whom they will be paid.

3.4(7) Biographical data of investigator(s). Include, if applicable, educational or business credentials, referenced publications or published works, juried exhibits or performances, patents, responsibilities, and percentage of time allocated to research.

3.4(8) Prior proposal submissions. List, if applicable, other proposals submitted to outside funding agencies within the previous twenty-four months. Include title of the proposal, source to whom it was submitted, date of submission, amount requested and date of rejection or award.

3.4(9) Future proposal plans, if any, based on results of this investigation.

3.4(10) Appendix. (optional)

485—3.5(70GA,ch207) Evaluation of proposals. The responsibility for review and evaluation of proposals lies solely with the council. The council, at its discretion, may contract with out-

side sources or consultants to assist in the evaluation. Upon completion of the evaluation the evaluator(s) shall submit a report to the council with a recommendation for funding the proposal.

The evaluation shall include but not be limited to the following general criteria:

3.5(1) Consistency of the proposal to the accomplishment of the purposes of the Act and these rules.

3.5(2) Objectives and scope of the research.

3.5(3) Significance of the proposal in its field.

3.5(4) Project design/work plan including background work, methodology, facilities, feasibility and schedule.

3.5(5) Investigation team and institutional support.

3.5(6) Budget, including contingencies.

3.5(7) Other items that the council may determine are significant evaluation criteria for the proposal.

485—3.6(70GA,ch207) Conditions of grant awards.

3.6(1) *Use of funds.* Expenditures of funds awarded pursuant to the Act shall be consistent with the approved budget. Any change in proposed expenditures shall be approved in advance by the council. Approvable expenditures may include:

a. Equipment, instruments, computer time, animals, field work or other services or labor essential to the research. Equipment costing in excess of $500.00 shall remain property of the state of Iowa and may be made available at the discretion of the council for other projects funded by the council or may be offered by the council for purchase in a follow-up business venture.

b. Domestic travel, including subsistence, that is essential to the research.

c. Salaries and fringe benefits covering that portion of the investigator's(s') time actually spent on this project.

3.6(2) *Annual reports.* The recipient of funds awarded shall be required to submit annual reports to the council. The first report shall be due one calendar year following the date the award is made and shall be due annually thereafter. The annual report shall describe the results of the research to date and outline the work plan and anticipated results during the following year.

3.6(3) *Final report.* The final report shall be due within three months following the completion of the project and shall include the following information:

a. Results of the research including descriptions and analyses of the process.

b. Description of how the research furthered the goals of the program consistent with the purposes defined in the Act and these rules.

c. Future plans and recommendations for utilizing the results of this research including feasibility of and potential for commercial application.

d. Recommendations, if any, for further research on the topic.

3.6(4) *Credit in publications.* Any publications resulting from research financed in whole or in part by the council shall credit the council and the state of Iowa.

3.6(5) *Ownership interest.* The council shall have the right to obtain a public ownership interest in conjunction with its investment. The public ownership interest shall be negotiated with the other investing interests, including but not limited to educational institutions, inventors and private investors. A provision relating to the terms of ownership and the circumstances of disposal of the public ownership interest shall be made at the time of the investment by the council and shall be stipulated in the contract. Any proceeds from the public interest beyond the original investment shall be disposed of pursuant to 1983 Iowa Acts, chapter 207, section 39.

485—3.7(70GA,ch207) Receipt of funds and contributions. The council may receive and expend funds and equipment from available sources pursuant to 1983 Iowa Acts, chapter 207, sections 37 and 38, to achieve its purposes. Any funds received shall be deposited in the general

fund of the state of Iowa and shall be available exclusively by the council for the purposes stated by the Act and these rules. Any equipment or tangible property shall become property of the state of Iowa and shall be available for use or appropriation by the council for the purposes stated by the Act and these rules.

These rules are intended to implement 1983 Iowa Acts, chapter 207, division VII.

[Filed emergency 12/15/83—published 1/4/84, effective 12/15/83]

CHAPTER 4
TECHNOLOGY TRANSFER

485—4.1(70GA,ch207) Duties of council. The council shall ensure the proper development of an effective mechanism to transfer information on technology, research and innovation to Iowa's existing industry and may contract with individuals or organizations to achieve this purpose.

485—4.2(70GA,ch207) Purpose of system. A technology transfer system responds to technical inquiries by investigation to discover, define, evaluate and provide the data, theory, method, practice, sources, resources, capabilities and expertise that will allow technical solutions to a problem to evolve. The system relies on the transfer of information on research, technology and other scientific endeavors among industry, laboratories, governments and the public. The specific objectives of the system are:

4.2(1) To promote greater use of scientific and technical knowledge.

4.2(2) To provide information and analysis services for users in industry, government and education.

4.2(3) To develop improved methods for organizing and disseminating information for encouraging innovation.

4.2(4) To provide technical assistance to users who need assistance in learning how to use information resources effectively.

485—4.3(70GA,ch207) Components of system. The mechanism to be developed should facilitate the dialogue and exchange of information and personnel between education, research facilities, public and private organizations and industry and include but not be limited to developing or utilizing and providing the following information systems:

4.3(1) Literature searches.

4.3(2) Access to available data bases.

4.3(3) System to evaluate ideas and processes.

4.3(4) Inter-university and inter-institutional communication.

4.3(5) Mechanism to facilitate the understanding of technology and science.

485—4.4(70GA,ch207) Submission of proposals. Proposals for grants for development of a technology transfer system shall be submitted to the council no later than March 1, 1984, to apply for a grant for the fiscal year ending June 30, 1984, which is the only fiscal year during which grants will be available for this purpose.

485—4.5(70GA,ch207) Form of submission. Individuals or organizations applying for grants pursuant to this chapter may submit proposals in the form of their own choosing. Proposals should, however, be in accordance with the stated purposes of the Act and these rules.

485—4.6(70GA,ch207) Evaluation. Evaluation of applications pursuant to this chapter shall follow the same guidelines as defined in rule 3.5(70GA,ch207). In addition, the evaluation will focus on:

4.6(1) The extent to which the system will meet the needs of Iowa industry and facilitate communication between industry and the providers of information.

4.6(2) The method by which potential users will be trained and encouraged to use the system and how referrals will be developed.

4.6(3) The means by which information will be gathered and disseminated.

4.6(4) The approach that will be employed in problem solving and analysis.

4.6(5) The effectiveness of the follow-up system and how it will be used to evaluate and, if necessary, refine the system.

4.6(6) The over-all potential of the system for achieving results that will have long-term, positive effects for Iowa industry and the Iowa economy in general.

4.6(7) How the system will be maintained.

These rules are intended to implement 1983 Iowa Acts, chapter 207, division VII.

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CHAPTER 77
CONDITIONS OF PARTICIPATION FOR PROVIDERS OF MEDICAL AND REMEDIAL CARE

CHAPTER 78
AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL SERVICES

CHAPTER 79
OTHER POLICIES RELATING TO PROVIDERS OF MEDICAL AND REMEDIAL CARE

CHAPTER 80
Reserved

CHAPTER 81
INTERMEDIATE CARE FACILITIES

CHAPTER 136
FOSTER CARE SERVICES

7.5(3) *Time limit for request.* Subject to the provisions of subrule 7.5(1), when a request for a fair hearing is made within thirty days after official notification of an action, a hearing shall be held. When the request for a hearing is made more than thirty days, but less than ninety days after notification, the commissioner shall determine whether a hearing shall be held. The time in which to appeal an agency action shall not exceed ninety days. The day after the official notice is mailed is the first day of the time period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next work day.

7.5(4) *Informal settlements.* The time limit for submitting a request for a hearing is not extended while attempts at informal settlement are in progress. Prehearing conferences are provided for at 7.7(4) and 7.8(4).

This rule is intended to implement Iowa Code sections 17A.10 and 17A.22.

7.5(5) *Where no hearing is granted.* No hearing will be granted on the following issues:

a. When services are changed from one plan year to the next in the social service block grant pre-expenditure report and as a result the service is no longer available.

b. When service has been time-limited in the social service block grant pre-expenditure report and as a result the service is no longer available.

c. When payment has been made in accordance with the Medicaid payment schedule for the service billed because there is no adverse action.

d. The removal of children from or placement in a specific foster care setting.

e. When, upon review, it is determined that the appellant does not meet the criteria of an aggrieved person as defined in 7.1(15).

498—7.6(217) Informing individuals of their rights.

7.6(1) *Written and oral notification.* It shall be the duty of all local offices to advise each applicant and recipient of the right to appeal any adverse decision affecting such individual's status.

Written notification of the right to and procedure for requesting a fair hearing before the department, of the right to be represented by others at the hearing, and of any provision for payment of legal fees by the department shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

Written notification shall be given on the application form and pamphlets prepared by the agency for applicants and recipients. Explanation shall be included in the agency pamphlet explaining the various provisions of the program. Oral explanation shall also be given explaining the policy on hearings during the application process and at the time of any contemplated action by the agency when the need for such discussion is indicated. Persons not familiar with English shall be provided a translation into the language understood by them in the form of a written pamphlet or orally. In all cases when a person is illiterate or semiliterate, such person shall, in addition to receiving the written pamphlet on rights, be advised of each right to the satisfaction of such person's understanding.

7.6(2) *Representation.* The person shall be advised that such person may represent self, or may be represented at fair hearings by others, including legal counsel, relatives, friends, or any other spokesman of choice. The agency shall advise the person of any legal services which may be available and assist in securing such services if the person desires.

498—7.7(217) Notice of intent to terminate, reduce, or suspend assistance.

7.7(1) Whenever the local office proposes to terminate, reduce, or suspend food stamps, financial or medical assistance, or services, it shall give timely and adequate notice of the pending action, except when a service is deleted from the state's comprehensive annual service plan in the social services block grant program at the onset of a new program year.

a. Timely means that the notice is mailed at least ten calendar days before the date the action would become effective. The timely notice period shall begin on the day after the notice is mailed.

b. Adequate means a written notice that includes:

(1) A statement of what action is being taken,

(2) The reasons for the intended action,

(3) The manual chapter number and subheading supporting the action,

(4) An explanation of the recipients' right to request a fair hearing, and

(5) The circumstances under which assistance is continued when a hearing is requested.

7.7(2) Timely notice may be dispensed with, but adequate notice shall be sent no later than the date of action when:

a. There is factual information confirming the death of a recipient or of the aid to dependent children payee when there is no relative available to serve as a new payee.

b. The recipient provides a clear written, signed statement that such recipient no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that such recipient understands that this must be the consequence of supplying such information.

c. The recipient has been admitted or committed to an institution which does not qualify for payment under an assistance program.

d. The recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

e. The recipient's whereabouts are unknown and mail directed to the recipient has been returned by the post office indicating no known forwarding address. When the recipient's whereabouts become known during the payment period covered by the returned warrant, the warrant shall be made available to the recipient.

f. The county establishes that the recipient has been accepted for assistance in a new jurisdiction.

g. A child in an aid to dependent children case is removed from the home as a result of a judicial determination, or voluntarily placed in foster care.

h. A change in the level of medical care is prescribed by the recipient's physician.

i. A special allowance or service granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance or service shall terminate at the end of the specified period.

j. Rescinded, effective 2/1/84.

k. The agency terminates, reduces, or suspends benefits or makes changes based on the timely receipt of a completed monthly report form.

l. The agency terminates benefits for failure to return a completed monthly report form.

7.7(3) When the agency obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources, notice of such grant adjustment shall be timely when mailed at least five calendar days before the action would become effective. Such notice shall be sent by certified mail, return receipt requested.

An appeal from or review of the proposed decision shall be on the basis of the record as defined in subrule 7.16(1), except that the commissioner need not listen to the verbatim record of the hearing in such a review or appeal. The review or appeal shall be limited to issues raised prior to that time and specified by the party requesting such appeal or review. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs, and, with the consent of the commissioner, present oral arguments. A party wishing oral argument shall specifically request it. When granted, all parties shall be notified in advance of the time and place.

7.16(5) *Limit of findings.* The findings of fact and conclusions of law in the proposed or final decision may be limited to contested issues of fact or policy.

7.16(6) *Time limit.* Prompt, definitive and final administrative action to carry out the decision rendered shall be taken within ninety days from the date of the appeal. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed thirty days except with the approval of the hearing officer, will be granted and such extra time may be added to the maximum time for final administrative action. Immediately upon receipt of a copy of the final decision, the local office shall take the action required by the decision and shall submit a report of that action to the appeals and hearing office in the department.

When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, corrective payments, retroactive to the date of the incorrect action shall be made.

This rule is intended to implement sections 17A.12, 17A.15 and 17A.22 of the Code.

498—7.17(217) Exhausting administrative remedies. To have exhausted all adequate administrative remedies, a party need not request a rehearing under section 17A.16(2) where such party accepts the findings of fact as prepared by the hearing officer, but wishes to challenge the conclusions of law, or departmental policy.

498—7.18(217) Ex parte communications and separation of functions.

7.18(1) *Communication of the hearing officer or commissioner.* The hearing officer or commissioner may communicate with any person or party concerning any appeal issue provided that the substance of such communication and any information received in reply are presented to all parties, allowing them an adequate opportunity to respond.

7.18(2) *Communication with hearing officer or commissioner.* Parties or their representatives may communicate with the hearing officer or commissioner concerning any appeal issue provided that the substance of such communication and any information received in reply are presented to all parties, allowing them an adequate opportunity to respond. The recipient of a prohibited communication shall submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding, and shall send copies to all parties and allow an opportunity to respond. Where prohibited communications are directed to the hearing officer or commissioner, the hearing officer or commissioner may take such of the following sanctions as are deemed necessary.

a. Provide for a decision against the party who violates the rules.

b. Censor, suspend or revoke a privilege to practice before the department.

c. Recommend that any agency personnel who violate this rule should be censored, suspended, or dismissed.

498—7.19(217) Accessibility of hearing decisions. Summary reports of all hearing decisions shall be made available to local offices and the public. Such information shall be presented in a manner consistent with requirements for safeguarding personal information concerning applicants and recipients.

498—7.20(217) Right of judicial review. The hearing decision shall advise the claimant of the right to judicial review by the district court. When the claimant is dissatisfied with the hearing decision, and appeals such decision to the district court, the department shall furnish copies of such documents or supporting papers as the appellant and legal representative may need in order to perfect the appeal to district court.

498—7.21(217) Food stamp fair hearings and appeals.

7.21(1) All fair hearings in the food stamp program shall be conducted in accordance with federal regulation, Title 7, section 273.15, as amended to February 15, 1983.

7.21(2) All administrative disqualification hearings shall be conducted in accordance with federal regulation, Title 7, section 273.16, as amended to February 15, 1983. Alleged intentional program violation shall be referred to the office of appeals and hearings by the local county human service office.

a. Hearings over disqualification for intentional program violation will be conducted by state hearing officers.

b. A form letter, Advance Notice Of Your Administrative Disqualification Hearing, FNS 396 (3-83) will be sent by certified mail thirty days prior to the hearing date. The hearing may be scheduled as an in-person hearing or as a teleconference hearing. The teleconferencing rules at 498—7.22(217) apply.

This rule is intended to implement Iowa Code section 17A.22.

498—7.22(217) Teleconference hearing. A teleconference hearing is an appeal hearing conducted by a hearing officer over the telephone.

7.22(1) *Determination.* The appeals and fair hearings office will determine whether the appeal hearing is conducted in person or by teleconference hearing.

7.22(2) *Notice of teleconference hearing.* All parties shall be notified in writing at least ten calendar days in advance of the time and date scheduled for a teleconference hearing, in addition to the notification required by 7.10(4).

7.22(3) *Reschedule.* The appellant may request the teleconference hearing be rescheduled as an in-person hearing. All requests made to the local office for a teleconference hearing to be rescheduled as an in-person hearing will be granted.

7.22(4) *Rights.* All parties shall be granted the same rights during a teleconference hearing as specified in 770—7.13(217).

This rule is intended to implement Iowa Code section 17A.22.

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CHAPTERS 8 to 14
Reserved

TITLE II
CHAPTERS 15 to 27
Reserved

d. A determination of eligibility and the amount of assistance shall be made and an adequate notice shall be promptly sent to the recipient, when the requirements of "*a*", "*b*", or "*c*" of this subrule are met. When the recipient is ineligible or is eligible for a reduced payment, the recipient shall be notified of the right to a fair hearing. When an appeal is filed within ten days of the notice, assistance shall continue at the same level pending the appeal decision.

This rule is intended to implement Iowa Code sections 239.3, 239.5 and 239.6.

498—40.3(239) Date of application. The date of application is the date an identifiable Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish), is received in the county. An identifiable application is an application containing a legible name and address, that has been signed.

This rule is intended to implement Iowa Code section 239.3.

498—40.4(239) Procedure with application.

40.4(1) The decision with respect to eligibility shall be based primarily on information furnished by the applicant. The applicant shall report no later than at the time of the face-to-face interview any change as defined in 40.7(4)"*e*" which occurs after the application was signed. Any change which occurs after the face-to-face interview shall be reported by the applicant within five days from the date the change occurred. The local office shall notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the information or verification, or refusal by the applicant to authorize the local office to secure the information or verification from other sources, shall serve as a basis for denial of assistance. Five working days shall be considered as a reasonable period for the applicant to supply the required information or verification. Any time taken beyond the five days shall be considered a delay on the part of the applicant, unless the local office extends the deadline because the applicant is making every effort to secure the information or verification but is unable to do so.

a. In those instances where an application has been filed to add an individual to an existing eligible group, the five-day requirement for reporting changes shall be waived. Such applicants and eligible groups shall be subject to the recipient's ten-day-reporting requirement as defined in 40.7(4).

b. Reserved.

40.4(2) In processing an application, the local office shall conduct at least one face-to-face interview with the applicant prior to approval of the application for assistance. The local office shall assist the applicant, when requested, in providing information needed to determine eligibility and amount of assistance. The application process shall include a visit, or visits, to the home of the child and the person with whom the child will live during the time assistance is granted under the following circumstances:

a. When it is the judgment of the local office that a home visit is required to clarify or verify information pertaining to the eligibility requirements; or

b. When the applicant requests a home visit for the purpose of completing a pending application.

c. In those instances where an application has been filed to add an individual to an existing eligible group, the face-to-face interview requirement shall be waived.

40.4(3) The applicant who is subject to monthly review as described in 40.7(1) shall become responsible for completing the form PA-2140-0, Public Assistance Eligibility Report, after the time of the face-to-face interview. This form shall be issued and returned according to the requirements in 40.7(4)"*b*". The application process will continue as regards the initial two months of eligibility, but eligibility and the amount of payment for the third month and those following is dependent on the proper return of these forms. The local office shall explain to the applicant at the time of the face-to-face interview the applicant's responsibility to complete and return this form.

40.4(4) The decision with respect to eligibility shall be based on the applicant's eligibility or ineligibility on the date the local office enters eligibility information on the Data Processing Turnaround Document, except as described in 40.4(3). The applicant shall become a recipient on the date the automated benefit calculation system determines the applicant is eligible for aid and sends a notice to this effect.

This rule is intended to implement Iowa Code sections 239.4, 239.5 and 239.6.

498—40.5(239) Time limit for decision. The applicant shall receive a notice approving assistance, or a written notice of denial as soon as possible, but not later than thirty days from the date of application. This time standard shall apply except in unusual circumstances, such as when the local office and the applicant have made every reasonable effort to secure necessary information which has not been supplied by the date the time limit expired; or because of emergency situations, such as fire, flood or other conditions beyond the administrative control of the local office. When eligibility is dependent upon the birth of a child the time limit may be extended while awaiting the birth of the child. When it becomes evident that due to an error on the part of the local office, eligibility will not be established within the thirty-day limit, the application shall be approved pending a determination of eligibility.

This rule is intended to implement Iowa Code sections 239.4, 239.5 and 239.6.

498—40.6(239) Effective date of grant. New approvals shall be effective as of the date the applicant becomes eligible for assistance, but in no case shall the effective date be earlier than seven days following the date of application. In those instances where an application has been filed to add an individual to an existing eligible group, approval for that individual shall be effective as of the date the applicant becomes eligible for assistance, but in no case shall the effective date be earlier than seven days following the date of application.

This rule is intended to implement Iowa Code section 239.5.

498—40.7(239) Continuing eligibility.

40.7(1) Eligibility factors shall be reviewed monthly for aid to dependent children using information contained in and verification supplied with form PA-2140-0, Public Assistance Eligibility Report except as specified in paragraphs "*a*", "*b*", and "*c*" below. A face-to-face interview shall be conducted at least annually at the time of a monthly review.

a. The following eligibility groups shall be exempt from monthly review: Those with no income, or only very constant unearned income, and no recent work history; or those with no earned income or recent work history whose adult members are sixty years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act; and those with no earned income and no recent work history, whose adult member(s) receives supplemental security income. These cases shall be reviewed at least every six months. When the source or amount of the nonexempt unearned income, such as social security benefits, is not expected to change more often than annually, the income shall be considered very constant unearned income. An individual who has been unemployed for three full calendar months or longer shall be considered to have no recent work history. Income disregarded in accordance with 41.7(2)"*e*" shall not be considered earned income for the purpose of exemption. Otherwise, any month in which income, including income in kind, is received as compensation for services shall be considered as a month of employment.

(1) The exempt status which relates to recent work history shall be attained in the third month of unemployment.

(2) A Public Assistance Eligibility Report, form PA-2140-0, shall be required for the budget month in which exempt status is lost.

(3) The eligibility group shall be exempt from submitting a Public Assistance Eligibility Report, form PA-2140-0, for the budget month following the budget month in which exempt status is attained.

b. Rescinded, effective November 11, 1983.

c. Aid-to-dependent-children unemployed parent cases shall be reviewed monthly.

40.7(2) A redetermination of specific eligibility factors shall be made when:

a. The recipient reports a change in circumstances, or

b. A change in the recipient's circumstances comes to the attention of a staff member.

40.7(3) Information for reviews shall be submitted on form PA-2140-0, Public Assistance Eligibility Report. This form shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf. When both parents, or a parent and stepparent, are in the home, both shall sign the Public Assistance Eligibility Report.

40.7(4) *Responsibilities of recipients (including individuals in suspension status).*

a. The recipient shall co-operate by giving complete and accurate information needed to establish eligibility and the amount of the aid-to-dependent-children grant.

b. The recipient shall complete form PA-2140-0, Public Assistance Eligibility Report, when requested by the local office in accordance with these rules. The form will be supplied as needed to the recipient by the department. The department shall pay the cost of postage to return the form. When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the local office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the local office by the seventh day after the date it is mailed by the department. The local office shall supply the recipient with a form PA-2140-0, Public Assistance Eligibility Report, on request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no later than the last day of the budget month and accompanied by verification as required in 41.7(1)"*i*" and 41.7(2)"*q*".

c. The recipient shall supply, insofar as the recipient is able, additional information needed to establish eligibility and the amount of the aid-to-dependent-children grant within five working days from the date a written request is mailed by the local office to the recipient's current mailing address or given to the recipient. The recipient shall give written permission for release of information on form PA-2206-0, Authorization for Release of Information, when the recipient is unable to furnish information needed to establish eligibility and the amount of the aid-to-dependent-children grant. Failure to supply the information or refusal to authorize the local office to secure the information from other sources shall serve as a basis for cancellation of assistance.

d. The recipient shall co-operate with quality control when the recipient's case is selected by quality control for verification of eligibility. Failure to do so shall serve as a basis for cancellation of assistance.

e. The recipient, or an applicant applying to be added to an existing eligible group, shall timely report any changes in the following circumstances:

(1) Income from all sources, including any change in the care expenses as defined in 41.7(2)"*b*" and any change in full-time or part-time employment status as defined in 41.7(2)"*a*".

(2) Resources.

(3) Members of the household.

(4) School attendance.

(5) Recovery from incapacity.

(6) Change of mailing or living address.

(7) Payment of child support.

(8) The completion of a tax return requiring repayment of excess advance earned income credit payments.

(9) Receipt of a warrant that exceeds the amount on the most recent notice from the department by ten dollars or more or receipt of a duplicate warrant.

(10) Receipt of a social security number.

(11) Payment for child support, alimony, or dependents as defined in 41.7(8)"*b*" and 41.7(10).

f. A report shall be considered timely when made within ten days from:

(1) The receipt of resources, income, or increased or decreased income.

(2) The date care expenses, as defined in 41.7(2)"*b*", increase or decrease or the date full-time or part-time employment status, as defined in 41.7(2)"*a*", changes.

(3) The date the address changes.

(4) The date the child is officially dropped from the school rolls.

(5) The date a person enters or leaves the household.

(6) The date medical or psychological evidence indicates a recovery from incapacity.

(7) The date the client increases or decreases child support payments.

(8) The date a federal income tax return requiring repayment of excess advanced earned income credit payments is signed by the recipient.

(9) The date the recipient receives a warrant that exceeds the amount on the most recent notice from the department by ten dollars or more or a duplicate warrant.

(10) The receipt of a social security number.

(11) The date the stepparent or sponsor increases or decreases payments for child support, alimony or dependents.

g. When a change is not timely reported, any excess assistance paid shall be subject to recovery.

40.7(5) After assistance has been approved, eligibility for continuing assistance and the amount of the grant shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month and any change affecting the amount of assistance shall be effective for the corresponding payment month except:

a. When the recipient completes an application to add a new person to the eligible group, and that person meets eligibility requirements, a payment adjustment shall be made for the month of application, subject to the effective date of grant limitations prescribed in 498—40.6(239).

b. When income ended during one of the initial two months of eligibility and a grant adjustment could not be made effective the first of the following month in accordance with 41.7(9)"*b*"(1), a payment adjustment shall be made.

c. When verification of an income deduction or diversions is provided before the end of the report month, but too late for a grant adjustment to be made effective the first of the following month, a payment adjustment shall be made.

d. When cancellation of assistance is later in those cases where issuance of a timely notice, as required by 770—7.6(217), requires that the action be delayed until the first day of the second calendar month. Any overpayment received in the first calendar month shall be recouped.

e. Any change not reported prospectively in the budget month and reported on the monthly report form shall be effective for the corresponding payment month. When the change creates ineligibility for more than one month, the payment made in the report month shall be recouped.

f. When the recipient timely reports, as defined in 40.4(1) or 40.7(4), a change in income or circumstances during the first initial month of eligibility, prospective eligibility and grant amount for the second initial month shall be determined based on the change. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment regardless of when the change is reported.

g. When an individual included in the eligible group becomes ineligible, that individual's needs shall be removed prospectively effective the first of the next month. When the action must be delayed due to administrative requirements a payment adjustment or recoupment shall be made when appropriate.

h. When specifically indicated otherwise in these rules, such as in 41.5(5) and 41.7(9)"*c*"(2).

This rule is intended to implement Iowa Code sections 239.2, 239.5, 239.6 and 239.18.

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permanently residing in the United States as evidenced by suitable documentary proof furnished by the immigration and naturalization service of the United States Department of Justice.

41.2(3) *Specified relationship.* A child may be considered as meeting the requirement of living with a specified relative if such child's home is with one of the following or with a spouse of such relative even though the marriage is terminated by death or divorce:

Father—adoptive father.

Mother—adoptive mother.

Grandfather—grandfather-in-law, meaning the subsequent husband of the child's natural grandmother, i.e., stepgrandfather—adoptive grandfather.

Grandmother—grandmother-in-law, meaning the subsequent wife of the child's natural grandfather, i.e., stepgrandmother—adoptive grandmother.

Great-grandfather—great-great-grandfather.

Great-grandmother—great-great-grandmother.

Stepfather, but not his parents.

Stepmother, but not her parents.

Brother—brother-of-half-blood—stepbrother—brother-in-law—adoptive brother.

Sister— sister-of-half-blood—stepsister—sister-in-law—adoptive sister.

Uncle—aunt, of whole or half blood.

Uncle-in-law—aunt-in-law.

Great uncle—great-great-uncle.

Great aunt—great-great-aunt.

First cousins—nephews—nieces.

41.2(4) *Liability of relatives.* All appropriate steps shall be taken to secure support from legally liable persons on behalf of all persons in the eligible group, including the establishment of paternity.

a. When necessary to establish eligibility, the local office shall make the initial contact with the absent parent at the time of application. Subsequent contacts shall be made by the child support recovery unit.

b. When contact with the aid to dependent children family or other sources of information indicates that relatives other than parents and spouses of the eligible children are contributing toward the support of members of the eligible group, have contributed in the past, or are of such financial standing they might reasonably be expected to contribute, the local office shall contact such persons to verify current contributions or arrange for contributions on a voluntary basis.

41.2(5) *Referral to child support recovery unit.* The local office shall provide prompt notice to the child support recovery unit whenever assistance is furnished with respect to a child whose eligibility is based on the continued absence of a parent from the home or when any member of the eligible group is entitled to support payments.

"Prompt notice" means within two working days of the date assistance is approved.

41.2(6) *Co-operation in obtaining support.* Each applicant for or recipient of aid to dependent children shall co-operate with the department in establishing paternity and securing support for persons whose needs are included in the assistance grant, except when good cause as defined in 41.2(8) for refusal to co-operate is established.

a. The applicant or recipient shall co-operate in the following areas:

(1) Identifying and locating the parent of the child for whom aid is claimed.

(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed.

(3) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed.

(4) Obtaining any other payments or property due the applicant, recipient, or child.

b. Co-operation is defined as including the following actions by the applicant or recipient:

(1) Appearing at the local office or the child support recovery unit to provide verbal or written information or documentary evidence known to, possessed by, or reasonably obtained by the applicant or recipient that is relevant to achieving the objectives of the child support recovery program. This includes completing and signing the Support Information, CS-1101-5, upon request of the local office.

(2) Appearing as a witness at judicial or other hearings or proceedings.

(3) Providing information, or attesting to the lack of information, under penalty of perjury.

(4) Paying to the department any nonexempt cash support payments received by a recipient after the date of decision as defined in 40.4(4).

c. The applicant or recipient shall co-operate with the local office in supplying information with respect to the absent parent, the receipt of support, and the establishment of paternity, to the extent necessary to establish eligibility for assistance and permit an appropriate referral to the child support recovery unit.

d. The applicant or recipient shall co-operate with the child support recovery unit to the extent of supplying all known information and documents pertaining to the location of the absent parent and taking such action as may be necessary to secure support payments or establish paternity.

e. The income maintenance unit in the local office shall make the determination of whether or not the client has co-operated.

f. Failure to co-operate shall result in the individual's need being removed from the grant and a protective payee established.

41.2(7) *Assignment of support payments.* Each applicant for or recipient of assistance shall assign to the department any rights to support from any other person as the applicant or recipient may have. This shall include rights to support in the applicant or recipient's own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance and which have accrued at the time the assignment is executed. An assignment is effective the same date the local office enters eligibility information on the Data Processing Turnaround Document and is effective for the entire period for which assistance is paid.

a. The support assignment shall remain in effect during the month of suspension. However, the monthly support entitlement or the support collected for a month of suspension, whichever is less, shall be refunded to the client by the child support recovery unit at the earliest possible date.

b. to *d.* Reserved.

41.4(4) *Registration/deregistration.* Any mandatory registrant shall be considered to be registered effective the same date the local office enters eligibility information on the Data Processing Turnaround Document for aid to dependent children or determines the individual is no longer exempt. Any voluntary registrant shall be considered to be registered effective the same date that the voluntary registrant requests registration except as specified in 41.4(8). A registrant shall be deregistered by the local office when the aid-to-dependent-children case is closed, a sanction is imposed by the local office, the registrant regains exempt status or a voluntary registrant withdraws.

41.4(5) *Referral to vocational rehabilitation.* Any person determined exempt from registration because of a medically determinable physical or mental impairment shall be referred to rehabilitation and education service bureau. Acceptance of vocational rehabilitation services is optional with the client.

41.4(6) *Refusal to participate during assessment.* A mandatory registrant who refuses to participate during assessment shall be deregistered and the needs of that individual shall be excluded from the assistance grant. Reregistration can occur only after assessment has been completed.

41.4(7) *Refusal to participate after assessment.* When the work incentive program staff determines that a mandatory registrant refused to participate in training or accept a bona fide offer of employment without good cause, the individual shall be deregistered.

a. Upon written notification from the work incentive program that the mandatory registrant has refused to participate, the local office shall deregister the individual and apply the following sanctions. For the first refusal to participate the individual shall be sanctioned for three calendar months. Subsequent refusals after a first refusal shall result in a six-calendar month sanction for each refusal.

(1) When the person is a parent, the needs of the parent shall be removed from the aid to dependent children grant and a protective payee, other than the parent, shall be appointed.

(2) When the person is the only dependent child in the eligible group, the aid to dependent children grant shall be canceled.

(3) When the person is one of two or more dependent children in the eligible group, the person's needs shall be removed from the aid to dependent children grant.

b. When a mandatory work incentive program registrant who was deregistered on the basis of failure to participate in the work incentive program without good cause reapplies for aid to dependent children benefits certain criteria must be met before eligibility can be determined:

(1) The person must give evidence to the work incentive program of willingness to participate.

(2) The sanction period specified under 41.4(7)*"a"* must have elapsed.

(3) When the first two criteria are met, then aid-to-dependent children benefits for the registrant or family shall begin the day the person meets the registration requirement.

41.4(8) *Refusal to co-operate or participate by a volunteer.* Volunteer registrants/participants who refuse to co-operate or participate as specified in these rules shall be deregistered. Volunteers are not subject to financial sanctions. However, reinstatement shall follow requirements and time frames specified for reinstatement of mandatory registrants. Volunteers whose registrant status changes from volunteer to mandatory during a sanction period shall be reregistered and the volunteer sanction period dropped.

This rule is intended to implement Iowa Code sections 239.2, 239.5 and 249C.17.

498—41.5(239) Uncategorized factors of eligibility.

41.5(1) *Divesting of income.* Assistance shall not be approved when an investigation proves that income was divested and the action was deliberate and for the primary purpose of qualifying for assistance or increasing the amount of assistance paid.

41.5(2) *Duplication of assistance.* No person whose needs are included in an aid to dependent children grant shall concurrently receive a grant under any other public assistance program administered by the department. Neither shall such person concurrently receive a grant from a public assistance program in another state. When a child leaves the home of a specified relative, no payment for a concurrent period shall be made for the same child in the home of another relative.

41.5(3) *Aid from other funds.* Supplemental aid from any other agency or organization shall be limited to aid for items of need not covered by the department's standards and to the amount of the percentage reduction used in determining the payment level. Any duplicated assistance shall be considered unearned income.

41.5(4) *Contracts for support.* A person entitled to total support under the terms of an enforceable contract is not eligible to receive aid to dependent children when the other party, obligated to provide such support, is able to fulfill that part of the contract.

41.5(5) *Participation in a strike.*

a. The family of any parent with whom the child(ren) is living shall be ineligible for aid-to-dependent-children for any month in which the parent is participating in a strike on the last day of the month.

b. Any individual shall be ineligible for aid to dependent children for any month in which the individual is participating in a strike on the last day of that month.

c. Definitions:

(1) A strike is a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(2) An individual is not participating in a strike at her/his place of employment when the individual is not picketing and does not intend to picket during the course of the dispute, does not draw strike pay, and provides a signed statement that the individual is willing and ready to return to work but does not want to cross the picket line solely because of fear of personal injury or death. The district administrator shall determine whether such a risk to the individual's safety exists.

This rule is intended to implement Iowa Code sections 239.2 and 239.5.

498—41.6(239) Resources.

41.6(1) *Limitation.* An applicant or recipient may have the following resources and be eligible for aid to dependent children. Any resource not specifically exempted shall be counted toward resource limitations.

a. A homestead without regard to its value. A mobile home or similar shelter shall be considered as a homestead when it is occupied by the recipient. Temporary absence from the homestead with a defined purpose for the absence and with intent to return when the purpose of the absence has been accomplished shall not be considered to have altered the

exempt status of the homestead. The net market value of any other real property shall be considered with personal property.

b. Household goods and personal effects without regard to their value. Personal effects are personal or intimate tangible belongings of an individual, especially those that are worn or carried on the person, which are maintained in one's home, and include clothing, books, grooming aids, jewelry, hobby equipment, and similar items.

c. Life insurance which has no cash surrender value. The owner of the life insurance policy is the individual paying the premium on the policy with the right to change the policy as he/she sees fit.

d. An equity not to exceed a value of $1500 in one motor vehicle. When a person has more than one motor vehicle, the equity value of the additional motor vehicle(s) shall be counted toward the resource limitation in 41.6(1)*"e"*. When a motor vehicle(s) is modified with special equipment for the handicapped, the special equipment shall not increase the value of the motor vehicle(s).

e. A reserve of other property, real or personal, not to exceed $1000 for the eligible group. Resources of the eligible group shall be determined in accordance with subrule 41.6(2).

f. Money which is counted as income in a month, during that same month; and that part of lump sum income as defined in 41.7(9)*"c"*(2) reserved for the current or future month's income.

g. Payments which are exempted for consideration as income and resources under subrule 41.7(6).

h. Irrevocable funeral contracts or burial trusts.

i. Burial plot(s) when a deed or contract indicates the plot(s) is unavailable.

j. Settlements for payment of medical expenses.

k. Life estates.

l. When the value of any resource is exempted in part, that portion of the value which exceeds the exemption shall be considered in computing whether the eligible group's property is within the reserve defined in paragraph *"e"*

41.6(2) *Persons considered.*

a. Resources of persons in the eligible group shall be considered in establishing property limitations.

b. Resources of the parent who has elected to be excluded from the eligible group or who is excluded due to lump sum income as defined in 41.7(9)*"c"*(2), or the parent whose needs have been removed from the eligible group because the parent refuses to co-operate with the department in the work incentive program or refuses to assign support or co-operate in establishing paternity or securing support payments or refuses to apply for benefits from other sources or refuses to comply with 41.2(13) and the minor payee living with a self-supporting parent shall be considered in the same manner as if the parent or payee were included in the eligible group.

c. Resources of the stepparent living in the home with the eligible group shall be considered only when determining eligibility of the spouse, with one exception: The resources of a stepparent included in the eligible group shall be considered in the same manner as a parent. The resources of the parent who is ineligible because of the stepparent's resources shall be considered as if the parent were included in the eligible group.

d. The resources of supplemental security income recipients shall not be counted in establishing property limitations.

e. The resources of a nonparental relative who elects to be included in the eligible group shall be considered in the same manner as a parent.

f. When a sponsor is financially responsible for an alien according to subrule 41.7(10), the resources of the sponsor or sponsor's spouse receiving supplemental security income or aid to dependent children shall not be considered in determining an alien's resource limitation.

g. Resources applied to sponsored aliens shall not be considered in determining the needs of unsponsored members of the alien's family except to the extent the resources are actually available.

41.6(3) *Homestead defined.* The homestead consists of the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. When within a city plat, it shall not exceed one-half acre in area. When outside a city plat it shall not contain, in the aggregate, more than forty acres. When property used as a home exceeds these limitations, the equity value of the excess property shall be determined by counting the market value of the excess property less the proportionate amount of legal debts, claims or liens against the total property.

41.6(4) *Liquidation.* When proceeds from the sale of resources or conversion of a resource to cash, together with other nonexempted resources, exceed the property limitations, the recipient is ineligible to receive assistance until the amount in excess of the resource limitation has been expended unless immediately used to purchase a homestead, or reduce the mortgage on a homestead. Property settlements which are part of a legal action in a dissolution of marriage or palimony suit are considered as resources upon receipt.

a. The resource value of a negotiable mortgage or contract is the amount for which it can be sold or discounted.

b. When the mortgage or contract is a negotiable resource or is a discounted contract retained by the individual, only that portion of the payment received representing interest is considered unearned income. When the interest payment is used to purchase a homestead or reduce a mortgage on a homestead, the monthly interest amount received which is in excess of the monthly payment shall be considered unearned income.

c. When the mortgage or contract is not negotiable, or has no discounted value, it is not considered a resource and the payments received, including principal and interest, shall be considered unearned income.

d. When property is sold on a non-negotiable contract basis and the proceeds are used to purchase a homestead or reduce the mortgage on a homestead, the monthly payments received in excess of the payments made on the homestead mortgage or purchase shall be considered as income.

41.6(5) *Net market value defined.* Net market value is the gross price for which property or an item can currently be sold on the open market, less any legal debts, claims, or liens against such property or item.

41.6(6) *Availability.*

a. A resource must be available in order for it to be counted toward resource limitations. A resource is considered available under the following circumstances:

(1) The applicant/recipient owns the property in part or in full and has control over it; that is. it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual's discretion.

(2) The applicant/recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

b. An applicant/recipient shall take all appropriate action to gain title and control of any resource the value of which would affect eligibility.

c. When property is owned by more than one person, unless otherwise established, it is assumed that all individuals hold equal shares in the property.

d. When the applicant/recipient cannot readily convert an available resource, the value of which would affect eligibility, to cash, the resource shall be considered exempt as long as all of the following conditions exist:

(1) The resource has been publicly advertised for sale and remains for sale, and

(2) The asking price for the resource is reasonable, and

(3) The applicant/recipient has not refused a reasonable offer on the resource.

41.6(7) *Damage judgments and insurance settlements.*

a. Payment resulting from damage to or destruction of an exempt resource shall be considered a resource to the applicant/recipient the month following the month the payment was received. When the applicant/recipient signs a legal binding commitment no later than the month after the month the payment was received, the funds shall be considered exempt for the duration of the commitment providing the terms of the commitment are met within eight months from the date of commitment.

b. Payment resulting from damage to or destruction of a nonexempt resource shall be considered a resource in the month following the month in which payment was received.

41.6(8) *Trusts.* When assets from a trust or conservatorship, except one established solely for the payment of medical expenses, together with other resources exceed resource limitations, the department shall determine whether the assets are available by examining the language of the trust agreement or order establishing a conservatorship. In the absence of evidence to the contrary, funds conserved for care, support, or maintenance shall be considered available. Payments received from the trust or conservatorship for basic or special needs are considered income.

41.6(9) *Special alien cases.* When a sponsor is financially responsible for an alien according to subrule 41.7(10), the resources of the sponsor and the sponsor's spouse in excess of $1500 shall be applied to the alien's resource limitation.

a. When the person described in subrule 41.7(10) sponsors two or more aliens who apply for assistance on or after November 1, 1981, the resources of the sponsor and the sponsor's spouse in excess of $1500 shall be divided equally among the aliens.

b. The resources of a sponsor or sponsor's spouse receiving supplemental security income or aid to dependent children shall be treated in accordance with subrule 41.6(2).

This rule is intended to implement Iowa Code section 239.5.

498—41.7(239) Income. All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered in determining initial and continuing eligibility and the amount of the aid-to-dependent-children grant. The determination of initial eligibility is a three-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income, exclusive of the aid-to-dependent-children grant, received by the eligible group and available to meet the current month's needs is no more than one hundred fifty percent of the standard of need for the eligible group; (2) the countable net unearned and earned income is less than the standard of need for the eligible group; and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the payment standard for the eligible group. The determination of continuing eligibility is a two-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed one hundred fifty percent of the standard of need for the eligible group; and (2) countable net unearned and earned income is less than the payment

standard for the eligible group. The amount of the aid-to-dependent-children grant shall be determined by subtracting countable net income from the payment standard for the eligible group. Child support assigned to the department in accordance with subrule 41.2(7) shall be considered unearned income for the purpose of determining continuing eligibility. Expenses for care of children or disabled adults, deductions, and diversions shall be allowed when verification is provided. The local office shall return all verification to the recipient.

41.7(1) *Unearned income.* Unearned income is any income in cash or in kind that is not gained by labor or service. Net unearned income, from investment and nonrecurring lump sum payments, shall be determined by deducting reasonable income producing costs from the gross unearned income. Money left after this deduction shall be considered gross income available to meet the needs of the eligible group.

a. Social security income is the amount of the entitlement before withholding of a Medicare premium.

b. Unearned income in kind shall be considered in the same manner as unearned income when such payment is for an item recognized as a basic or special need and represents the full cost of such item, and is made by an individual other than an individual living in a shared arrangement. The chart for determining income in kind in subrule 41.8(2) shall be used to determine the amount of income to apply towards the needs of the eligible group when a payment in kind meets these two conditions.

c. Rescinded, effective 9/1/80

d. Financial assistance received for education or training.

(1) Any financial assistance received for the purpose of education or training shall be considered as first available for the educational expenses of tuition; books; transportation to and from school; child care necessary for school attendance; board and room when the student does not live at home; and any other direct verified educational expense. Money left after educational expenses, unless specifically exempt, shall be considered gross income available to meet the needs of the eligible group. When a student has a combination of exempt and nonexempt income for educational purposes, the exempt income shall be considered as first available for the expenses of education.

(2) Transportation shall be considered an educational or training expense only when it is to and from school, including transporting the individual's child or children to and from a child care facility or babysitter, and includes parking fees and bridge tolls. The expense is allowable based on the actual cost of bus transportation as charged in the community as reported; the actual cost of cab transportation as verified by the cab company when cab transportation is necessary due to late school hours, remoteness of the home, disability of the person, opening and closing hours of the child care center, or the impossibility of securing other means of transportation; the current mileage rate paid to state employees when a private motor vehicle is used for a reasonable estimate of miles as reported (reasonable shall mean the estimate is within three miles round trip daily when the mileage is calculated from maps or verified by driving the usual route); payment to ride with another person as verified by receipt; parking meter fees as reported; parking lot fees as verified by receipt; and bridge tolls as reported.

e. When an individual receiving educational assistance from the veterans administration also receives an additional amount for an individual's dependents the amount for the individual's dependents who are in the eligible group shall be counted available as nonexempt income.

f. When the applicant or recipient sells property on contract, proceeds from the sale shall be considered according to subrule 41.6(4).

g. Every person in the eligible group shall apply for benefits for which that person may be qualified and accept those benefits, even though the benefit may be reduced because of the laws governing a particular benefit. The needs of any individual who refuses to co-operate in applying for or accepting benefits from other sources shall be removed from the eligible group. Such individual is not eligible for the earned income disregard in subrule 41.7(2)*"c"* or medical benefits.

h. Support payments in cash shall be considered as unearned income in determining initial and continuing eligibility.

(1) Any nonexempt cash support payment, for a member of the eligible group, made while the application is pending shall be treated as unearned income and deducted from the initial assistance warrant(s). Any nonexempt cash support payment, for a member of the eligible group, received by the recipient after the date of decision as defined in 40.4(4), shall be refunded to the child support recovery unit.

(2) Support payments shall be considered as unearned income in the month in which the local office receives an official written report of the payment from the child support recovery unit.

The amount of income to consider shall be the actual amount paid or the monthly entitlement, whichever is less.

(3) Support payments reported by child support recovery during the budget month shall be used to determine prospective and retrospective eligibility for the corresponding payment month.

(4) When the reported support payment, combined with other income, creates ineligibility the case shall be canceled. Eligibility may be re-established for any month in which the countable support payment combined with other income meets the eligibility tests.

i. The applicant or recipient shall co-operate in supplying verification of all unearned income.

j. Every person in the eligible group shall apply for and accept health or medical insurance offered by an employer when it is available and provided at no cost to the applicant or recipient. The needs of any individual who refuses to co-operate in applying for or accepting this insurance shall be removed from the eligible group. The individual is not eligible for the earned income disregard in subrule 41.7(2)"*c*" or medical benefits.

41.7(2) *Earned income.* Earned income is defined as income in the form of a salary, wages, tips, bonuses, commission earned as an employee, income from Job Corps or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of expenses of employment. With respect to self-employment, earned income means the profit determined by comparing gross income with the allowable costs of producing the income. Income shall be considered earned income when it is produced as a result of the performance of services by an individual. Advance earned income credit payments shall be considered earned income either when received or when it appears that the applicant or recipient would meet internal revenue service requirements for payment of the credit upon filing an Earned Income Credit Advance Payment Certificate (form W-5). Where an individual who is eligible to receive advance payments of the earned income credit has made all possible efforts to receive advance payments of the earned income credit has made all possible efforts to receive them, but does not receive them because of the refusal of the employer to issue them, the local office shall not count the credit as earned income.

a. Each individual whose gross nonexempt earned income, earned as an employee or net profit from self-employment, is considered in determining eligibility and the amount of the assistance grant is entitled to one standard work expense deduction.

(1) The first $75.00 of nonexempt earned income shall be deducted monthly for a full-time employee. Full-time employment shall be defined as employment of one hundred twenty-nine or more hours per month.

(2) The first $74.00 of nonexempt earned income shall be deducted monthly for part-time employees. Part-time employment shall be defined as employment fewer than one hundred twenty-nine hours per month.

(3) The determination as to whether self-employment income is full-time or part-time shall be made on the basis of whether the average total monthly income from self-employment, before any deductions for business expenses, is at least equal to the federal minimum wage multiplied by one hundred twenty-nine hours a month.

b. Each individual with nonexempt earned income whose needs are included in determining eligibility and the amount of the assistance grant is entitled to a deduction for care expenses subject to the following limitations.

(1) Child care or care for an incapacitated adult shall be considered a work expense in the amount paid for care of an individual in the eligible group, not to exceed $160.00 per month for a full-time employee and $159 for a part-time employee or the going rate in the community, whichever is less.

(2) The deduction is allowable only when the care covers the actual hours of the individual's employment plus a reasonable period of time for commuting; or the period of time when the individual who would normally care for the child or incapacitated adult is employed at such hours that the individual is required to sleep during the waking hours of the child or incapacitated adult, excluding any hours a child is in school.

(3) Any special needs of a physically or mentally handicapped child or adult shall be taken into consideration in determining the deduction allowed.

(4) The expense shall be verified by receipt or a statement from the provider of care and shall be allowed when paid to any person except a parent of the child.

c. After deducting allowable work expenses as defined in 41.7(2)*"a"* and *"b"*, $30.00 plus one-third of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each individual whose needs are included in the assistance grant is disregarded in determining eligibility and the amount of the assistance grant.

(1) Initial eligibility is determined without application of this disregard. Exception: When for any one of the four months immediately preceding the date of reapplication the needs of the individual having the income were met in whole or in part by an aid-to-dependent-children grant from any state, that individual is automatically eligible for the $30.00 plus one-third disregard of earned income, provided the individual did not receive the disregard for four consecutive months while receiving assistance.

(2) The $30.00 plus one-third disregard shall be limited to four consecutive months for each individual whose needs are included in the eligible group. Any individual whose needs are included in the eligible group and who received the disregard for four consecutive months shall not receive the disregard again until the individual has not been a recipient of assistance for twelve consecutive months. A month of suspension shall not be construed as an interruption of the four consecutive months for receiving the disregard. However, the month of suspension shall not be counted as a month in which the disregard is received. A "recipient of assistance" includes an individual not receiving a payment due to the limitations on payment described in 770—45.6(239) and 770—45.7(239).

d. Ineligibility for expenses and disregards.

(1) An applicant/recipient is not eligible for the standard work expense, care expense, or $30.00 plus one-third disregard of earned income for one month if within thirty days preceding the month of application or the report month the individual terminated employment, reduced earned income, or refused to accept a bona fide offer of employment in which the individual was able to engage, without good cause as defined in 41.4(1). A "bona fide offer of employment" is an offer made through the work incentive program or an offer made by an employer of which the worker determines there was a definite offer of employment at the federal minimum wage or more; there was no unreasonable risk to health or safety due to working conditions or there was worker's compensation protection; the individual was physically able to engage in the employment and the individual was able to get to and from the job by using public or private transportation, or by walking where feasible.

(2) An applicant/recipient is not eligible for the standard work expense, care expense, or

o. In determining profit for a self-employed enterprise in the home other than providing room and board, renting apartments or providing child care services in the home, the following expenses shall be deducted from the income received:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees.

(3) The cost of machinery and equipment in the form of rent; or the interest on mortgage or contract payment; and any insurance on such machinery equipment.

(4) Ten percent of the total gross income to cover the costs of upkeep when the work is performed in the home.

(5) Any other direct cost involved in the production of the income, except the purchase of capital equipment and payment on the principal of loans for capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

p. Income in-kind received in payment for work shall be given the same consideration as cash when such work is in a commercial arrangement and the payment for the work is regular and certain.

q. The applicant or recipient shall co-operate in supplying verification of all earned income. A self-employed individual shall keep any records necessary to establish eligibility.

41.7(3) *Shared living arrangements.* When an aid to dependent children parent shares living arrangements with another family or person, any cash paid from such family or person to the aid to dependent children parent toward the combined obligation for shelter and other basic needs shall be considered exempt as income. Only when it is proven that a contribution made to the aid to dependent children eligible group is exclusively for their needs shall such contribution be considered as income.

41.7(4) *Diversion of income.*

a. Nonexempt earned and unearned income of the parent shall be diverted to meet the unmet needs, including special needs, of the dependent, but ineligible-child(ren) of the parent living in the family group. Income of the parent shall be diverted to meet the unmet needs of the ineligible child(ren) of the parent and a companion in the home only when the income and resources of the companion and the child(ren) are within aid-to-dependent-children standards. The maximum income that shall be diverted to meet the needs of the dependent, but ineligible child(ren) shall be the differences between the needs of the eligible group if the ineligible child(ren) were included and the needs of the eligible group with the child(ren) excluded, except as specified in 41.7(8)"*d*".

b. Nonexempt earned and unearned income of the parent shall be diverted to permit payment of court-ordered support to children not living with the parent when the payment is actually being made.

41.7(5) *Income of unmarried payee under age eighteen.*

a. The income of the unmarried payee under age eighteen living with a self-supporting parent or parents shall be considered available in the computation of the assistance grant except when such income is specifically exempted, disregarded, or restricted by law or regulation.

b. The income of the unmarried payee under age eighteen who is also an eligible child in the grant of such payee's parent shall be treated in the same manner as that of any other child.

c. The income of the unmarried payee under age eighteen living with a nonparental relative or in an independent living arrangement shall be treated in the same manner as though the payee had attained majority.

41.7(6) *Exempt as income and resources.* The following shall be exempt as income and resources:

a. Food reserves from home-produced garden products, orchards, domestic animals, and the like, when utilized by the household for its own consumption.

b. The value of the coupon allotment in the food stamp program.

c. The value of the United States department of agriculture donated foods (surplus commodities).

d. The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.

e. Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.

f. Any assistance that is provided in cash or in kind under the emergency energy conservation services program.

g. Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.

h. Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe. When the payment, in all or part, is converted to another type of resource, that resource is also exempt.

i. Payments to volunteers in volunteers in service to America.

j. Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.

k. Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.

l. Experimental housing allowance program payments made under annual contribution contracts entered into prior to January 1, 1975, under section 23 of the U.S. Housing Act of 1936 as amended.

m. The income of a supplemental security income recipient.

n. Income of a child when the payee has elected to exclude the child from the eligible group.

o. Rescinded, effective October 1, 1983.

p. Rescinded, effective October 1, 1983.

q. Loans and grants obtained and used under conditions that preclude their use for current living costs.

r. Any loan or grant to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education.

s. All earned income of the undergraduate student in a college work-study program administered by the United States Secretary of Education.

t. Any income restricted by law or regulation which is paid to a representative payee, other than a parent who is the applicant or recipient, unless the income is actually made available to the applicant or recipient by the representative payee.

41.7(7) *Exempt as income.* The following are exempt as income.

a. Reimbursements from a third party.

b. Reimbursement from the employer for job-related expenses.

c. The following nonrecurring lump sum payments:

(1) Income tax refund.

(2) Retroactive supplemental security income benefits.

(3) Settlements for the payment of medical expenses.

(4) Refunds of security deposits on rental property or utilities.

(5) That part of a lump sum received and expended for funeral and burial expenses.

d. Payments received by the family providing foster care to a child or children when the family is operating a licensed foster home.

e. Any income which is restricted to the sole use of a child being removed from the eligible group to be placed in aid to dependent children-foster care.

f. Contributions, gifts, and winnings received on less than a quarterly basis, with no assurance of continuance.

g. Income of less than $5.00 per month from any one source.

h. Supplementation from county funds providing:

(5) The amount of the assistance grant for the initial two months of eligibility shall be computed prospectively with two exceptions. Income shall be considered retrospectiveiy for the first two payment months which follow a month of suspension, unless there has been a change in the family's circumstances. Also, income for the first two months of eligibility shall be considered retrospectively when the applicant received assistance for the immediately preceding payment month, including a month for which payment was not received due to the restriction defined in 770—45.6(239) and 770—45.7(239).

(6) Income considered for prospective budgeting shall be the best estimate, based on knowledge of current and past circumstances and reasonable expectations of future circumstances.

(7) Work expense for care, as defined in 41.7(2)"*b*", shall be the allowable care expense expected to be billed or otherwise expected to become due during the budget month. The amount of standard work expense deduction for each wage earner as defined in 41.7(2)"*a*" shall be allowed.

b. Ongoing eligibility.

(1) After the initial two payment months, the amount of each grant shall be based, retrospectively, on income and other circumstances in the budget month. However, when the income was considered prospectively in the initial application and is not expected to continue, it shall not be considered again. This includes an eligible group not receiving a payment due to the restriction defined in 770—45.6(239) and 770—45.7(239).

(2) When a change in eligibility factors occurs, the local office shall prospectively compute eligibility based on the change, effective no later than the month following the month the change occurred. If eligibility continues, no action is taken. If ineligibility exists, assistance shall be canceled or suspended. Continuing eligibility under the one hundred fifty percent eligibility test, defined in 41.7(239), shall be computed prospectively and retrospectively.

(3) Income considered for retrospective budgeting shall be the actual income received in the budget month, except for the income described in 41.7(9)"*c*"(1), 41.7(9)"*g*" and 41.7(9)"*i*". A payroll check will be considered received the date the employer distributes payroll checks to employees.

(4) Work expense for care, as defined in 41.7(2)"*b*", shall be the actual allowable expense billed or which otherwise became due in the budget month. The amount of standard work expense deduction for each wage earner, as defined in 41.7(2)"*a*", shall be allowed.

c. Lump sum income.

(1) Lump sum income other than nonrecurring. Recurring lump sum earned and unearned income, except for the income of the self-employed, shall be prorated over the number of months for which the income was received and applied to the grant for the same number of months. Income received by an individual employed under a contract shall be prorated over the period of the contract. Income received at periodic intervals or intermittently shall be prorated over the period covered by the income and applied to the grant for the same number of months, except periodic or intermittent income from self-employment shall be treated as described in 41.7(9)"*i*". When the lump sum income is earned income, appropriate disregards, deductions and diversions shall be applied to the monthly prorated income. Income is prorated when a lump sum is received before the month of decision and is anticipated to recur; or a lump sum is received during the month of decision or anytime during the receipt of assistance.

(2) Nonrecurring lump sum income. Nonrecurring lump sum income, except as specified in 41.7(7)"*c*", shall be considered as income in the budget month, and counted in computing eligibility and the amount of the grant for the payment month. Nonrecurring lump sum unearned income is defined as a payment which is a one-time distribution of funds from a single source such as an inheritance, certain insurance settlements, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. A lump sum payment of earned income credit shall be treated as a nonrecurring lump sum payment of earned income. When countable income, exclusive of the aid-to-dependent-children grant but

including countable lump sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. The eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter.

The period of ineligibility shall be shortened when it is established that a life-threatening circumstance exists and the countable lump sum income causing the period of ineligibility has been or will be expended in connection with the life-threatening circumstance. Furthermore, until that time, the nonrecurring income must have been used to meet those needs as defined in subrules 41.8(2) and 41.8(3). The former eligible group must have no other income or resources sufficient or available to meet the life-threatening circumstance. Expenditure of funds for the following are to be considered as life-threatening: Payments made on medical services for the former eligible group or their dependents for services listed in 498—chapters 78, 81, 82, and 770—chapter 85 at time of claiming relief under this provision; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over twenty-five dollars per incident; cost of replacement of exempt resources as defined in subrule 41.6(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses of a member or dependent of the former eligible group. The cost of the life-threatening circumstance shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the budget month. For purposes of applying the lump sum provision, the eligible group is defined as all eligible persons and any other individual whose lump sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump sum income was received may be eligible for aid-to-dependent children as a separate eligible group. Income of this eligible group plus income, excluding the lump sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

d. The third digit to the right of the decimal point in any computation of income, hours of employment and work expenses for care, as defined in 41.7(2)"*b*", shall be dropped.

e. In any month for which an individual is determined eligible to be added to a currently active aid-to-dependent-children case, the individual's needs shall be included subject to the effective date of grant limitations as prescribed in 498—40.6(239). When adding an individual to an existing eligible group, any income of that individual shall be considered prospectively for the initial two months of that individual's eligibility and retrospectively for subsequent months. Any income considered in prospective budgeting shall be considered in retrospective budgeting only when the income is expected to continue. The needs of an individual determined to be ineligible to remain a member of the eligible group shall be removed prospectively effective the first of the following month.

f. Suspension. The local office shall suspend assistance retrospectively when income or circumstances in the budget month cause ineligibility and the local office has knowledge or reason to believe that ineligibility will exist for only one month.

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◊ Two or more ARC's.

CHAPTER 46
RECOUPMENT
[Prior to 7/1/83, Social Services (770) Ch. 46]

498—46.1(239) Definitions.

46.1(1) *Client error.* "Client error" means and may result from:

a. False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

b. Failure to timely report changes in income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

c. Failure to timely report the receipt of and, if applicable, to refund assistance in excess of the amount shown on the most recent Notice of Decision, form PA-3102-0, or the receipt of a duplicate warrant; or

d. Failure to refund to the child support recovery unit any payment from the absent parent received after the date the decision on eligibility was made.

e. False or misleading statements regarding income or resources of the sponsor and the sponsor's spouse, when a sponsor is financially responsible for an alien according to 41.7(10).

46.1(2) *Overpayment.* "Overpayment" means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive.

46.1(3) *Recoupment.* "Recoupment" means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance warrant or both.

46.1(4) *Recoup.* "Recoup" means reimburse, return, or repay an overpayment.

46.1(5) Rescinded, effective February 8, 1984.

46.1(6) *Client.* "Client" means a current or former applicant or recipient of aid to dependent children.

46.1(7) *Agency error.* "Agency error" in overpayments means: (a) The same as circumstances described in 45.4(1) pertaining to underpayments, or (b) any error that is not a client or procedural error.

46.1(8) *Good cause.* "Good cause" for not reporting income or resources means the change results in a monthly error of less than $10.00.

46.1(9) *Without fault.* "Without fault" means an alien's sponsor is "without fault" when the department fails to determine that an alien has a sponsor, fails to count the sponsor's income and resources in determining the alien's eligibility or an overpayment results from an agency error.

46.1(10) *Procedural error.* "Procedural error" means: A technical error which does not in and of itself result in an overpayment. Procedural errors include:

a. Failure to secure a properly signed application at the time of initial application or reapplication.

b. Failure to require an application when a new person is added to the eligible group or when a stepparent becomes a member of the household.

c. Failure of the local office to conduct the face-to-face interviews described in subrules 40.4(2) and 40.7(1).

d. Failure to request a Public Assistance Eligibility Report at the time of a monthly or six-month review.

e. Failure of local office staff to cancel aid to dependent children when the client submits a Public Assistance Eligibility Report which is not complete as defined in 40.7(4)*"b"*. However overpayments of grants as defined in 46.1(2) based on incomplete reports are subject to recoupment.

498—46.2(239) Monetary Standards.

46.2(1) *Amount subject to recoupment.* All aid-to-dependent-children overpayments shall be subject to recoupment.

46.2(2) *Warrant issued.* When recoupment is made by withholding from the aid-to-dependent-children grant, the warrant issued shall be for no less than $10.00.

498—46.3(239) Notification. All clients shall be promptly notified when it is determined that an overpayment exists. Notification shall include the dates of the overpayment, the amount of overpayment subject to recoupment, and the reason for the overpayment. The local office shall notify the client by means of the Notice of Overpayment, form PA-3170-0, when an overpayment exists. The client shall simultaneously be sent a worksheet showing the computation of the overpayment.

498—46.4(239) Determination of overpayments. All overpayments due to agency or client error or due to assistance paid pending an appeal decision shall be recouped. A procedural error does not result in an overpayment.

46.4(1) *Agency error.* When an overpayment is due to an agency error recoupment shall be made, including those instances when errors by the department prevent the requirements in subrules 41.2(6), 41.2(7) or 41.4(6) from being met or when the client receives a duplicate warrant. An overpayment of any amount is subject to recoupment with one exception: When the client receives a warrant that exceeds the amount on the most recent notice from the department, recoupment shall be made only when the amount received exceeds the amount on the notice by ten dollars or more. The client is required to timely report receipt of excess assistance under 40.7(4). An overpayment due to agency error shall be computed as if the information had been acted upon timely.

46.4(2) *Assistance paid pending appeal decision.* Recoupment of overpayments resulting from assistance paid pending a decision on an appeal hearing shall begin no later than the month after the month in which the final decision is issued.

46.4(3) *Client error.*

a. An overpayment due to client error shall be computed as if the information had been reported and acted upon timely. Exception: When the client, without good cause, as defined in 41.7(2)*"d"*(2), fails to report income earned as specified in subrule 41.7(2)*"d"*(2), the deductions in subrule 41.7(2)*"a"*, *"b"* and *"c"* shall not be allowed.

b. Overpayments due to failure to refund payments received from the absent parent shall be the total support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the recipient or eligible group may also be subject to recoupment under provisions in 41.2(6) and 41.7(8).

46.4(4) *Failure to co-operate.* Failure to co-operate in the investigation of alleged overpayments shall result in ineligibility for the months in question and the overpayment shall be the total amount of assistance received during those months.

46.4(5) Overpayment in special alien cases. An overpayment due to client error regarding the income and resources of the alien's sponsor and the sponsor's spouse shall be recouped from the alien or from the resources of the sponsor and the sponsor's spouse which were available to the alien according to 41.6(9). Exception: When the sponsor is found to have "good cause" or to be "without fault" recoupment shall be from the alien.

498—46.5(239) Source of recoupment. Recoupment shall be made from the basic needs or the resources of a sponsor or sponsor's spouse which were deemed available to the alien according to 41.6(9). The minimum recoupment amount shall be the amount prescribed in 46.5(3). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the office of investigations, or have repayment withheld from the warrant. The client shall sign either form PA-3164-0, Agreement to Repay Overpayment or form PA-3167-0, Agreement to Repay Overpayment after Probation, when requested to do so by the office of investigations. When the client fails to make the agreed upon payment, the agency shall reduce the warrant. Recoupment, whether it be by a lump sum payment, periodic installment payments, or withholding from the warrant, can be made from one or both of the following sources:

46.5(1) and 46.5(2) Rescinded, effective February 8, 1984.

46.5(3) *Basic needs.*

a. Recoupment by withholding from basic needs for overpayments due to client error or a combination of client and agency errors shall be ten percent of the basic needs standard in accordance with the schedule in subrule 41.8(2), unless the client elects to have more withheld.

b. Recoupment by withholding from basic needs for overpayments due to the continuation of benefits pending a decision on an appeal as provided under rule 7.9(217) or a combination of continued benefits and agency or client errors shall be ten percent of the basic needs standard in accordance with the schedule in subrule 41.8(2), unless the client elects to have more withheld.

c. Recoupment by withholding from basic needs for overpayments due to agency error shall be one percent of the basic needs standard in accordance with the schedule in subrule 41.8(2), unless the client elects to have more withheld.

46.5(4) *Recoupment in special alien cases.* Recoupment shall be made from the resources deemed to an alien according to 41.6(9) when

a. The sponsor is financially responsible for the alien according to 41.7(10),

b. The alien and sponsor failed to provide accurate information regarding the sponsor's income or resources, and

c. An overpayment resulted.

When recoupment is to be made from the resources deemed to an alien, the case shall be referred to the office of investigations for investigation, recoupment, or referral for possible prosecution.

498—46.6(239) Rescinded, effective February 8, 1984.

498—46.7(239) Procedures for recoupment.

46.7(1) *Initiating recoupment.* When the local office starts recoupment proceedings, recoupment shall begin as soon as the amount of the overpayment has been established.

46.7(2) *Referral.* When the local office does not start recoupment proceedings, the case shall be referred to the office of investigation for investigation, recoupment, or referral for possible prosecution.

46.7(3) *Canceled cases.* Canceled cases with an unpaid overpayment shall be referred to the office of investigation for investigation, recoupment, or referral for possible prosecution. When a canceled case with an unpaid overpayment is reopened, responsibility for recoupment may be transferred to the local office to begin or continue recoupment according to these rules.

46.7(4) *Change of circumstances.* When financial circumstances change, the recoupment plan is subject to revision.

46.7(5) *Collection.* Recoupment for overpayments shall be made from the individual, as defined in 41.2(3), who was the recipient at the time the overpayment occurred, except as provided in 46.4(5).

498—46.8(239) Appeals. The client has the right to appeal the amount of the overpayment and the amount to be withheld from the warrant.

These rules are intended to implement Iowa Code sections 239.2, 239.5, 239.6, 239.14 and 239.17, 45 CFR 233.20(a)(12), and 1983 Iowa Acts, chapter 201, section 3.

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f. Payment will be made for a period not to exceed ten days in any calendar month when the resident is absent due to hospitalization. Payment will not be authorized for over ten days for any continuous hospital stay whether or not the stay extends into a succeeding month or months.

g. The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.

(1) Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.

(2) To compute the facility-wide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six-month period and divide by the total patient days care provided to this group during the same period of time.

52.1(4) *Blind.* The standard for a blind recipient not receiving another type of state supplementary assistance is $22.00 per month.

52.1(5) *In-home health related care.* Payment to a person receiving in-home health related care shall be made in accordance with rules in chapter 148.

52.1(6) *Minimum income level cases.* The income level of those persons receiving old age assistance, aid to the blind, and aid to the disabled in December 1973 shall be maintained at the December 1973 level as long as the recipient's circumstances remain unchanged and that income level is above current standards. In determining the continuing eligibility for the minimum income level, the income limits, resource limits, and exclusions which were in effect in October 1972 shall be utilized.

This rule is intended to implement Iowa Code sections 249.2, 249.3 and 249.4.

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CHAPTER 53
Reserved

CHAPTER 54
FACILITY PARTICIPATION
[Prior to 7/1/83, Social Services(770) Ch 54]

498—54.1(249) Application and contract agreement. Each facility desiring to participate in the state supplementary assistance program must enter into a contract with the department of social services and agree to the provisions as enumerated in form PA-1108-6, Application and Contract Agreement for Residential Care Facilities. The effective date of the contract shall be the first of the month that the Application and Contract Agreement for Residential Care Facilities, signed by the administrator of the facility, is received by the department. No payment shall be made for care provided before the effective date of the contract. The contract shall be for a term of twelve months, subject to renewal; or until the department ceases to participate in the program; or until either party gives sixty days notice of termination in writing to the other party.

This rule is intended to implement section 249.12, The Code.

498—54.2(249) Maintenance of case records. A facility must maintain a case folder for each individual residing in such facility which contains the following:

1. Contract between the facility and the resident on form PA-2365-6, Admission Agreement.
2. Physician's statement certifying that the resident does not require nursing services.
3. Proof of expenditures from resident's "personal needs" allowance.

This rule is intended to implement section 249.12, The Code.

498—54.3(249) Financial and statistical report. All facilities wishing to participate in the program shall submit a Financial and Statistical Report for Residential Care Facilities, form AA-4038-0, to the department. Such reports shall be based on the following rules.

54.3(1) *Failure to maintain records.* Failure to adequately maintain fiscal records, including census records, medical charts, ledgers, journals, tax returns, canceled checks source documents, invoices, and audit reports by or for a facility may result in the penalties specified in subrule 54.8(1).

54.3(2) *Accounting procedures.* Financial information shall be based on that appearing in the audited financial statement. Adjustments to convert to the accrual basis of account-

ing shall be made when the records are maintained on other accounting basis. Residential care facilities which are a part of a health facility providing nursing home services are not required to file form AA-4038-0, Financial and Statistical Report for Residential Care Facilities. Such combination facilities shall continue to file form AA-4036-0, Financial and Statistical Report for Nursing Homes.

54.3(3) *Submission of reports.* The report shall be submitted to the department of social services no later than three months after the close of each six-month period of the facility's established fiscal year. Failure to submit the report within the three-month period shall reduce payment to seventy-five percent of the current rate. Such reduced rate shall be paid for no longer than three months, after which time no further payments shall be made.

54.3(4) *Payment at new rate.* When a new rate is established, payment at the new rate shall be effective with services rendered as of the first day of the month in which the report was received by the department of social services. Adjustments shall be included in the payment the third month after the receipt of the report.

54.3(5) *Accrual basis.* Facilities not using the accrual basis of accounting shall adjust recorded amounts to the accrual basis. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expense.

54.3(6) *Census of public assistance recipients.* Census figures of public assistance recipients shall be obtained on the last day of the month ending the reporting period.

54.3(7) *Patient days.* In determining in-patient days, a patient day is that period of service rendered a patient between the census taking hours on two successive days, the day of discharge being counted only when the patient was admitted that same day.

54.3(8) *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate disregard of the certification and reporting instructions.

54.3(9) *Calculating patient days.* When calculating patient days, facilities shall use an accumulation method.

a. Census information shall be based on a patient status at midnight each day. A patient whose status changes from one class to another shall be shown as discharged from the previous status and admitted to the new status on the same day.

b. When a recipient is on a reserve bed status and the department of social services is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance resident and a per diem rate for the bed is charged to any party, such reserved days shall be included in the total census figures for in-resident days.

54.3(10) *Revenues.* Revenues shall be reported as recorded in the general books and records. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues.

a. Routine daily services shall represent the established charge for daily care. Routine daily services are those services which include room, board, and such services as supervision, feeding, and similar services.

b. Revenue not related to resident care shall be applied in reduction of the related expense.

c. Investment income adjustment is necessary only when interest expense is incurred, and only to the extent of such interest expense.

d. Accounts receivable charged off or provision for uncollectible accounts shall be reported as a deduction from gross revenue.

54.3(11) *Limitation of expenses.* Certain expenses that are not normally incurred in providing resident care shall be eliminated or limited according to the following rules.

a. Federal and state income taxes are considered in computing the fee for services for proprietary institutions.

b. Fees paid directors and nonworking officer's salaries are not allowed as reimbursable costs.

c. Bad debts are not an allowable expense.

d. Charity allowances and courtesy allowances are not an allowable expense.

e. Personal travel and entertainment are not allowable as reimbursable costs. Certain expenses such as rental or depreciation of vehicle and expenses of travel which includes both business and personal shall be prorated. Amounts which appear to be excessive may be limited after consideration of the specific circumstances. Records shall be maintained to substantiate the indicated charges.

(1) Commuter travel by owner(s), owner-administrator(s), administrator, nursing director or all other employees is not an allowable cost (from private residence to facility and return to residence).

(2) One car or one van or both shall be designated for use in transporting patients for the expense of same to be an allowable cost. All expenses shall be covered by a sales slip, invoice or other documents setting forth the designated vehicle as well as the expenses incurred for the expenses to be an allowable expense.

(3) Expenses associated with association business meetings, limited to individual members of associations which are members of a national affiliate, and expenses associated with workshops, symposiums, and meetings which provide administrators or department heads with hourly credits required to comply with continuing education requirements for licensing, are allowable expenses.

(4) Travel of an emergency nature required for supplies, repairs of machinery or equipment, or building is an allowable expense.

(5) Travel for which a patient must pay is not an allowable expense.

(6) Allowable expenses in paragraphs (2) to (4) above are limited to six percent of total administrative expense.

f. Entertainment provided by the facility for participation of all residents who are physically and mentally able to participate is an allowable expense except entertainment for which the patient is required to pay is not an allowable expense.

g. Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

h. A reasonable allowance of compensation for services of owners is an allowable cost, provided the services are actually performed in a necessary function. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided such persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner for the services rendered to the facility. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor; the cost of assets and services which the proprietor receives from the facility; and deferred compensation.

(2) Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable facilities, and depends upon the facts and circumstances of each case.

(3) Necessary requires that the function be such that had the owner not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of such facility.

(4) The maximum allowed compensation for the administrator is $1,250.00 per month plus $13.00 per month per bed licensed capacity for each bed over sixty, not to exceed $1,775.00 per month.

i. Management fees shall be computed on the same basis as the administrator's salary but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, such costs are allowed.

j. Depreciation based upon tax cost using only the straight-line method of computation, recognizing the estimated normal life of the asset, may be included as a resident cost. When accelerated methods of computation have been elected for income tax purposes, an adjustment shall be made. For change of ownership, refer to 54.3(12)*"b"* and *"c"*.

k. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) Necessary requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to resident care.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

(5) Interest is an allowable cost when the general fund of a provider borrows from a donor-restricted fund, a funded depreciation account of the provider, or the provider's qualified pension fund, and pays interest to such fund, or when a provider operated by members of a religious order borrows from the order.

(6) When funded depreciation is used for purposes other than improvement, replacement or expansion of facilities or equipment related to resident care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where such deposits are used for other than the purpose for which the fund was established.

l. Costs applicable to supplies furnished by a related party or organization are a reimbursable cost when included at the cost to the related party or organization. Such cost shall not exceed the price of comparable supplies that could be purchased elsewhere.

(1) Related means that the facility, to a significant extent, is associated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in the facility and the institution or organization serving the provider.

(3) Control exists where an individual or an organization has power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

(4) When the facility demonstrates by convincing evidence that the supplying organization is a bona fide separate organization; that a substantial part of its business activity of the type carried on with the facility is transacted with others and there is an open competitive market for the type of services, facilities, or supplies furnished by the organization; that the services, facilities, or supplies are those which commonly are obtained by similar institutions from other organizations and are not a basic element of resident care ordinarily furnished directly to residents by such institutions; and that the charge to the facility is in line with the charge for such services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such services, facilities, or supplies, the charges by the supplier shall be allowable costs.

m. When the operator of a participating facility rents from a nonrelated party, the amount of rent or lease expense allowable on the cost report shall be based on either of the following methods at the discretion of the operator:

(1) Actual rent expense or portion thereof so that total property cost does not exceed the median property cost of all participating facilities as adjusted annually based on cost reports on file with the department as of June 30 each year.

(2) The cost of the facility amortized over its expected useful life plus other owner's expenses and a reasonable rate of return, not to exceed actual rent payments.

When the operator of a participating facility rents or leases the building from a related party, the amount of rent or lease expense allowable on the cost report shall be no more than the amortized cost of the facility plus other owner's expenses.

Whenever owner's costs are used as the basis for allowable rental costs, the owner must be willing to provide documentation of these costs.

n. Depreciation, interest and other capital costs attributable to construction of new facilities, expanding existing facilities, or the purchase of an existing facility, are allowable expenses only if prior approval has been gained through the health planning process specified in rules of the health department, 470—chapter 201.

54.3(12) *Termination or change of owner.*

a. A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department of social services with at least sixty days prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. No payment to the new owner shall be made until formal notification is received. The following situations are defined as transfer of ownership:

(1) In the case of a partnership which is a party to an agreement to participate in the residential care program, the removal, addition, or substitution of an individual for a partner in the association, in the absence of an express statement to the contrary, dissolves the old partnership and creates a new partnership which is not a party to the previously executed agreement and a transfer of ownership has occurred.

(2) When a participating nursing home is a sole proprietorship, a transfer of title and property to another party constitutes a change of ownership.

(3) When the facility is a corporation, neither a transfer of corporate stock nor a merger of one or more corporations with the participating corporation surviving is a transfer of ownership. A consolidation of two or more corporations resulting in the creation of a new corporate entity constitutes a change of ownership.

(4) When a participating facility is leased, in whole or in part, a transfer of ownership is considered to have taken place.

b. Upon change of ownership, the new owner or operator shall furnish the department with an appraisal made by a department-approved appraiser. The appraisal shall be based on market values.

c. The new owner or operator shall either continue the previous owner's depreciation schedule or set-up a new depreciation schedule using the amount obtained by deducting the depreciation expense incurred since July 1, 1980, from the value of depreciable real property. The value will be the sale price or appraisal value, whichever is less.

54.3(13) *Payment to new home.* A new home for which cost has not been established shall receive the prevailing maximum allowable cost ceiling. At the end of three months' operation a financial and statistical report shall be submitted and the cost established subject to provisions set forth in 53.1(3)"*g*". Subsequent reports shall be submitted from the beginning day of operation to the end of the fiscal year or six months interim period, whichever comes first, and each six months thereafter.

54.3(14) *Payment to the new owner.* An existing facility with a new owner shall continue with the previous owner's per diem rate until a new financial and statistical report has been submitted and a new rate established. The facility may submit a report for the period from beginning of actual operation to the end of the fiscal year or may submit two cost reports within the fiscal year provided the second report covers a period of six months ending on the last day of the fiscal year. The facility shall notify the department of social services of the date its fiscal year will end and of the reporting option selected.

54.3(15) The cost-related per diem rate is calculated by computing the per diem allowable costs from the financial and statistical report, adding five percent to all costs except interest to adjust for inflation, and adding an incentive factor of fifty-two cents for nonprofit facilities and seventy cents for proprietary facilities.

This rule is intended to implement Iowa Code section 249.12.

498—54.4(249) Goods and services provided. All facilities participating in the program shall provide residents those goods and services required by the terms of the license issued by the Iowa department of health in accordance with chapter 135C of the Code and rules promulgated thereto set forth in 470—chapter 57 and requirements of the department of human services set forth in these rules.

54.4(1) *Payment accepted.* The amount of client participation and the payment made through the state supplementary assistance program shall be accepted as payment in full for the required goods and services provided the resident. The facility may seek reimbursement from other sources for goods and services provided that are beyond the goods and services required to be provided by these rules.

54.4(2) *Care, maintenance, general supervision, and personal services.* Each facility as part of providing care, maintenance, general supervision, and personal services shall provide as necessary supervision or assistance with ambulation, grooming, hair washing, shaving, personal hygiene, bathing, getting in and out of bed, dressing, feeding, and with medication that can be self-administered.

54.4(3) *Laundry.* Each facility shall provide personal laundry service to the resident as part of the goods and services paid for through the program.

54.4(4) *Room furnishings.* The facility shall completely furnish the resident's room in accordance with health department's subrule 57.30(4) without additional charge to the resident or person acting on the resident's behalf. When the resident wishes to provide some item or items of room furnishing, the facility may grant such a request.

This rule is intended to implement Iowa Code section 249.12.

498—54.5(249) Personal needs account. When a facility manages the personal needs funds of a resident, it shall establish and maintain a system of accounting for expenditures from the resident's personal needs funds. The personal needs funds shall be deposited in a single checking account, not commingled with trust funds from any other facility, nor commingled with facility operating funds except for facility funds, not to exceed $500.00, deposited to cover bank charges and have in the account name the terms "Resident Trust Funds". The funds shall be deposited in a bank or other institution within the state of Iowa insured by the federal government. Expense for bank service charges for this account is an allowable audit cost under rule 54.3(249) if the service cannot be obtained free of charge. The department shall charge back to the facility any maintenance item included in the computation of the audit cost that is charged to the resident's personal needs when such charge constitutes double payment. Unverifiable expenditures charged to personal needs accounts may be charged back to the facility. The accounting system is subject to audit by representatives of the Iowa department of human services, and shall meet the following criteria:

54.5(1) *Ledger.* Upon admittance, a ledger sheet shall be credited with the resident's total incidental money on hand. Thereafter, the ledger shall be kept current on a monthly basis. The facility may combine such accounting with the disbursement section showing the date, amount given the resident, and the resident's signature. A separate ledger shall be maintained for each resident.

54.5(2) *Expenditures.* When something is purchased for the resident and is not a direct cash disbursement, each such expenditure item in the ledger shall be supported by a signed, dated receipt. The receipt shall indicate the article furnished for the resident's benefit.

54.5(3) *Disbursement.* Personal funds shall be turned over only to the resident, the resident's guardian, or other persons selected by the resident. With the consent of the resident, when the resident is able and willing to give such consent the administrator may turn over personal funds to a close relative or friend of the resident to purchase a particular item. A signed, dated receipt shall be required to be deposited in the resident's files.

54.5(4) *Audit.* The ledger and receipts for each recipient shall be made available for periodic audits by an accredited department representative. Audit certification shall be made by the department's representative at the bottom of the ledger sheet. Supporting receipts may then be destroyed.

54.5(5) *Death.* Upon a recipient's death the funds remaining in the personal needs account shall be treated in the following manner:

a. The facility shall provide a written statement of the personal needs account to be filed in the case record.

b. When an estate is opened, the funds shall be submitted to the estate administrator.

c. When no estate is opened, the funds shall be released to the person assuming responsibility for the recipient's funeral expenses.

d. When no estate is opened and there are no living heirs, the funds shall be submitted to the department to escheat to the state.

This rule is intended to implement section 249.12 of the Code.

770—54.6(249) Case activity report. A case Activity Report, form AA-4166-0, shall be submitted to the department whenever a recipient enters the facility, changes level of care, is hospitalized, leaves for visitation, or is discharged from the facility.

This rule is intended to implement section 249.12 of the Code.

770—54.7(249) Billing procedures. In order to determine the amount of payment to the recipient, the facility shall submit a billing form to be received by the department by the fifth working day following the last day of the month in which service was provided. Payment will be mailed to the recipient by the fifteenth working day of the month.

54.7(1) *Billing.* When payment is made, the facility will receive a copy of form AA-4163-0, Residential Payment Register. The original shall be returned to the department as a claim for the next month.

54.7(2) *Changes.* When there has been a new admission, a discharge, or a claim for a reserved bed, the facility shall also submit form AA-4164-0, Residential Care Change Notice, with the claim.

This rule is intended to implement section 249.12 of the Code.

770—54.8(249) Audits.

54.8(1) *Audit of financial and statistical report.* Authorized representatives of the department of social services or the department of health, education and welfare shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report for Residential Care Facilities, Form AA-4038-0, are reasonable and proper according to the rules set forth in rule 54.3(249). The aforementioned audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agent(s).

a. When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department of social services that the indicated per diem be reduced to seventy-five percent of the established payment rate for the ensuing six-month period and if the situation is not remedied on the subsequent Financial and Statistical Report for Residential Care Facilities, Form AA-4038-0, the health facility shall be suspended and eventually canceled from the residential care facility program, or

b. When a facility continues to include as an item of cost an item or items which had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the department of social services that the per diem be reduced to seventy-five percent of the current payment rate for the ensuing six-month period. The department may, after considering the seriousness of the exception, make such reduction.

54.8(2) *Audit of proper billing and handling of resident funds.*

a. Field auditors of the department of social services, or representatives of health, education and welfare, upon proper identification, shall have the right to audit billings to the department of social services and receipts of client participation, to insure the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed as deemed necessary.

b. Field auditors of the department of social services or representatives of health, education and welfare, upon proper identification, shall have the right to audit records of the facility to determine proper handling of resident funds in compliance with rule 54.5(249).

c. The auditor shall recommend and the department of social services shall request repayment by the facility to either the department of social services or the resident(s) involved, such sums inappropriately billed to the department or collected from the resident.

d. The facility shall have sixty days to review the audit and repay the requested funds or present supporting documentation which would indicate that the requested refund amount, or part thereof, is not justified.

e. If the facility fails to comply with paragraph "*d*", the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

f. When exceptions are taken during the scope of an audit which are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility to seventy-five percent of the current payment rate.

This rule is intended to implement section 249.12 of the Code.

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498—65.9(234) Treatment centers. Alcoholic or drug treatment or rehabilitation centers shall provide the local office with a certified list of residents currently participating in the food stamp program on a monthly basis.

498—65.10(234) Change report form. Households may report changes on the Change Report Form, FP-2232-0. Households are supplied with this form at the time of initial certification, at the time of recertification when it needs a new form, whenever a form is returned by the household, and upon request by the household.

498—65.11(234) Discrimination complaint. Individuals who feel that they have been subject to discrimination may file a written complaint with the Affirmative Action Office, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319.

498—65.12(234) Appeals. Fair hearings and appeals are provided according to the department's rules, chapter 7.

498—65.13(234) Joint processing.

65.13(1) *SSI/food stamps.* The department will handle joint processing of supplemental security income and food stamp applications by having the social security administration complete and forward food stamp applications.

65.13(2) *Public assistance/food stamps.* In joint processing of public assistance and food stamps, the certification periods for public assistance households will be assigned to expire at the end of the month in which the public assistance redetermination is due to be processed.

498—65.14(234) Rescinded, effective 10/1/83.

498—65.15(234) Proration of benefits. Benefits shall be prorated using a thirty day month. This rule is intended to implement Iowa Code section 234.12.

498—65.16(234) Complaint system. Clients wishing to file a formal written complaint concerning the food stamp program may submit form FP-2238-0, or FP-2238-1, Food Stamp Complaint, to the division of field operations. Department staff shall encourage clients to use the form.

498—65.17(234) Involvement in a strike. An individual is not involved in a strike at her/his place of employment when the individual is not picketing and does not intend to picket during the course of the dispute, does not draw strike pay, and provides a signed statement that the individual is willing and ready to return to work but does not want to cross the picket line solely because of fear of personal injury or death. The district administrator shall determine whether such a risk to the individual's safety exists.

498—65.18(234) Energy assistance. Food stamps will not be reduced as the result of payments of federal energy assistance made to or on behalf of a client.

498—65.19(234) Monthly reporting/retrospective budgeting.

65.19(1) *Budgeting cycle.* Retrospective budgeting will base benefit calculation on the budget month which is the second calendar month preceding the issuance month.

65.19(2) *Reporting responsibilities of monthly reporting households.*

a. The Public Assistance Eligibility Report, form PA-2140-0 will be supplied to the recipient, by the department, as needed or requested. The department shall provide a postage-paid envelope for return to the local office of form PA-2140-0, the Public Assistance Eligibility Report.

b. The household shall return the completed form to the local office by the fifth calendar day of the month which precedes the issuance month, when the form was issued in the department's regular end-of-month mailing. The household shall return the completed form to the local office by the seventh day after the date of the issuance of the form when the form was not issued in the department's regular end-of-month mailing.

c. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, accompanied by verification as required in 65.19(14) and 65.19(15), and signed and dated by a responsible household member on or after the last day of the budget month. When the PA-2140-0 is used as a food stamp monthly report and a person in the household is also required to report monthly for another public assistance program, the form shall also be signed by all individuals required to sign for that program to be considered complete.

65.19(3) *Determination of eligibility.* Eligibility will be determined on the basis of the household's prospective income and circumstances.

65.19(4) *Public assistance income.* The aid to dependent children and refugee cash assistance grant(s) authorized for the issuance month will be considered in determination of the household's eligibility and benefit level.

65.19(5) *Suspension.* Suspension is not limited to households whose recurring income has a periodic increase. Suspension may not occur for two consecutive months.

65.19(6) *Households required to submit monthly reports.* All households, not exempt by regulation or rule are subject to monthly reporting. Exempt households are: Households without countable earned income whose adult members are all elderly or disabled, as defined by 7 CFR 271.2, as amended in 498—65.3(234), unless these households are required to submit AFDC monthly reports; if a waiver is granted by the secretary of the department of agriculture, aid to dependent children, aid to dependent children-related medical assistance, child medical assistance or refugee resettlement — cash assistance households which are exempt from monthly reporting for assistance eligibility, if a waiver is granted by the secretary of the department of agriculture, nonpublic assistance households which have no members who have countable earned income and have no members who either have "recent work history" or are not exempt from work registration as a condition of participation in the food stamp program, if the household has nonexempt income and, except for contributions and gifts received not more frequently than twice a year, it is all "constant unearned income."

65.19(7) *Entering or leaving monthly reporting or retrospective budgeting due to a change in status.* A monthly report will be required for the budget month in which exempt status is lost. Retrospective budgeting will begin for the issuance month which corresponds to the budget month in which exempt status is lost.

The household will not be required to submit a monthly report for the budget month following the budget month in which exempt status is attained. The exempt status which is related to recent work history will be attained in the third month of recent work history. Retrospective budgeting will end for the issuance month which corresponds to the budget month in which exempt status is attained.

65.19(8) *Prospective beginning months.* All eligible households will have benefits calculated prospectively for the two beginning months. When a household has applied for assistance from the aid to dependent children program or related medical programs, the child medical assistance program or the refugee resettlement-cash assistance program, and for food stamp benefits using a form PA-2207-0, Public Assistance Application, a third food stamps' beginning month will be allowed when the public assistance program's first "initial month" is the same calendar month as the second food stamp's beginning month, and the third begin-

ning month permits a simultaneous transition to retrospective budgeting.

65.19(9) *Disregarded income for the first months of retrospective budgeting.* Income considered prospectively in the beginning months and not expected to continue shall not be considered again.

65.19(10) *Action on reported changes.* The local office will act on all reported changes for households required to submit monthly reports.

65.19(11) *Actual income.* Calculation of benefits will consider the actual income received or anticipated to be received in the budget month, without conversion to regular monthly amounts, unless income is required to be annualized or prorated.

65.19(12) *Mailing of notices.* All individual household notices of benefit amounts will be mailed separately from food stamps.

65.19(13) *Reinstatement.* Reinstatement of the household canceled for failure to submit a complete monthly report will occur only when the otherwise eligible household submits a complete report by the end of the report month or by the extended filing date, whichever is later.

65.19(14) *Verification of income.* A monthly report will be considered incomplete when it is not accompanied by verification of unearned income or prorated income or annualized income when this income starts, stops, or changes in amount. Verification of interest income, with a monthly report, is not required.

65.19(15) *Return of verification.* The local office will return all items of verification, submitted in the monthly reporting process, to the household.

65.19(16) *Notice regarding reinstatement.* The household which has received a Notice of Cancellation, form 4107-0, shall be notified in writing of its status every time the department receives a monthly report form prior to the end of the "report month", or the extended filing period, whichever is later.

65.19(17) *Additional information and verification.* The household which has submitted a complete monthly report shall submit, or co-operate in obtaining, additional information and verification needed to determine eligibility or benefits within five working days of the local office's written request.

65.19(18) *Household membership.* Except for applications received during a period of time when the household was not certified to receive food stamps, household membership shall be determined as it was or is anticipated to be on the first day of the issuance month. Changes in household membership occurring on or after the first day of the month which are reported during the month in which the change occurs, will not be considered until the following month. Except for qualified residents of a shelter for battered women and children, individuals shall not be added to the household prior to their being removed from another household where they were receiving food stamps.

498—65.20(234) Notice of expiration issuance.

65.20(1) Issuance of the Automated Notice of Expiration will occur with the monthly mailing of Public Assistance Eligibility Reports, form PA-2140-0, from Des Moines.

65.20(2) Issuance of the Notice of Expiration, form FP-2310-0, will occur from the local office at the time of certification if the household is certified for one month, or for two months, and will not receive the Automated Notice of Expiration.

498—65.21(234) Claims.

65.21(1) *Time period.* Claims shall be calculated back to the month the error originally occurred to a maximum of three years prior to month of discovery of the overissuance.

65.21(2) *Suspension status.* Claims suspended under rules effective prior to June 1, 1983, that do not meet the criteria for suspension under rules effective June 1, 1983, shall be transferred to an active status.

65.21(3) *Application of restorations.* Restoration of lost benefits shall first be applied to any claims (including a suspended claim) prior to any remaining entitlement being issued to a household.

498—65.22(234) Verification.

65.22(1) *Income.* Households shall be required to verify income (except interest income and the public assistance grant) at time of recertification and when income is reported or when income changes.

65.22(2) *Dependent care costs.* Households shall be required to verify dependent care costs at time of certification, when reported in the monthly reporting system, and when a change is reported (when a household is not in the monthly reporting system).

65.22(3) *Medical expenses.* Households shall be required to verify medical expenses at recertification and when reported.

65.22(4) *Shelter costs.* Households shall be required to verify shelter costs (other than utility expenses) at application and when the household reports moving or a change in its shelter costs.

65.22(5) *Utilities.* Actual utilities (for households required or choosing to use actual utility expenses) shall be verified at time of certification and when reported.

498—65.23(234) Weekly or biweekly income and prospective budgeting. Households receiving benefits determined by prospective budgeting shall have the actual amount of income that is received on a weekly or biweekly basis considered for that benefit month.

498—65.24(234) Failure to verify. When the household does not verify an expense as required, no deduction for that expense will be allowed.

These rules are intended to implement Iowa Code sections 217.6 and 234.12.

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CHAPTERS 66 to 70
Reserved

TITLE VIII
MEDICAL ASSISTANCE

CHAPTER 75
[Ch 75, 1973 IDR, renumbered as Ch 90]
CONDITIONS OF ELIGIBILITY
[Prior to 7/1/83, Social Services[770] Ch 75]

498—75.1(249A) Persons covered.

75.1(1) *Individuals receiving aid to dependent children.* Medical assistance shall be available to all recipients of aid to dependent children. Recipient means a person for whom an aid to dependent children (ADC) payment is received and includes individuals deemed to be receiving ADC. Individuals deemed to be receiving ADC are:

a. Individuals denied ADC because the amount of payment would be less than $10.00.

b. Individuals suspended from ADC because of recovery of an overpayment such as five weekly checks received in the budget month instead of the usual four.

75.1(2) Rescinded, effective February 8, 1984.

75.1(3) *Individuals who are ineligible for aid to dependent children because of failure to provide a social security number.* Medical assistance shall be available to individuals who are ineligible for aid to dependent children benefits because of failure to provide a social security number to the department of human services.

75.1(4) *Beneficiaries of Title XVI of the Social Security Act (Supplemental security income for the aged, blind and disabled) and mandatory state supplementation.* Medical assistance will be available to all beneficiaries of the Title XVI program and those receiving mandatory state supplementation.

75.1(5) *Persons receiving care in a medical institution who were eligible for medical assistance as of December 31, 1973.* Medical assistance will be available to all persons receiving care in a hospital, skilled nursing facility or intermediate care facility who were recipients of medical assistance as of December 31, 1973. Eligibility of such persons will continue as long as they continue to meet the eligibility requirements for the applicable assistance programs (old-age assistance, aid to the blind or aid to the disabled) in effect on December 31, 1973.

75.1(6) *Individuals who would be eligible for cash assistance for their institutional status.* Medical assistance shall be available to individuals receiving care in a hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded who would be eligible for aid to dependent children, supplemental security income, or state supplementary assistance if they were not institutionalized.

75.1(7) *Individuals receiving care in a medical institution who would be ineligible for supplemental security income because of excess income if they were not institutionalized.* Medical assistance shall be available to individuals receiving care in a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded who meet all eligibility requirements for supplemental security income except for income and whose income does not exceed three hundred percent of the maximum monthly payment for one person under the federal supplemental security income program. Eligibility for persons in this group shall be determined after the person has been insitutionalized a full calendar month and shall be effective no earlier than the first day of the first full calendar month of institutionalization. "Full calendar month" means twenty-four hours of each day in a calendar month.

75.1(8) *Certain persons essential to the welfare of Title XVI beneficiaries.* Medical assistance will be available to the person living with and essential to the welfare of a Title XIX beneficiary provided such essential person was eligible for medical assistance as of December 31, 1973. The person will continue to be eligible for medical assistance as long as he or she continues to meet the definition of "essential person" in effect in the public assistance program on December 31, 1973.

75.1(9) *Individuals receiving state supplemental assistance.* Medical assistance shall be available to all recipients of state supplemental assistance as authorized by chapter 249, The Code. Medical assistance shall also be available to the individual's dependent relative as defined in subrule 51.4(4).

75.1(10) *Individuals under age twenty-one living in a licensed foster care facility or in a private home pursuant to a subsidized adoption arrangement for whom the department has financial responsibility in whole or in part.* Medical assistance will be available to all such individuals provided they are not otherwise eligible under a category for which federal financial participation is available.

75.1(11) *Families terminated from aid to dependent children because of increased earnings or hours of employment.* Medical assistance shall be available for a period of up to four months to individuals who are canceled from aid to dependent children program solely because a member of the eligible group receives increased income from employment. Income from employment includes:

a. Increase in rate of pay.

b. Increased hours of employment.

c. Receipt of income from Earned Income Tax Credit (EITC).

Such recipients must have received aid to dependent children benefits during at least three of the six months immediately preceding the month in which ineligibility occurred and at least one member of the eligible group, although not necessarily the same member, must continue to be employed during the period of extended medical coverage. The four months medical coverage begins the day following termination of aid to dependent children benefits. When ineligibility is determined to occur retroactively, the extended medical coverage begins with the first month in which aid to dependent children assistance was erroneously paid.

75.1(12) *Persons ineligible due to October 1, 1972 social security increase.* Medical assistance will be available to individuals and families whose assistance grants were canceled as a result of the increase in social security benefits October 1, 1972, as long as such individuals and families would be eligible for an assistance grant if such increase were not considered.

75.1(13) *Persons who become ineligible for supplemental security income or state supplementary assistance as a result of a social security cost of living increase.* Persons receiving cash assistance under the supplemental security income program or the state supplementary assistance program who are receiving such assistance immediately prior to termination of benefits as a result of a social security cost of living increase subsequent to July 1, 1977 will retain their eligibility for medical assistance. Such persons must continue to meet all eligibility requirements for supplemental security income or state supplementary assistance except that the amount of social security cost of living increases received subsequent to July 1, 1977 will be disregarded in determining their financial eligibility under these programs.

75.1(14) *Aid to dependent children—pregnant women.* Medical assistance shall be available to pregnant women who would be eligible for aid to dependent children if the child was born.

The pregnancy shall be verified in writing by a licensed physician. The verification shall attest to the fact of pregnancy and establish the probable date of conception. When an examination is required and other medical resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment.

a. Eligibility for medical assistance under this rule shall begin no earlier than the first of the month in which conception occurred, and in accordance with 770—76.5(249A).

b. Financial eligibility shall be established using the income and resource standards in effect in the aid to dependent children program.

c. An individual shall not be ineligible for medical assistance under this rule for failure to co-operate in establishing paternity or obtaining support, securing a social security number, or for failure to register for the work incentive program.

d. Eligibility for medical assistance under this rule shall end when the pregnancy terminates.

75.1(15) *Child medical assistance program.* Medical assistance shall be available to individuals under age twenty-one including unborn children who would be eligible for aid to dependent children but do not qualify as dependent children as defined in 41.1(1), 41.1(3), 41.1(5), and 41.4(1). Individuals under age twenty-one who are voluntarily excluded from an aid to dependent children eligible group shall be eligible for medical assistance if the individual meets the financial criteria set forth below.

a. Financial eligibility shall be established using the income and resource standards in effect in the aid to dependent children program for the family size of which the individual is a member. An unborn child is not considered a member of the family for the purpose of establishing the number of persons in the family.

(1) When an individual is living with the individual's parents or spouse, the individual shall be eligible for medical assistance when the total income and resources of all family members does not exceed the income and resource limitations in effect in the aid to dependent children program for an eligible group of the same size. Application for medical assistance shall be made by the parent or parents when the individual is residing with them. An individual shall be considered to be living with a parent when the individual is temporarily absent from the parents' home to secure education or training and the parent retains supervision, care, and control of the individual.

(2) An individual who is living apart from the individual's parents or spouse shall be considered to be a family of one and shall make application in the individual's own name.

(3) Individuals residing in a family in which some members are receiving aid to dependent children and who have been excluded from the assistance eligible group shall be eligible for medical assistance under this rule when income and resources attributed to that individual do not exceed the limits established for a family of one, unless the family members excluded from the assistance eligible group include a parent. In this case, the excluded parent's income shall be considered in determining the eligibility for medical assistance for any children who are also excluded from the assistance eligible group.

b. Parents who would be eligible for aid to dependent children except for failure to cooperate on a point of eligibility shall be ineligible for medical assistance under this rule.

c. Medical assistance under this rule may be established no earlier than the first of the month in which conception occurred, and in accordance with 770—76.5(249A). Pregnancy shall be verified in writing by a licensed physician and the verification shall establish the probable date of conception. When an examination to establish pregnancy is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment.

d. A review of all eligibility factors shall be made at least every six months.

e. Eligibility for medical assistance under this rule shall terminate effective with the first of the month following the month in which one of the following occurs:

(1) The income or resource standard is exceeded; or

(2) The individual's twenty-first birthday occurs, unless the individual's birthday occurs on the first day of the month, in which case the individual is ineligible effective the day of the twenty-first birthday.

(3) Rescinded, effective July 1, 1983.

75.1(16) *Payee.* For the purposes of this chapter, payee refers to a SSI payee defined in Iowa Code sections 633.3(7) and 633.3(20) and an ADC payee defined in IAC 498—chapter 43.

75.1(17) *Individuals who would be eligible for but are not receiving cash assistance.* Medical assistance shall be available to individuals who would be eligible for aid to dependent children, supplemental security income, or state supplementary assistance but who choose not to receive payments.

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.6, 1982 Iowa Acts, chapter 1260, sections 91 and 94, 1983 Iowa Acts, chapter 4, sections 2 and 3 and chapter 201, section 3.

498—75.2(249A) Medical resources. Medical resources include health and accident insurance, eligibility for care through Veterans Administration, specialized child health services, Title XVIII of the Social Security Act (Medicare) and other resources for meeting the cost of medical care which may be available to the recipient. Such resources must be used when reasonably available.

When a medical resource may be obtained by filing a claim or an application, and co-operating in the processing of that claim or application, that resource shall be considered to be reasonably available, unless good cause for failure to obtain that resource is determined to exist.

Payment will be approved only for those services or that part of the cost of a given service for which no medical resources exist. Persons who have been approved by the Social Security Administration for supplemental security income shall complete form MA-2120-0, Request for Information Re Private Health Insurance Coverage and Other Medical Benefits, and return such form to the local office of the department of human services. Persons eligible for Part B of the Medicare program shall make assignment to the department on form MA-2106-6, Statement Regarding Assignment of Claims—Part B, Medicare.

75.2(1) The recipient, or one acting on the recipient's behalf, shall file a claim, or submit an application, for any reasonably available medical resource, and shall also co-operate in the processing of the claim or application. Failure to do so, without good cause, shall result in the termination of medical assistance benefits. The medical assistance benefits of a minor or a legally incompetent adult recipient shall not be terminated for failure to co-operate in reporting medical resources.

75.2(2) When a parent or payee, acting on behalf of a minor, or of a legally incompetent adult recipient, fails to file a claim or application for reasonably available medical resources, or fails to co-operate in the processing of a claim or application, without good cause, the medical assistance benefits of the parent or payee shall be terminated.

75.2(3) Good cause for failure to co-operate in the filing or processing of a claim or application, shall be considered to exist when the recipient, or one acting on behalf of a minor, or of a legally incompetent adult recipient, is physically or mentally incapable of co-operation. Good cause shall be considered to exist, when co-operation is reasonably anticipated to result in:

a. Physical or emotional harm to the recipient for whom medical resources are being sought.

b. Physical or emotional harm to the parent or payee, acting on the behalf of a minor, or of a legally incompetent adult recipient, for whom medical resources are being sought.

75.2(4) The determination of good cause shall be made by the Utilization Review Section of the Bureau of Medical Services. This determination shall be based on information and evidence provided by the recipient, or by one acting on the recipient's behalf.

This rule is intended to implement Iowa Code sections 249A.4, 249A.5, 249A.6 and 1983 Iowa Acts, Senate File 541.

498—75.3(249A) Acceptance of other financial benefits. An applicant or recipient shall take all steps necessary to apply for and, if entitled, accept any income or resources for which such applicant or recipient may qualify, unless the applicant or recipient can show an incapacity to do so. Sources of such benefits may be, but are not limited to, contributions, annuities, pensions, retirement or disability benefits, veteran's compensation and pensions, old-age, survivors, and disability insurance, railroad retirement benefits, black lung benefits, or unemployment compensation.

This rule is intended to implement sections 249A.3 and 249A.4, The Code.

498—75.4(249A) Right of subrogation.

75.4(1) The agency within the department of social services responsible for administration of the department's right of subrogation is the bureau of medical services. All notifications to the department required by law shall be directed to the bureau of medical services. Notification shall be considered made as of the time such notification is deposited so addressed, postage prepaid in the United States postal service system. The act of notification shall not in any way be considered to give the agreement of the commissioner or designee to any compromise under which the department would receive less than full reimbursement of the amounts it expended.

b. In rebutting the presumption that the resource was transferred to establish eligibility, the burden of proof is on the individual to establish:

(1) The fair market value of the compensation and

(2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource and

(3) That the agreement, contract, or expectation was established at the time of transfer.

75.6(3) Uncompensated value is defined as the fair market value of the resource minus the amount of compensation received by the individual in exchange for the resource. In no case will the amount of uncompensated value exceed the amount which would have been counted toward the resource limit (as of the date of transfer) if the resource had been retained.

a. Fair market value is defined as the price that the item can reasonably be expected to sell for on the open market in the particular geographic area involved and may be established by independent appraisal.

b. Compensation is defined as all money, real or personal property, food, shelter or services received by the individual in exchange for the resource if such money, property, food, shelter or services are provided in reliance on an agreement made at the time of transfer.

This rule is intended to implement Iowa Code section 249A.3.

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(2) One car or one van or both shall be designated for use in transporting patients for the expense of same to be an allowable cost. All expenses shall be covered by a sales slip, invoice or other documents setting forth the designated vehicle as well as the expenses incurred for the expenses to be an allowable expense.

(3) Expenses associated with association business meetings, limited to individual members of association which are members of a national affiliate, and expenses associated with workshops, symposiums, and meetings which provide administrators or department heads with hourly credits required to comply with continuing education requirements for licensing, are allowable expenses.

(4) Travel of an emergency nature required for supplies, repairs of machinery or equipment, or building is an allowable expense.

(5) Travel for which a patient must pay is not an allowable expense.

(6) Allowable expenses in paragraphs (2) through (4) above are limited to six percent of total administrative expense.

f. Entertainment provided by the facility for participation of all residents who are physically and mentally able to participate is an allowable expense except that entertainment for which the patient is required to pay is not an allowable expense.

g. Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

h. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: Husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother, and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for non-salaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.

(2) Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions, and depends upon the facts and circumstances of each case.

(3) Necessary requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The maximum allowed compensation for an administrator involved in ownership or immediate relative is $1,500.00 per month plus $16.00 per month per licensed bed capacity for each bed over sixty, not to exceed $2,220.00 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of five percent or more.

(5) The maximum allowed compensation for an assistant administrator involved in ownership or immediate relative in facilities having a licensed capacity of one hundred fifty-one or more beds is $950.00 per month. An assistant administrator is considered to be involved in ownership of a facility when the assistant administrator has ownership interest of five percent or more.

(6) The maximum allowed compensation for a nursing director involved in ownership or immediate relative is sixty percent of the amount allowed for the administrator, or $950.00 per month, whichever is greater. The nursing director shall be a licensed registered or practical nurse. A nursing director is considered to be involved in ownership of a facility when the nursing director has ownership interest of five percent or more.

i. Management fees shall be computed on the same basis as the administrator's salary, but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, such costs are allowed.

j. Depreciation based upon tax cost using only the straight-line method of computation, recognizing the estimated useful life of the asset, may be included as a patient cost. When accelerated methods of computation have been elected for income tax purposes, an adjustment shall be made. For change of ownership, refer to 81.6(12)"c".

k. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) Necessary requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to patient care, and be reduced by investment income except where such income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

(5) Interest is an allowable cost when the general fund of a provider borrows from a donor-restricted fund, a funded depreciation account of the provider, or the provider's qualified pension fund, and pays interest to such fund, or when a provider operated by members of a religious order borrows from the order.

(6) When funded depreciation is used for purposes other than improvement, replacement or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where

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CHAPTER 82
INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

[Prior to 7/1/83, Social Services (770) Ch 82]

498—82.1(249A) Definitions.

82.1(1) *Qualified mental retardation professional.* The term "qualified mental retardation professional" means a person who qualifies under one of the following categories:

a. A psychologist with at least a master's degree from an accredited program and one year of experience in treating the mentally retarded.

b. A physician licensed under state law to practice medicine or osteopathy and one year experience in treating the mentally retarded.

c. An educator with a degree in education from an accredited program and one year experience in working with the mentally retarded.

d. A social worker with a bachelor's degree in social work from an accredited program, or a bachelor's degree in a field other than social worker and at least three years social work experience under the supervision of a qualified social worker, and one year experience in working with the mentally retarded.

e. A physical or occupational therapist who has one year experience in treating the mentally retarded.

f. A speech pathologist or audiologist who is licensed, when applicable, by the state in which practicing, and has one year experience in treating the mentally retarded.

g. A registered nurse who has one year of experience in treating the mentally retarded.

h. A therapeutic recreation specialist who is a graduate of an accredited program and, where applicable, is licensed or registered in the state where practicing, and who has one year of experience in working with the mentally retarded.

This rule is intended to implement section 249A.12 of the Code.

498—82.2(249A) Conditions of participation. In order to participate in the program, a facility shall be licensed as a hospital, skilled nursing home, intermediate care facility, an intermediate care facility for the mentally retarded by the department of health under chapter 64 of rules of the health department. The facility shall meet the following conditions of participation:

82.2(1) *Conformity with laws.* The facility shall conform with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding, and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and post-mortem procedures.

82.2(2) *General administrative policies and practices.*

a. The facility shall have a written philosophy, objectives, and goals, that are available for distribution to staff, consumer representatives, and the interested public. The philosophy, objectives, and goals shall include at least:

(1) The facility's role in the state comprehensive program for the mentally retarded.

(2) The facility's goals for its residents.

(3) The facility's concept of its relationship to the parents of its residents, or to their surrogates.

b. The facility shall have a written statement of policies and procedures concerning the rights of residents that assure the civil rights of all residents.

82.5(8) *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate disregard of the certification and reporting instructions.

82.5(9) *Calculating patient days.* When calculating patient days, facilities shall use an accumulation method.

a. Census information shall be based on a patient status at midnight each day. A patient whose status changes from one class to another shall be shown as discharged from the previous status and admitted to the new status on the same day.

b. When a recipient is on a reserve bed status and the department of social services is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance patient and a per diem rate for the bed is charged to any party, such reserved days shall be included in the total census figures for in-patient days.

82.5(10) *Revenues.* Revenues shall be reported as recorded in the general books and records. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues.

a. Routine daily services shall represent the established charge for daily care. Routine daily services are those services which include room, board, nursing services, and such services as supervision, feeding, incontinuency, and similar services, for which the associated costs are in nursing service.

b. Revenue from ancillary services provided to patients shall be applied in reduction of the related expense.

c. Revenue from the sale of medical supplies, food or services to employees or nonresidents of the facility shall be applied in reduction of the related expense. Revenue from the sale to private pay residents of items or services which are included in the medical assistance per diem will not be offset.

d. Investment income adjustment is necessary only when interest expense is incurred, and only to the extent of such interest expense.

e. Laundry revenue shall be applied to laundry expense.

f. Accounts receivable charged off or provision for uncollectible accounts shall be reported as a deduction from gross revenue.

82.5(11) *Limitation of expenses.* Certain expenses that are not normally incurred in providing patient care shall be eliminated or limited according to the following rules.

a. Federal and state income taxes are not allowed as reimbursable costs. Such taxes are considered in computing the fee for services for proprietary institutions.

b. Fees paid directors and nonworking officer's salaries are not allowed as reimbursable costs.

c. Personal travel and entertainment are not allowed as reimbursable costs. Certain expenses such as rental or depreciation of a vehicle and expenses of travel which include both business and personal shall be prorated. Amounts that appear excessive may be limited after considering the specific circumstances. Records shall be maintained to substantiate the indicated charges.

d. Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

e. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: Husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for non-salaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.

(2) Reasonableness—requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions, and depends upon the facts and circumstances of each case.

(3) Necessary—requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The maximum allowed compensation for an administrator involved in ownership or immediate relative is $1,500.00 per month plus $16.00 per month per licensed bed capacity for each bed over sixty, not to exceed $2,220.00 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of five percent or more.

(5) The maximum allowed compensation for an assistant administrator involved in ownership or immediate relative in facilities having a licensed capacity of one hundred fifty-one or more beds is $950.00 per month. An assistant administrator is considered to be involved in ownership of a facility when the assistant administrator has ownership interest of five percent or more.

(6) The maximum allowed compensation for a nursing director involved in ownership or immediate relative is sixty percent of the amount allowed for the administrator, or $950.00 per month, whichever is greater. The nursing director shall be a licensed registered or practical nurse. A nursing director is considered to be involved in ownership of a facility when the nursing director has ownership interest of five percent or more.

f. Management fees shall be computed on the same basis as the administrator's salary, but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, such costs are allowed.

g. Depreciation based upon tax cost using only the straight-line method of computation, recognizing the estimated useful life of the asset, may be included as a patient cost. When accelerated methods of computation have been elected for income tax purposes, an adjustment shall be made. For change of ownership, refer to 82.5(12)*"c"*.

h. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) Necessary—requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to patient care, and be reduced by investment income except where such income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper"—requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

82.17(2) *Auditing of proper billing and handling of patient funds.*

a. Field auditors of the department of human services or representatives of health, education and welfare, upon proper identification, shall have the right to audit billings to the department of human services and receipts of client participation, to insure the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. Field auditors of the department of human services or representatives of health, education and welfare, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 82.9(3).

c. The auditor shall recommend and the department of human services shall request repayment by the facility to either the department of human services or the resident(s) involved, such sums inappropriately billed to the department or collected from the resident.

d. The facility shall have sixty days to review the audit and repay the requested funds or present supporting documentation which would indicate that the requested refund amount, or part thereof, is not justified.

e. When the facility fails to comply with paragraph *"d"* the requested refunds may be withheld from future payments to the facility. Such withholding shall not be more than twenty-five percent of the average of the last six monthly payments to the facility. Such withholding shall continue until the entire requested refund amount is recovered. If in the event the audit results indicate significant problems, the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

f. When exceptions are taken during the scope of an audit which are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility seventy-five percent of the current payment rate.

These rules are intended to implement Iowa Code sections 249A.2, 249A.3 and 249A.12.

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c. When immediate restraint is necessary to protect the safety of the child, other residents of the facility, staff or others, mechanical restraint may be utilized without prior authorization but in each case a person designated to provide authorization shall be contacted as soon as the child is restrained. The designated person shall visit the resident before determining if continued use of the mechanical restraint is necessary. If not viewed as necessary, the child shall be immediately released from restraint.

d. Each authorization of mechanical restraint shall not exceed one hour in duration without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

e. No child shall be kept in mechanical restraint for more than one hour in a twelve-hour period without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

f. Any time that a child is placed in mechanical restraint a staff person shall be assigned to monitor the child with no duties other than to ensure that the child's physical needs are properly met. The staff person shall remain in continuous auditory and visual contact with the child.

g. Each child shall be released from mechanical restraint as soon as the restraints are no longer needed.

105.21(2) *Documentation.*

a. Each use of mechanical restraints shall be documented in the client's record and shall include at least the following:

(1) The date and time the child was placed in mechanical restraint.

(2) The type of mechanical restraint utilized.

(3) The reason for the restraint.

(4) The signature of the person authorizing the restraint and the time of authorization.

(5) The signature of the person placing the child in restraint.

(6) The signature of the person providing the continuous auditory and visual contact with the child.

(7) The signature of the person releasing the child and the time of release.

b. Each use of mechanical restraint shall be documented in a separate file which is used only for the recording of uses of mechanical restraints and shall contain the name of the child restrained and the information discussed in 105.21(2)"*a*".

c. Each facility authorized to use mechanical restraint shall submit a quarterly report to the bureau of children's services of the department which shall include all the information required in 105.21(2)"*b*".

105.21(3) *Continued use of mechanical restraints.* When a child requires mechanical restraint on more than four occasions during any thirty-day period, the facility shall hold an immediate emergency meeting within three days of the fifth incident and shall have a licensed psychologist or psychiatrist or psychologist employed by a local mental health center present at the staffing to discuss the appropriateness of the child's continued placement at the facility.

105.21(4) *In transporting children.* Notwithstanding 105.21(1)"*d*", mechanical restraint of a child by the staff of a juvenile detention facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's case record and the mechanical restraint file. This report shall document the necessity for the use of restraint.

Seat belts are not considered mechanical restraints. Agency policies should encourage the use of seat belts while transporting children.

498—105.22(232) Chemical restraint. Chemical restraint shall not be utilized in juvenile shelter care or detention facilities. Each juvenile shelter care or detention facility shall have written policies which clearly prohibit the use of chemical restraints.

These rules are intended to implement Iowa Code section 232.142.

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CHAPTERS 106 to 108
Reserved

CHAPTER 109
CHILD CARE CENTERS

[Filed as Chapter 108, February 14, 1975 and renumbered July 1, 1975]
[Prior to 7/1/83, Social Services(770) ch 109]

498—109.1(237A) Administration.

109.1(1) When a child care center is incorporated, a copy of the Certificate of Incorporation and bylaws relating to the child care center shall be submitted to the Iowa department of social services. In the event any amendments to the original bylaws are adopted, a copy of said amendment or amendments shall be transmitted to the department of social services. Incorporated centers shall submit a statement of purpose and objectives. The plan and practices of operation shall be consistent with this statement.

109.1(2) Unincorporated child care centers shall submit a written statement of purposes and objectives to the department of social services. The plan and practices of operation shall be consistent with this statement.

109.1(3) A nonprofit child care center shall have a governing board which meets at least quarterly. The board or operating body shall formulate administrative rules and policies within the objectives and purposes of the center.

109.1(4) The board or operating body of a nonprofit child care center shall provide for the operation of the center with staff which meets the minimum requirements established by the department of social services shall provide for revenue for financing of the center, job descriptions, and shall develop personnel policies and benefits.

109.1(5) The child care center shall establish definite financial agreements and fee policies for the children served.

109.1(6) The child care center admission, intake, discharge and health policies shall be defined, formulated and commensurate with the needs of the children and with the purpose of the program.

109.1(7) The child care center's preschool age program shall be appropriate to the developmental level of the children and the defined purpose of the program shall not be a duplication of the elementary school curriculum.

109.1(8) The child care center operator, executive or board shall provide and carry out a plan for staff training and development.

109.1(9) The child care center operator or executive shall be responsible for the center's administration and programs, and be concerned for the child's development.

109.1(10) Requirements and procedures for mandatory reporting of suspected child abuse and neglect shall be posted where they can be read by staff. Methods of identifying and reporting suspected child abuse and neglect shall be discussed with all staff.

109.1(11) Centers licensed for twelve or fewer children need not comply with 109.1(1), 109.1(3), 109.1(4), 109.1(5), and 109.1(8).

498—109.2(237A) Records. The child care center shall keep records and reports on the staff, including all those persons counted in the child/staff ratio; the children; center finances; and attendance.

109.2(1) Personnel records shall contain information on:

a. Employment application, including age, education, and previous work history.

b. A statement signed by each individual that there has been no conviction by any law of any state involving lascivious acts with a child, child neglect, or child abuse.

c. The status of any current treatment of alcoholism, drug abuse, or child abuse.

d. Physical examination report or religious exemption waiver.

e. Professional growth and development showing a minimum attendance of six hours of in-service training annually for each child care staff person, and minimum attendance of one staff person annually at a workshop, conference, or college course for outside professional training.

f. Salary and benefit records.

g. A copy of Child Day Care Staff Criminal Records Check, Form SS-1207-3, and Department of Public Safety Check, Form SS-2203.

109.2(2) An individual file for each child shall be maintained in the center and shall contain:

a. Enrollment information including an emergency telephone number, next of kin, and who has permission to pick up the child.

b. Name, address, and telephone number of the child's regular source of health care.

c. Physical examination report which shall include allergies and restrictive conditions.

d. Parent permission for center-sponsored field visits.

e. Permission to secure emergency care and written plan of procedure signed by the parent.

f. Accident and incident reports for the child.

g. Any professionally prescribed treatment.

109.2(3) Signed and dated immunization cards provided by the state department of health shall be on file for each child enrolled.

109.2(4) A separate file or listing of emergency telephone numbers for each child shall be maintained near the telephone.

109.2(5) A bookkeeping system shall be maintained, including necessary fiscal files.

109.2(6) Centers licensed for twelve or fewer children need not comply with 109.2(1)"*a*", 109.2(1)"*e*" and 109.2(4).

498—109.3(237A) Health and safety policies. The child care center shall establish definite health policies, including, but not limited to:

109.3(1) The child care center shall require each preschool age child to have an admission physical examination report signed by a licensed physician or designee in a clinic supervised by a licensed physician. This report shall include an immunization record that is in compliance with the Iowa state health department regulations. This written report shall include past health history, status of present health and recommendations for continued care when necessary. A statement of health condition signed by a physician or designee shall be submitted annually thereafter. For the school age child, a copy of the most recent school physical examination and immunization record shall be acceptable.

Nothing in this rule shall be construed to require medical treatment or immunization for staff or the minor child of any person who is a member of a church or religious organization which is against medical treatment for disease. In such instances, an official statement from the organization shall be incorporated in the record.

109.3(2) The child care center shall have a written plan for medical emergencies and written consent of the parent or guardian for emergency care of the children and shall administer no medication including nonprescription drugs to any child without the parents or guardian's written authorization. Parent authorization shall be on file for each prescribed medication. Each prescription drug shall be accompanied by a physician's/pharmacist's direction.

a. The director or administrator shall designate one person at one time in each assigned group to administer all medications. When medications are administered, it shall be recorded and retained on file.

b. Medications shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. All medication shall be kept under lock and key, or stored in a refrigerator in a separate compartment with proper security.

109.3(3) Each child shall have direct contact with a staff person upon his arrival for the early detection of apparent illness, communicable disease, or unusual condition or behavior which may adversely affect the child or the group.

109.3(4) A quiet area under supervision shall be provided for a child who appears to be ill or injured. The parents or a designated person shall be notified of the child's health status.

109.3(5) Individual towels, paper or cloth, and facilities for keeping them shall be provided. If individual toilet articles are provided, they shall be kept in a sanitary manner.

109.3(6) Emergency plans for fire, tornado, and flood (if area is susceptible to floods) shall be written and posted in a conspicuous place. Emergency plan procedures shall be practiced at least once a month for fire and at least quarterly for tornado.

498—109.4(237A) Personnel. In these rules qualified staff shall mean the director or administrator or person considered part of the staff ratio.

109.4(1) The onsite director or administrator for a facility licensed for twenty or fewer children shall be an adult and shall:

a. Have two years of administrative or program experience in a child care center, or be able to demonstrate an equivalent amount of other child development related experience, employment or educational experience.

b. Have completed high school or an equivalent program. Persons who do not meet this educational requirement, and who possess unusual qualifications or experience in the child age group with which they will be working, could be employed with the approval of the department of human services.

c. Be at least eighteen years of age.

109.4(2) The onsite director or administrator employed after April 1, 1984 by a facility licensed for more than twenty children shall be an adult and shall have a valid first aid certificate. The director or administrator shall also have three semester hours of coursework in administration, or, one year on the job business related experience in finance, personnel, supervision, recordkeeping or budgeting. The director or administrator shall also meet all of the requirements in one of the following paragraphs:

a. Three years' experience working with children in a child care center; high school graduate or have passed a General Education Development Test (GED), and ten continuing educational units (CEU's) in a child care related field or one of the following:

(1) Education documentation equivalent to ten CEU's in a child related field,

(2) Six semester or equivalent quarter hours of coursework in child development, lower elementary or early childhood education,

(3) A combination of CEU's or the equivalent education and semester or quarter hours of college work in areas listed above.

b. Child care center employee with a child development associate (CDA) credential or a technical or community college one-year training program; high school education or GED and three years' experience working with children in a child care center (experience can be concurrent with obtaining a CDA).

c. Six years' experience as a family day care home provider with a minimum of two years as a licensed or registered family day care home; high school graduate or GED; and ten CEU's in a child related field or one of the following:

(1) Education documentation equivalent to ten CEU's in a child care related field.

(2) Six semester or equivalent quarter hours of coursework in child development, lower elementary or childhood education.

(3) A combination of CEU's or equivalent education and semester or quarter hours of college work in areas listed above.

d. A two-year associate college degree in early childhood education or child development and two years of noncollege related experience working with children in a child care facility.

e. Two years of a four-year degree program in child development, early education or lower elementary education, minimum of twelve semester hours of coursework in child development, early childhood education or lower elementary education and two years of noncollege related experience working with children in a child care facility.

f. Four-year degree in child development, lower elementary or early childhood education and one of the following:

(1) One year of noncollege related experience working with children in a child care facility.

(2) Four years' experience working with child care centers in a consulting or training capacity.

g. Four-year degree in a nonchild related field; twelve semester hours in child development, early childhood education or lower elementary education; and two years' experience in a child care facility.

h. A master's degree in behavioral sciences, and three years' experience working with child care centers in a consulting or training capacity.

109.4(3) Persons counted as part of the staff ratio, including the director or administrator, must be involved with children in programming activities and shall meet the following requirements:

a. Demonstrate competence in working independently with children.

b. Be at least sixteen years of age, except the director who must be at least eighteen years old.

c. At least one staff member on duty shall have a valid certificate in standard first aid or documentation of equivalent training.

109.4(4) Staff ratio shall be as follows:

Age of children	Minimum ratio of staff to children
Two weeks to two years	One to every four children
Two years	One to every six children
Three years	One to every eight children
Four years	One to every twelve children
Five years to ten years	One to every fifteen children
Ten years and over	One to every twenty children

a. Regardless of the staff ratio in subrule 109.4(4), when seven or more children five years of age or younger are present, basic minimum qualified child care staff shall consist of two people on duty. Combinations of age grouping shall have staff determined on the age of the youngest child in a group.

b. Every child-occupied program and nap room shall have adult supervision present in the room. The minimum staff ratio shall be maintained in the center during nap time.

c. In transporting seven or more preschool children, any child care vehicle shall have a minimum of two staff members or other adults present.

d. Any child care center sponsored preschool aged program activity conducted away from the licensed facility shall provide a minimum of one additional responsible person over the required staff ratio for the protection of the children.

109.4(5) Centers licensed for twelve or fewer children need not comply with 109.4(1)*"a"* and 109.4(4)*"b"*.

109.4(6) When a volunteer is included in the staff ratio count for more than ten hours in any calendar month, the volunteer shall meet all the personnel requirements in this chapter and Iowa Code chapter 237A.

498—109.5(237A) Physical facilities.

109.5(1) The minimum program room size shall be eighty square feet.

109.5(2) The child care center shall have thirty-five square feet per child of usable indoor floor space maintained in a clean and sanitary manner. When floor space occupied by cribs is counted as usable floor space, there shall be forty square feet of floor space per child in those rooms. There shall be seventy-five square feet in outdoor recreation area per child using the space at any given time. Kitchens, bathrooms, and halls may not be counted in the square footage per child or used as regular program space. Cooking stoves shall not be placed in the

program area. For programs of two and one-half hours or less, outdoor space may be waived with the approval of the department providing there is suitable substitute space and equipment.

109.5(3) All stairways used by children shall be provided with hand rails within reach of the children and maintained free of all obstacles.

109.5(4) In all centers, the following minimum requirements shall be met:

a. Ceiling height for all program rooms shall be a minimum of seven feet.

b. Rooms not having air conditioners or mechanical ventilation shall have a ratio of window area of eight percent of floor space or more.

c. All rooms shall be ventilated, without drafts, by means of windows which can be opened or by an air-conditioning or mechanical ventilating system.

d. All windows used for ventilation shall be screened with sixteen or smaller mesh wire.

e. Areas used by the children shall be heated when the temperature falls below 68 degrees so room temperature of 68 degrees to 72 degrees is maintained at the floor level. Radiators and hot water pipes shall be screened or insulated to prevent burns.

f. Lighting capacity to produce a light intensity of twenty foot candles in the program area shall be provided.

109.5(5) Premises used for outdoor play by the center shall be maintained in good condition throughout the year; shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child; and shall provide both sunshine and shade areas. The premises shall be kept free from litter, rubbish and flammable materials at all times; and shall be free from contamination by drainage or ponding of sewage, household waste, or storm water.

109.5(6) The facility and premises shall be maintained in a clean, sanitary, and safe manner.

109.5(7) An area shall be provided properly and safely equipped for the use of infants and free from the intrusion of children over two years of age. Children over eighteen months may be grouped outside this area.

109.5(8) One functioning toilet and one lavatory for each fifteen children or fraction thereof, shall be provided in a room with natural or artificial ventilation. Training seats or chairs shall be allowed for children under two years of age. There shall be handwashing facilities with hot and cold running water for child care personnel in rooms where infants are housed or in an adjacent area other than in the kitchen.

109.5(9) A telephone in working order shall be available in the center with emergency phone numbers posted adjacent to the phone.

498—109.6(237A) Food services.

109.6(1) *Nutritionally balanced meals.* During regular meal times the center shall serve each child a full nutritionally balanced meal which provides at least one-third of the child's daily nutritive allowances, except breakfast which provides at least one-fourth.

109.6(2) *Snack and meal time supervision.* A staff member shall sit with the children at meal time and when snacks are served.

109.6(3) *Menu planning.* Menus shall be planned at least one week in advance. Such menus shall be dated, posted, and kept on file at the center. Notations shall be made for special dietary needs of the children.

a. Menu planning shall include a variety of foods and varying textures, flavors, and colors that will provide children with many different food experiences, and help stimulate their interests in foods.

b. Each noon or evening meal menu shall include a bread or cereal type food, a meat or protein food, a vegetable, a fruit and milk.

Meals shall consist of a variety of foods each day based on the following minimums established for preschoolers:

Breakfast - ½ cup of milk; ¼ cup of juice or fruit; ½ slice of bread or ¼ cup of cereal or equivalent.

Lunch or supper - ½ cup of milk; 1 ounce (edible portion as served) of lean meat or an equivalent quantity of a protein food; ¼ cup each of two vegetables or ¼ cup each of two fruits, or a combination of each; ½ slice of bread or equivalent; ½ teaspoon of butter or fortified margarine.

c. Children remaining at the center two hours or longer shall receive midmorning and midafternoon nourishment.

d. Drop-in center means a center which provides no more than fifty hours of child care per month for every child in care. Drop-in centers need not comply with 109.6(1) and 109.6(3)*"a"* and *"b"*, provided that sack lunches are supplemented as needed to insure that full nutritionally balanced meals are served.

109.6(4) *Feeding of children under two years of age.*

a. All children under six months of age are to be held during feeding. No bottles are to be propped for children of any age.

b. Single service ready-to-feed formulas shall be used for children three months and younger unless otherwise ordered by a parent or physician.

c. Grade A pasteurized milk shall be used for children not on formula unless otherwise directed by a physician.

d. Special formulas prescribed by a physician shall be made available for the child who has a feeding problem.

e. Spoon feeding shall be adapted to the developmental need of the child.

109.6(5) *Food preparation and storage.*

a. Sufficient refrigeration space shall be provided for holding perishable foods at a maximum of 40 degrees F., and thermometers shall be maintained in the refrigerator.

b. Kitchens shall be clean, well lighted and ventilated, and free of rodents and insects.

c. Aseptic techniques shall be used in the preparation of all milk mixtures and other foods prepared in the center.

d. The person preparing meals must maintain good personal hygiene and appropriately covered hair while preparing food. Food shall not be handled by cooks with open sores or bandages on their hands unless wearing protective gloves.

e. A sufficient number of flytight, watertight garbage and rubbish containers shall be provided to properly store all material between collections. Containers must be maintained in a sanitary condition outside the building and away from the play area.

f. No chipped or cracked dishes shall be used.

g. Nondisposable dishes and silverware shall be properly cleaned by prerinsing or scraping, washing, sterilizing and airdrying. A dishwashing machine must provide a minimum wash temperature of 140 degrees F. For hand dishwashing at least a two compartment sink or comparable facility must be available. Tableware shall be either rinsed in water of a minimum of 180 degrees F. or rinsed in a chemical sanitizing agent and air dried. No tableware shall be towel dried.

109.6(6) *Water supply.*

a. Water for drinking and culinary purposes shall be from a public water system when available.

b. Private water supplies for drinking and culinary purposes shall be located and constructed in accordance with recommendations outlined in the Iowa state department of health bulletin, "Sanitary Standards for Water Wells". Water shall be of satisfactory bacteriological quality as shown by annual laboratory analysis. When the facility provides care for children under two years of age, a nitrate analysis shall also be obtained.

c. Drinking fountains shall be maintained in a clean and sanitary manner and shall be so constructed and located as to be accessible for use by the children at all times.

d. If drinking fountains are not available, individual single service cups shall be provided in a sanitary dispenser and used only once. When individual drinking cups are used they shall be kept in a sanitary manner.

498—109.7(237A) Activity program requirements.

109.7(1) The program conducted daily in a child care center shall provide:

a. Experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being and shall provide for both gross and fine motor development.

b. A schedule of activities with sufficient flexibility to respond to the needs of the individual children.

c. Both active and quiet learning experiences which promote the development of skills, social competence, self-esteem, positive self-identity, and creative expression.

d. Experiences in harmony with the ethnic and cultural backgrounds of the children.

109.7(2) *Discipline.*

a. Corporal punishment including spanking, shaking and slapping shall not be used.

b. Punishment which is humiliating or frightening shall not be used.

c. Punishment shall not be administered because of a childs illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.

d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about such child or such child's family.

e. Nothing in this rule shall preclude the use of professionally prescribed treatment for the severely retarded or handicapped. The treatment plan shall be recorded in the child's record.

109.7(3) Play material and equipment for both indoor and outdoor play shall be in sufficient variety and quantity to meet the interests and needs of the children. Equipment and materials shall be suitable for the age range served and shall be selected according to the type of supervision required. All equipment shall be kept in good condition, free of sharp, loose, or pointed parts, and, if painted, only lead free paint shall be used. Permanent outdoor play equipment must be firmly anchored.

a. Materials and equipment shall be provided to encourage muscular activity, social and dramatic play, intellectual growth, creative expression and shall be of safe construction and materials that are easily cleaned. When a child is eating or participating in programming activities at the table there shall be eighteen or more inches of table space per child.

b. The program shall provide for a nap or quiet time for all preschool age children present at the center for five or more hours.

c. A clean washable individual cot, bed, or crib and bedding to cover both cot, bed, or crib and child shall be provided for each child who naps. Mats may be substituted for physically handicapped children.

d. There shall be at least two feet of space on all sides of the cot, bed, or crib except where the cot, bed, or crib is adjacent to the wall. Cribs shall not be stacked one on top of the other, nor attached one to the other except those cribs in use by a licensed center prior to the adoption of this rule.

109.7(4) A child care center serving children two weeks to two years old must provide an environment which protects the children from physical harm, but is not so restrictive as to inhibit physical, intellectual, emotional and social development.

a. Stimulation shall be provided through being held, rocked, played with and talked with individually several times each day. Insofar as possible, the same adult should care for the same child. This includes care during feeding and toileting.

b. Each infant's diaper shall be changed as frequently as needed in his own crib or on a surface which is cleaned and sanitized between each infant change. When changing diapers the infant shall be washed and dried, using his individual toilet accessories. There shall be a covered, waterproof container for the storage of soiled diapers and clothing.

c. Highchairs shall be equipped with a safety strap and shall be constructed so the chair will not topple.

d. Washable toys, large enough so they cannot be swallowed, shall be provided. Toys shall have no sharp edges or removable parts.

e. A crib shall be provided for each infant up to eighteen months of age. Each crib shall be of sturdy construction with bars closely spaced so a child's head cannot be caught, and have clean, individual bedding, including sheets and blankets. Crib railings shall be fully raised and secured when the child is in the crib. Each mattress shall be completely and securely covered with waterproof material. When plastic materials are used, they shall be heavy, durable and not dangerous to children. A child shall not be placed directly on the waterproof cover. A crib shall be provided for the number of children present at any one time and shall be kept in a clean and sanitary manner and always cleaned and changed upon the change of an occupant. There shall be no restraining devices of any type used in cribs. The minimum spacing between cribs shall be two feet on any side except that which is next to the wall.

f. When play pens are provided, no more than one child shall be placed in one at any time.

g. Centers licensed for twelve or fewer children may substitute a playpen for a crib in 109.7(4)"*e*" providing all other requirements within that paragraph are met.

109.7(5) A child care center offering night care shall provide for the special needs of children during the night.

a. A selection of toys for quiet activities shall be available.

b. Bathing facilities shall be provided. Comfortable individual cots, cribs, or beds, complete bedding, and night clothes shall be available.

498—109.8(237A) Parental participation.

109.8(1) Opportunity shall be provided for parents at times convenient to them to observe their children in the child care center and whenever possible to work with the program.

109.8(2) Whenever a nonprofit child care center provides day care for forty or more children, there shall be a policy advisory committee or its equivalent at the policy making level. Committee membership shall include not less than fifty percent parents or parent representatives, selected by the parents themselves in a democratic fashion. The committee shall perform productive functions which may include, but are not limited to:

a. Initiating suggestions and ideas for program improvements.

b. Assisting in organizing activities for parents.

c. Encouraging parental participation in the program.

498—109.9(237A) Licensure procedures.

109.9(1) *Application for license.*

a. Any adult individual or agency has the right to make application for a license.

b. Requested reports including the fire marshal's report and other information relevant to the licensing determination shall be furnished to the department by the applicant within ninety days of application.

c. Applicants shall be notified of approval or denial within one hundred twenty days of application.

109.9(2) *License.*

a. An applicant showing full compliance with center licensing laws and these rules shall be issued a license for one year.

b. A new license shall be obtained when the center moves, expands, or the facility is remodeled to change licensed capacity.

c. A new license shall be obtained when another adult or agency assumes ownership or legal responsibility for the facility.

109.9(3) *Provisional license.*

a. A provisional license may be issued for a period up to one year when the center does not meet all standards imposed by law or these rules.

b. A provisional license shall be renewable when written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the department.

109.9(4) *Denial.* Initial applications or renewals shall be denied when:

a. The applicant does not comply with center licensing laws and these rules in order to qualify for a full or provisional license.

b. The facility is operating in a manner which the department determines impairs the safety, health, sanitation, hygiene, comfort, or well-being of children in care.

c. The director or an employee has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. The director or an employee has a history of substantiated child abuse or neglect records.

e. There is a substantiated sexual abuse report on the director or a staff member of the facility.

109.9(5) *Revocation and suspension.* A license shall be revoked or suspended if corrective action has not been taken when:

a. The facility does not comply with the licensing requirements imposed by law or these rules.

b. The facility is operating in a manner which the department determines impairs the safety, health, sanitation, hygiene, comfort, or well-being of the children in care.

c. The director or an employee has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. The director or an employee has a history of substantiated child abuse or neglect reports.

e. There is a substantiated child sexual abuse report on the director or a staff member of the facility.

109.9(6) *Adverse action.*

a. Notice of adverse actions (denial, revocation, or suspension) and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 498—chapter 7.

b. An applicant or licensee affected by an adverse action may request a hearing by means of a written request directed to the local office, district office, or central office of the department of social services within thirty days after the date the official notice was mailed containing the nature of the denial, revocation, or suspension.

These rules are intended to implement Iowa Code section 237A.12.

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CHAPTERS 110 to 116
Reserved

CHAPTERS 117 to 129
Reserved

TITLE XIII
SOCIAL SERVICES RESOURCES
CHAPTER 130
GENERAL PROVISIONS
[Prior to 7/1/83, Social Services(770) ch 130]

498—130.1(234) Definitions.

130.1(1) *Family.* "*Family*" includes the following members:

a. Legal spouses (including common law) who reside in the same household.

b. Natural, adoptive, or step mother or father, and children who reside in the same household.

c. An individual who lives alone or who resides with a person, or persons, other than a spouse or minor child.

d. A child or minor siblings who reside with a person, or persons, not legally responsible for their support.

130.1(2) Reserved.

This rule is intended to implement Iowa Code section 234.6.

498—130.2(234) Application.

130.2(1) Application for social services shall be made at the local office of the department of human services on the form Application for Social Services, SS-1120-0, available at the local office.

130.2(2) The application may be filed by the applicant, the applicant's authorized representative, or where the applicant is incompetent or incapacited, someone acting responsibly for the applicant.

130.2(3) The date of application is the date the application form is signed and dated.

130.2(4) The application shall be approved or denied within thirty days from the date of application and the applicant notified of the decision. The decision shall be mailed or given to the applicant on the date the determination is made.

130.2(5) Eligibility shall be redetermined in the same manner as an application at least every six months except that for individuals whose family's gross monthly income is derived exclusively from social security benefits, supplemental security income, state supplementary assistance, or a combination thereof, redetermination shall be made at least every twelve months.

This rule is intended to implement Iowa Code sections 234.4 and 234.6.

498—130.3(234) Eligibility.

130.3(1) Eligibility factors for services available through the department are individual need for a service and family income except when services are provided without regard to income or when services are directed in a valid court order.

a. Individual need is established when the service to be provided is directed at and will facilitate an individual in reaching or maintaining one of the goals and objectives in 130.7(1). Except when the court establishes need, the department shall do so in accordance with individual service chapters. The department shall determine the number of units to be provided.

b. The block grant service to be provided shall be contained in the pre-expenditure report and listed for the specific district and county. Service available through the department and funded by resources other than the social service block grant is identified in rules for that specific service.

c. Service shall be provided only when funds are available for service delivery.

d. Persons are financially eligible for services when they are in one of the following categories:

(1) Income maintenance status. They are recipients of aid to dependent children, or those whose needs were taken into account in determining the needs of aid to dependent children recipients, or recipients of supplemental security income or state supplementary assistance, or those in the 300 percent group as defined in IAC 498—subrule 75.1(7).

(2) Income eligible status. The monthly gross income according to family size is no more than the following amounts:

Family Size	For Day Care: Monthly Gross Income	All Other Services: Monthly Gross Income Below
1 Member	$ 500	$ 422
2 Members	651	552
3 Members	804	682
4 Members	957	811
5 Members	1,110	941
6 Members	1,264	1,071
7 Members	1,293	1,095
8 Members	1,322	1,119
9 Members	1,350	1,144
10 Members	1,378	1,168

When a family has more than ten members, the monthly maximum income, rounded to the nearest whole dollar, is increased for each additional person by three percent of the income standard for a family of four.

e. Certain services are provided without regard to income which means family income is not considered in determining eligibility. The services provided without regard to income are information and referral, child abuse investigation, child abuse treatment, child abuse prevention services and dependent adult abuse investigation.

f. In certain cases the department shall provide services directed in a valid court order. In these cases the court may determine the need for service and may direct that services are provided without regard to income.

130.3(2) To be eligible for services the person must be living in the state of Iowa. Living in the state shall include those persons living in Iowa for a temporary period, other than for the purpose of vacation.

130.3(3) In determining gross income, all income received by an individual from sources identified by the U.S. Census Bureau in computing median income is considered and includes money wages or salary, net income from nonfarm self-employment, net income from farm self-employment, social security, dividends, interest, income from estates or trusts, net rental income and royalties, public assistance or welfare payments, pensions and annuities, unemployment compensation, worker's compensation, alimony, child support; and veterans pensions. Excluded from the computatior of monthly gross income are the following:

a. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian claims commission or the court of claims.

b. Payments made pursuant to the Alaska Claims Settlement Act to the extent such payments are exempt from taxation under section 21(a) of the Act.

c. Money received from the sale of property, unless the person was engaged in the business of selling such property.

d. Withdrawals of bank deposits.

e. Money borrowed.

f. Tax refunds.

g. Gifts.

h. Lump sum inheritances or insurance payments or settlements.

i. Capital gains.

j. The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons.

k. The value of USDA donated foods.

l. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food program for children under the National School Lunch Act, as amended.

m. Earnings of a child fourteen years of age or under.

n. Loans and grants obtained and used under conditions that preclude their use for current living expenses.

o. Any grant or loan to any undergraduate student for educational purposes made or insured under the Higher Education Act.

p. Home produce utilized for household consumption.

q. Earnings received by any youth under Title III, Part C—Youth Employment Demonstration Program of the Comprehensive Employment and Training Act of 1973.

r. Stipends received by persons for participating in the foster grandparent program.

s. The first sixty-five dollars plus fifty percent of the remainder of income earned in a sheltered workshop or work activity setting.

t. Payments from the low-income home energy assistance program.

130.3(4) Reserved.

130.3(5) Temporary absence. The composition of the family group does not change when one, or more, of the group members is temporarily absent from the household.

"*Temporary absence*" means:

a. A medical absence anticipated to be less than three months.

b. An absence for the purpose of education or employment.

c. When a family member is absent and intends to return home within three months.

This rule is intended to implement Iowa Code section 234.6. 1983 Iowa Acts, chapter 201, section 4, and 1983 Iowa Acts, chapter 194, section 13, subsection 3.

498—130.4(234) Fees. The department may set fees to be charged to clients for services received. Such fees will be charged to those clients eligible under rule 130.3(234), but not those receiving services without regard to income due to a protective service situation, except as specified in 770—chapter 149. Nothing in these rules shall preclude a client from voluntarily contributing toward the cost of service.

130.4(1) *Collection.* The provider shall collect fees from clients. The provider shall maintain records of fees collected, and such records shall be available for audit by the department or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two follow-up notices of nonpayment.

130.4(2) *Monthly income.* The amount of the fee shall be determined by monthly income according to family size. When an otherwise eligible client has monthly income above that shown on the table, no Title XX funds are available for the service, and the client or another resource shall pay the full cost of the service. Monthly income is shown in the following table.

MAXIMUM MONTHLY INCOME ACCORDING TO FAMILY SIZE

	1	2	3	4	5	6	7	8	9	10
A	$ 288.00	$ 375.00	$ 464.00	$ 551.00	$ 640.00	$ 727.00	$ 744.00	$ 761.00	$ 776.00	$ 793.00
B	344.00	449.00	555.00	660.00	766.00	871.00	891.00	911.00	930.00	950.00
C	400.00	523.00	646.00	769.00	892.00	1015.00	1038.00	1061.00	1084.00	1107.00
D	457.00	598.00	738.00	879.00	1019.00	1161.00	1186.00	1213.00	1239.00	1265.00
E	514.00	672.00	831.00	989.00	1147.00	1305.00	1335.00	1364.00	1394.00	1423.00
F	571.00	747.00	923.00	1099.00	1274.00	1450.00	1483.00	1516.00	1549.00	1581.00
G	629.00	822.00	1015.00	1208.00	1402.00	1595.00	1631.00	1667.00	1703.00	1739.00
H	686.00	897.00	1107.00	1318.00	1529.00	1740.00	1779.00	1819.00	1858.00	1897.00
I	743.00	971.00	1200.00	1428.00	1657.00	1885.00	1928.00	1971.00	2013.00	2055.00
J	800.00	1046.00	1292.00	1538.00	1784.00	2030.00	2076.00	2122.00	2168.00	2213.00

When a family has more than ten members, monthly income is determined by:

a. Multiplying each income figure in the four member eligibility column by three percent, and round to the nearest dollar.

b. Multiplying the result in paragraph "*a*" by the number in the family in excess of ten.

c. Adding the results from paragraph "*b*" to the amounts shown in the column for a ten-member family.

130.4(3) *Day care.* The fees for child day care in a licensed center or registered family day care home are shown in the following table.

Child Day Care

	Per Day	Per ½ Day	Per Hour
A	.00	.00	.00
B	.60	.30	.06
C	.75	.37	.08
D	1.00	.50	.10
E	1.50	.75	.15
F	2.00	1.00	.20
G	2.50	1.25	.25
H	3.00	1.50	.30
I	3.50	1.75	.35
J	4.00	2.00	.40

130.6(5) Monitor the case to ensure that eligibility continues, services are received, plans are adjusted as needed, services reporting system reporting is correct, and the case is canceled when appropriate, according to these rules.

130.6(6) Ensure that services are unavailable elsewhere without cost to the client.

This rule is intended to implement Iowa Code section 234.6.

498—130.7(234) Service plan. The department worker shall develop a service plan with the client for every individual reported in the service reporting system, and record it in the department's case record with all specific service or program plans. Any specific service or program plan shall be consistent with the service plan. A copy of the service plan shall be provided to the client, parent or representative.

130.7(1) Services shall be directed toward the Title XX goals of:

a. Achieving or maintaining self-support to prevent, reduce or eliminate dependency.

b. Achieving or maintaining self-sufficiency, including reduction or prevention of dependency.

c. Preventing or remedying neglect, abuse or exploitation of children or adults unable to protect their own interest, or preserving, rehabilitating or reuniting families.

d. Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care.

e. Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

130.7(2) The recorded service plan shall contain, but not be limited to, the following:

a. The goal and objective to which the plan is directed, stated in a clear manner indicating the specific services required to achieve or maintain the Title XX goal to meet the needs of the particular client.

b. Objectives for specific services which are measurable and have time frames for completion.

c. A summary of all pertinent information relating to the client and the client's situation relative to need, and containing, but not limited to, the following:

(1) Emotional behavior.
(2) Social aspects.
(3) Historical perspective.
(4) Reasons for success or lack of success.

d. Information on case entries that will substantiate the client's eligibility for service.

e. A target date for re-evaluation of the case plan based on assessment of need, which shall not exceed six months.

f. A review of financial eligibility in accordance with 130.2(5).

g. The reason for termination or reduction of any or all services.

130.7(3) The re-evaluation of the service plan shall include all components listed under 130.7(2).

This rule is intended to implement Iowa Code section 234.6.

498—130.8(234) Monitoring and evaluation. The department of human services shall evaluate and monitor client eligibility, on a sample basis, by verifying all eligibility factors, including income, and evaluating the services actually received.

This rule is intended to implement Iowa Code section 234.6.

498—130.9(234) Entitlement. There is no automatic right to ongoing service in any service category from one fiscal year to the next.

This rule is intended to implement section 234.6, The Code.

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transmittal of funds, accounting, and reversion of unspent funds. If the initial agreement is amended, it shall be done formally.

498—145.3(234) Iowa purchase of social services contract—agency providers.

145.3(1) *Initiation of contract proposal.*

a. Right to request a contract. All potential provider agencies have a right to request a contract.

b. Initial contact. The initial contact should be between the potential provider and the district administrator for the district in which the provider's headquarters is located. In the case of out-of-state providers this contact can be with the district administrator for either the closest district or the district initiating the contact.

c. Contract proposal development. When the district administrator determines that a contract is to be developed, a project manager will be assigned who will assist in contract development and processing. The project manager will assist the contractor in completing the contract proposal and fiscal information appropriate to the contract which will include documentation that the conditions of participation required below are met.

d. Contract proposal approval/rejection. Before a contract can be effective, it shall be signed by the following individuals within the timeframes provided:

(1) Authorized representative of the provider agency.

(2) County director of the department's local office within one week from receipt.

(3) District administrator within one week from receipt.

(4) Manager, purchase of service section within thirty days from receipt.

The provider shall be notified of delays in the process or of rejection of the proposal. This notification, along with an explanation, shall be in writing. Payment cannot be made until the contract is signed by the provider's authorized representative and the manager of the purchase of services section.

e. Criteria for rejection. The following criteria may cause a proposed contract to be rejected:

(1) The service is not needed by department clients.

(2) The service is not in the state plan for the district(s) or county(ies) to be served by the program.

(3) No funds are available for the service being proposed.

(4) The proposed contract does not meet applicable rules, regulations, or guidelines, including service definition.

f. Contract effective date. When the agreed upon contract conditions have been met, the effective date of the contract is the first day of an agreed upon month following signature by the manager, purchase of service section.

145.3(2) *Contract administration.*

a. Contract management. During the contract period the assigned project manager will be the contract liaison between the department and the provider and shall be contacted on all interpretations and problems relating to the contract. The project manager will follow the issues through to their resolution. The project manager will also monitor performance under the contract and will provide or arrange for technical assistance to improve the provider's performance, if needed.

b. Contract amendments. The contract shall only be amended upon agreement of both parties. Amendments which affect the cost of services shall include reestablishment of applicable rates.

c. Contract renewal. A joint decision to pursue renewal of the contract must be made at least sixty days prior to the expiration date. Each contract shall be evaluated and the results of the evaluation taken into consideration in the decision on renewal. This evaluation may involve use of the Monitoring and Evaluation Review Guide, form SS-1637-0, or other evaluation tools specified in the contract.

d. Contract termination. Causes for termination during the period of the contract are:

(1) Mutual agreement of the parties involved.

(2) Upon demonstration that sufficient funds are unavailable to continue the service(s) involved.

(3) If required reporting is not made.

(4) Failure to make financial and statistical records available for review.

(5) Failure to abide by the provisions of the contract.

145.3(3) *Conditions of participation.* The provider shall meet the following standards:

a. Licensure/approval/accreditation. The provider shall obtain any license, approval, and accreditation required by law, regulation or administrative rules, or standards of operation required by the state or meet federal regulation before the contract can be effective. Out-of-state providers shall meet Iowa licensing standards related to treatment, professional staff to client ratio, and staff qualifications.

b. Signed contract. A contract can only be effective when signed by all parties required in 145.3(1)"*d*".

c. Civil rights laws. The provders shall be in compliance with all federal, state and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the department to come into compliance.

d. Title VI compliance. The contractors shall be in compliance with Title VI of the 1964 Civil Rights Act, as amended, and all other federal, state, and local laws and regulations regarding the provision of services or have a written plan approved by the department to come into compliance.

e. Section 504 compliance. The providers shall be in compliance with all federal (Rehabilitation Act of 1973, as amended), state, and local section 504 laws and regulations or have a written work plan approved by the department to come into compliance.

f. Affirmative action. The providers shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the department to come into compliance.

g. Abuse reporting. The provider shall have an approved policy and procedure for reporting abuse or neglect of children and dependent adult abuse.

h. Confidentiality. The provider shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 770—chapter 9.

i. Client appeal/grievances. Clients receiving service through a purchase of service contract have the right to appeal adverse decisions made by the department or the provider. The provider shall have an approved policy and procedure for handling client appeals and grievances and shall provide information to clients about their rights to appeal.

j. Client reports. The provider shall maintain the following client records:

(1) Provider service plan/individual program plan. Providers shall have a written service plan/individual program plan for each client within thirty days of service initiation. This shall include a concise description of the situation or area which will be the focus of the service; statement of the goal(s) to be achieved through the delivery of services; time limited and measurable objectives which will lead to the attainment of the goal to be achieved; specific service components, frequency, and the assignment of responsibility for the provision of the components; and the month and year when it is estimated the client will be able to achieve the current goal(s) and objectives.

(2) Quarterly progress reports. Quarterly progress reports shall be sent to the department caseworker responsible for the client. The first report shall be submitted to the department three months after service is initiated and quarterly thereafter, unless provided for otherwise in rules for a specific service. The progress report shall include a description of the specific service components provided, their frequency, and who provided them; the client's progress with respect to the goals and service objectives; any recommended changes in the service plan/individual program plan and for all placement cases; interpretation of client's reaction to placement; a summary of medical or dental services that were provided; a summary of educational/vocational progress and participation; and a summary of the involvement of the family with the client and the services.

Reports for mental health services, purchased foster family home services, and independent living service shall also include supporting documentation including dates of client and col-

b. Signed contract. A contract can only be effective when signed by all parties required in 145.5(1)"*d*".

c. Civil rights laws. The contractors shall be in compliance with all federal, state, and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the department to come into compliance.

d. Title VI compliance. The contractors shall be in compliance with Title VI of the 1964 Civil Rights Act, as amended, and all other federal, state, and local laws and regulations regarding the provision of services, or have a written plan approved by the department to come into compliance.

e. Section 504 compliance. The contractors shall be in compliance with all federal (Rehabilitation Act of 1973, as amended), state, and local Section 504 laws and regulations, or have a written work plan approved by the department to come into compliance.

f. Affirmative action. The contractors shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the department to come into compliance.

g. Abuse reporting. The contractor shall have an approved policy and procedure for reporting abuse or neglect of children and dependent adult abuse.

h. Confidentiality. The contractor shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 770—chapter 9.

i. Financial and statistical records. Each contractor of service shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department.

(1) The records shall be available for review at any time during normal business hours by department personnel, the purchase of service fiscal consultant, state or federal audit personnel.

(2) These records shall be retained for a period of five years after final payment.

145.5(4) *Establishing amounts to be paid.* The amounts to be paid under purchase of administrative support contracts are actual approved expenses as negotiated in the contract. Approved items of cost are based on submission of a proposed budget listing those items necessary for provision of the volunteer coordination or technical assistance to be delivered. At the termination of the contract a statement of actual expenses incurred shall be submitted by the contractor.

145.5(5) *Billing procedures.* At the end of each month or as otherwise provided in the contract, the contractor will prepare a billing on a Voucher 1 form of expenses for which reimbursement is permitted in the contract. The claim is to be sent to the district office of the department administering the contract for approval and forwarding for payment.

a. Time limit for submitting claims. The time limit for submission of original claims shall be the same as specified in Iowa Code section 8.13(1).

b. Resubmittals of rejected claims. Valid claims which were originally submitted within the time limit specified in paragraph "*a*" but were rejected because of an error must be resubmitted but without regard to time frames.

145.5(6) *Reviews of department actions.* A contractor who is adversely affected by a department decision may request a review. A review request may cause the action to be stopped pending the outcome of the review process except in cases where it can be documented that to do so would be detrimental to the health and welfare of clients. The procedure for review is:

a. A written request for review shall be sent by the provider within ten days of receipt of the decision in question to the project manager responsible for the contract. This request shall document the specific area in question and the remedy desired. A written response from the project manager shall be provided within ten days.

b. When dissatisfied with the response, the contractor shall, within ten days, submit the original request, the response received, and any additional information desired to the district administrator. The district administrator will study the concerns, the action taken and render

a decision in writing within fourteen days. A meeting with the contractor may be held to clarify the situation.

c. If still dissatisfied, the contractor may request a review within ten days by the manager, purchase of service section. The request for review should include copies of material from paragraphs "*a*" and "*b*" above. The manager, purchase of service section will review the issues and positions of the parties involved and provide a written decision within fourteen days. A meeting with the contractor, project manager, and district administrator or designee may be held.

d. The contractor may appeal this decision within ten days to the commissioner of the department who will issue the final department decision within fourteen days.

145.5(7) *Reviews.* Authorized representatives of the department or state or federal audit personnel have the right upon proper identification to review, using generally accepted auditing procedures, the general financial records of a contractor to determine if expenses reported to the department have been handled as required by 145.5(4). The reviews may be on the basis of an on-site visit to the contractor, the contractor's central accounting office, the office(s) of the contractor's agent(s), a combination of these, or by mutual decision, other locations.

498—145.6(234) County board of supervisors participation contract.

145.6(1) *Contract development.* The district administrator or designee will assist the county board of supervisors in completion of the contract documents.

a. Contract approval/rejection. Before a contract can be effective it shall be signed by the following individuals within the time frames provided:

(1) Chairperson, county board of supervisors.

(2) County director of the department's local office within one week from receipt.

(3) District administrator within one week from receipt.

(4) Manager, purchase of service section within two weeks from receipt.

b. Contract effective date. The effective date of the contract is the first day of an agreed-upon month following signature by the manager, purchase of service section.

c. Contract ending date. The contract ending date shall be specified in the contract but shall not be later than June 30 following the effective date of the contract.

145.6(2) *Contract administration and renewal.*

a. Contract management. During the contract period the district administrator or designee will be the contract liaison between the department and the county board and shall be contacted on all interpretations and problems relating to the contract. When a problem involves a particular service or administrative support contract, the project manager for that contract shall be notified by the contract liaison.

b. Contract amendment. The contract shall be amended when:

(1) The county or department is unable to comply with the existing terms of the contract and contract termination is not being sought.

(2) The county or department agrees to make additional resources available under the contract.

c. Contract termination. The contract may be terminated early if any of the following conditions exist:

(1) County and department agree to terminate the contract early.

(2) County or department fails to comply with contract terms.

d. Contract renewal. A joint decision to pursue renewal of the contract shall be made at least forty-five days prior to expiration of the current contract.

145.6(3) *Conditions of participation.* The contractor shall meet the following standards:

a. Signed contract. A contract can only be effective when signed by all parties required in subrule 145.6(1)"*a*".

b. Civil rights laws. The county shall be in compliance with all federal, state, and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the department to come into compliance.

c. Title VI compliance. The contractors shall be in compliance with Title VI of the 1964

498—145.9(234) Public access to contracts. Subject to applicable federal and state laws and regulations on confidentiality including 770—chapter 9, all material submitted to the department of human services pursuant to this chapter shall be considered public information.

This rule is intended to implement Iowa Code section 234.6(7).

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CHAPTERS 146 and 147
Reserved

CHAPTER 1
THE DEPARTMENT

680—1.1(17A) Establishment of the department of public safety. The state department of public safety was created by an Act of the General Assembly. (Acts of the Forty-eighth General Assembly, chapter 120, 1939) through the consolidation of several departments and divisions to assist co-ordination among the law enforcement agencies at all levels of government within Iowa.

The department of public safety is primarily a law enforcement agency with the responsibility to enforce state laws and also has other administrative duties.

680—1.2(17A) Organization. The department of public safety is administered by a commissioner who is appointed by and serves at the pleasure of the governor. Bureaus which provide planning and staff support, conduct staff inspections and investigate complaints against officers of the department report directly to the commissioner. The rest of the department is divided into six divisions: The administrative services division, the state patrol division, the capitol security division, the communications division, the fire marshal division and the division of criminal investigation.

1.2(1) The administrative services division, through its bureaus, provides primary support services to all line elements in the general field of business administration, data processing, collections, and office management.

1.2(2) The division of state patrol is a law enforcement agency that primarily regulates the orderly flow of traffic on the state's highways, and responds to local law enforcement agencies' requests for emergency assistance. Peace officer members of this division have a duty to detect and apprehend criminals and enforce all state laws. Section 321.2 of the Code imposes motor vehicle law enforcement duties upon this division and the commissioner may and does assign to this division other law enforcement responsibilities.

This division also assigns officers to the promotion of motor vehicle and other safety education, and will provide emergency transportation of substances needed by doctors, veterinarians, or hospitals, and support security for special events. Any citizen requesting such services may contact Division or District Headquarters, the addresses for which are listed in this chapter.

This division is also responsible for the highway emergency long-distance phone (HELP). Anyone calling 1-800-362-2200 from anywhere in Iowa will be connected with someone at the District Headquarters in Des Moines who will try to provide immediate assistance.

1.2(3) The division of capitol security is a law enforcement agency which performs police and security work, regulates the orderly flow of traffic, and preserves the peace in and around the seat of state government and at Terrace Hill.

1.2(4) The communications division provides total police communications to the public safety sector including the department of public safety, police departments, sheriffs' offices, and other local state and federal criminal justice agencies.

1.2(5) The fire marshal division is responsible for the promotion and enforcement of fire safety, fire protection, elimination of fire hazards, and the enforcement of laws, rules and regulations concerned with fire prevention, such as the storage, transportation, handling, and use of inflammable liquids, combustibles, explosives, and liquid petroleum gas, and inspection of electric wiring, heating, and adequate fire exits for public buildings.

This division is also responsible for investigation into the cause, origin and circumstances of fires and the enforcement of all laws relating to the suppression of arson and apprehension of those persons suspected of arson. These functions are performed through the bureau of fire prevention and the bureau of arson and explosives.

1.2(6) The division of criminal investigation is a law enforcement unit that is made up of the bureau of criminal investigation and the bureau of narcotic and drug enforcement. This division, through the two bureaus, conducts criminal investigations, enforces Iowa's

beer and liquor laws under chapter 123 of the Code, maintains the state's central repository for all criminal history records, and operates the state criminalistics laboratory.

680—1.3(17A) Offices.

1.3(1) Principal office. The principal office for the department is that of the commissioner in the Wallace State Office Building in the Capitol Complex in Des Moines. Its mailing address is the Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319.

1.3(2) Division offices. The principal offices of the divisions of the department are also located in the Wallace State Office Building.

1.3(3) Addresses of district headquarters, fire marshals, radio stations and other offices located outside the principal headquarters may be obtained at the Department of Public Safety's principal office in the Wallace State Office Building.

680—1.4(17A) Methods by which and location where the public may obtain information or make submissions or requests.

1.4(1) Persons wishing to obtain information from or report information to the department may contact any of the offices in 1.3(17A).

1.4(2) Those wishing to make submissions to the department may do so by delivering or forwarding to the administrative services division of the department, the principal offices of the affected division or, if the subject matter is relevant to a specific geographical location, the nearest office as listed in 1.3(17A).

1.4(3) Those making requests of the department may submit such request to the administrative services division or the principal office of the division that would provide the information or as may otherwise be provided in these rules.

1.4(4) Communication of information regarding conflicts with the department, declaratory rulings or rules or initiation of rulemaking by the department shall be directed to the administrative services division as provided in chapter 10 of these rules.

1.4(5) Accident reports filed as required by Iowa Code section 321.266 and which are retained by the department are available to any party to an accident, the party's insurance company or its agent, or the party's attorney on written request and the payment of a $4.00 fee for each copy, paid to the department of public safety. Such request shall be made to the state patrol district headquarters in the district in which the accident occurred.

This rule is intended to implement Iowa Code section 321.271 as amended by 1983 Iowa Acts, chapter 72.

680—1.5(17A) Examination of department records. Chapter 17A and 68A provide all records, including information submitted to the department by any person, are open to the public for examination and copying. The procedure for examining these records is set forth in chapter 10. Some records or information contained in some records are not available to the public and these exceptions are provided in chapters 17A, 68A and 749B.

680—1.6(17A) Legal advice. The attorney general of the state provides legal advice to the commissioner and employees of the department.

680—1.7(17A) Surety companies. When the Code requires the commissioner to approve a corporate surety company, approval by the Iowa insurance department shall be required, and if such approval has been acquired and is continuing, the commissioner's approval will be extended.

680—1.8(17A) Construction of rules. All of the rules of the commissioner and the department are promulgated to describe the department and its procedure, to elaborate on or define some statutory language and to regulate some activities. Each of the sections of chapter 4 of the Code are hereby adopted by reference so as to apply when construing these rules. When the words "statutes" or "general assembly" appear in chapter 4, it is intended the words "rules" and "commissioner" are to be inserted in lieu thereof. Each of the sections of chapter 4 are adopted by reference at least so far as is applicable and not inconsistent with the intend of these rules or repugnant to the context of these rules.

These rules are intended to implement section 17A.3 of the Code.

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REAL ESTATE COMMISSION[700]

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complained against, and any other affected parties, of the results of the informal proceedings and the action taken, if any. Such an informal proceeding shall not preclude the commission from thereafter instituting formal proceedings. In the enforcement of this section, the commission may accept an assurance of voluntary complaince with respect to any act or practice alleged to be violative of these rules or the real estate law from any person who has engaged in, is engaging in, or is about to engage in such acts or practice. Any such assurance shall be in writing and be subject to the approval of the commission. Such assurance of voluntary compliance shall not be considered an admission to violation for any purpose; however, proof of failure to comply with the assurance of voluntary compliance shall be prima facie evidence of a violation of these rules and shall constitute unprofessional conduct.

1.6(2) Reserved.

700—1.7(117) Renewal procedure following expiration. Failure to apply for renewal of a license before expiration shall terminate licensees authority thereunder but the license may be renewed if application for renewal is filed on or before the January 30 following the effective year with a penalty of ninety dollars for each broker's license renewal and a penalty of forty-five dollars for each salesperson's license renewal. If the former licensee does not file for renewal by January 30 following the effective year of the license, the licensee shall be required to file an original application and be examined before a license shall be issued. A renewal application shall be made on forms furnished by the commission and shall include the appropriate renewal fee.

1.7(1) If a salesperson or broker does not renew his license for a period of two years from the date of expiration, he will not be permitted to apply for a license based on past experience, but must qualify for a license as if it were an initial application.

1.7(2) Reserved.

This rule is intended to implement Iowa Code section 117.28.

700—1.8(117) Advertising under own name. Apprentice salespersons, or salesperson, or broker-salespersons are prohibited from advertising under their own name unless they are the owner of the property they are advertising, and therefore have all the rights of a nonlicensee owner.

700—1.9(117) Licensee acting as principal. A licensee shall not acquire any interest in any property nor shall the licensee sell any property in which the licensee has an interest without first making licensee's true position clear to the other party. Satisfactory proof of this fact must be produced by the licensee upon request of the commission.

700—1.10(117) Examinations passed by commission. The commission shall pass upon the examination papers of applicants for either broker's or salesman's license.

700—1.11(117) Conversion of licenses. A broker's license cannot be converted to a salesman's license or vice versa.

700—1.12(117) Commission controversies. The commission is not authorized by law nor will it consider or conduct hearings involving disputes over fees or commissions between co-operating brokers, brokers and salesmen and other brokers.

700—1.13(117) Fees.

Fee for salesperson license	$45.00
Fee for broker or firm	$90.00
Fee for branch office or trade name license for remaining term of main license	$60.00
Fee for duplicate license (Replacement or copy of original license)	$10.00
Fee for change of status, type*, name, employment, conversion, or other transaction (multiple changes at the same time may be made to a license for one fee)	$ 5.00

*Change of type of firm requires a new license and new license fee

Fee for change of address (applies only to sole proprietors and firms)	$ 5.00

Examination fees are paid directly to the testing company at the prevailing rate as determined by the contract between the Iowa Real Estate Commission and the testing company.

This rule is intended to implement Iowa Code section 117.27.

1.14 Rescinded, effective 5/20/81

700—1.15(117) Lotteries prohibited. Lotteries and schemes of sales involving selling of certificates, chances or other devices, whereby the purchaser is to receive property to be selected in an order to be determined by chance, or by some means other than the order of prior sale, or whereby property more or less valuable will be secured according to chance , or the amount of sales made, or whereby the price will depend upon chance, or the amount of sales made, whereby the buyer may or may not receive any property, are declared to be methods by reason of which the public interests are endangered.

700—1.16(117) Signs on property. Placing a sign on any property offering it for sale, rent or lease without the consent of the owner shall be held as against the best interests of the general public.

700—1.17(117) Meetings of the Commission. Meetings of the commission shall be held at the times scheduled by the commission in the offices of the commission in the state capitol or at such other place as may be designated by the commission. Special meetings may be called by the chairman or director of the commission, who shall set the time and place of such meeting.

This rule is intended to implement section 117.11 of the Code.

700—1.18(117) Broker required to furnish progress report. At the expiration of thirty days after an offer to buy has been made by a buyer and accepted by a seller, either party may demand and the broker shall furnish a detailed statement showing the current status of the transaction. On demand by either party the broker shall furnish a detailed current statement on thirty-day intervals thereafter until the transaction is closed.

700—1.19(117) Enforcing a protective clause. To enforce a protective clause beyond the expiration of an exclusive listing contract, there must be a provision for the protective clause in the listing contract which establishes a definite protection period, and the broker must furnish to the owner prior to the expiration of the listing the names and addresses of persons to whom the property was presented during the active term of the listing and for whom protection is sought.

700—1.20(117) Offering of prizes. The offering of prizes or anything of value as an inducement to buy or sell real estate shall be considered payment of a commission to a person who is not a licensed broker or salesman under the provisions of this chapter and a violation thereof.

700—1.21(117) Part-time brokers or broker-salesman. A duly licensed broker whose principal business is other than that of a real estate broker, or one who operates as a salesman for another duly licensed broker, may not sponsor a salesman for his twelve-month apprenticeship period.

700—1.22 Rescinded, effective 4/21/82.

700—1.23(117) Listings. All listing agreements shall be in writing, properly identifying the property and containing all of the terms and conditions under which the property is to be sold, including the price, the commission to be paid, the signatures of all parties concerned and a definite expiration date. It shall contain no provision requiring a party signing the listing to notify the broker of his intention to cancel the listing after such definite expiration date.

1.23(1) A real estate apprentice salesperson or salesperson or broker shall not negotiate a sale, exchange, lease or listing contract, of real property directly with an owner if it is

known that such owner has a written unexpired contract in connection with such property which grants an exclusive right to sell to another broker, or which grants an exclusive agency to another broker.

1.23(2) Net listing prohibited. The taking of a net listing shall be unprofessional conduct. A net listing is an agreement whereby a licensee agrees to take as a commission the proceeds of a sale over and above the selling price agreed in the listing contract.

700—1.24(117) Advertising. A broker shall not advertise to sell, buy, exchange, rent, or lease property in a manner indicating that the offer to sell, buy, exchange, rent, or lease such property is being made by a private party not engaged in the real estate business, and no real estate advertisement shall show only a post office box number, telephone number or street address. Every broker, when advertising real estate, shall use his regular business name or the name under which he is licensed, and shall affirmatively and unmistakably indicate that the party is a real estate broker and not a private party. Each broker when operating under a franchise or trade name other than the broker's own name may license the franchise or trade name with the commission, or shall clearly reveal in all advertising that the broker is the licensed individual who owns the entity using the franchise or trade name.

700—1.25(117) Established office. Every Iowa resident real estate broker who is self-employed shall maintain a bona fide regular established office for the transaction of business in the state of Iowa, which shall be open to the public during business hours.

1.25(1) *Sharing office space.* It shall be acceptable for more than one broker to operate in an office at the same address if each broker maintains all records and trust accounts separate from all other brokers. Each broker shall operate under a business name which clearly identifies the broker as an individual within the group of brokers.

1.25(2) *Branch office.* A resident Iowa broker who is self-employed and maintains a branch office shall display a duplicate license in the branch office. A designated broker associate assigned to supervise the branch office shall also display a duplicate license in the branch office. A corporation or partnership which maintains a branch office shall display a duplicate license in the branch office. The designated broker or designated broker associate assigned to supervise the branch office shall also display a duplicate license in the branch office. A broker who is a principal in more than one real estate firm must display a duplicate license in the main office of each of the other real estate firms in which the broker is a principal. Trade names are not required to display duplicate trade name licenses in branch offices.

This rule is intended to implement Iowa Code section 117.31.

700—1.26(117) Presenting purchase agreements. Any and all offers to purchase received by any broker shall be promptly presented to the seller for his formal acceptance or rejection immediately upon receipt of such offer. The formal acceptance or rejection of such offers shall be promptly communicated to the prospective purchasers.

700—1.27(117) Trust account. All money belonging to others and accepted by the broker or the broker's salesperson on real estate matters relating to real property located in the state of Iowa shall no later than the next banking day after acceptance of the offer be deposited in some bank or savings and loan in Iowa in an account separate from the money belonging to the broker, except for funds deposited to cover bank service charges as specified in Iowa Code section 117.46. The name of the separate account shall be identified by the word "trust". Earnest payments, rents collected, property management funds, and other trust funds received by the broker shall be deposited in an identified "trust" account. A broker shall maintain in the broker's office a general ledger for the trust account and an account ledger for each account or transaction which shall provide a complete record of all moneys received on real estate transactions, rents, and management funds, including the sources of the money, the

1.31(7) An arrangement in which a real estate licensee who is affiliated with a bank, savings and loan association or other financial institution benefits from the practice by the affiliated financial institution of granting mortgage loans or any other loan or financial services conditioned upon the use of the real estate services of the affiliated licensee.

Rule 1.31(117) is not intended nor should it be interpreted to supplant chapter 553, Iowa Code (The Iowa Competition Law). Rule 1.31(117) is intended only to regulate the licensing of real estate licensees in the state of Iowa and not to exempt such behavior from remedies, both private and public, provided under chapter 553, Iowa Code. The real estate commission, upon receipt of any formal written complaint filed pursuant to this rule, shall forward a copy of same to the Attorney General of the state of Iowa for investigation and appropriate action under chapter 553, Iowa Code (The Iowa Competition Law).

700—1.32(117) Broker-associates. A broker-associate is a broker employed by or otherwise associated with another broker as a salesperson, and during such time as the broker remains a broker-associate is subject to the provisions of 117.24 and 117.33.

700—1.33(117) Address of inactive licensees. Each real estate broker who returns a license to the commission office shall include the last known permanent mailing address of the licensee. Each inactive licensee shall immediately notify the commission of any change in permanent mailing address.

700—1.34(117) Loan finder fees. The acceptance of a fee or anything of value by a real estate licensee from a lender or financing company for the referral or steering of a client to the lender for a loan, shall be considered not in the best interest of the public and shall constitute a violation of Iowa Code sections 117.29(3) and 117.34(8).

700—1.35(117) Distribution of executed instruments. Upon execution of any instrument in connection with a real estate transaction, a licensee shall, as soon as practicable, deliver a legible copy of the original instrument to each of the parties thereto. It shall be the responsibility of the licensee to prepare sufficient copies of such instruments to satisfy this requirement.

These rules are intended to implement Iowa Code sections 117.1, 117.3, 117.5(2), 117.11, 117.15, 117.16, 117.20, 117.21, 117.23, 117.24, 117.27, 117.28, 117.29, 117.31, 117.32, 117.34 and 117.46.

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CHAPTER 2
ADMINISTRATIVE PROCEDURE

700—2.1(117) Responsibilities of commission. The commission is charged with the responsibility of regulating, and investigating the conduct of the real estate business in Iowa.

2.1(1) The commission employs a director and such clerks and assistants as shall be necessary to discharge its duties. The duties of the director, as established by the commission, are to attend all commission meetings, supervise staff, review license applications for completeness, administer real estate licensure examinations, issue licenses by commission direction, review complaints for presentation to the commission, administer

the regulation of out-of-state subdivided land developments, and represent the commission in co-ordinating the regulation of real estate practice at the interstate and national level. An assistant to the director assumes those duties in the director's absence.

2.1(2) The commission meets monthly at the office of the Iowa Real Estate Commission, Suite 205, 1223 E. Court, Des Moines, Iowa. The commission may additionally meet upon the call of the chairman or on the recommendation of the director.

2.1(3) The commission carries on a program of education of real estate practices and matters relating thereto by publishing a news bulletin and a real estate manual, and by conducting one-day seminars throughout the state.

700—2.2(117)* Application for license. When the commission receives notice from the testing service of an individual passing a qualifying examination, the real estate commission upon request will furnish the applicant with a formal application for a license. The application form shall require detailed personal, financial, and business information concerning the applicant, and the applicant shall attest to the accuracy thereof.

2.2(1)** An applicant who passes a qualifying examination and desires a license shall file a completed application with proper fee for a license with the real estate commission not later than the last working day of the sixth month following the qualifying real estate examination.

2.2(2) Renewal applications for licenses scheduled to expire December 31, 1981, will be divided by random selection into three groups. One third of the total will be issued licenses with expiration date of December 31, 1982, one third with expiration date of December 31, 1983, and one third with expiration date of December 31, 1984. Thereafter all renewals will be for three years. New licenses issued after January 1, 1982 will be for three years, counting the remaining portion of the year issued as a full year. All licenses shall expire on December 31 of their effective year.

2.2(3) An application for renewal of a salesperson license must be signed by the employing broker to whom the license is to be issued. A broker signature is not required for renewal of a salesperson license in an inactive status.

This rule is intended to implement sections 117.15, 117.16, 117.20 and 117.28, Iowa Code.

700—2.3(117) Licensees of other jurisdictions. A person who is actively licensed in another state as a real estate salesperson or broker and has qualified for that license by passing an examination in that state, may be issued a comparable Iowa license by successfully passing only the Iowa portion of the examination under the following circumstances:

Broker:

1. Has been actively licensed as a broker for at least twenty-four consecutive months immediately preceding the date of application.
2. Nonresident applicants must comply with sections 117.22 and 117.23, Iowa Code.
3. If the applicant is a broker-associate of a nonresident broker, the employing broker must have an Iowa broker license.
4. If the applicant is employed by or otherwise associated with a nonresident partnership or corporation, that partnership or corporation must be licensed, and all officers or partners who hold real estate licenses must be licensed. No partnership or corporation shall be granted an Iowa license unless every partner or officer who holds a real estate license in the state of domicile applies for and is granted an Iowa license.

Salesperson:

1. Has been actively licensed as a salesperson for at least twenty-four consecutive months immediately preceding the date of application.
2. Rescinded, effective 7/29/82.

2.3(1) The commission may enter into specific reciprocity agreements with individual states and grant an Iowa license to licensees from those states on the same basis as Iowa licensees are granted licenses by those states.

*Objection filed 7/13/79, see insert IAC 7/25/79

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

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730—1.1(17A) Establishment, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests. By an Act of the General Assembly (chapter 342, Acts of the 62nd GA) there was established within the department of revenue for administrative and budgetary purposes a state board of tax review hereinafter called the state board. The state board consists of three members appointed by the governor to serve six-year terms and a secretary. One of the three members is selected as the chairman and it is his or her duty to call and chair meetings.

The state board is required by law to meet at least six times a year with the first meeting on the second secular day of July. At such meetings the state board conducts hearings to review matters appealed to them from the department of revenue or on their own motion, determines and adopts such policies as are authorized by law and are necessary for the more efficient operation of any phase of tax review, advises and counsels with the director of revenue concerning the tax laws and regulations, prepares and submits to each regular session of the General Assembly a report containing such recommendations as to changes in the tax laws as the state board determines necessary, and sets the capitalization rate for agricultural property within the state.

The office of the state board is maintained in the office of the Department of Revenue at the seat of government in the Hoover* State Office Building, Des Moines, Iowa 50319. Persons wishing to obtain information pertaining to the state board or to make submissions or requests should address correspondence to that address.

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

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

FORM NUMBER	DESCRIPTION
1040 (Schedule C)	Profit or Loss Report for a Business or Profession from which an estate or trust has received income. To be filed with federal schedule 1041. 2 pages.
1040 (Schedule E)	Supplemental Income Schedule for Reporting Rental, Annuity, Partnership Income of an Estate or Trust. To be filed with schedule 1041. 1 page.
1040 (Schedule F)	Schedule of Farm Income & Expenses for Reporting the Income an Estate or Trust Receives from Farming. To be filed with federal form 1041. 2 pages.
1041	Federal Fiduciary Return of Income. Filed by the fiduciaries of domestic estates and trusts. 2 pages.
1041 (Schedule D)	The Federal Schedule of Gains and Losses from the Sale of Assets in an Estate or Trust. Filed with federal schedule 1041. 2 pages
1041 (Schedule J)	Federal Schedule for Allocating Accumulation Distribution to Beneficiaries of Complex Trusts. To be filed with federal form 1041 for those years when an accumulation distribution is made. 2 pages.
1041 (Schedule K-1)	Federal Schedule itemizing the Income, Deduction, Credits, etc., a Beneficiary has Received as a Distribution from an Estate or Trust. To be filed with federal form 1041 with a copy for each beneficiary. 2 pages.
Schedule 4797	Supplemental Schedule of Gains and Losses of assets used in Trade or Business. For use by estates and trusts who sell or exchange assets. To be filed with form 1041. 2 pages.
Schedule 4831	Schedule of Non-Farm Rental Income. For use when an estate or trust has income from residential, commercial or industrial real estate. To be filed with form 1041. 2 pages.
Schedule 4835	Schedule of Farm Rental Income and Expenses for Use When an Estate or Trust has Rental Income from Farming as a Non-Participating Landlord.

b. Inheritance tax section.

60-008	Iowa Inheritance Tax Return. Filed with the department for both taxable and nontaxable estates listing on schedules the assets of the estate and their values, the liabilities deductible, the taxable shares and a computation of the tax due. 13 pages.
60-087	Inheritance Tax Clearance. Formal document issued by the department certifying that all inheritance tax due has been paid or that no inheritance tax is due from the estate. Required by Iowa Code Section 450.64. 1 page.

FORM NUMBER	DESCRIPTION
60-014	Inheritance Tax Waivers. Department's consent to transfer corporate securities for use where there is probate proceedings. 1 page.
60-027	Extension of Time to Pay Inheritance Tax. This form is a combination of an application and extension itself. Used when the estate is unable to pay the inheritance tax within twelve months after death. An extension avoids the penalty of eight percent during the period of extension. 2 pages.
60-028	Joint Bank Account Report Form. All Iowa banks and trust companies are required by law to report the amount of joint accounts held in the name of the decedent and another to the department upon the death of one of the joint tenants. The form indicates the name of the decedent, date of death, name and address of the surviving joint tenant(s) together with the amount of the account at death. 1 page.
60-030	Inventory of Safe Deposit Box. Banks and trust companies use this form to report the contents of value in safe deposit boxes to the department when the decedent is the sole or co-owner of the box. 1 page.
60-031	Application for Inheritance Tax Consent. Used by an heir or beneficiary to request the department's consent to transfer corporate securities owned by the decedent where there is no estate and no tax is due. 2 pages.
60-032	Notice of Time and Place of Appraisal. Used to inform the fiduciary of the estate and the beneficiaries and the department when and where property is to be appraised by the county inheritance tax appraisers. 2 pages.
60-033	Commission to Inheritance Tax Appraisers. Used by the clerk of the court to direct the inheritance tax appraisers to appraise certain property pursuant to the department's request. 4 pages.

FORM NUMBER	DESCRIPTION
60-034	Notice to IPERS to Withhold or Release Funds. Direction from the department to IPERS to either withhold payment of funds to a beneficiary until arrangements have been made to pay the tax or to release funds if the department is satisfied that the tax will be paid. This form is similar to 60-064. 1 page.
60-035	Notice to Beneficiary of IPERS Withholding. Companion form to 60-034 and is similar to the insurance beneficiary form 60-053. Notification to the beneficiary of IPERS benefits that the department has requested IPERS to withhold payment of proceeds and asking the beneficiary to make arrangements to pay the tax due. 1 page.
60-038	Election and Application to Defer Tax on a Future Estate and Deferral. Used by a beneficiary who receives a future interest in property and desires to defer the payment of the tax until the termination of the prior estate. 1 page.
60-039	Mortality Tables (as of 7-4-65). Table is used to compute the value of life estates and remainders. The table divides the total value of property based on the life expectancy of the life tenant at four percent. Also included in this form are tables for computing four percent annuities and the remainder values upon the expiration of the annuity. 6 pages.
60-044	Certificate to IRS of Inheritance Tax Paid. This is an Internal Revenue Service form for the department to certify the amount of Iowa inheritance tax paid for the purpose of state death tax credit allowable against the total federal estate tax. 1 page.
60-045	Letter to Beneficiary or Joint Tenant to Report Assets for Taxation. Letter sent to surviving joint tenant, transferees and beneficiaries to be used when an estate is not opened or when audits of bank accounts and safe deposit box records and reports of land transfers indicate a tax may be due. 1 page.
60-046	Request to Clerk to Issue Appraisal Commission. When the department requires that an item or items of property be appraised, this form is sent to the clerk of the court requesting a commission be issued to the county inheritance tax appraiser. 1 page.
60-047	Application for Release of Inheritance Tax Lien and Release. Application by the fiduciaries, transferee or joint tenant, during a pending estate, that a release of lien be given so real estate can be sold during the administration of the state. 1 page.

FORM NUMBER	DESCRIPTION
60-048	Specific Release of Inheritance Tax Lien. Release is to be used to release specific real estate from the Iowa inheritance tax lien. Used when an estate has been closed and all tax due has been paid but the property was omitted or misdescribed originally. 1 page.
60-049	Inheritance Tax Information Memorandum. Sent by the department to the fiduciary of an estate or his attorney requesting certain information. 1 page.
60-050	Insurance Company Notice. Notice sent to the department from an insurance company that they are paying proceeds of insurance contracts to designated beneficiaries. 1 page.
60-053	Notice to Beneficiary of Insurance Contract of Withholding. Used to notify the recipient of insurance and annuity contracts that the company is withholding inheritance tax from the proceeds payable and that the beneficiary should make arrangements to pay the tax due. This is a companion form to 60-064. 1 page.
60-055	Reason for Returning Waiver. Form letter sent to the fiduciary of an estate or his attorney when form 60-014 has not been correctly prepared or lists property not included in the inventory. 1 page.
60-058	Numbered Inheritance Tax Payment Receipts. Certification by the department that an amount of inheritance tax has been paid in either full or partial payment of the tax due. 1 page.
60-061	Inheritance Tax Computation Chart. Tax rate schedule for use for deaths on or after July 1, 1976. The schedule indicates the tax rates for all classes of beneficiaries from direct line beneficiaries through tax exempt charitable institutions. 2 pages.
60-064	Withholding Letter to Company. Used for the purpose of notifying insurance companies to withhold inheritance tax from the proceeds of insurance or annuity contracts that are subject to tax. Most frequently used when the payee is a nonresident and does not otherwise participate in the assets of the estate. 1 page.
60-067	Letter to Estate That Inheritance Tax Warrant for Overpayment is Enclosed. This letter accompanies an overpayment warrant and is sent to the estate in those situations where there has been an excess tax paid upon submission of the final return. Also used for fiduciary income tax refund. 1 page.

FORM NUMBER	DESCRIPTION
54-067	Impoundment Structure Application for Exemption. To be used by property owners to obtain a tax exemption on property which meets impoundment structure specifications. 1 page.
54-084 (Short form)	Application for pollution control property tax exemption. Submitted annually on or before February 1 by property owners to obtain an exemption for pollution control property. 1 page. This form is intended to implement section 427.1(32), The Code.
54-130	Iowa Disabled and Senior Citizens rent reimbursement claim. Filed by October 31 of each year with the Department of Revenue by elderly and disabled persons to claim a rent reimbursement. 2 pages. This form is intended to implement section 425.25 as amended by Acts of the 68GA(1).
54D250	Claim for Tax Exemption. To be used by organizations who use property for charitable, religious, literary, scientific, benevolent and agricultural purposes to receive a tax exemption. 1 page.
56-040	Industrial Machinery and Equipment Reporting Form. To be used by owners of industrial property to report machinery and equipment to local assessors each year and to the Department of Revenue upon request. 1 page.
56-041	Industrial Machinery and Equipment Itemized Listing Form. To be used by owners of industrial property to report machinery and equipment to local assessors and the Department of Revenue upon request. 1 page.
56-042	Industrial Machinery and Equipment Itemized Listing Form: Continuation. A continuation of form 56-041. 1 page.
56-043	Industrial Return of Leased and/or Not Owned Machinery and Equipment—State of Iowa. To be used by owners of industrial property to report to local assessors and the Department of Revenue machinery and equipment not owned by the company. 1 page.
56-054	Personal Property Tax Credit Application. To be used by owners of personal property to claim a tax credit. 1 page. This form is intended to implement section 427A.1(7), The Code.
56-067	Forest and Fruit Tree Exemption Application. To be used by property owners to receive a tax exemption on property which meets forest and fruit tree spefifications. 1 page This form is intended to implement section 161.12, The Code.

57-006 Real Estate Transfer—Declaration of Value. Filed by a buyer, seller or either's agent in certain conveyances of real property at the time a conveyance instrument is presented for recording. One copy is retained by the city or county assessor, and one copy is used by the department in formulating the assessment/sales ratio study. This form is intended to implement section 428A.7 of the Code.

57-122 Application for Industrial Property Tax Exemption. 2 pages. This form is intended to implement Acts of the Sixty-eighth General Assembly, 1979 Session, Chapter 103.

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CHAPTER 10
INTEREST

730—10.1(421) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

10.1(1) *"Department"* means the Iowa department of revenue.

10.1(2) *"Director"* means the director of the department or his or her authorized representative.

10.1(3) *"Taxes"* means all taxes arising under Title XVI of the Iowa Code, which include but are not limited to individual income, withholding, corporate income, franchise, sales, use, hotel/motel, railroad fuel, equipment car, motor vehicle fuel, inheritance, estate and generation skipping transfer taxes due and payable to the state of Iowa.

730—10.2(421) Interest. Except where a different rate of interest is provided by Title XVI of the Iowa Code, the rate of interest on interest bearing taxes and interest bearing refunds arising under Title XVI is fixed for each calendar year by the director.

10.2(1) *Calendar year 1982.* The rate of interest upon all unpaid taxes which are due as of January 1, 1982, will be seventeen percent per annum (1.4% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after, January 1, 1982. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless whether the tax to be refunded is due before, on, or after January 1, 1982. This interest rate of seventeen percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1982.

EXAMPLES:

1. The taxpayer, X corporation, owes corporate income taxes assessed to it for the year 1975. The assessment was made by the department in 1977. On January 1, 1982, that assessment had not been paid. The rate of interest on the unpaid tax assessed has accrued at the rate of nine percent per annum (¾ of 1 percent per month) through December 31, 1981. Commencing on January 1, 1982, the rate of interest on the unpaid tax will thereafter accrue at the rate of seventeen percent per annum for 1982 (1.4 percent per month). If the tax liability is not paid in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Acts of the Sixty-ninth General Assembly, 1981 Session, Chapter 131, Section 1.

2. The taxpayer, Y, owes retail sales taxes assessed to it for the audit period January 1, 1979 through December 31, 1982. The assessment is made on March 1, 1983. For the tax periods in which the tax became due prior to January 1, 1982, the interest rate on such unpaid sales taxes accrued at nine percent per annum (¾ of 1 percent per month). Commencing on January 1, 1982, the entire unpaid portion of the tax assessed which was delinquent at that time will begin to accrue interest at the rate of seventeen percent per annum. Those portions of the tax assessed first becoming delinquent in 1982 will bear interest at the rate of seventeen percent per annum (1.4 percent per month). In the event that any portion of the tax assessed remains unpaid on January 1, 1983, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Acts of the Sixty-ninth General Assembly, 1981 Session, Chapter 131, Section 1.

3. The taxpayer, Z, files a refund claim for 1978 individual income taxes in March, 1982. The refund claim is allowed in May, 1982, and is paid. Z is entitled to receive interest at the rate of nine percent per annum (¾ of 1 percent per month) upon his refunded tax accruing through December 31, 1981, and is entitled to interest at the rate of seventeen percent per annum (1.4 percent per month) upon such tax from January 1, 1982 until the refund is paid.

4. A's 1981 individual income tax liability becomes delinquent on May 1, 1982. A owes interest, commencing on May 1, 1982, at the rate of seventeen percent per annum (1.4 percent per month). In the event that A does not pay his liability in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Acts of the Sixty-ninth General Assembly, 1981 Session, Chapter 131, Section 1.

5. Decedent died December 15, 1976. The inheritance tax was due twelve months after

death, or December 15, 1977. Prior to the due date, the estate was granted an extension of time, until September 1, 1978, to file the return and pay the tax due. The tax, however, was paid March 15, 1982. Interest accrues on the unpaid tax during the period of the extension of time (December 15, 1977 to September 1, 1978) at the rate of six percent per annum. Interest accrues on the delinquent tax from September 1, 1978 through December 31, 1981 at the rate of eight percent per annum. Interest accrues on the delinquent tax from January 1, 1982 to the date of payment on March 15, 1982 at the rate of seventeen percent per annum.

6. B files a refund for sales taxes paid for the periods January 1, 1979 through December 31, 1982 in March, 1983. The refund is allowed in May, 1983. Since no interest is payable on sales tax refunds, B is not entitled to any interest. *Herman M. Brown Co. v. Johnson,* 248 Iowa 1143 (1957).

The examples set forth in these rules are not meant to be all inclusive. In addition, other rules set forth the precise circumstance when interest begins to accrue and whether interest accrues for each month or fraction of a month or annually as provided by law. Interest accrues as provided by law, regardless of whether the department has made a formal assessment of tax.

10.2(2) *Calendar year 1983.* The rate of interest upon all unpaid taxes which are due as of January 1, 1983, will be fourteen percent per annum (1.2% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after January 1, 1983. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless whether the tax to be refunded is due before, on, or after January 1, 1983. This interest rate of fourteen percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1983.

10.2(3) *Calendar year 1984.* The rate of interest upon all unpaid taxes which are due as of January 1, 1984, will be nine percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and upaid as of, or after, January 1, 1984. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless whether the tax to be refunded is due before, on, or after January 1, 1984. This interest rate of nine percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1984.

These rules are intended to implement Iowa Code section 421.7.

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shall be reduced to that amount which would allow the taxpayer to retain a net income of five thousand dollars. For example: If a taxpayer's net income is five thousand twenty-five dollars, and the computed tax after personal exemption and out-of-state credit is forty-five dollars, the payment of forty-five dollars would reduce the net income below five thousand dollars; therefore, the amount of tax due is reduced to twenty-five dollars which enables the taxpayer to retain a net income of five thousand dollars.

This provision for reducing tax does not apply for the Iowa minimum tax.

This rule is intended to implement Iowa Code sections 422.5, 422.16, 422.17, 422.21, 422.24, 422.25 and 1982 Iowa Acts, chapter 1023, section 2 and chapter 1064.

730—39.6(422) Minimum tax. For tax years beginning on or after January 1, 1982, an Iowa minimum tax is imposed in addition to the tax computed under Iowa Code section 422.5. The Iowa minimum tax on tax preference items is a percentage of the state's apportioned share of the federal minimum tax(es) on tax preference items. For residents, the state's apportioned share of the federal minimum tax is one hundred percent. For part-year residents and nonresidents, see subrule 39.6(3). "Federal minimum tax" means the federal minimum tax(es) for tax preferences computed under sections 55 to 58 of the Internal Revenue Code of 1954 for the tax year. No estimate payments are required for minimum tax. No Iowa minimum tax will be imposed except to the extent the federal minimum tax is based on tax preference items as defined in sections 55 to 58 of the Internal Revenue Code of 1954.

39.6(1) *Five thousand dollar exemption.* The Iowa minimum tax is imposed without regard to the exemption from paying Iowa income tax under section 422.5 given to individuals whose net income as computed under section 422.7 is five thousand dollars or less. The Iowa minimum tax is not a payment of tax for purposes of the provisions of section 422.5 which limits the amount of tax on incomes slightly above $5,000 to the amount the income exceeds $5,000. The minimum tax may reduce the income to less than $5,000.

39.6(2) *Married filing separately.* When a husband and wife file a joint federal return and elect to file separate Iowa income tax returns, the Iowa minimum tax shall be allocated between spouses in the ratio of the net income of each spouse to the total net income of both spouses, unless an alternative formula more accurately reflects the amount of Iowa minimum tax to be paid by each spouse.

39.6(3) *Part-year residents and nonresidents.* For part-year resident and nonresident taxpayers, the Iowa minimum tax is a percentage of the federal minimum tax times the ratio of the net income allocable to Iowa under section 422.8 to the federal adjusted gross income, unless the taxpayer can show that an alternative formula more accurately reflects the amount of minimum tax attributable to Iowa.

39.6(4) *Penalty and interest.* In computing penalty and interest for failing to file a timely return or to pay the minimum tax, refer to chapter 44 of the rules.

39.6(5) *Personal exemption credits.* Personal and dependent exemption credits may be applied against the separate minimum tax to the extent that the credits are not fully applied against the computed tax on income reported under Iowa Code section 422.7.

39.6(6) *Minimum tax rates.* For tax years beginning on or after January 1, 1982 and prior to January 1, 1983, the Iowa minimum tax is twenty-five percent of the state's apportioned share of the federal minimum tax on tax preference items.

For tax years beginning on or after January 1, 1983, the Iowa minimum tax is seventy percent of the state's apportioned share of the federal minimum tax on tax preference items.

This rule is intended to implement Iowa Code section 422.5 as amended by 1983 Iowa Acts, chapter 179.

730—39.7(422) Tax on lump sum distributions. For tax years beginning on or after January 1, 1982, Iowa Code section 422.5 provides that in addition to the tax computed on the taxable income, a tax shall also be imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of 1954 to be separately taxed for federal income tax purposes for the tax year. The rate of this tax is twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution.

39.7(1) *Five thousand dollar exemption.* To be eligible for the five thousand dollar or less exemption as provided in Iowa Code section 422.5, the total amount of a lump sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump sum distribution income) is less than $5,000, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump sum distributions and the computed tax may be limited to the amount of income that exceeds $5,000 (including the lump sum income). Example: If the net income including a lump sum distribution was $5,030 and the computed tax and lump sum tax was $50 after personal exemptions and out-of-state credit, the payment of $50 tax would reduce the income below $5,000; therefore the amount of tax due is reduced to $30 which enables the taxpayer to retain a net income of $5,000.

39.7(2) *Nonresidents.* A nonresident is liable for tax on a lump sum distribution or a portion of a lump sum distribution attributable to services performed within Iowa. If a distribution to a nonresident is attributable to services performed both within and outside Iowa, the tax must be allocated in the ratio of the income from services performed within Iowa to the total income from all services performed relating to the lump sum distribution unless it can be shown that another method of proration would result in a more equitable amount of tax on the distribution.

39.7(3) *Penalty and interest.* In computing penalty and interest for failing to file a timely return or to pay the lump sum tax, refer to chapter 44 of the rules.

39.7(4) *Personal exemption credits.* Personal and dependent exemption credits may be applied against the separate lump sum tax to the extent that the credits are not fully applied against the computed tax on income reported under Iowa Code section 422.7.

39.7(5) *Out-of-state tax credit.* When computing an out-of-state tax credit for a year in which tax on a lump sum distribution has been computed separately, the amount of the lump sum distribution on which the separate tax has been computed must be included on the Iowa gross income.

This rule is intended to implement Iowa Code section 422.5.

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CHAPTER 40
DETERMINATION OF NET INCOME

730—40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code of 1954 as amended, and shall include the adjustments in 40.2(422) to 40.10(422). The remaining provisions of this rule and 40.12(422) to 40.20(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

730—40.2(422) Interest and dividends from federal securities. For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of such dividend or interest.

Gains and losses from the sale or other disposition of federal securities, as distinguished from interest income, shall be taxable for state income tax purposes.

◇ Two separate ARC's.

This rule is intended to implement Iowa Code section 422.7.

730—40.3(422) Interest from bonds issued by the Iowa Board of Regents. Interest and dividends from bonds issued by the Iowa board of regents for buildings and facilities as authorized by chapter 262 of the Code are exempt from taxation under sections 262.41 and 262.51. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made, deducting the amount of such dividend or interest.

Gains and losses from the sale or other disposition of bonds issued by the Iowa board of regents, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code sections 422.7, 262.41 and 262.51.

730—40.4(422) Certain pensions, annuities and retirement allowances. Pensions, annuities, or retirement allowances paid under the peace officers' retirement system, Iowa public employees' retirement system and the Iowa policemen and firemen retirement system plans provided for under chapters 97A, 97B, and 411 are exempt from taxation under sections 97A.12, 97B.39, and 411.13. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes income of this type, an adjustment must be made deducting the amount.

Certain qualifying persons who receive one or more annuities from the United States civil service retirement and disability trust fund may exclude from net income the amount of the

annuity or annuities up to five thousand five hundred dollars for a person who files a separate state income tax return and eight thousand dollars total for a husband and wife who file a joint state income tax return. To qualify for this exclusion an individual must be disabled, sixty-two years of age or older, or a surviving spouse or survivor having an insurable interest of an individual who would have qualified for this exemption for the tax years being filed. A survivor who is not disabled or sixty-two years of age or older can only exclude the amount of annuities received as a result of the death of the annuitant. The amount of the exemption shall be reduced by the amount of any social security benefits received. This exclusion shall apply to any amounts of an annuity not already excluded in determining net income as defined in section 422.7, The Code. The full amount of an annuity or annuities received from the United States civil service retirement and disability trust fund taxable under the Internal Revenue Code of 1954 shall be included as net income to determine whether an individual qualifies to exclude his or her income from tax under the five thousand dollar rule provided by section 422.5, The Code.

EXAMPLE 1. Husband and wife file a joint Iowa income tax return and have received the following income during the year:

Interest income	$3,500
U.S. civil service retirement annuity (husband)	5,500
Social Security (wife)	3,000

The amount of civil service exclusion allowable on the joint Iowa return would be $2,500 ($5,500 annuity minus wife's $3,000 social security benefit). The $5,000 or less exclusion would not be applicable since the total of interest income of $3,500 and the civil service annuity of $5,500 exceeds $5,000.

EXAMPLE 2. Husband and wife file separately on a combined Iowa income tax return and have received the following income during the taxable year:

	Wife	Husband
Interest income	$1,500	$2,500
Dividends	3,000	
Social Security	2,000	
Civil service annuity		6,000

The amount of civil service exclusion in this case would be limited to $5,500 since the taxpayers elected to file separately. The amount of the civil service exclusion to the husband would not be reduced by the wife's social security benefits.

For each of the calendar years 1979 and 1980, the exclusion amount of $5,500 for persons filing separately and $8,000 for persons filing jointly, may be adjusted due to the indexation provisions of rule 38.9(422).

This rule is intended to implement sections 422.7, 422.5, 97A.12, 97B.39, 411.13, The Code.

730—40.5(422) Military pay.

40.5(1) For income received for services performed on or after January 1, 1969 and for services performed during tax periods beginning prior to January 1, 1977. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, section 101, for more than six continuous months, shall not include any income received for such service performed on or after January 1, 1969 and for services performed during tax periods beginning prior to January 1, 1977. Military income excluded in the computation of the tax imposed must be included in determining the four-thousand-dollar exemption under subrule 39.5(7). If the six-month continuous service runs from one tax year into another, the department will recognize the applicable portion of service income earned in any given taxable year after January 1, 1969 but before taxable periods beginning on or after January 1, 1977, if there is no break in the service. Therefore, if the federal taxable income of an individual, taxable by Iowa, includes active duty pay of this type, an adjustment must be made deducting the amount.

40.5(2) For income received for services performed prior to January 1, 1969 and for services performed for tax periods beginning on or after January 1, 1977. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, section 101, shall include all income received for such service

taken on the Iowa return, but, under no circumstances, may the taxpayer take an Iowa tax credit for political contributions. The maximum deduction allowed for federal tax purposes is one hundred dollars in the case of a single individual or a married individual filing a separate return and two hundred dollars in the case of a joint return.

a. For tax years beginning prior to January 1, 1978. Section 422.9(2)"*c*" of the Code allows a deduction for contributions to a political party or parties up to a maximum amount of one hundred dollars for a single individual or for married individuals filing a joint return. Each spouse may deduct up to one hundred dollars when filing separately on a combined return. For Iowa income tax purposes, a taxpayer may avail himself or herself of both the political contribution deduction allowed for federal income tax purposes and the political contribution deduction allowed for Iowa tax purposes, but, in no event, may the aggregate exceed the amount allowed for Iowa income tax purposes. If a taxpayer avails himself or herself of the federal tax credit for political contributions, this does not preclude him or her from a political contribution deduction on his or her Iowa return.

b. For tax years beginning on or after January 1, 1978. Section 422.9(2)"*c*" of the Code provides that individuals may claim a political contribution as defined in section forty-one c (41(c)) of the Internal Revenue Code of 1954 which includes contributions to political parties; individuals who are candidates for public office; national, state or local committees of a national political party; and newsletter funds established by incumbents or candidates for a public office. The maximum deduction allowable is $100 for single individuals or married individuals filing separately or separately on a combined return and $200 for married individuals filing a joint return.

c. For tax years beginning on or after January 1, 1983, no deduction shall be allowed for political contributions as defined in section forty-one c [41(c)] of the Internal Revenue Code of 1954. A credit shall be allowed pursuant to subrule 42.2(4).

41.5(3) Adoption expense deduction.

a. Reduce federal itemized deductions by any amounts of adoption expenses allowed under section 222 of the Internal Revenue Code of 1954.

b. Unreimbursed amounts paid by the taxpayer in the adoption of a child if placed by a licensed agency under chapter 238, by an agency that meets the provision of the interstate compact in section 238.33 or by a person making an independent placement under chapter 600, which exceed three percent of the taxpayer's net income, or the combined net income of a husband and wife in the case of married taxpayers filing a joint return, will be allowed as a deduction in the year paid. Qualifying expenses include all medical, hospital, legal fees, welfare agency fees, and all other costs relating to the adoption of a child. Those expenses claimed for adoption purposes may not be claimed elsewhere on the individual income tax return. Adoption expenses paid or incurred prior to January 1, 1977, in connection with the adoption of a child, which exceeds three percent of the taxpayer's net income, will be allowed only if the child was placed by a licensed agency under chapter 238 or by an agency that meets the provisions of the interstate compact in Iowa Code section 238.33.

41.5(4) Deduction for expenses for the care of certain disabled relatives.

a. For tax years beginning on or after January 1, 1983, a deduction from net income may be taken for expenses incurred by a taxpayer for care of a disabled person who is unable to live independently. Such care must be provided in the home in which the taxpayer resides throughout the year. A person is considered to be incapable of living independently if as a result of a physical or mental defect, the person is incapable of caring for his or her hygenical or nutritional needs or requires full-time attention of another person for his or her own safety or the safety of others. The fact that an individual, by reason of a physical or mental defect, is unable to engage in any substantial gainful activity, or is unable to perform the normal household functions of a homemaker or to care for minor children, does not of itself establish that the individual is physically or mentally incapable of self-care. An individual who is physically handicapped or is mentally defective, and for such reason requires constant attention of another person, is considered to be physically or mentally incapable of self-care.

To qualify for the deduction, in addition to being disabled, the person must be the grandchild, child, parent or grandparent of the taxpayer or the taxpayer's spouse, and

(1) Be receiving medical assistance benefits under Iowa Code chapter 249A; or

(2) Be eligible to receive such benefits under the income and resources levels established in Iowa Code chapter 239A; or

(3) Would be eligible to receive such benefits if living in a health care facility licensed under Iowa Code chapter 135C.

Expenses incurred for a taxpayer's disabled spouse do not qualify for the deduction.

b. The deductible amount is limited to $5,000 for each disabled person cared for in the taxpayer's home and the expenses must not be otherwise deductible as a deduction from net income under Iowa Code section 422.9.

c. Qualifying expenses include a proportionate share of food expenses as well as amounts spent directly on the disabled person for such items as clothing, medical care, dental care and transportation.

Medical expenses incurred for a disabled relative which are eliminated from federal itemized deductions because of the federal adjusted gross income percentage limitation, may be included in the deduction for expenses incurred for the care of the disabled relative providing the other requirements are met. Following are examples to illustrate the portion of medical expenses incurred which would be deductible.

EXAMPLE 1. Mr. and Mrs. Smith care for Mrs. Smith's mother in their home. Mrs. Smith's mother is physically unable to live independently and qualifies for medical assistance benefits under Iowa Code chapter 249A. Mr. and Mrs. Smith paid medical expenses of $1,500 for themselves and $500 for Mrs. Smith's mother. The medical expenses for Mrs. Smith's mother are includable as federal itemized deductions. Mr. and Mrs. Smith's federal adjusted gross income is $20,000. For 1983, the federal deduction for medical expenses would be $1,000 ($2,000—five percent of $20,000). Since the deductible amount for federal tax purposes is $1,000 or fifty percent of the total medical expenses of Mr. and Mrs. Smith and Mrs. Smith's mother, there remains fifty percent of the $500 expense for Mrs. Smith's mother (or $250) which can be included in the Iowa deduction for a disabled relative.

EXAMPLE 2. Mr. and Mrs. Smith's medical expenses were $400 and Mrs. Smith's mother's expenses were $200. None of the $600 in expenses would be deductible as a federal itemized deduction but the mother's $200 in expenses would be includable in the Iowa deduction for expenses incurred for a disabled relative.

d. Expenses not directly related to care of a disabled relative are not deductible. This category includes rent, mortgage interest, utilities, house insurance and taxes. Such expenses would be incurred without the disabled relative in the home and unless an expense can be directly attributed to the disabled relative, it may not be deducted.

e. In the event that the person being cared for is receiving assistance benefits under Iowa Code chapter 239, the expenses qualifying for deduction shall be the net difference between the expenses actually incurred in caring for the person which are not otherwise deductible as a deduction to net income and the assistance benefits under chapter 239. Chapter 239 covers aid to dependent children payments.

f. In order to claim a deduction for expenses for care of a disabled relative, a schedule of qualifying expenses must be provided with the tax return as well as a statement from a qualified physician certifying that the disabled individual is unable to live independently. Such certification must be filed with the tax return in the initial year for the deduction and every third year thereafter.

This rule is intended to implement Iowa Code section 422.9.

730—41.6(422) Itemized deductions—separate returns by spouses. Where both spouses itemize deductions, the deductions must be divided between them in the ratio that each spouse's separate Iowa net income bears to the total Iowa net income of both spouses unless each spouse can show that he or she paid for or is entitled to accrue the deductions. It will be presumed that the deductions are paid by both spouses and must be prorated if the deductions were paid from a joint checking account of both spouses. In any event, all itemized deductions must either be prorated between spouses or must be specifically deducted by the spouse that paid for the deductions. No combinations of the two methods will be permitted.

This rule is intended to implement Iowa Code section 422.9.

730—41.7(422) Itemized deductions—part-year residents.

41.7(1) For tax years beginning on or before December 31, 1981, itemized deductions attributable to Iowa by part-year residents shall be determined by multiplying the total itemized deductions, excluding Iowa income tax expensed, by a fraction, the numerator of which is the Iowa net income and the denominator of which is the federal adjusted gross income unless the taxpayer can show the actual amount of itemized deductions paid or accrued during the period of residency in Iowa.

41.7(2) For tax years beginning on or after January 1, 1982, itemized deductions attributable to Iowa by part-year residents shall be the itemized deductions allowable for resident taxpayers.

This rule is intended to implement Iowa Code sections 422.7, 422.8 and 422.9, as amended by 1982 Iowa Acts, chapter 1226.

730—41.8(422) Itemized deductions—nonresidents.

41.8(1) For tax years beginning on or before December 31, 1981, Itemized deductions attributable to Iowa by nonresidents shall be determined by multiplying the total itemized

deductions, excluding Iowa income tax expensed, by a fraction, the numerator of which is the Iowa net income and the denominator of which is the federal adjusted gross income.

If separate Iowa nonresident returns are filed by husband and wife who filed a joint federal return, each spouse's Iowa adjusted gross income must be divided by the total federal net income of both spouses in order to compute a ratio that can be used to determine the itemized deductions attributable to each spouse. In any event, the ratio including the combined ratio of husband and wife, cannot exceed one hundred percent.

41.8(2) For tax years beginning on or after January 1, 1982, itemized deductions attributable to Iowa by nonresidents shall be the itemized deductions available for resident taxpayers.

This rule is intended to implement Iowa Code sections 422.5, 422.7 and 422.9, as amended by 1982 Iowa Acts, chapter 1226.

730—41.9(422) Annualizing income. Where a taxpayer is required to annualize his or her income for federal income tax purposes he or she must also annualize on his or her Iowa return.

This rule is intended to implement Iowa Code section 422.7.

730—41.10(422) Income tax averaging. There is no provision in the Iowa Code which allows income tax averaging.

This rule is intended to implement Iowa Code sections 422.7 and 422.5.

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CHAPTER 42
ADJUSTMENTS TO COMPUTED TAX

730—42.1(422) School district surtax. Iowa law provides for the implementation of an income surtax for increasing local school budgets. The surtax must be approved by the voters in a special election and the surtax rate shall be determined by the state comptroller.

This rule is intended to implement Iowa Code sections 422.16 and 422.17.

730—42.2(422) Exemption and child care credits. Section 422.12 of the Code provides for personal exemption and child care credits which are deducted from computed tax. The total amount of credits allowable cannot exceed the computed tax.

42.2(1) *Exemption credits beginning prior to January 1, 1979.*

a. A single person may deduct from the computed tax a personal exemption credit of fifteen dollars. A single person is defined in 39.4(1).

b. A married person living with husband or wife at the close of the taxable year, or living with husband or wife at the time of the death of that spouse during the taxable year, may, if a joint return is filed deduct from the computed tax a personal exemption of thirty dollars. Where such spouse files a separate return, each is entitled to deduct from the computed tax a personal exemption of fifteen dollars. The personal exemption may not be divided between the spouses in any other proportion.

c. A taxpayer may deduct from his or her computed tax an exemption of ten dollars for each dependent. "Dependent" has the same meaning as provided by the Internal Revenue Code of 1954, and the same dependents may be claimed for Iowa income tax purposes as the taxpayer is entitled to claim for federal income tax purposes. If each spouse furnished

fifty percent of the support, they may elect between them which spouse is to be entitled to claim the dependent. The dividing of dependent credits applies only to the number of dependents and not to the money credits for a particular dependent.

d. A head of household as defined in 39.4(7) is allowed an additional personal exemption credit of fifteen dollars in addition to any other credits allowed by this section.

e. A taxpayer who is sixty-five years of age on or before the first day following the end of the tax year is allowed an additional personal exemption credit of fifteen dollars in addition to any other credits allowed by this section.

f. A taxpayer who is blind as defined in section 422.12(5) is allowed an additional personal exemption credit of fifteen dollars in addition to any other credits allowed by this section.

g. A nonresident taxpayer or a part-year resident taxpayer will be allowed to deduct personal exemption credits as if they were residents for the entire year.

42.2(2) The following exemption credit amounts for each exemption to which the taxpayer is entitled will be in effect for the tax years beginning:

	1/1/79	1/1/80	1/1/81	1/1/82	1/1/83
a. Single	$16	$17	$18	$19	$20
b. Married-Joint	32	34	36	38	40
Married-Separate	16	17	18	19	20
c. Dependent	11	12	13	14	15
d. Head of household	16	17	18	19	20
e. 65 or older	16	17	18	19	20
f. Blind	16	17	18	19	20

42.2(3) *Child care credit.*

a. Iowa resident taxpayers are allowed a tax credit for qualifying employment-related expenses paid for child and dependent care. The expense limitations are the same as provided by Internal Revenue Code Section 44A. A joint Iowa income tax return is not required to be filed in order to obtain this credit. However, those married taxpayers electing to file separate returns or separately on a combined return must allocate the credit to each spouse in proportion to their respective net incomes to the total combined net income. The credit may not exceed the computed tax less amount of exemption credits for any taxable year.

For the tax years beginning on or before December 31, 1981, a nonresident of Iowa is allowed a child care credit of five percent of the qualifying employment-related expenses incurred to allow the taxpayer or the taxpayer's spouse to work either full or part time for an employer or as a self-employed individual in the state of Iowa. To compute the amount of child care credit attributable to Iowa, the following formula should be used:

$$\frac{\text{Iowa earned income (wages, salaries, self-employment income, etc.)}}{\text{Federal earned income (wages, salaries, self-employment income, etc.)}} \times \text{qualifying employment related expenses} \times 5\%$$

In the case of married taxpayers, both taxpayers' incomes must be used in the computation. If the spouses file separate returns or separately on a combined return, the child care credit attributable to Iowa must be allocated to each spouse in the proportion that each spouse's respective Iowa net income bears to the total combined Iowa net income.

The computation of the child care credit for nonresident taxpayers is shown in the following example:

A husband and wife both have earned income during 1977 and are filing separate Iowa returns or separately on a combined Iowa return. The total income for the spouses is shown below:

	Husband	Wife
Wages		$ 5,000 (Non-Iowa)
Self-employment income	$20,000 (Iowa)	
Interest income	$ 2,500 (Non-Iowa)	$ 2,500 (Non-Iowa)
Net rental income		$10,000 (Iowa)

The qualifying employment related expenses shown on federal schedule 2441 amounted to $3,000. The amount of child care credit attributable to Iowa would be:

$$\frac{\$20,000}{\$25,000} \times \$3,000 \times 5\% = \$120$$

The $120 child care credit is then allocated to each spouse on the following basis:

Husband

$$\frac{\$20,000}{\$30,000} \times \$120 = \$80$$

Wife

$$\frac{\$10,000}{\$30,000} \times \$120 = \$40$$

For tax years beginning on or after January 1, 1982, nonresidents or part-year residents of Iowa shall compute their child care credit in the same manner as residents of Iowa.

A copy of federal schedule 2441 must be attached to all returns on which taxpayers have claimed the child care credit. In no case may the child care credit exceed the taxpayers' Iowa income tax liability.

b. For tax years beginning on or after January 1, 1977, and prior to January 1, 1983, the percentage of qualifying employment-related expenses paid for child and dependent care which is allowable as a tax credit shall be five percent. For tax years beginning on or after January 1, 1983, the percentage of qualifying employment-related expenses paid for child and dependent care which is allowable as a tax credit shall be ten percent.

42.2(4) *Political contributions credit.* Effective for tax years beginning on or after January 1, 1983, a taxpayer is allowed a tax credit equal to five percent of the first one hundred dollars donated as a political contribution as defined in section 41(c) of the Internal Revenue Code of 1954. In the case of a married couple filing a joint return, a political contribution credit equal to five percent of the first two hundred dollars donated shall be allowed. The credit may not exceed the computed tax less the amount of exemption credits and child care credits for any taxable year.

42.2(5) *Iowa venture capital fund investment credit.* A taxpayer is allowed a tax credit equal to five percent of the taxpayer's investment in the initial offering of securities by the Iowa venture capital fund established by the Iowa development commission. Any credit in excess of the computed tax less exemption credits, child care credits, and political contribution credits may be credited to the tax liability for the following three taxable years or until depleted in less than three years.

This rule is intended to implement Iowa Code section 422.10 and 422.12 as amended by 1983 Iowa Acts, chapters 179 and 207.

730—42.3(422) Proration of computed tax—nonresidents and part-year residents. For tax years beginning on or after January 1, 1982, the Iowa tax liability of a nonresident or part-year resident of Iowa is computed upon the individual's total net income as if a resident, and after application of all nonrefundable credits, the tax is reduced by multiplying the tax by a fraction, the numerator of which is the individual's net income allocated to Iowa according to Iowa Code section 422.8, and rule 730—40.16(422), and the denominator of which is the individual's total net income computed under Iowa Code section 422.7.

This rule is intended to implement Iowa Code section 422.5.

730—42.4(422) Out-of-state tax credits.

42.4(1) *General rule.* Iowa residents are allowed an out-of-state tax credit for taxes paid to another state or foreign country on income which is also reported on the taxpayer's Iowa return. The out-of-state tax credit is allowable only if the taxpayer files an Iowa resident income tax return.

42.4(2) *Limitation of out-of-state tax credit.* If an Iowa resident pays income tax to another state or foreign country on any of his or her income, he or she is entitled to a net tax credit; that is, he or she may deduct from his or her Iowa net tax (not from gross income) the amount of income tax actually paid to the other state or country, provided the amount deducted as a credit does not exceed the amount of Iowa net income tax on the same income which was taxed by the other state or foreign country.

42.4(3) *Computation of tax credit.*

a. For tax years beginning before January 1, 1983. The limitation on the tax credit must be computed according to the following formula: Income earned in another state or country and taxed by such other state or country shall be divided by the total income of the Iowa resident taxpayer. Said quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax.

b. For tax years beginning on or after January 1, 1983. The limitation on the tax credit must be computed according to the following formula: Income taxed by another state or country shall be divided by the total income of the Iowa resident taxpayer. Said quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax.

42.4(4) *Proof of claim for tax credit.* The credit may be deducted from Iowa net income tax if written proof of such payment to another state or foreign country is furnished to the department. The department will accept any one of the following as proof of such payment:

a. A photocopy, or other similar reproduction of either

(1) The receipt issued by the other state or foreign country for payment of the tax, or

(2) The canceled check (both sides) with which the tax was paid to the other state or foreign country together with a statement of the amount and kind (that is, whether wages, salaries, property or business) of total income on which such tax was paid.

b. A copy of the income tax return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and showing thereon that the income tax assessed has been paid to them.

This rule is intended to implement Iowa Code section 422.8 as amended by 1983 Iowa Acts, chapter 16.

730—42.5(422) Withholding and estimated tax credits. An employee from whose wages tax is withheld, shall claim credit for the tax withheld on his or her income tax return for the year during which the tax was withheld. Credit will be allowed only if a copy of the withholding statement is attached to the return. Taxpayers who have filed estimated income tax declarations shall claim credit for the estimated tax paid for the taxable year.

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

730—42.6(422) Motor fuel credit. An individual may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by chapter 324 of the Code. An individual who holds a motor fuel refund permit under section 324.18 of the Code must cancel the permit before he or she becomes eligible to take a motor fuel credit on the individual income tax return. The permit must be cancelled within thirty days after the first day of the individual's tax year. Once an election is made, it will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The amount of income tax credit shall be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by chapter 324 and sections 422.86, 422.87 and 422.88 of the Code less any state sales tax deductible under section 422.52(4) of the Code. The credit shall be deducted on the tax return filed for the year in which the motor fuel tax

was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or credited to income tax due in subsequent years.

The motor fuel credit option is available on individual income tax returns filed for tax years beginning on or after January 1, 1975.

For tax years beginning on or after January 1, 1975 and ending on or before December 31, 1976, an individual taxpayer may elect to use the motor vehicle fuel tax credit option even though he or she failed to cancel his or her motor vehicle fuel refund permit. The credit is allowable on the income tax return only if the taxpayer has complied with all the other requirements of the law with respect to refund of fuel taxes through an income tax credit under section 422.86 of the Code.

Effective for tax returns which are timely filed after January 1, 1980, members of partnerships or subchapter S corporations may claim a credit for their respective share of the motor vehicle fuel tax paid by the partnership or subchapter S corporation. The credit is to be shared in the same ratio as the person's pro rata share of the earnings from the partnership or subchapter S corporation. In order to be eligible for the tax credit, the partnership or subchapter S corporation must not hold a valid motor vehicle fuel refund permit during the tax year or the permit must have been canceled within thirty days after the beginning of the tax year. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each partner or shareholder.

This rule is intended to implement sections 422.110 and 422.111, The Code.

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CHAPTER 43
ASSESSMENTS AND REFUNDS

730—43.1(422) Notice of discrepancies.

43.1(1) *Notice of adjustments.* An agent, auditor, clerk or employee of the income tax division, designated by the director of the income tax division to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of his or her discovery by ordinary mail. Such notice shall not be termed an assessment. It may inform the taxpayer what amount would be due from him or her if the information discovered is correct.

43.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, he or she should then file a claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the agent, auditor, clerk or employee who notified him or her of the discrepancy, either in person or through correspondence, all matters of fact and law which he or she considers relevant to the situation. Documents and records supporting his or her position may be required.

of such controversy within the specified five-year period.

43.3(7) *Refunds—statute of limitations for tax years ending on or after January 1, 1979.* The statute of limitations with respect to which refunds or credit may be claimed are:

a. The later of—

(1) Three years after due date of payment upon which refund or credit is claimed; or

(2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of such matter within six months after the specified three-year period, contained in paragraph "*a*" subparagraph (1) above. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits.

c. Three years after the date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

This rule is intended to implement Iowa Code sections 422.16, 422.73 and 421.17.

730—43.4(56,107,422) Optional designations of funds by taxpayer.

43.4(1) *Iowa fish and game protection fund.* The taxpayer may designate a portion or all of the overpayment of tax indicated on the face of the return to be donated to the Iowa fish and game protection fund. The donation must be one dollar or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the Iowa department of revenue, the child support recovery unit of the Iowa department of social services, and the college aid commission have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund as claimed on the original return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.

Example A: Overpayment as shown on the original return is $50. $25 is designated to the fund. Due to an error on the return, only $20 is an overpayment. The taxpayer would not receive any refund and all $20 of the overpayment would be credited to the fund.

Example B: Overpayment as shown on the original return is $50. $25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes $20. No money would be credited to the fund in this instance.

43.4(2) *Iowa election campaign fund.* For tax years beginning on or after January 1, 1983, any taxpayer who directs that one dollar of the taxpayer's tax liability be paid over to the Iowa election campaign fund may also donate an additional two dollars to be allocated to or among the qualifying political parties in the same manner as the taxpayer's one dollar designation. If a husband and wife file a joint return each spouse may direct that an additional two dollars be donated pursuant to the provisions of this paragraph. The two dollar donation will reduce the taxpayer's refund or increase the amount due with the return, and must be made on the original return for the current year. The donation is allowed only after the taxpayer's obligations to the Iowa department of revenue, the child support recovery unit, foster care recovery unit, public assistance overpayments, the college aid commission, and the Iowa fish and game protection fund have been satisfied. The designation to the fund is irrevocable and cannot be changed on an amended return. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional two dollars designated by the taxpayer, the amount designated shall be adjusted accordingly.

Example A. Overpayment as shown on the original return is $50. $25 is designated to the Iowa fish and game protection fund and $2 to the Iowa election campaign fund. Due to an error on the return, only $26 is an overpayment. The taxpayer would not receive a refund and $25 would be credited to the Iowa fish and game protection fund and $1 would be credited to the Iowa election campaign fund.

Example B. Tax due as shown on the original return is $10. An additional $2 is designated to the Iowa election campaign fund and a payment of $12 is made with the return. Due to an error on the return an additional $20 tax is due. No money would be credited to the fund in this instance.

Example C. Overpayment as shown on original return is $100. $25 is designated to the Iowa fish and game protection fund and $2 to the Iowa election campaign fund. The taxpayer owes either the deparment for previously unpaid taxes, the child support recovery unit, or the college aid commission $80. The taxpayer would not receive a refund and $20 would be credited to the Iowa fish and game protection fund and no contribution to the Iowa election campaign fund would be allowed.

This rule is intended to implement Iowa Code section 107.16 and section 56.18 as amended by 1983 Iowa Acts, chapter 176.

730—43.5(422) Abatement of tax. Section 422.28 of the Code provides that a taxpayer may appeal to the director within ninety days any portion of tax, penalties or interest assessed against him or her. If a taxpayer fails to appeal the assessment within the statutory period, the assessment becomes fixed as a matter of law: Iowa Department of Revenue v. Ingwersen, Des Moines County District Court, Cause No. 17623, February 22, 1973; Commonwealth v. Kettenacker, 335 S.W. 2d 339 (Ky); Heasley v. Engen, 124 N.W. 2d 398 (N.D.). If however, the statutory period for appeal has expired, the director may abate any portion of tax, penalties or interest assessed which he or she determines is excessive in amount or erroneously or illegally assessed.

43.5(1) *Assessments qualifying for abatement.* To be subject to an abatement, an assessment must have been issued that exceeded the amount due as provided by the Code and the rules issued by the department interpreting the Code. If a taxpayer fails to appeal an assessment that is based on the Code or the department's rules interpreting the Code within the statutory period, then the taxpayer cannot request an abatement of the assessment, or a portion thereof, beyond the statutory time for appeal.

Examples of assessments where abatements may be requested include but are not limited to the following:

(1) Inclusion of income not required to be reported by the Code or rule
(2) Estimated or jeopardy assessments
(3) Disallowance of a deduction
(4) Disallowance of an exemption
(5) Disallowance of a credit
(6) Interest erroneously assessed

Examples of assessments where abatement may not be requested include but are not limited to the following:

(1) Change from one filing status to another filing status which creates a lesser tax liability such as joint to separate or separately on a combined return.

(2) Use of a method of accounting or method of reporting income not provided by the Code or department rules.

(3) Change from standard deduction to itemizing deductions or from itemizing deductions to the standard deduction.

(4) Any other elections which the individual made on the return as filed.

43.5(2) *Procedures for requesting abatement.* If it is determined that an assessment, or portion thereof, is excessive or has been erroneously or illegally assessed, the taxpayer shall make a written request to the director for abatement of that portion of the assessment that is excessive. A request for abatement which is filed shall contain:

1. The taxpayer's name and address;
2. A statement on the type of proceeding, e.g., individual income tax, request for abatement; and,
3. The following information:

a. The nature of the tax, the taxable period or periods involved and the amount thereof that was excessive or erroneously or illegally assessed;

b. Clear and concise statements of each and every error which the taxpayer alleges to have been committed by the director in the notice of the deficiency. Each assignment of error shall be separately numbered;

c. Clear and concise statements of all relevant facts upon which the taxpayer relies (documents verifying the correct amount of tax liability must be attached to this request);

d. Refer to any particular statute or statutes and any rule or rules involved;

e. The signature of the taxpayer or that of his or her representative;

f. Description of records or documents which were not available or were not presented to department personnel prior to the filing of this request, if any;

g. Any other matters deemed relevant and not covered in the above paragraphs.

This rule is intended to implement Iowa Code section 422.28.

730—43.6(422)* 1978 Income tax rebate. A rebate of 1978 taxes is to be computed for all taxpayers that had an individual income tax liability for the first tax year beginning in 1978. The provisions of the rebate Act are in effect through June 30, 1980; therefore, the following subrules are applicable only through that date as clarified below in subrules 43.6(1) to 43.6(4). 43.6(4).

43.6(1) *Rebate determined on tax liability minus allowable credits.* The amount of the rebate is determined on the Iowa income tax liability of a taxpayer, minus credits for (*a*) personal exemptions, (*b*) child and dependent care as defined in Section 44A of the Internal Revenue Code of 1954 and (*c*) income tax paid to another state or foreign country. If the total of the above allowable credits is equal to or greater than the income tax liability of the taxpayer, the taxpayer will receive no rebate.

43.6(2) *Married couples filing separate return.* For purposes of the rebate, a married couple shall be considered as one taxpayer and the amount of the rebate shall be determined on the combined income tax liability of both spouses. For married persons filing separately on a combined return, only one rebate check will be issued in the names of both spouses. In the case of married taxpayers, who elect to file separate returns, the allowable rebate shall be prorated between the spouses on the ratio that each spouse's income tax liability bears to the total income tax liability of both spouses. The following formula may be used to compute the amount of the rebate that will be issued to each spouse:

$$\text{allowable rebate} \times \frac{\text{wife's income tax liability (net of applicable credits)}}{\text{income tax liability of both spouses (net of applicable credits)}} = \text{wife's rebate}$$

$$\text{allowable rebate} \times \frac{\text{husband's income tax liability (net of applicable credits)}}{\text{income tax liability of both spouses (net of applicable credits)}} = \text{husband's rebate}$$

EXAMPLE 1. A husband and wife file separate Iowa returns for 1978. The husband's income tax liability is $600 after reduction of the credits specified in subrule 43.6(1). The wife's income tax liability after reduction of the credits is $400. The allowable rebate for the taxpayers is ten percent of their combined liability of $1,000 or $100. On the basis of the formula, the wife's rebate is:

$$\$100 \times \frac{\$400}{\$1000} = \$40$$

The husband's rebate is:

$$\$100 \times \frac{\$600}{\$1000} = \$60$$

EXAMPLE 2. A husband and wife file separate Iowa returns for 1978. The husband's income tax liability is $4,900. The wife's income tax liability is $100. The allowable rebate for the taxpayers is 10% of their total liability of $5,000 or $500, but is limited to $250.

The wife's rebate is: $\$250 \times \frac{\$100}{\$5000} = \$\ 5.00$

The husband's rebate is: $\$250 \times \frac{\$4900}{\$5000} = \$245.00$

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

43.6(3) *Audits or examinations during period of rebate.* The effect of the rebate must be considered in audits of 1978 Iowa returns when the audits or examinations are agreed to by the taxpayer or a certified notice is sent to the taxpayer on or before June 30, 1980. In cases where audits completed prior to June 30, 1980, increase the income tax liability of the taxpayer, the amount of the rebate of the taxpayer will be increased accordingly, subject to the maximum amount of $250. In cases where audits completed prior to June 30, 1980 decrease the income tax liability of the taxpayer, the rebate of the taxpayer will be decreased accordingly.

43.6(4) *Amended returns received during the rebate period.* The department will adjust the amount of the rebate on all amended 1978 returns that are received or are postmarked on or before June 30, 1980.

43.6(5) *Interest paid on rebates.* Interest at the rate of three-fourths of one percent per month is to be paid on rebates not made within one hundred twenty days from the date of payment. For calendar year 1978 returns filed before April 30, 1979, the date of payment is April 30, 1979. For calendar year 1978 returns filed after April 30, 1979, due to an extension of time, the date of payment is the last date to which the return due date has been extended and not the actual date the return is filed.

(EXAMPLE: A return due date has been extended to June 30, 1979. Even though the return is filed on May 15, 1979 the date of payment for purposes of the rebate is June 30, 1979, and, therefore, no interest would accrue on the rebate until one hundred twenty days after June 30, 1979.) For fiscal years, the date of payment is considered to be the last day of the fourth month following the close of the tax year, or in the case of extensions, the last day of the month for which the return due date has been extended. However, interest will not be paid on rebates issued after one hundred twenty days from the date of payment in the case of returns that were improperly or incorrectly completed. For purposes of paying interest on rebates, amended returns will be considered as returns that are improperly or incorrectly completed. Also, any adjustment to a return which alters the tax liability, or an application of an overpayment to another tax due which the taxpayer currently owes the department will be considered an improper or incorrect return.

43.6(6) *Application of rebate when taxpayer fails to remit tax.* For any individual that files an income tax return before the due date but fails to remit the tax due with the return, an assessment will be issued for the total amount of tax, penalty, interest and fees due. No rebate will be refunded or applied to this liability unless the taxpayer remits the difference between the amount due and the amount of the rebate and specifically requests that the rebate be applied to the tax liability due. Any balance of the rebate will be refunded to the taxpayer.

These rules are intended to implement Acts of the Sixty-eighth General Assembly, chapter 1.

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it is compensation paid in this state, B must withhold Iowa income tax on A's deferred compensation.

c. Exemption from withholding. An employer may be relieved of his responsibility to withhold Iowa income tax on an employee who had no Iowa income tax liability the prior tax year and who does not anticipate an Iowa income tax liability for the current tax year.

An employee who had no Iowa income tax liability for the prior tax year and who anticipates no Iowa income tax liability for the current tax year shall file a withholding allowance certificate with their employer claiming exemption from withholding. An employee who meets this criteria may claim an exemption from withholding at any time; however this exemption from withholding must be renewed by February 15 of each tax year that the criteria is met. If the employee wishes to discontinue or is required to revoke the exemption from withholding, the employee must file a new withholding allowance certificate within ten days from the date the employee anticipates a tax liability or on or before December 31 if a tax liability is anticipated for the next tax year. See 46.3(2).

46.1(2) Reserved.

This rule is intended to implement Iowa Code section 422.16.

730—46.2(422) Computation of amount withheld.

46.2(1) *Amount withheld.*

a. General rules. Every employer required to deduct and withhold a tax on compensation paid in Iowa to an individual shall deduct and withhold for each payroll period an amount the total of which will approximate the employee's annual tax liability. "Payroll period" for Iowa withholding purposes shall have the same definition as in section 3401 of the Internal Revenue Code and shall include "miscellaneous payroll period" as that term is defined and used in that section and the regulations thereunder.

b. Methods of computations. Employers required to withhold Iowa income tax on compensation paid in this state shall compute the amount of tax to be withheld for each payroll period pursuant to the methods and rules provided herein.

(1) *Tables.* An employer may elect to use the withholding tables provided in the Iowa employer's "Withholding Tax Guide and Withholding Tables", which are available from the department.

(2) *Formulas.* Formulas are available upon request for employers who have a computerized payroll system.

(3) *Other methods.* An employer may request and be granted the use of an alternate method for computing the amount of Iowa tax to be deducted and withheld for each payroll period so long as the alternate proposal approximates the employee's annual Iowa tax liability. When submitting an alternate formula, the withholding agent should explain the formula and show examples comparing the amount of withholding under the proposed formula with the department's tables or computer formula at various income levels and by using various numbers of personal exemptions. Any alternate formula must be approved by the department prior to its use.

c. Supplemental wage payments. An employee's compensation may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period or without regard to a particular period. When such supplemental wages are paid, the amount of tax required to be withheld shall be determined by using the current withholding tables or formulas. If supplemental wages are paid at the same time as regular wages, the regular tables or formulas are used in determining the amount of tax to be withheld as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at any other time, the regular tables or formulas are used in determining the amount of tax to be withheld as if the supplemental wage were a single wage payment for the regular payroll period.

d. Vacation pay. Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the allowance shall be treated as supplemental wage payments.

46.2(2) *Correction of underwithholding or overwithholding.*

a. Underwithholding. If an employer erroneously underwithholds an amount of Iowa income tax required to be deducted and withheld from compensation paid to an employee within a payroll period, he or she should correct the error within the same calendar year by deducting the difference between the amount withheld and the amount required to be withheld from any compensation still owed the employee, even though such compensation may not be subject to withholding. If the error is discovered in a subsequent calendar year, no correction shall be made by the employer.

b. Overwithholding. If an employer erroneously overwithholds an amount of tax required to be deducted and withheld from compensation paid to an employee, repayment of such overwithheld amount shall be made in the same calendar year. Repayment may be made in either of two ways: (1) the amount of overwithholding may be repaid directly to the employee, in which case the employer must obtain written receipt showing the date and amount of the repayment, or (2) the employer may reimburse the employee by applying the overcollection against the tax required to be deducted and withheld on compensation to be paid in the same calendar year in which the overcollection occurred. If the error is discovered in a subsequent calendar year, no repayment shall be made.

c. Cross-reference. For effect on reporting and remitting taxes deducted and withheld when there is an erroneous underpayment or overpayment, see 46.3(3)*"h"*.

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

730—46.3(422) Forms, returns and reports.

46.3(1) *Employer registration.* Every employer or payor required to deduct and withhold Iowa income tax must register with the department of revenue by filing an "Application for Withholding Agents Identification Number". The application shall indicate the employer's or payor's federal identification number. If an employer or payor has not received a federal employer's identification number, he or she should obtain one before filing the state application. It must then be filed with the department within fifteen days of the date of the federal employer's identification number is assigned.

Where initial payment of wages, subject to Iowa withholding tax occurs late in the calendar quarter, or before the employer's or payor's federal employer's identification number is assigned by the Internal Revenue Service, the application for Iowa withholding agent's identification number shall be forwarded along with the first quarterly withholding return. The responsible party(ies) shall be listed on the application and the application shall be signed by each of the responsible party(ies) so listed.

46.3(2) *Allowance certificate.*

a. General rules. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed Iowa employee's withholding allowance certificate indicating the number of withholding allowances which the individual claims, which in no event shall exceed the number to which the individual is entitled. The employer is required to request a withholding allowance certificate from each employee. If the employee fails to furnish such certificate, such employee shall be considered as claiming no withholding exemptions.

The employer must submit to the department of revenue a copy of a withholding allowance certificate received from an employee if:

(1) The employee claimed more than a total of fourteen withholding allowances, or

(2) The employee is claiming an exemption from withholding and it is expected that the employee's wages from that employer will normally exceed $200 per week.

Employers are required to submit such withholding certificates on at least a calendar quarter basis.

The department will notify the employer whether to honor the withholding certificate or to withhold as though the employee is claiming no withholding exemptions.

b. Form and content. The "Employee's Withholding Allowance Certificate", is the form prescribed to be filed under this section. A withholding allowance certificate shall be prepared in accordance with the instructions applicable thereto, and shall set forth fully and clearly the

required data. The allowance form will be supplied to employers upon request to the department. In lieu of the prescribed form, employers may use the federal allowance certificate, however, it should be noted that Iowa law does not recognize the "special withholding allowance" and allowances for estimated tax credits and estimated deductions which are allowable for federal withholding tax purposes except that taxpayers are permitted to claim additional withholding allowances for itemized deductions in excess of the allowable standard deduction. One additional withholding allowance is allowable for each $200 that estimated itemized deductions exceed the standard deduction.

c. Change in allowances which affect the current calendar year.

(1) *Decrease.* If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is less than the number of withholding allowances claimed by the individual on a withholding certificate then in effect, the employee must furnish the employer with a new Iowa withholding allowance certificate relating to the number of withholding allowances which the employee then claims, which must in no event exceed the number to which the employee is entitled on such day.

(2) *Increase.* If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is more than the number of withholding allowances claimed by the employee on the withholding allowance certificate then in effect, the employee may furnish the employer with a new Iowa withholding allowance certificate on which the employee must in no event claim more than the number of withholding allowances to which the employee is entitled on such day.

d. Change in allowances which affect the next calendar year. If, on any day during the calendar year, the number of withholding allowances to which the employee will be, or may

reasonably be expected to be, entitled to for the employee's 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 allowances claimed by an employee on an Iowa withholding allowance certificate in effect on such day, the employee must within a reasonable time furnish their employer with a new withholding allowance certificate reflecting the decrease.

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

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

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.

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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CHAPTER 54
ALLOCATION AND APPORTIONMENT

730—54.1(422) Basis of corporate tax. Section 422.33 of the Code imposes a tax on all corporations incorporated under the laws of Iowa and upon every foreign corporation doing business in Iowa. For corporations or other entities subject to the tax (as corporations), the tax is levied and collected only on such income as may accrue or be recognized to the corporation from business done or carried on in the state plus net income from certain sources without the state which by law follows the commercial domicile of the corporation.

If a corporation carries on its trade or business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The corporation will be presumed to be carrying on its business entirely within the state of Iowa if its sales or other activities are carried on only in Iowa, even though it received income from sources outside the state in the form of interest, dividends, royalties and other sources of income from intangibles.

For taxable years beginning on or after January 1, 1977, the income from the operation of a farm is allocable to this state if the property used in the operation of the farm is located in its entirety in this state. If the property used in the operation of a farm is located partly within and partly without this state, the income shall be equitably allocated and apportioned to this state in accordance with section 422.33 of the Code.

54.1(1) *Definition—operation of a farm.* A taxpayer is engaged in the operation of a farm if it cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For the purpose of section 422.33(1), a taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the operation of a farm. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the operation of a farm only if it participates to a material extent in the operation or management of the farm. A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the operation of a farm. A taxpayer cultivating or operating a farm for recreation or pleasure rather than a profit is not engaged in the operation of a farm. For the purpose of this subrule, the term "farm" is used in its ordinary, accepted sense and includes stock, dairy, poultry, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A taxpayer is engaged in the operation of a farm if it is a member of a partnership engaged in the operation of a farm. The operation of a farm includes the sale of products produced on the farm. The purchase of livestock for feeding purposes and subsequent resale is part of the operation of a farm.

54.1(2) *Definition—property used in the operation of a farm.* Property used in the operation of a farm means land and buildings which are used in the operation of a farm. The land must be used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. For the purposes of this subrule, the term livestock includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pidgeons, and other poultry. It does not include fish, frogs, reptiles, and the like. Land used for the sustenance of livestock includes land used for grazing such livestock.

Property used in the operation of a farm means property used in the unitary operations of a farm whether or not the acreage is contiguous.

54.1(3) *Definition—unitary operations of a farm.* Unitary operations of a farm means the operation of one or more tracts of land or the conducting of one or more types of farming operations where the operation of a farm within Iowa are integrated with, dependent upon or contribute to the operations of a farm outside the state.

This rule is intended to implement section 422.33, The Code.

730—54.2(422) Allocation or apportionment of investment income.

54.2(1) The classification of investment income by the labels customarily given them, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents and royalties shall be apportioned as business income to the extent the income was earned as a part of a corporation's unitary busi-

ness, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes,* 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission,* 458 U.S. ____, 73 L.Ed.2d 787 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.,* 458 U.S. ____, 73 L.Ed.2d (1982); *Container Corporation of America v. Franchise Tax Board,* ____ U.S. ____, ____ L.Ed.2d ____, 51 U.S.L.W. 4987 (1983). Whether investment income is part of a corporation's unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of investment income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of corporations in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

54.2(2) All business income, except for capital gains and the receipts therefrom, may at the taxpayer's election be included in the computation of the denominator of the business activity formula. For a tax year which begins on or after January 1, 1984, if the taxpayer has investment income which is deemed to be business income under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for all future tax years.

If the taxpayer makes an election to include investment income deemed to be business income in the computation of the denominator of the business activity ratio, the computation of the business activity ratio is as follows:

a. Interest income from accounts receivable—Accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

Example: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of $300,000, total gross receipts everywhere of $1,000,000, and accounts receivable interest income everywhere of $10,000. $10,000 would be included in the denominator of the business activity formula, and 30% of $10,000, or $3,000, would be included in the numerator of the business activity formula.

b. Interest income other than accounts receivable—All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

c. Dividend income—All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

d. Rental income—All rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payor obtained possession.

e. Royalty income—All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

f. Other miscellaneous income—All other miscellaneous income determined to be business income shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense.

g. Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

Subrules 54.2(1) and 54.2(2) are effective for tax years beginning on or after January 1, 1983.

54.2(3) Grossed-up foreign income. For purposes of administration of the Iowa corporation income tax law, section 78 of IRC of 1954 (gross-up) shall be considered to be nonbusiness income, irrespective of the fact that the income creating the gross-up may be business income, and shall be allocated to the situs of the income payor.

This rule is intended to implement Iowa Code section 422.33.

casting operations" includes studios and transmitters, but does not include automobiles furnished salesmen to solicit advertising.

However, if a radio or television company's only contact with a particular state is the transmission of the signal necessary for broadcast, the population served by the broadcast shall be excluded from both the numerator and denominator of the apportionment ratio.

EXAMPLE: A radio company has its studio in Iowa and its transmitter in state A. The broadcast signal also reaches state B. The population served by broadcasting is as follows: 100,000 in Iowa, 100,000 in state A and 50,000 in state B for a total population served by broadcasting of 250,000. The radio company's apportionment factor would be computed as follows. The numerator would be the Iowa population served by broadcasting and the denominator would be the combined population of Iowa and state A ($\frac{100,000}{200,000} = 50\%$).

This rule is intended to implement section 422.33, The Code.

730—54.8(422) Allocation and apportionment of income in special cases. If a taxpayer feels that the allocation and apportionment method as prescribed by section 422.33, subsection 1, in its case results in an injustice, such taxpayer may petition the director for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file his or her return as prescribed by section 422.33, subsection 1, and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing such alternative method shall be submitted to the director. The director shall require detail and proof within such time as he or she may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the director, any information the director deems necessary to analyze the request for an alternative method of allocation and apportionment. Such petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair,* 437 U.S. 267, 1978; 57 L Ed 2d 197. In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair,* supra.

One of the possible alternative methods of allocation and apportionment is separate accounting. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair,* supra.

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by it in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be

out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule "statutory method of apportionment" means the Iowa single sales factor formula set forth in section 422.33, subsection 1, paragraph *"b"*, The Code, and the apportionment methods set forth in chapter 54 of the department's rules.

If the director concludes that the statutory method of allocation and apportionment is, in fact both inapplicable and inequitable, the director shall prescribe a special method. The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory, or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the director of such changes prior to filing its return for the current year. After reviewing the information submitted, along with any other information the director deems necessary, the director will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement section 422.33, The Code.

54.9 Rescinded, effective 1/30/80.

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CHAPTER 55
ASSESSMENTS, REFUNDS, APPEALS

730—55.1(422) Notice of discrepancies.

55.1(1) *Notice of adjustment.* An agent, auditor, clerk or employee of the income tax division, designated by the director of the income tax division to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of his discovery by ordinary mail. Such notice shall not be termed an assessment. It may inform the taxpayer what amount would be due from him if the information discovered is correct.

55.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, he should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no

TITLE XI

INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX

CHAPTER 86
INHERITANCE TAX

730—86.1(450) Administration.

86.1(1) *Definitions.* The following definitions cover chapter 86.

a. "Department" means the 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 a person liable for the payment of the inheritance tax under section 450.5, The Code, and includes the executor or administrator of an estate, the trustee or other fiduciary of property subject to inheritance tax and also each heir, beneficiary, surviving joint tenant, transferee or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in section 450.3, The Code, as subject to inheritance tax with respect to any inheritance tax due on his or her share of the property.

f. "Tax" means the inheritance tax imposed by chapter, 450, The Code.

g. "Gross estate" as used for inheritance tax purposes includes all those items, or interests in property, passing by any method of transfer specified in section 450.3, The Code, without reduction for liabilities specified in section 450.12, The Code. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, jointly owned property, property transferred with a retained life use, gifts in contemplation of death, transfers to take effect in possession or enjoyment at death, annuities and certain retirement plans, are not part of the decedent's probate estate, but are includible in the decedent's gross estate for inheritance tax purposes. *In re Louden's Estate,* 249 Iowa 1393, 92 N.W.2d 409 (1958); *In re Sayres' Estate,* 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Toy's Estate,* 220 Iowa 825, 263 N.W. 501 (1935); *In re Mann's Estate,* 219 Iowa 597, 258N.W. 904 (1935); *Matter of Bliven's Estate,* 236 N.W.2d 366 (Iowa 1975); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973).

h. "Net estate" means the gross estate less those items specified in section 450.12, The Code, as deductions, in determining the net shares of property of each heir, beneficiary, surviving joint tenant or transferee. *In re Estate of Waddington,* 201 N.W.2d 77 (Iowa 1972). Attorney fees and expenses incurred in marshaling assets can be deductible even though not specified in section 450.12, The Code. See *Bair v. Randall,* 258 N.W.2d 333 (Iowa 1977).

i. "Gross share" means the total amount of property of an heir, beneficiary, surviving joint tenant or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

j. "Net share" means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant or transferee. The law of abatement of shares is applicable for purposes of determining the net share subject to tax. *In re Estate of Noe,* 195 N.W.2d 361 (Iowa 1972); *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978) and *In re Estate of Duhme,* 267 N.W.2d, 688 (Iowa 1978). However, see section 633.278, The Code, for property subject to a mortgage.

k. "Personal representative" shall have the same meaning as the term is defined in section 633.3(29), The Code.

l. "Internal Revenue Code" means the Internal Revenue Code of 1954 as defined in section 422.4, The Code.

86.1(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 inheritance tax. This delegated authority specifically includes but is not limited to, the determination of the correct inheritance tax liability; making assessments against the taxpayer for additional inheritance tax due; authorizing refunds of excessive inheritance tax paid; issuing receipts for inheritance tax paid; executing releases of the inheritance tax lien; granting extension of time to file the final inheritance tax return and pay the tax due; granting deferments to pay the inheritance tax on a property interest to take effect in possession or enjoyment at a future date; requesting or waiving the appraisal of property subject to the inheritance tax and the determination of reasonable cause for failure to timely file or pay the inheritance tax. The administrator of the estates and trusts division may delegate the examination and audit of inheritance tax returns to the supervisors, examiners, agents and clerks of the division as he or she may designate.

86.1(3) *Information deemed confidential.* 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 inheritance 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 confidentiality and disclosure of federal tax returns and federal return information.

86.1(4) *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 inheritance tax paid is a matter of public record and is not deemed confidential. The amount of inheritance tax paid by an individual heir, beneficiary, donee, transferee or surviving joint tenant is a matter of public record. The final inheritance tax return is a matter of public record.

86.1(5) *Forms.* The final inheritance tax return, inheritance tax receipts, and forms for the audit, assessment and refund of the inheritance tax shall be in such form as may be prescribed by the director.

This rule is intended to implement chapters 68A and 450, and sections 421.2, 450.67, 450.68 and 450.94, The Code.

730—86.2(450) Inheritance tax returns and payment of tax.

86.2(1) *Liability for the tax.* The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent of the person's share of the property subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary, to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant and any other person being beneficially entitled to any property subject to tax, is personally liable for the tax due on all property he or she receives subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable. *Eddy v. Short,* 190 Iowa 1376, 179 N.W. 818 (1920); *Waterman v. Burbank,* 196 Iowa 793, 195 N.W. 191 (1923).

86.2(2) *Form and content—inheritance tax return.*

a. Estates of decedents dying prior to July 1, 1983. The report and inventory required by Iowa Code section 633.361 shall constitute the preliminary inheritance tax report and return to the department. The report and return shall be in such form as the director may prescribe. It shall provide for a listing of information required by law and sufficient other information relating to the property subject to tax to enable the department to determine the extent and value of the property subject to tax. It shall provide schedules for categorizing property subject to tax which conform as nearly as possible to the asset schedules of the federal estate tax return.

b. Estates of decedents dying on or after July 1, 1983. For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance

tax return is substituted in lieu thereof. The return shall provide for schedules listing the assets includible in the gross estate, a listing of the liabilities deductible in computing the net estate and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return form 706. If the estate has filed a federal estate tax return a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets and liabilities from the return. When Iowa schedules are filed with the return, only those schedules which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of $10,000 is not sufficient in nontaxable estates. In this case the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

86.2(3) *Amendments—preliminary return and probate inventory.* This subrule is applicable only to estates of decedents dying prior to July 1, 1983. The preliminary inheritance tax return and probate inventory must be amended to list newly discovered assets subject to tax and also, to correct an erroneous value placed on an asset of readily determinable value. An amendment is also required to correct any listing of the heirs, beneficiaries, transferees and surviving joint tenants and their relationship to the decedent. The preliminary inheritance tax report and probate inventory may be amended to correct any other erroneous information relating to property subject to tax. Unless the value of an asset has been determined by the appraisal proceedings, the preliminary inheritance tax report and probate inventory may be amended to list the correct market value of an asset. Provided, in no event will an amendment be permitted which would result in a refund of tax more than five years after the tax became due or one year after the tax was paid, whichever time is the later. *Welp v. Department of Revenue,* 333 N.W.2d 481 (Iowa 1983).

86.2(4) *Who must file—preliminary return and probate inventory.* This subrule is only applicable to estates of decedents dying prior to July 1, 1983. If the estate of the decedent is probated, the personal representative acting for the estate must file in duplicate the preliminary inheritance tax return and inventory, and any amendments thereto, with the clerk of the court where the estate is being administered. If the decedent's estate is not probated and no real estate is involved, the trustee or any other person becoming beneficially entitled to the property subject to the tax, must file with the department the same preliminary inheritance tax report and probate inventory that would be required if the estate were probated, if the gross share of any beneficiary, heir, transferee, or surviving joint tenant exceeds the allowable exemption. In all cases where real estate is subject to the tax, the report and inventory must be filed with the clerk of the court in the county where the decedent was a resident, or in the county where some of the real estate is located, if the decedent was a nonresident of Iowa.

86.2(5) *Time for filing—preliminary return and probate inventory.* This subrule is only applicable to estates of decedents dying prior to July 1, 1983. If the decedent's estate is probated, the preliminary inheritance tax report and probate inventory must be filed within the time prescribed by Iowa Code section 633.361, when the gross share of any heir, beneficiary, transferee or surviving joint tenant exceeds the allowable exemption. If the decedent's estate is not probated, an inventory and preliminary inheritance tax report in the same form as required in probated estates, must be filed with the department (or with the clerk, if real estate is involved) within one year after the decedent's death, if the gross share of any heir, beneficiary, transferee or surviving joint tenant exceeds the allowable exemption. If none of the gross shares exceed the allowable exemptions, the preliminary inheritance tax return and inventory must be filed with the department at the time an inheritance tax release and no inheritance tax due certificate is requested.

86.2(6) *Mandatory filing — inheritance tax return.* The inheritance tax return provided for in subrule 86.2(2) must be filed if the gross share of any heir, beneficiary, transferee or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includible in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.

86.2(7) *Who must file—inheritance tax return.* If the decedent's estate is probated, the personal representative of the estate shall have the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants and trustees who receive shares in excess of the allowable exemptions or which are taxable in whole or in part, without the deduction of liabilities, either jointly or severally to file the return with the department.

86.2(8) *Supplemental return—deferred interest.* When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation.

86.2(9) *Amended return.* If additional assets or liabilities deductible are discovered or incurred, as the case may be, after the filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets or liabilities. If additional assets or liabilities are discovered or incurred after the filing of the inheritance tax return, which results in an overpayment of tax, an amended inheritance tax return may be filed, in lieu of a claim for refund.

86.2(10) *Due date for filing—return on present property interests.* Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

a. Within nine months after death for estates of decedents dying on or after July 1, 1981.

b. Within twelve months after death for estates of decedents dying during the period beginning July 1, 1976 and ending June 30, 1981.

c. Within fifteen months after death for estates of decedents dying during the period beginning July 1, 1973, and ending June 30, 1976.

d. Within eighteen months after death for estates of decedents dying prior to July 1, 1973.

86.2(11) *Election to file—before termination of prior estate.* The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

a. Within one year after the death of the decedent. Compute the tax by applying the life estate, annuity or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

b. One year after the decedent's death and prior to the termination of the prior estate. Compute the tax by applying the life estate, annuity or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time, at the date the tax is paid that must be used. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950); *In re Estate of Millard,* 251 Iowa 1282, 105 N.W.2d 95 (1960). *In re Estate of Dwight E. Clapp,* district court Clay County, Probate No. 7251 (1980).

86.2(12) *Mandatory due date-return on a future property interest.* If the tax due on a property interest to take effect in possession or enjoyment at a future date has been deferred, the deferred tax due must be paid within 9 months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. If the termination is due to the death of a life tenant or the expiration of a term, the return and deferred tax is due 9 months (one year for future property interests created prior to July 1, 1981) after the death of the life tenant or the expiration of the term, as the case may be. If the termination of the prior estate is due to the sale of the property (when the prior estate is not preserved in the proceeds) or upon the relinquishment of the prior estate, the deferred tax is due 9 months (one year for future property interests created prior to July 1, 1981) after sale or the relinquishment of the prior estate. If the prior estate is terminated by exhaustion of the corpus under a testamentary power of invasion, a supplemental inheritance tax return must be filed with the department within 9 months (one year for future property interests created prior to July 1, 1981) after the termination and must provide an accounting of the corpus, even though no tax is due. If an

extension of time has been granted by the department to file the inheritance tax return and pay the tax due, and the prior estate terminates before the expiration of the extension, the tax shall be due on the future estate either at the expiration of the extension, or 9 months (one year for future property interests created prior to July 1, 1981) after the prior estate terminates, whichever time is the later.

86.2(13) *Extension of time—return and payment.* For good cause, the department may grant an extension of time to file the inheritance tax return and pay the tax due on a property interest in present possession or enjoyment for a period not to exceed ten years after the decedent's death. The 9 months (one year for future property interests created prior to July 1, 1981) period to file a supplemental inheritance tax return and pay the deferred tax due on a future estate cannot be extended if the prior estate terminates after the expiration of a previously granted extension of time. Application for an extension of time must be on forms prescribed by the director and must be made prior to the time the tax is due.

86.2(14) *Penalty—delinquent returns 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 90 percent of the tax required to be shown as due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless 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. A request for waiver of penalty must be in writing and submitted to the 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. Delinquent returns draw 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 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 until 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 for estates of decedents dying prior to January 1, 1981.

86.2(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.

f. When the taxpayer has good reason to believe that the gross share of none of the heirs, beneficiaries, transferees or joint tenants is of a sufficient amount for a tax to be owing.

g. When the taxpayer exercised ordinary business care and prudence in providing for the timely filing of the return and payment of the tax due. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue,* 320 N.W.2d 623 (Iowa 1982).

86.2(16) *What does not constitute reasonable cause.* Factors which do not tend to establish reasonable cause, are but not limited to:

a. Lack of sufficient liquid assets to timely pay the tax due and file the return, when the taxpayer had ample time to request an extension of time to file the return and pay the tax, but failed to do so.

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.

86.2(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.

86.2(18) *Discount.* There is no discount allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 421.14, 450.5, 450.6, 450.22, 450.39, 450.44, 450.46, 450.51, 450.52, 450.53, 450.63, 450.94, 633,361 and 633.364, as amended by 1983 Iowa Acts, chapter 177.

730—86.3(450) Audits, assessments and refunds.

86.3(1) *Audits.* Upon filing of the inheritance tax return, the department shall audit and examine it and determine the correct tax due. A copy of the federal estate tax return shall be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds, appraisals and such other information as may reasonably be necessary to establish the correct tax due. *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971). The person, or persons liable for the payment of the tax imposed by Iowa Code chapter 450, shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and regulation section 20.6001-1 thereunder.

86.3(2) *Assessments for additional tax.* If the audit and examination of the inheritance tax return discloses the correct tax to be in excess of the tax paid, or if the return is submitted without remittance, the department shall notify the taxpayer of the correct tax and make an assessment for the amount of tax due together with any penalty and interest. The amount of the assessment shall be a sum certain if paid on or before the last day of the month in which the notice of assessment is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the first day of the following month. If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments and other information available.

86.3(3) *Refunds.* If the examination and audit of the inheritance tax return discloses an overpayment of tax the department shall refund the excess, without the necessity of an amended return or claim being filed, to the taxpayer with interest at six percent per annum after sixty days from the date of payment until December 31, 1981. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Interest on refunds shall only be paid on overpayment of tax made in estates of decedents dying on or after July 1, 1975. (Acts of the Sixty-fifth General Assembly (1973) Chapter 224.) No interest shall be allowed on refunds due the estates of decedents dying prior to July 1, 1975. *Weiting v. Morrow,* 151 Iowa 590, 132 N.W. 193(1911). Also 1976 O.A.G. 871. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment shall be refunded to the taxpayer upon filing with the department either an amended inheritance tax return or a claim for refund. No refund for excessive tax paid shall be made by the department unless a claim or an amended return is filed with the department within five years after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later.

86.3(4) *Supplemental assessments and refund adjustments.* The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 7.8(17A) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections 422.25, 422.30, 450.53, 450.65, 450.71, 450.94, 450A.12, 451.12 and 1983 Iowa Acts, chapter 177.

730—86.4(450) Appeals. A determination made by the department of either the correct amount of the tax due, or the amount of refund for excessive tax paid, shall be final unless the taxpayer, or any other party aggrieved by the determination, appeals to the director for a revision of the department's determination. The appeal must be made to the director within ninety days from the postmark date of the determination. In the event of an appeal, the provisions of chapter 7 of the department's rules of practice and procedure before the department of revenue and Iowa Code chapter 17A shall apply.

This rule is intended to implement Iowa Code chapter 17A and section 450.94.

730—86.5(450) Gross estate.

86.5(1) *Iowa tangible property.* Real estate and tangible personal property within a situs in the state of Iowa and in which the decedent had an interest at the time of his death is includible in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers are, but not limited to, transfers of real estate in which the grantor retained a life estate, interest or the power of revocation and gifts made within three years of death which are in contemplation of death. These constitute transfers of property in which the decedent may not have an interest at death, but are includible in the gross estate for inheritance tax purposes. *In re Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973); and *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

86.5(2) *Foreign real estate and tangible personal property.* Real estate and tangible personal property with a situs outside the state of Iowa are not subject to the Iowa inheritance tax

annuity policy. See *Websters 3rd International Dictionary,* page 461. In other words the present value of the full amount of each annuity payment is the commuted value. This can be construed to mean only those estates which had been taxed for inheritance tax purposes on the full amount of each installment payment are entitled to the income tax exclusion.

Therefore, section 422.7(4), addresses itself only to those beneficiaries of estates of decedents dying prior to 1961, whose gross share of the estate subject to Iowa inheritance tax included the commuted value of the full amount of each installment payment. As a result, since 1961, the exclusion under section 450.4(5) alone and by itself prevents the double taxation of the portion of the installment payments subject to income tax. Thus the circuity problem is avoided by first ascertaining whether the installment payments, or a portion thereof, are subject to Iowa income tax. The rule since 1961 is this: First determine what portion (which may be all or none) of the installment payments will be subject to Iowa income tax; the portion thus determined is exempt from Iowa inheritance tax. The present value of the portion of the installment payments remaining after the portion subject to income tax has been excluded is includible in the gross estate for inheritance tax purposes.

This rule is intended to implement Iowa Code sections 422.7(4), 450.2, 450.3, 450.3(2), 450.3(3), 450.3(4), 450.3(5), 450.4(5), 450.8, 450.12, 450.37, and 450.91.

730—86.6(450) The net estate.

86.6(1) *Debts.* For estates of decedents dying prior to July 1, 1983. In general, section 450.12, The Code, provides for the deduction of "debts" before computing the tax due. The term "debts" used in section 450.12, The Code, is broader than debts of the decedent. The term includes, but is limited to, those other items specifically allowed as deductions under this section of the Code. In order to prevent confusion in the different meanings of the word "debt", the term "liabilities" is used in this rule to include all those items allowed as deductions under section 450.12, The Code.

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. *In re Estate of Waddington,* 201 N.W.2d 77, (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items, such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse and copies of notes and mortgages.

Section 450.12, The Code, draws a distinction between the liabilities that are deductible in the estate of a decedent who was domiciled in Iowa at the time of death and the liabilities that are deductible in estates of decedents domiciled outside of Iowa at death. Section 450.12(2), which lists the items that are deductible for estates of decedents domiciled outside of Iowa, should be construed in conjunction with section 450.89, The Code, which also provides for the deduction of debts in foreign estates. *In re Estate of Evans,* 246 Iowa 893, 68 N.W.2d 289 (1955).

86.6(2) *Liabilities deductible—Iowa residents.* For estates of decedents dying prior to July 1, 1983.

a. Debts owing by decedent. A debt to be allowed as a deduction in determining the net estate under section 450.12, The Code, must be the liability of the decedent and also be owing and not discharged at the time of the decedent's death. The amount allowable as a deduction is the principal amount due, plus interest accruing to the day of the decedent's death. If the decedent is not the only person liable for the debt, only a portion of the debt may be deductible for inheritance tax purposes. *In re Estate of Tollefsrud,* 275 N.W.2d 412 (Iowa 1979). The term "debt owing by the decedent" is not defined in section 450.12, The Code. However, section 633.3(10), The Code (probate code) defines "debts" as including liabilities of the decedent which survive, whether arising in contract, tort or otherwise.

Examples of what the term "debt of the decedent" does not include are but not limited to: Taxes, which are an impost levied by authority of government upon its citizens or subjects for the support of the state. *Eide v. Hottman,* 257 Iowa 263, 265, 132 N.W.2d 755 (1965); Promissory notes executed by the decedent without consideration are not debts of the decedent and are not allowable as a deduction in determining the net estate subject to tax. *In re McAllister's*

Estate, 214 N.W.2d 142 (Iowa 1974); Payments to persons in compromise of their claim to a portion of the estate made by those persons who take from the decedent, are not debts nor treated as expenses of settlement. *In re Estate of Bliven,* 236 N.W.2d 366, 371 (Iowa 1975); *In re Estateof Wells,* 142 Iowa 255, 259, 260, 120 N.W. 713 (1909).

Section 450.12(1), The Code, provides that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. *In re Estate of McMahon,* 237 Iowa 236, 21 N.W.2d 581 (1946); *In re Estate of Laartz,* Cass County District Court, Probate No. 9641 (1973); *In re Estate of Tracy,* department of revenue hearing officer decision Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. It is sufficient that the liability is enforceable against the decedent's estate and will be paid. Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. *In re McAllister's Estate*, 214 N.W.2d 142 (Iowa 1974).

If the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate based on a liability of the decedent is subject to review by the department. *In re Estate of Stephenson,* 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

b. Mortgages—decedent's debt. A mortgage or other encumbrance securing a debt of the decedent on Iowa property in which the decedent had an interest is allowable as a deduction in determining the net estate in the same manner as an unsecured debt of the decedent (Even though it may be deducted from different shares of the estate than unsecured debts. See section 633.278, The Code). However, if the debt of the decedent is secured by property located outside Iowa, which is not subject to Iowa inheritance tax, the debt is allowable as a deduction in determining the net estate, only in the amount the debt exceeds the value of the property securing the debt.

c. Mortgages—not decedent's debt. If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, if the decedent's right of recovery against the debtor. See *Home Owners Loan Corp. v. Rupe,* 225 Iowa 1044, 1047, 283 N.W. 108 (1938) for circumstances under which the right of subrogation may exist.

d. Mortgages—nonprobate property. A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death and in contemplation of death is deducted in the same manner as a debt secured by probate property. The fact the property is includible in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

e. Local and state taxes. The taxes deductible are limited to Iowa state and local taxes. *In re Estate of McMahon,* 237 Iowa 236, 21 N.W.2d 581 (1946). The deductible taxes would includes taxes on real and personal property, sales and use taxes, income tax and special school district income taxes which are due and unpaid at the time of the decedent's death, including tax on income received during the year of, but prior to, death and miscellaneous Iowa taxes, such as motor vehicle fuel taxes. To be deductible under this category, the obligation must be a tax and not a user charge, such as a sewer fee, which is more properly categorized as a debt. Special assessments on property and penalty and interest accrued to the day of death on taxes owed by the decedent are deductible, not as taxes, but as an offset against the value of the property or as a debt of the decedent as the case may be. However, for administrative convenience, it is permissible to list and deduct such liabilities in the same manner as taxes. Taxes to be deductible must be due and owing at death during the period beginning July 1 and ending June 30 in which the decedent's death occurs.

expenses specifically enumerated, that may be deductible depending on the facts and circumstances of each individual sale, would include, but are not limited to, the commission of the auctioneer for a public sale, cost of advertising the property for sale, the expense of a clerk for a public auction, necessary expenses of preparation of the property for sale, cost of the deed of conveyance and purchase contract (if the seller's obligation), broker's commission for the sale of personal property and cost of a bond required for selling real or personal property.

The expense deductible is limited to sales by the estate or trust during the period of administration. The expense of a sale by the heirs, beneficiaries, surviving joint tenants and transferees of property for their own benefit, is not deductible in computing the net estate for taxation.

Deductible selling expenses must be paid, and if not paid when the final return is filed, the department must be reasonably satisfied that the expense will be paid.

Selling expense is part of court costs. However, for administrative convenience, selling expense should be itemized and listed separately from court costs on the final return.

86.6(3) *Liabilities deductible—nonresident decedents.* For estates of decedents dying prior to July 1, 1983.

a. Liabilities deductible in full. The following items are deductible in full in computing the net estate, subject to the same terms and conditions as like obligations in estates of Iowa domiciled decedents: Iowa court costs of ancillary administration; the fee of the executor, administrator, trustee and the attorney for settling the Iowa ancillary administration, or the nonprobate assets included in the Iowa gross estate; mortgages or other encumbrances on property includible in the Iowa gross estate; bond of the executor, administrator or trustee in the Iowa ancillary administration; expense of selling Iowa property; Iowa taxes; *In re Estate of Evans,* 246 Iowa 893, 68 N.W.2d 289 (1955).

b. Liabilities not deductible. The following items are not deductible in computing the Iowa net estate subject to taxation: Court costs of the primary administration and the fees of the executor, administrator, trustee and attorney employed for settling the primary administration outside Iowa; funeral expense if the burial is outside Iowa; appraisal fees incurred in the primary administration; debts of the decedent and other obligations secured by property with situs outside Iowa which is not includible in the Iowa gross estate, except that if the secured liability is an obligation of the decedent and is in excess of the value of the security, the excess shall be prorated in the same manner as an unsecured debt of the decedent. *In re Estate of Evans,* 246 Iowa 893, 68 N.W.2d 289 (1955).

c. Liabilities—to be prorated. The following liabilities are to be prorated between the primary and the ancillary estate: Federal income tax owed by the decedent and the federal estate tax imposed on the decedent's estate; unsecured debts of the decedent; the excess of a debt of the decedent over the value of the property securing the debt, where the security is not includible in the Iowa gross estate.

The amount deductible is computed by multiplying the amount of the liability by a fraction of which the Iowa gross estate is the numerator and the total gross estate is the denominator. However, in the case of federal estate tax, if it is established either by the department or the taxpayer that the taxable estate for federal estate tax purposes includes Iowa property in a greater or lesser proportion than the Iowa property included in federal gross estate, then such greater or lesser proportion shall govern the ratio used in computing the deduction for federal estate taxes paid. See subrule 86.6(2)*"f"*.

86.6(4) *Liabilities deductible — Estates of decedents dying on or after July 1, 1983.*

a. In general — subrules 86.6(1) to 86.6(3) apply to the liabilities deductible in estates of decedents dying on or after July 1, 1983, except as otherwise provided in this subrule.

b. Residents and nonresident distinction abolished. Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. The case of *In Re Estate of Evans,* 246 Iowa 893, 68 N.W.2d 289 (1955) only applies to estates of decedents dying prior to July 1, 1983. However, the amount of the liability that is deductible depends upon the situs of the property in the gross estate.

In part of the property included in the gross estate has a situs in a jurisdiction other than

Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator. For the purpose of apportionment of the liabilities the term "gross estate" means the gross estate for federal estate tax purposes. Provided, if the federal gross estate formula produces a grossly distorted result then, subject to the approval of the department, an alternate apportionment formula may be used either by the department or the taxpayer which fairly represents the particular facts of the estate.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

c. Liabilities that must be prorated—Estates of decedents dying on or after July 1, 1983.

If the gross estate includes property with a situs outside of Iowa, the liabilities that must be prorated are: (1) Court costs, both foreign and domestic; (2) Unsecured debts of the decedent regardless of where the debt was contracted; (3) Federal and state income tax, including the tax on the decedent's final return, federal estate, gift and excise tax, and state and local sales, use and excise tax; (4) Expenses of the decedent's funeral and burial, regardless of the place of interment; (5) Allowances for the surviving spouse and children allowed by the probate court in Iowa or another jurisdiction; (6) The expense of the appraisal of property for the purpose of assessing a state death or succession tax, if not otherwise included in court costs; (7) The fees and necessary expenses of the personal representative and his or her attorney allowed by order of court, both foreign and domestic; (8) The costs of the sale of real and personal property, both foreign and domestic, if not otherwise included in court costs; and (9) The amount paid by the personal representative for a bond, both foreign and domestic.

d. Liabilities that are not prorated—Estates of decedents dying on or after July 1, 1983.

Liabilities secured by a lien on property included in the gross estate are to allocated in full to the state of situs. These are liabilities secured by: (1) Mortgages, mechanic's liens and judgments; (2) Real estate taxes and special assessments on real property; (3) Liens for an obligation to the United States of America, a state or any of its political subdivisions; and (4) Any other lien on property imposed by law for the security of an obligation.

e. Accrued taxes—For estates of decedents dying on or after July 1, 1983.

Effective for estates of decedents dying on or after July 1, 1983, state and local taxes that have accrued before the decedent's death are deductible in computing the net estate. This modifies subrule 86.6(2)*"e"* which allows a deduction only for state and local taxes that are due and payable during the fiscal year beginning July 1 in which the decedent's death occurs. In Iowa property taxes accrue on the date the county board of supervisors make the tax levy, even though they are not due and payable until the following July 1. *In Re Estate of Luke,* 184 N.W.2d 42 (Iowa 1971). Death terminates the decedent's taxable year for income tax purposes. Federal Regulation Section 1.443-1(a)(2), department subrule 89.4(9)*"b"*. As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death. In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income tax, both for prior years and the year of death, are deductible in computing the taxable estate, if unpaid at death.

This rule is intended to implement Iowa Code sections 450.12, 450.22, 450.24, 450.38, 450.89, 633.278, 633.374 and 1983 Iowa Acts, chapter 177.

730—86.7(450) Life estate, remainder and annuity tables—in general. For estates of decedents dying on or after July 4, 1965, the value of a life estate in property, an annuity for life and the value of a remainder interest in the property, shall be computed by the use of the commissioners 1958 standard ordinary mortality table at the rate of four percent per annum.

86.7(1) *Tables for life estates and remainders.* The two factors across the page equal one hundred percent. Multiply the corpus of the estate by the first factor to obtain the value of the life estate. Use the second factor to obtain the value of the remainder interest in the corpus if the tax is to be paid within twelve months after the death of the decedent who created the life

estate remainder. If the tax on the remainder is to be paid prior to the death of the life tenant, but after one year from the decedent's death, use the remainder factor opposite the age of the life tenant at the time the tax is to be paid.

Age of Life Tenant	Life Estate	Remainder
0	.90164	.09836
1	.89936	.10064
2	.89900	.10100
3	.89676	.10324
4	.89396	.10604
5	.89104	.10896
6	.88792	.11208
7	.88464	.11536
8	.88120	.11880
9	.87756	.12244
10	.87380	.12620
11	.86984	.13016
12	.86576	.13424
13	.86152	.13848
14	.85716	.14284
15	.85268	.14732
16	.84808	.15192
17	.84336	.15664
18	.83852	.16148
19	.83356	.16644
20	.82840	.17160
21	.82308	.17692
22	.81756	.18244
23	.81184	.18816
24	.80592	.19408
25	.79976	.20024
26	.79336	.20664
27	.78672	.21328
28	.77984	.22016
29	.77268	.22732
30	.76524	.23476
31	.75756	.24244
32	.74960	.25040
33	.74132	.25868
34	.73280	.26720
35	.72392	.27608
36	.71476	.28524
37	.70532	.29468
38	.69560	.30440
39	.68560	.31440
40	.67536	.32464

additional inheritance tax will be imposed on the fair market value of the decedent's interest in the same manner and subject to the same limitations as other property specially valued.

86.8(17) *Audits, assessments and refunds.* Subrules 86.3(1), 86.3(2) and 86.3(3) providing for the audit, assessment and refund of the inheritance tax imposed by Iowa Code sections 450.2 and 450.3, shall also be the rules for the audit, assessment and refund of the additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2.

86.8(18) *Appeals.* Rule 86.4(450) providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450, shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance or Iowa estate tax imposed by Iowa Code chapters 450B and 451.

This rule is intended to implement Iowa Code sections 450B.1 to 450B.7 and 451.2.

730—86.9(450) Market value in the ordinary course of trade.

86.9(1) *In general.* With the exception of real estate which has been specially valued under Iowa Code chapter 450B, property included in the gross estate for inheritance tax purposes must be valued under the provisions of Iowa Code section 450.37 at its market value in the ordinary course of trade. See department rule 730—86.10(450) for the rule governing the market value in the ordinary course of trade if the alternate valuation date is elected. "Market value in the ordinary course of trade" and "fair market value" are synonymous terms. *In Re Estate of McGhee,* 105 Iowa 9, 74 N.W. 695 (1898). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. See Federal Regulation Section 20.2031(1)(b), and Iowa Code section 441.21(1)*"b"* for similar definitions of fair market value.

86.9(2) *Values not to be used.* Other kinds of value assigned to property such as, but not limited to, assessed value of real estate for property tax purposes, cost price, true value, or book value are only relevant in computing the value of the property for inheritance tax purposes, to the extent they may be properly used in the determination of fair market value or special use value. *In Re Estate of McGhee,* 105 Iowa 9, 74 N.W.695 (1898). Fair market value cannot be determined alone by agreement between the persons succeeding to the decedent's property. Also, fair market value cannot be determined alone by setting out in the decedent's will the price for which property can be sold. *In Re Estate of Fred W. Rekers,* Probate No. 28654, Black Hawk County District Court, July 26, 1972.

86.9(3) *Date of valuation.* Unless the alternate valuation date is elected under Iowa Code section 450.37, or the tax has been deferred according to Iowa Code sections 450.44 to 450.49, all property includible in the gross estate must be valued at the time of the decedent's death for the purpose of computing the tax imposed by Iowa Code section 450.2. Subject to the two exceptions listed, any appreciation or depreciation of the value of an asset after the decedent's death is not to be taken into consideration. *Insel v. Wright County,* 208 Iowa 295, 225 N.W.378 (1929).

86.9(4) *Market value — how determined.*

a. By agreement between the department, the estate and its beneficiaries. Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or

2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or

3. The department does not request an appraisal within thirty days after the return has been filed in the case of the value of real estate. However, see subrule 86.9(4)"*a*"(3) for the rule governing values listed as "unknown" or "undetermined". See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown". If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined". The return must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until thirty days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that both the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall,* 258 N.W.2d 333 (Iowa 1977) regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

b. Values established — no agreement.

(1) *Real Estate.* If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under subrule 86.9(4)"*a*", the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, are not controlling in determining values for inheritance tax purposes. *In Re Estate of Giffen,* 166 N.W.2d 800 (Iowa 1969); *In Re Estate of Lorimor,* 216 N.W.2d 349 (Iowa 1974).

(2) *Personal property.* Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under subrule 86.9(4)"*a*", the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director's decision under Iowa Code chapter 17A.

c. Amending returns to change values.

(1) *Amendment permitted or required.* Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset's value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as "unkown" or "undetermined".

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department's request, to change the value of the item to its correct fair market value or its special use value as the case may be.

(2) *Amendment not permitted.* A return cannot be amended

1. To change the agreed value of an asset, if the facts and circumstances surrounding the agreement would not justify a reformation or rescission of the agreement,

2. To change a real estate value that has been established by the appraisal proceedings under Iowa Code sections 450.31 to 450.33, *Insel v. Wright County,* 208 Iowa 295, 225 N.W.378 (1929),

3. To change the value of an item of personal property that has been established by the department's administrative procedure under chapter 7 of the department's rules of practice and procedure, or, if an appeal is taken from the director's decision, by judicial review under Iowa Code chapter 17A. Provided, in no event may the return be amended to lower the value of an asset that would result in a refund of tax more than five years after the tax became due or one

year after the tax was paid, whichever time is the later. Iowa Code section 450.94, *Welp v. Department of Revenue,* 333 N.W.2d 481 (Iowa 1983).

This rule is intended to implement 1983 Iowa Acts, chapter 177; Iowa Code sections 450.27 to 450.37 and 450.44 to 450.49.

730—86.10(450) Alternate valuation date.

86.10(1) *When available.* The alternate valuation date allowed by 26 U.S.C. section 2032 is available for estates of decedents dying on or after July 1, 1983, on the same terms and conditions which govern the alternate valuation date for federal estate tax purposes. In general, the alternate valuation date is the date six months after the decedent's death. If property is sold within the six-month period, the date of sale is the alternate date for valuing the property sold. See Federal Regulation Section 20.2032-1 for the rules governing the valuation of property in the gross estate at its alternate valuation date for federal estate tax purposes. If the election is made, all of the property included in the gross estate and not just a portion of the property, must be valued at the alternate valuation date. Provided, the estate may elect both the alternate valuation date and the special use value under Iowa Code chapter 450B, if the estate is otherwise qualified. See Federal Revenue Ruling 83-31(1983). It is a precondition for valuing the property at its alternate value for Iowa inheritance tax purposes, that the property has been valued at the alternate value for federal estate tax purposes. However, even if the property in the gross estate is valued at the alternate valuation date for federal estate tax purposes, the estate has the option either to elect or not to elect the alternate valuation date for Iowa inheritance tax purposes. If the alternate valuation date is elected, the value established for federal estate tax purposes shall also be the alternate value for inheritance tax purposes. The election is an affirmative act and must be made on a timely filed inheritance tax return, taking into consideration any extensions of time granted to file the return. Failure to indicate on the inheritance tax return whether the alternate valuation date is elected shall be construed as a decision not to elect the alternate valuation date.

86.10(2) *When not available.*

a. The alternate valuation date provided for in 26 U.S.C. section 2032, cannot be elected by the estate if the tax on a future property interest has been deferred under Iowa Code sections 450.44 to 450.49. The tax on a future property interest must be computed on the fair market value of the future property interest at the time the tax is paid. *In Re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950).

b. Real estate which is subject to an additional inheritance tax imposed by Iowa Code section 450B.3 due to the early disposition or cessation of the qualified use, cannot be valued at the alternate valuation date for purposes of the recapture tax, unless the alternate valuation date was originally elected on the return for the decedent's estate.

c. The alternate valuation date cannot be elected if the size of the gross estate for federal estate tax purposes, based on the fair market value of the assets at the time of death, is less than the minimum filing requirements ($275,000 for 1983) specified in 26 U.S.C. section 6018(a). The fact the gross estate for inheritance tax purposes is less than the minimum federal estate tax filing requirements is not relevant.

This rule is intended to implement 1983 Iowa Acts, chapter 177; Iowa Code section 450.37.

730—86.11(450) Valuation—special problem areas.

86.11(1) *Valuation of life estate and remainder interests.* In general. Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in department rule 730—86.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred

or future estates in property be computed on the basis that the use of the property is worth a return of 4% per year. The life estate-remainder tables in department rule 730—86.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles* vs. Manhart, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris,* 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983) for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the value of the life estate for inheritance tax purposes. *In Re Estate of Evans,* 255 N.W.2d 99 (Iowa 1977), appeal dismissed 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

86.11(2) *Single life estate and remainder.* The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in department rule 86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to her surviving spouse B, age 68, a life estate in her 160 acre farm, with the remainder at B's death to daughter C. Special use value and the alternate value were not elected. The 160 acre farm at the time of the decedent's death had a fair market value of $2,000 per acre, or $320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under department rule 730—86.7(450) is .31829, that is, the use of the $320,000 for life at the statutory rate of return of 4% is worth 31.829% of the value of the farm. Daughter C's remainder factor is .68171. The life estate-remainder factors when combined equal 100% of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

Value of B's Life Estate	$320,000 × .31829 =	$101,852.80
Value of C's Remainder	$320,000 × .68171 =	$218,147.20
Total Value		$320,000.00

86.11(3) *Joint and succeeding life estates.* If property includible in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In Re Estate of Evans,* 225 N.W.2d 99 (Iowa 1977), appeal dismissed 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised his 160 acre farm to his surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45 for life, and the remainder upon C's death to C's daughters D and E in equal shares. The 160 acre farm had a fair market value at A's death of $320,000. Neither the alternate valuation date nor special use value was elected.

COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1. Value of B's Life Estate:
   Life estate factor for age 68 is .31829
   $320,000×.31829 = $101,852.80

2. Value of C's Succeeding Life Estate
Life estate factor for age 45 is .62044
Remainder factor for a life tenant aged 45 is .37956

$320,000×.62044 =	$198,540.80	
Less: B's life estate	101,852.80	
Value of C's life estate		$ 96,688.00

3. Value of D's ½ remainder
½ of $320,000×.37956 = $ 60,729.60
4. Value of E's ½ remainder
(same as D's) $ 60,729.60

Total Value — life estates and remainders $320,000.00

NOTE: In this example the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of their mother C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983), if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240 acre Iowa farm to her son B, aged 52, and her daughter-in-law C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of $2,200 per acre, or $528,000; the alternate value of the farm six months after death was $2,100 per acre or $504,000. Its special use value is $1,000 per acre or $240,000. The life estates and the remainder are computed on the basis of the special use value of $240,000.

COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1. B's share of joint life estate.

$240,000×.53412 (life estate factor, age 52) =	$128,188.80	
½ as B's share =		$64,094.40

2. C's share of joint life estate.

$240,000×.58464 (life estate factor, age 48) =	$140,313.60	
Less: value of life estate for B's life	$128,188.80	
	$ 12,124.80	
Plus: ½ value of life estate for B's life	$ 64,094.40	$76,219.20

3. Value of the Remainder.
The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is .41536, based on C's age of 48.
D's share of the remainder.
½ $240,000×.41536 = $ 49,843.20
E's share of the remainder.
Same as D's $ 49,843.20

Total value of joint life estates and the remainder $240,000.00

NOTE: In this example B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth $64,094.40. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

86.11(4) *Fixed sum annuity for life or for a term of years.* The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4% annuity tables in department rule 86.7(450). A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of annuity does not necessarily bear any relationship to the earning capacity or value of

the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4% used to compute a life estate. As a result, the present value of the fixed sum annuity computed at the statutory rate of 4% per year, may exceed the value of the property which funds the fixed annuity. In this case the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1: Decedent A devises his 240 acre farm to daughter B, with the provision that B pay the sum $5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is $2,000 per acre, or $480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE $5,000 ANNUITY AND THE REMAINDER — REVERSION TO B. Under department rule 86.7(450) the 4% annuity factor for life at age 54 is12.697 for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

C's Annuity		
$5,000×12.697 =		$ 63,485
B's Reversionary — Remainder Interest		
Value of farm	$480,000	
Less: C's annuity	$ 63,485	$416,515
Total annuity and reversion — remainder		$480,000

NOTE: In this example the $5,000 annuity is worth less than a life estate in the farm. A life estate would be worth $243,782.40 because the use of $480,000 at 4% per year would return $19,200.00 per year, which is much greater than the $5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of $100,000 be set aside from the residuary estate to be held in trust to pay $500.00 per month to B for life and upon B's death the remaining principal and income, if any, is to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under department rule 86.7(450) the annuity factor for a person 35 years of age is 18.098 for each dollar of the annuity. The annuity factor is based on the annual amount of the annuity, which in this case is $6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B'S $6,000 ANNUITY

$500.00×12 = $6,000×18.098 = $108,588, which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is $100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

86.11(5) *Valuation of remainder interests.* Iowa Code section 450.51 and department rule 86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In Re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in department rule 86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In Re Estate of Millard,* 251 Iowa 1282, 105 N.W.2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

a. If the tax on a remainder or other future property interest is paid within nine months after the decedent's death (twelve months for estates of decedents dying prior to July 1, 1981), the tax is to be based on the value of the property at the time of the decedent's death (whether it is fair market value or special use value) or the alternate value, six months after death, if elected. The age of the life tenant at the time of the decedent's death (the youngest life tenant in case of succeeding or joint life estates), or the term of years specified in the will or trust instrument, must be used to determine the value of the life estate or term estate in computing the tax on the remainder or other future property interests.

b. If the tax is paid after nine months from the date of the decedent's death (one year for estates of decedents dying prior to July 1, 1981), but before the termination of the previous life or term estate, the tax on the remainder or other future property interest, shall be computed on the fair market value of the property at the time of payment using the life estate or term factor based on the life tenant's age or term of years remaining at the time the tax is paid. Neither the alternate value or special use value can be used to value the property after nine months from the date of the decedent's death.

c. If the tax on the remainder or other future property interest is not paid under paragraphs "*a*" and "*b*", the tax must be paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. In this case the tax is based on the fair market value of the property and the life estate remainder or term factor corresponding with the time the prior estate is terminated. If the prior estate is terminated due to the death of the life tenant, or due to the expiration of the term of years, the remainder factor is 100% of the value of the property. If the prior estate terminates during the life of the life tenant or during the term of years, the tax is computed in the same manner as provided in paragraph "*b*". If the tax is not paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate, the tax owing is delinquent and is subject to penalty and interest as provided by law. However, in this case the value of the remainder interest is not modified to reflect any change in the fair market value of the property or the life or term estate factor that may occur, due to the lapse of time between the due date of the tax and the date the tax is paid.

d. Iowa Code section 450.52 provides that the tax may be paid at any time on the present worth of the future property interest. The term "present worth" means the value of the future property interest at the time the tax is paid. Therefore, if the tax on the remainder or other future property interest is not paid within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981), the estate or the beneficiary receiving the future interest cannot pay the tax on a delinquent basis using a value and a life estate or term factor which does not reflect the present worth of the future interest at the time of payment. In this situation the tax must be computed under option "*b*" or "*c*" of this subrule, whichever applies. In this respect failure to pay the tax within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981) operates as a deferral of the tax on the future property interest. *In Re Estate of Dwight E. Clapp,* Probate No. 7251, Clay County Iowa District Court, July 2, 1980.

These rules can be illustrated by the following examples:

EXAMPLE 1: Decedent A, died July 1, 1983, and, by will, devised all of her personal property to her surviving spouse B and her 240 acre Iowa farm to B for his life with the remainder at B's death to C and D in equal shares. The surviving spouse B was 74 years of age when A died. The fair market value of the 240 acre farm was $2,000.00 per acre, or $480,000.00 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 1984, the inheritance tax return was filed and the tax paid.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

Since the return was filed and the tax paid within nine months after the decedent's death, the age of B, the life tenant, and the fair market value of the farm on July 1, 1983, control the value of the remainder. The remainder factor in department rule 86.7(450) for a life tenant 74 years old is .75519.

C's ½ remainder interest	½ $480,000×.75519=	$181,245.60
D's ½ remainder interest	same as C's	181,245.60
Total value of remainder		$362,491.20

The difference between the value of the remainder and the total value of the farm is the value of B's life estate.

EXAMPLE 2: Same facts as in example 1, with the exception that only the tax on B's life estate was paid on March 15, 1984. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 1985, due to adverse economic circumstances, B, C, and D voluntarily sell the 240 acre farm at public auction to an unrelated person for $2,100 per acre, or $504,000. B's life estate was *not* preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph *"b"*, when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate remainder factor reflecting B's age on October 15, 1985 (B's age is now 76) control the value of the remainder.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in department rule 87.7(450) for a life tenant aged 76 is .77825.

C's ½ remainder interest	½ $504,000×.77825=	$196,119.00
D's ½ remainder interest	same as C's	196,119.00
Total value of remainder		$392,238.00

NOTE: In this example, the value of C and D's remainder interest in the sale proceeds is greater than the value of the remainder at the time of A's death due to the increase in the remainder factor because of B's increased age and the increase in the fair market value of the farm. However, if B's life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C and D's remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 3: Decedent A at the time of her death on July 1, 1983, owned a vested remainder in a 240 acre Iowa farm, which was subject to the life use of her mother B, who was 87 years old when A died. A's ownership of the remainder interest was not discovered until after the life tenant B's death on October 15, 1985. The fair market value of the farm was $2,000 per acre or $480,000 on July 1, 1983, and $2,200 per acre or $528,000 on October 15, 1985. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See department rule 86.10(450) and subrule 86.8(4), paragraph *"c"*. A's estate was reopened to include the omitted remainder in the 240 acre farm. An amended inheritance tax return was filed December 10, 1985, basing the tax on the fair market value and the remainder factor corresponding with the life tenant's age (87) on July 1, 1983. In this fact situation the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of $2,200 per acre and a remainder factor of 100% of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, 1986, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

86.11(6) *Valuation of contingent property interests.* Contingent remainders, succeeding life estates and other contingent property interests, must be valued as if no contingency exists. As a result, department subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay a tax on a property interest he or she does not have a vested right to receive. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240 acre Iowa farm to B for life

and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to example 1, in subrule 86.11(3), with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E who own the remainder will come into possession or enjoyment of the 240 acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

730—86.12(450) The inheritance tax clearance.

86.12(1) *In general.* The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate and, also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. The clearance fulfills the statutory requirements of Iowa Code sections 450.58, 450B.2, 633.477 and 633.479.

86.12(2) *Limitations on the clearance.* Limitations on the inheritance clearance, include, but are not limited to:

a. If special use valuation has been elected under Iowa Code chapter 450B, a clearance certifying all inheritance tax has been paid in full, or that no inheritance tax is due, does not extend to any additional inheritance tax that may be imposed under Iowa Code section 450B.3 by reason of the early disposition or early cessation of the qualified use of the real estate specially valued. Provided, this limitation shall be null and void if:

(1) The real estate specially valued remains in qualified use for the ten-year period after the decedent's death, or

(2) There is an early disposition or early cessation of the qualified use and any additional inheritance tax imposed by Iowa Code section 450B.3 is paid in full.

b. The clearance does not extend to property that is not reported on the return.

c. The clearance does not extend to a fraudulently filed return or a return which misrepresents a material fact.

d. The clearance does not release an underlying tax obligation that remains unpaid, even though a clearance may release the liens imposed by Iowa Code sections 450.7 and 450B.6.

86.12(3) *The tax paid in full clearance.* Effective for estates of decedents dying on or after July 1, 1983, the distinction between full payment and partial payment clearances is abolished. For estates of decedents dying on or after July 1, 1983, in which a tax is due, only full payment clearances will be issued. The full payment clearance will be issued only after all the tax, penalty and interest have been paid in full. Provided, if the tax has been paid in full on some, but not all of the shares in the estate, the department will, upon request, issue a full payment clearance limited to those shares on which the tax has been paid in full. The inheritance tax is a separate tax on each share of the estate and not one tax on the estate itself. *In Re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906). However, see subrule 86.12(2), paragraph "*a*" for the limitation on clearances if the estate elected the special use valuation under Iowa Code chapter 450B.

86.12(4) *The no tax due clearance.* If no tax is found to be due on any of the shares of the estate, the department will issue a clearance certifying that no tax is due, subject to the limitations in subrule 86.12(2).

86.12(5) *Clearance releases the lien.*

a. In general. Two inheritance tax liens have been created by statute to secure the payment of an inheritance tax. The lien created by Iowa Code section 450.7 secures the payment of the tax imposed by Iowa Code section 450.3, regardless of whether the tax is based on market value in the ordinary course of trade, the alternate value or special use value. Iowa Code section

450B.6 creates a second lien to secure the additional inheritance tax that may be due by reason of the early disposition or early cessation of the qualified use of special use valuation property.

b. The section 450.7 lien. A tax clearance which is not specifically limited to certain property or shares of the estate releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate. If a full payment clearance is limited to some of the shares of the estate, but not all of the shares, the lien is only released as to those shares where the tax has been paid in full.

c. The section 450B.6 lien. This lien has no application to estates of decedents dying prior to July 1, 1982. In estates of decedents dying on or after July 1, 1982, the lien only applies to the property which has been specially valued under Iowa Code chapter 450B. A clearance certifying full payment of the additional inheritance tax imposed by Iowa Code section 450B.3 releases the lien on the property which was subject to the additional tax. Since the lien imposed by Iowa Code section 450B.6 expires automatically ten years after the decedent's death on property remaining in qualified use during the ten-year period, a tax clearance is not required.

86.12(6) *Distribution of the clearance.* Effective for estates of decedents dying on or after July 1, 1983, only an original inheritance tax clearance will be issued by the department. The personal representative is required to designate on the return who is to receive the clearance. If the return fails to designate a recipient, the clearance will be sent to the clerk of the district court.

Rules 86.9(450) to 86.12(450) are intended to implement Iowa Code chapter 17A and sections 450.5, 450.7, 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, 633.479 and 1983 Iowa Acts, chapter 177.

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CHAPTERS 10 to 14

[Chs 13 to 15, 1973 IDR, rescinded June 11, 1975]

CHAPTER 15

Transferred to Corrections Department[291], chapter 50, effective October 1, 1983; see 1983 Iowa Acts, Senate File 464.

CHAPTERS 16 to 19

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CHAPTERS 20 and 21

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CHAPTER 22

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CHAPTER 23

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CHAPTER 24

Transferred to Corrections Department[291], chapter 44, effective October 1, 1983; see 1983 Iowa Acts, Senate File 464.

CHAPTER 25

Rescinded, see IAB 9/14/83 and IAB 1/4/84.

CHAPTERS 54 to 56
Reserved
Transferred to Human Services [498]
Chs 55 and 56, effective 7/1/83, see 1983 Iowa Acts, S.F. 464.

CHAPTER 57
[Rescinded July 1, 1982, IAB 6/9/82]

CHAPTER 58
Transferred to Human Services[498]
Ch 58, effective 7/1/83, see 1983 Iowa Acts, S.F. 464.

CHAPTER 59
Reserved

Transferred to Human Services [498] Ch 59, effective 7/1/83, see 1983 Iowa Acts, S.F. 464.

CHAPTERS 60 to 63
Reserved

CHAPTER 64
RELIEF FOR NEEDY INDIANS

770—64.1(252) Relief for Indians. The program of relief for needy Indians provides for the state department of social services, upon authorization of the tribal council of the settlement in Tama county, to order the state comptroller to write warrants, in favor of an Indian residing on the settlement for those items designated by the department of social services. Warrants may also be issued to meet special needs when recommended by the tribal council and approved, on an individual basis, by the state department of social services.

This rule is intended to implement Iowa Code section 252.43.

770—64.2(252) Eligibility requirements.

64.2(1) *Determining amount of assistance.* The standards used in the aid to dependent children program shall be used for those items for which provision is made through the program of relief for needy Indians.

64.2(2) *Need.* Need exists when an applicant lacks sufficient income and resources to meet established requirements.

64.2(3) *Age.* There are no age limitations.

64.2(4) *Resources and income.* See rules 41.1(1) and 41.2 (aid to dependent children).

64.2(5) *Support from relatives.* Responsible relatives shall be interviewed at the time of application and review. Any contribution made by the relative shall be taken into consideration in determining the amount of the grant.

64.2(6) *Applications.* See rules contained in chapter 40 (aid to dependent children).

64.2(7) *Investigations.* See rules contained in chapter 40 (aid to dependent children).

64.2(8) *Payment.* Payment shall be made directly to the vendor by the state department of social services for goods or services provided.

64.2(9) *Limitations on expenditures.* The state department shall notify the tribal council, each month, of funds available for that month. The tribal council may not issue orders in excess of such amount.

64.2(10) *Review.* A review of cases receiving assistance on a regular basis shall be made as frequently as the circumstances require but in no instance shall the period of time between reviews be in excess of six months. In cases where temporary assistance is granted in emergencies the situation should be evaluated at any time additional assistance is requested.

This rule is intended to implement section 252.43, The Code

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CHAPTER 65
Reserved

Transferred to Human Services[498] Ch 65, effective 7/1/83,
see 1983 Iowa Acts, Senate File 464.

b. Rehabilitation. The agency shall take the necessary steps to assure physical rehabilitation, if indicated, of every child to fullest extent possible.

c. Written authorization. The agency shall obtain from parent or guardian written authorization for medical and surgical care including anesthesia and for necessary immunizations and vaccinations.

d. Treatment. Provision shall be made for prompt treatment in case of illness and for carrying out corrective measures and treatment of remedial defects or deformities, if possible.

108.7(2) *Dental care.* A thorough dental examination shall be made as soon as possible after acceptance for placement and at least once a year thereafter.

108.7(3) *Hospital care.* The agency shall provide hospitalization as needed for children under care.

108.7(4) *Clothing.* The agency shall assure adequate and individualized clothing for each child under care.

This rule is intended to implement section 238.4 of the Code.

770—108.8(238) Education. The agency shall provide academic or vocational training in accordance with the abilities and needs of the individual children.

This rule is intended to implement section 238.4 of the Code.

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CHAPTER 109

Transferred to Human Services[498] ch 109,
effective 7/1/83, see 1983 Iowa Acts, chapter 96.

CHAPTER 2
VOTER REGISTRATION FORMS AND INSTRUCTIONS

845—2.1(47) Voter registration form.

2.1(1) The voter registration form shall provide for the following minimum information:

a. Name of applicant in full;

b. Address (residence number, street name, city, state, zip, rural route if applicable);

c. Date of birth;

d. Sex;

e. Telephone number;

f. Date of registration;

g. Ward, precinct, school district and other districts as necessary;

h. Name, if different from current name and the address given on applicant's last previous registration;

i. Party affiliation;

j. A statement in substantially the following form: "I state that I am or will be an eligible elector at any election at which I attempt to vote and that all of the information I have given upon this voter registration form is true. I hereby authorize cancellation of any prior registration to vote in this or any other jurisdiction and my eligibility to vote in any jurisdiction where voter registration is not required. I am aware that fraudulently registering, or attempting to do so, is a felony under Iowa law";

k. Signature of applicant;

l. Signature of employee of the commissioner's office; and

m. Social security number of applicant (if available).

2.1(2) Other information may be included on the voter registration forms as provided in section 48.6 of the Code.

2.1(3) In no case shall the commissioner decline to register an applicant unable to provide information set out in section 48.6(6): Ward, precinct, school district, other district.

2.1(4) An applicant may decline to list social security number and telephone number.

2.1(5) A receipt of registration shall be given the applicant, indicating the date the registration will become effective.

2.1(6) If the voter registration form presently used by a county does not include a designated space for the registrant's telephone number, the county may use any blank space not used for other information until April 30, 1979.

Effective May 1, 1979, forms with a designated telephone number space shall be used.

This rule is intended to implement Iowa Code sections 48.2, 48.3, 48.4 and 48.6.

845—2.2(47) Voter registration form, for use by mobile deputy registrar.

2.2(1) The same form is prescribed as is described under 2.1(1) to 2.1(5) except that this form must be numbered and provide a space for the signature of the deputy mobile registrar.

2.2(2) Mobile deputy registrars must account for registration forms provided by the county commissioner.

845—2.3(47) Voter registration by mail.

2.3(1) To comply with registration by mail, the commissioners of registration shall be directed to use and accept the form prescribed by the voter registration commission as follows:

a. The wording of the registration by mail form shall be precisely the same, in the same order, and with the same size type as appears in the sample form. The dimensions of the form shall be 3½ inches by 6 inches. The instructions shall be printed on the left hand side of the address side of the form.

b. The form shall be legibly printed and shall correspond with a sample to be supplied by the voter registration commission to all commissioners, and to other persons upon request.

c. The paper stock shall be either white or buff in color and of a type approved by the United States Postal Service for post cards.

d. Upon receipt of the prescribed form from the applicant, the commissioner may add additional information which shall in no way interfere with the format of the form.

e. The date of the postmark on the voter registration by mail form or the envelope bearing the form shall be the date of registration.

f. Upon receipt of the prescribed form from the applicant, the form may be affixed to a larger card for filing or mechanical retrieval purposes in such a manner so as not to obscure any part of the face of the form.

g. The prescribed form shall be the only form used by Iowa eligible electors for registration by mail, except members of the armed forces of the United States may also register by mail by executing the affidavit on the absentee ballot envelope in either a primary or general election.

h. If an envelope contains more than one registration, the individual registrants must reside at the same address and be related to each other within the first degree of consanguinity.

i. The commissioner shall within five days of receiving by mail, a registration by mail form on which the applicant has failed to provide all of the required information or incorrectly submitted the form, return each such form to the applicant stating why it is defective; and the commissioner shall enclose a new form for use by the applicant.

j. Under the conditions described in 2.3(1)*"h"*, if there is a probability the applicant may not be able to register by use of the voter registration by mail form in time to qualify the applicant to vote in the next known election the commissioner shall immediately notify the applicant of other methods of registration.

2.3(2) A sample copy of the Revised Voter Registration by Mail form together with amended rules regulating the administration of this method of registration were mailed to the county commissioners on March 23, 1976. Voter Registration by Mail forms which contain "(optional)" in the box for telephone number may be used until current supply is exhausted. The following is a reproduction of this form:

VOTER REGISTRATION BY MAIL FORM. See instructions on reverse side. Please type or print in ink.

Soc. Sec. No. (if available)	Month Day Year / / Birth Date	Phone Number (optional)	Male ☐ Female ☐ (check one)	Republican ☐ Democratic ☐ (Check one, or you may decline to state party)

NAME

Last First Full Middle

IOWA VOTING RESIDENCE

Street and number, including apartment number, or rural route

City County State Zip Code

COMPLETE IF YOUR CURRENT NAME OR CURRENT ADDRESS (OR BOTH) DIFFERS FROM THE NAME OR ADDRESS GIVEN ON YOUR LAST PREVIOUS REGISTRATION.

Full name given on last previous registration

Full address given on last previous registration

COMPLETE EVERY ONE THAT IS KNOWN:

School District

Township Section
(Fill in only if you do not live within city limits)

City
(Fill in only if you live within city limits)

Ward/Precinct

Special District

For Office Use Only

Date of Registration: (Postmark Date)

I state that I am or will be an eligible elector at any election at which I attempt to vote and that all of the information I have given upon this voter registration form is true. I hereby authorize cancellation of any prior registration to vote in this or any other jurisdiction and my eligibility to vote in any jurisdiction where voter registration is not required. I am aware that fraudulently registering, or attempting to do so, is a felony under Iowa law.

Other Signature (See instruction number 4) Applicant's Signature

Signed this day of , 19

Form 2E (Rev. 76)

INSTRUCTIONS:

1. To register to vote in Iowa you must be: a citizen of the United States, be 17½ years of age or older and declare Iowa as your voting residence. You must be 18 to vote.
2. You may register by this form at any time; however, this form or the envelope bearing the form must be postmarked no later than 25 days prior to an election to be valid for that election.
3. This form may also be used to record a change of name, address, or political party.
4. Two persons must sign this form: (1)the applicant (2) another eligible elector.
5. To be valid, this form must be delivered by the United States Postal Service.
6. Within a week you should receive a receipt of this registration. If you do not, contact your county auditor.
7. There are other ways to register. Contact your county auditor if assistance is needed.

Postmark Date Will Be Registration Date

PLACE STAMP HERE

County Auditor – Commissioner of Elections

Courthouse

City (County Seat)

IOWA Zip Code

2.3(3) Notwithstanding the provisions of subrule 2.3(1), paragraph *"a"*, any county may provide registration materials in a language other than English, subject to the following conditions and limitations:

a. Approval of the content and syntax of the form shall be made by the voter registration commission prior to the form's use. Such approval shall not be unreasonably withheld.

b. The county shall be responsible for all costs associated with the translation, production, and distribution of all such forms.

c. Any such form shall contain the words "For use by (county name) county residents only" clearly printed on its face in both English and the other language.

For the purposes of this section, the words "Registration Materials" shall include, but not be limited to the registration by mail form, the newsprint registration form, and registration and change of address forms used by deputy registrars and office personnel, as well as related instructional or informational materials and brochures.

This rule is intended to implement Iowa Code sections 48.3, 48.4, 48.6, and 48.7.

845—2.4(48)* Newsprint voter registration by mail form.

2.4(1) Notwithstanding the requirements in subrule 2.3(1) paragraphs "*c*" and "*g*", a county commissioner of registration may cause one Voter Registration by Mail Form provided for in this chapter to be printed per issue in a newspaper or shopper of general circulation. The newspaper form may be completed and submitted to the commissioner of registration in lieu of the prescribed postcard voter registration by mail form.

2.4(2) The newsprint voter registration by mail form, in addition to the printed matter provided for in rule 2.1(47) shall contain, in the lower right-hand corner on the registration side of the form in bold-faced type not less than one-eighth of an inch in height, the words "THIS FORM TO BE USED BY _____ (insert name of county) COUNTY RESIDENTS ONLY." Any newsprint voter registration form which has not been preprinted to include the name of the authorizing county shall be invalid.

2.4(3) The instructions provided for in subrule 2.3(1) paragraph "*a*" shall accompany each newsprint voter registration by mail form.

2.4(4) A newsprint voter registration by mail form or forms shall be enclosed in an envelope in accordance with Iowa Code section 48.3 and mailed by the registrant or registrants by postage paid United States mail to the commissioner of registration of the county named on the newsprint voter registration by mail form.

These rules are intended to implement Iowa Code sections 48.3, 48.6 and 48.27(4)"*b*".

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CHAPTER 3
VOTER REGISTRATION LISTS

845—3.1(48) Lists of registered voters to requesters.

3.1(1) Requests for lists of voter registration records shall be made to the registrar on a Specifications for Voter List. If a request for a voter registration record is made to the county commissioner of registration, the commissioner shall immediately forward the request to the registrar.

a. Telephone requests for confirmation and similar in-person requests for confirmation may be answered by the commissioner without filing a Specifications for Voter List.

b. Any voter, notwithstanding the provisions of this chapter, may view his or her own registration record upon request, without filling out a Specifications for Voter List.

3.1(2) Definition of "registration list." For the purpose of these rules, the term "registration list" shall mean any information except statistical data extracted from voter registration files by the county or state and provided by request. Individuals wishing to manually access the original voter registration application forms on file in the county and make limited notations of the information obtained may be granted immediate permission to do so by the county commissioner provided that the requester fills out the Specifications for Voter List. Specifications for Voter List shall be forwarded to the state registrar with the notation that manual access was granted to the requester and the date access was granted.