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Pursuant to Iowa Code section 17A.6, the Iowa Administrative Code [IAC] Supplement is published biweekly.

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 the Administrative Rules Coordinator as provided in sections 7.17, 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 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 9/24/86 Employment Services[341] Ch 1, p.7

*Section 17A.6 has mandated that the "Iowa Administrative Bulletin" be published in pamphlet form. The Bulletin will contain Notices of Intended Action, Filed Rules, effective date delays, Economic Impact Statements, 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.

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January 24, 1990, Biweekly Supplement

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CHAPTER 27
IOWA MEDICAL AND CLASSIFICATION CENTER

[Prior to 10/1/83, Social Services (770), Ch 20]

291—27.1(218) Rescinded, effective 11/18/81.

291—27.2(246) Visiting.

27.2(1) Visiting hours are from noon to 8 p.m. Thursday through Monday except as provided in paragraph *"b"* of this subrule. There are no visits on Tuesday and Wednesday. Visits shall be limited in duration according to the space available in the facility's visiting room. Limitations on the frequency and duration of visits are as follows:

a. Psychiatric program. Patients are permitted to have visits only at times when not involved in a scheduled treatment activity unless prior approval is granted by the patient's counselor.

b. Reception program. Reception inmates may have two 2-hour visits per week commencing the eighth day after admission. Visiting hours for reception inmates are from 4 p.m. to 8 p.m. on Monday, Thursday, and Friday. Visiting hours on Saturday and Sunday are from noon to 8 p.m.

c. General population. The frequency and duration of visits for general population inmates is dependent upon level assignment or housing status.

d. Visiting schedule:

Level	Duration (Hours) Weekdays	No. Visits
Patient	4	No limit
Reception	2	2/week
I	2	2/week
II	2	2/week
III	3	3/week
IV	4	4/week
Honor Unit	4	No limit
Disciplinary Detention	1	2/week
Administrative Segregation	2	2/week
Protective Custody	2	2/week

e. All visits on weekends and state holidays are limited to no more than two hours in duration.

f. All inmates and patients are limited to two visits each weekend.

g. Inmates in disciplinary detention and protective custody will receive noncontact visits unless otherwise approved by the superintendent or designee.

27.2(2) to **27.2(4)** Rescinded IAB 1/24/90, effective 1/5/90.

291—27.3(218) Tours. Tours shall be limited to adults and to small groups whose interests are relative to patient treatment as deemed appropriate by the superintendent.

These rules are intended to implement Iowa Code sections 218.4 and 246.512.

[Filed 10/17/75, Notice 8/11/75—published 11/3/75, effective 12/8/75]
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[Filed emergency 1/5/90, after Notice of 11/29/89—published 1/24/90, effective 1/5/90]

*Effective date of 20.2(7) [Social Services 770] delayed by the Administrative Rules Review Committee seventy days from May 24, 1978.

CHAPTER 28
RIVERVIEW RELEASE CENTER

[Prior to 10/1/83, Social Services (770), Ch 21]

291—28.1(218) Rescinded, effective 11/18/81.

291—28.2(218) Visiting.

28.2(1) Visiting hours are 8:15 a.m. to 11:15 a.m. or 12:45 p.m. to 3:45 p.m. on Saturdays, Sundays and holidays and from 5:30 p.m. to 9:30 p.m. Monday through Friday. Visiting hours are scheduled to avoid conflicts with inmate work programs/assignments.

28.2(2) An approved visitor may visit three times per week.

a. Inmates are permitted to have a maximum of five visitors at any given time without advance written permission from the security manager.

b. Inmates on dormitory confinement are permitted two two-hour visits per week during normal visiting hours.

c. Visiting hours for inmates in administrative/disciplinary segregation are from 10 a.m. to 3 p.m. Monday through Friday. Visits shall be scheduled in advance by the visitor. Visitors shall be immediate family only and visits shall be limited to one hour.

d. Inmates participating in intensive substance abuse programming are permitted visits in conjunction with scheduled support group treatment activities. These visits shall be scheduled with the unit director.

28.2(3) Upon arrival, all visitors shall report to the control center. All visitors must be prepared to show proof of identification. In the event that maximum visiting capacity has been reached, new arrivals will receive at least a ten-minute visit. The institution will accommodate visitors who have traveled more than 50 miles or have not visited during the last seven days.

28.2(4) Outside visits are permitted April 15 through October 15, weather permitting. Only commercially prepared food for picnics may be brought during outside visits. Food items for picnics must be presented to the control center for inspection. Only enough food for each person in the visiting party and the inmate will be allowed. Any unconsumed food items must be properly disposed of or taken off the grounds by the visitor. Food items will not be allowed in the buildings and must be consumed at the picnic tables only.

28.2(5) If a visitor desires to take an item or article to an inmate, the item or article must be presented, when arriving, to the control center for inspection. Approved items or articles must be entered into the inmate's inventory record.

28.2(6) Visitors will have access only to designated visiting areas of the institution.

28.2(7) Visits between attorney and inmate shall be permitted during normal business hours or visiting hours. Such visits during nonbusiness hours shall be by appointment as authorized by the superintendent or designee.

28.2(8) Visitors must report to the control center at the end of the visit prior to leaving the institution.

291—28.3(218) Tours.

28.3(1) Tours of institutional facilities are available primarily for adult groups. In special cases, tours may be granted for persons under age eighteen at the discretion of the superintendent.

28.3(2) Prior approval from the superintendent is required for relatives or close friends of inmates to tour the institution.

291—28.4(218) Trips of inmates. An outside group wishing an institution's organization to make a trip shall send a written request to the institution. Trips are limited to a one hundred mile radius. Permission may be granted for longer trips at the discretion of the superintendent.

Rules 28.1 to 28.4 are intended to implement Iowa Code section 218.4.

CHAPTERS 48 and 49
Reserved

TITLE IV
JAIL INSPECTION STANDARDS

CHAPTER 50
JAIL FACILITIES

[Prior to 10/1/83, Social Services (770) Ch 15]

291—50.1(356,356A) Definitions. The following are defined terms:

"Activity area." Such area, distinct from the living unit, where inmates may congregate for programming. This area is to be under constant staff observation.

"Alternative jail facility" means a facility designated pursuant to Iowa Code chapter 356A, and which is used as a halfway house type facility rather than a jail-type operation. These facilities shall be subject to inspection and accreditation by division of community services staff utilizing applicable administrative rules for residential facilities pursuant to IAC chapter 43 and other acceptable operations standards.

"Average daily population" means the average number of inmates or detainees housed daily during each year.

"Barrier free." No walls or other obstructions impeding contact by staff within their assigned area of operation.

"Capacity" means the number of inmate or detainee occupants which any cell, room, unit, building, facility or combination thereof may accommodate according to the square footage requirements of the standards.

"Cell." Single occupancy bedroom space with toilet and lavatory facilities.

"Cell block." A cell block is a group of cells with an associated day room.

"Classification." A system of obtaining pertinent information concerning inmates with which to make a decision on assignment of appropriate housing, security level, and activities.

"Continuous visual observation." Uninterrupted visual contact unaided by C.C.T.V.

"Day room." A common space shared by inmates or detainees residing in a group of cells or multiple occupancy cells, to which inmates or detainees are admitted for activities such as dining, bathing, or passive recreation.

"Detainee" means any individual confined in a temporary holding facility.

"Detention area" means that portion of the facility used to confine inmates or detainees.

"Direct supervision jail." A style of jail construction designed to facilitate direct contact between officers and inmates. The officer is stationed inside the housing unit. Evaluation and classification of inmates is an ongoing and continuous function of a direct supervision jail and is based on close contact with inmates.

"D.O.C." means the Iowa department of corrections.

"Dormitory." An open area for two or more inmates with all fixtures self-contained. There is no barrier between the sleeping area and other fixtures such as shower, table, recreation equipment, or similar items.

"Emergency situation." Any significant disruption of normal operations caused by riot, strike, escape, fire, natural disaster or other serious incident.

"Evaluation." An ongoing process whereby judgments are made concerning an inmate based upon the behavior of that inmate.

"Existing facility" means any place in use as a jail or temporary holding facility or for which bids have been let for construction prior to February 1,1982.

"Facility" means a jail in IAC chapter 50 or a temporary holding facility in IAC chapter 51 as defined by these rules.

"Holdover" is defined as a nonsecure area within a law enforcement facility which is intended to serve as a short-term holding facility for juveniles. A nonsecure area may be a multipurpose area which is unable to be locked.

"Housing unit." Individual detention area. These areas may be a single occupancy cell, multiple occupancy cell, cell block, or dormitory.

"Housing unit." (applicable to direct supervision jails) A group of living units totaling no more than 50 cells that can be efficiently managed by one officer. Staff assigned to the housing unit(s) work among inmates 24 hours a day.

"Inmate." Any individual confined in a jail.

"Inspection unit" means state jail inspection unit.

"Jail" means any place administered by the county sheriff and designed to hold inmates for as long as lawfully required but not to exceed one year pursuant to Iowa Code chapters 356 and 356A.

"Jail administrator." The sheriff, sheriff's designee, or the executive head of any agency operating a jail. The jail administrator shall be responsible for the operation of the facility according to these rules.

"Jailer." The term jailer as used in these rules includes the following persons:

a. All jail supervisors.

b. All persons who regularly devote in excess of twenty-five percent of their working day to jail activities other than administration. The term jailer may or may not include a jail administrator depending upon the jail administrator's involvement in the day-to-day operation of the facility.

"Jail inspector." The department of corrections employee responsible for inspections of jails and enforcement of these rules by authority of Iowa Code section 356.43.

"Jail supervisor." A jail supervisor is any person who is responsible for the routine operation of a jail during their assigned duty hours. While this person does not have to be on the premises at all times, he or she must be readily available for consultation.

"Living unit." An area within a housing unit containing individual sleeping compartments, day rooms, all necessary personal hygiene fixtures with sufficient tables and seats to accommodate capacity.

"Lock down." Whenever inmates are required to be in their individual cells or locked in same.

"Mail" means anything that is sent to or by an inmate or detainee through the United States Postal Service.

"Major remodeling" means construction or repairs to a portion of a jail or temporary holding facility requiring sealed bids as specified in Iowa Code section 384.96.

"Medical practitioner" means medical doctor, osteopathic physician or physician's assistant.

"Minister." A trained person ordained or licensed by a bona fide religion to conduct the services of that faith.

"Monitoring." A reasonable degree of knowledge or awareness of what activities arrestee is engaged in during incarceration.

"Multiple occupancy cell." A cell designed for more than one person.

"Person performing jail duties." All persons directly involved in the provision of services to inmates or the operation of a jail except:

1. Outside contractors performing specific housekeeping functions under the direct supervision of a jailer.
2. Individuals such as maintenance personnel, cooks, and janitors, if they do not have direct contact with inmates or routine access to areas occupied by inmates.

"Person performing temporary holding facilities duties" means all persons directly involved in the provision of services to detainees or the operation of a facility except:

1. Outside contractors performing specific housekeeping functions under the direct supervision of a facility supervisor.
2. Individuals such as maintenance personnel, cooks, and janitors.

"Physical jeopardy" means due to inmate's physical or mental condition, the inmate is in peril of serious physical harm.

"Podular or pod." A grouping of two or more housing units, usually found in large facilities, which will aid in the control of inmates.

"Prebooking area" means a secure room or cell where inmates may be held up to three hours while awaiting the procedure of commitment, release, or court appearances.

"Residential facilities" means the facilities governed by IAC 291—Chapter 43.

"Roving supervising officer." An officer who provides direct supervision of inmates by continuously moving through the housing unit, cells, and activity area of the unit.

"Segregation cell." A cell equipped with tamper-resistant bunks, a toilet, and wash basin which are of the type recommended for maximum security housing.

"Temporary holding facility" means secure holding rooms or cells administered by a law enforcement agency where detainees may be held for a limited period of time, not to exceed twenty-four hours, and a reasonable time thereafter to arrange for transportation to an appropriate facility.

"Temporary holding facility administrator" means the executive head of any law enforcement agency or designee operating a temporary holding facility. The temporary holding facility administrator shall be responsible for the operation of the facility according to these rules.

"Temporary holding facility inspector" means the department of corrections employee responsible for inspection of temporary holding facilities and enforcement of these rules by authority of Iowa Code section 356.43.

"Temporary holding facility supervisor" means any person who is responsible for the routine operation of the facility during their assigned duty hours. This person need not be on the premises at all times, but must be readily available for consultation.

Variance. Waiver of a specific standard granted by the jail inspection unit in accordance with these rules.

291—50.2(356,356A) General provisions.

50.2(1) *Applicability.* These rules apply to all facilities regulated by Iowa Code chapters 356 and 356A except temporary holding facilities which are covered by IAC chapter 51.

50.2(2) *Capacity.* Established capacities as determined by these rules shall not be exceeded except in the event of an emergency, and then only for such a period of time as is necessary

located and protected as to be free from inmate access. The detection equipment shall be battery operated or so constructed as to continue operating during a power failure.

50.9(9) *Heating appliances.* Heating appliances and water heaters shall not be located along the path of required exits.

50.9(10) *Hinged doors.* All hinged doors serving as required exits from an area designed for an occupancy in excess of 50 persons shall swing with exit traffic.

50.9(11) *Mattresses.* Only fire resistant mattresses of a type that will not sustain a flame and certified by the manufacturer and approved by the state fire marshal shall be used in jails.

50.9(12) *Sprinkler heads.* If installed, sprinkler heads accessible to inmates must be of the weight-sensitive type, be protected with a sleeve that would hamper the tying of the material on the sprinkler head or be recessed into the wall or ceiling.

291—50.10(356,356A) Minimum standards for jail personnel.

50.10(1) *Requirements for employment.* No person shall be recruited, selected or appointed to serve as a jail administrator or jailer unless the person:

a. Has reached their eighteenth birthday.

b. Is able to read and write the English language.

c. Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted of local, state and national fingerprint files.

d. Is not the reason of conscience or belief opposed to the use of force, when appropriate or necessary to fulfill their duties.

e. Is in good physical condition and free of contagious disease as certified by a physician.

f. It has been demonstrated by qualified psychological screening that the person is an appropriate candidate for employment.

50.10(2) *Minimum standard for retention.* No employee shall be retained who has demonstrated inappropriate action beyond a reasonable degree, who is not psychologically fit for jail employment, or who has repeatedly failed to observe these rules.

50.10(3) *Business transactions with inmates.* No person working in a jail shall transact any business with any inmate or member of an inmate's family, nor shall any person working in a jail arrange through another party any business transaction with an inmate.

291—50.11(356,356A) Training for jail personnel.

50.11(1) *Initial orientation.* Except in an emergency situation, all persons performing jail duties and dispatchers subject to performing jail duties within the confines of the jail shall meet the following requirements, and the provision of this information and training shall be documented.

a. The individual shall be fully knowledgeable of the administrative rules referring to jail standards.

b. The individual shall be fully knowledgeable of jail rules, written policies and procedures as adopted by the jail administrator.

c. The individual shall have been given specific orientation with respect to an inmate's rights during confinement and procedures adopted to ensure those rights.

d. The individual shall have been given both safety and range instruction assuring competency in the use of any firearm which might be used in the line of duty. If the individual is to have access to a handgun at any time, the person shall possess a professional permit to carry weapons issued under the authority of Iowa Code section 724.6.

e. Personnel authorized to have access to chemical control agents shall be trained in their use.

f. The individual shall have been instructed in the use of required fire-fighting equipment and the fire and emergency evacuation plan.

50.11(2) All jailers and jail administrators shall meet and document training requirements as specified by the Iowa law enforcement academy training standards as found in Iowa Administrative Code 501—9.1(80B) and 501—9.2(80B).

50.11(3) Rescinded IAB 1/24/90, effective 2/28/90.

This rule is intended to implement Iowa Code Supplement section 80B.11A and Iowa Code section 356.36.

50.12 Approved training program. Rescinded IAB 1/24/90, effective 2/28/90.

291—50.13(356,356A) Standard operating procedures manual. Pursuant to the authority of Iowa Code sections 356.5 and 356.36, each county shall establish and the jail administrator shall ensure compliance with a standard operating procedures manual to include administrative rules 50.13(356,356A) to 50.22(356,356A) as noted.

50.13(1) *Admission and classification.*

a. No person shall be confined or released from confinement without appropriate process or order of court.

b. With the exception of incidental contact under staff supervision, the following classes of inmates shall be kept separate by architectural design barring conversational and visual contact from each other:

(1) Juveniles and adults (pursuant to Iowa Code section 356.3).

(2) Females from males (exception—alternate jail facilities) (pursuant to Iowa Code section 356.4).

c. The following shall be kept separate whenever possible:

(1) Felons from misdemeanants.

(2) Pretrial inmates from sentenced persons.

(3) Witnesses from persons charged with crimes.

d. The following shall be kept physically separated:

(1) Persons of whom violence is reasonably anticipated.

(2) Persons who are a health risk to others.

(3) Persons of whom sexually deviant behavior is reasonably anticipated.

50.25(8) There shall be a classification system developed which shall include an initial classification determination and an ongoing evaluation of the classification status. This system shall include, but not be limited to, the following considerations:

a. Individual's criminal history.
b. Individual's present behavior.
c. Individual's present charge.
d. Health.
e. Potential for violence.
f. Sexual deviation.
g. Self-harm or suicide potential.
h. Mental and physical maturity relative to personnel safety.
i. Previous behavior in other institutional settings.
j. Noticeable changes in attitude.

50.25(9) Programming (books, television, work, treatment) shall be available to reduce inmate idleness. Subjects referred to within the parentheses are illustrative and not inclusive.

50.25(10) Each officer assigned to a housing unit shall have a mechanical or electronic means on their person to summon assistance in times of emergency.

50.25(11) Supervision checks as required by 291—Chapter 50 will continue to be required and documented. C.C.T.V. shall not be used for supervision checks.

50.25(12) All incoming inmates must be thoroughly oriented to expectations, rules, and routines of the jail. All such orientation must be documented.

50.25(13) Policies and procedures shall be developed by the sheriff or designee for the operation of the facility. These policies and procedures shall reflect the rules for direct supervision jails as delineated in 291—Chapter 50. All staff shall be knowledgeable of and have access to the policy manual and shall receive training in the implementation of said policies and procedures prior to being assigned as a housing unit officer.

The sole remedy for breach of these rules is by a proceeding for compliance initiated by request of the department of corrections. The violation of any rule shall not be construed to permit any civil action to recover damages against the state of Iowa, its departments, agents or employees of any county, its agencies or employees.

These rules are intended to implement Iowa Code sections 356.36 and 356.43.

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51.7(5) *Fire extinguishers.* All facilities shall be equipped with not less than one AA ABC fire extinguisher in operable condition for each three thousand square feet of facility on any given floor of the building.

51.7(6) *Emergency lighting.* All exits shall be equipped with independent emergency lighting sources.

51.7(7) *Required exits.* Where exits are not immediately accessible from an open floor area, safe and continuous passage, aisles or corridors shall be maintained leading directly to every exit, and shall be so arranged as to provide access for each detainee to at least two separate and distinct exists from each floor. A locked exit may be classified as an emergency exit only if necessary keys to locked doors are readily available. Elevators shall not be counted as required exists.

51.7(8) *Fire alarms.* A means of fire detection utilizing equipment of a type tested and approved by Underwriters Laboratories or Factory Manual shall be installed and maintained in operational condition. These alarms shall be ceiling-mounted if possible and shall be protected from detainee access. The detection equipment shall be battery operated or so constructed as to continue operating during a power failure.

51.7(9) *Heating appliances.* Heating appliances and water heaters shall not be located along the path of required exists.

51.7(10) *Hinged doors.* All hinged doors serving as required exists from an area designed for an occupancy in excess of fifty persons shall swing with exit traffic.

51.7(11) *Mattresses.* Only fire resistant mattresses which will not sustain a flame and certified by the manufacturer and approved by the state fire marshal shall be used in the facilities.

291—51.8(356,356A) Minimum standards for facility personnel.

51.8(1) *Requirements for employment.* No person shall be recruited, selected or appointed to serve as a jail administrator or facility supervisor unless the person has met qualifications comparable with that of a peace officer.

51.8(2) *Business transactions with detainees.* No person working in a facility shall transact any business with any detainee or member of a detainee's family, nor shall any person working in a facility arrange through another party any business transaction with a detainee.

291—51.9(356,356A) Training for facility personnel.

51.9(1) *Initial orientation.* Except in an emergency situation, all persons performing temporary detention duties shall meet the following requirements.

a. The individual shall have received a copy of these rules and be familiar with their content.

b. The individual shall be familiar with facility rules, written policies and procedures as adopted by the administrator.

c. The individual shall have been given specific orientation with respect to a detainee's rights during confinement and procedures adopted to ensure those rights.

d. The individual shall have been given both safety and range instruction assuring competency in the use of any firearm which might be used in the line of duty. If the individual is to have access to a handgun at any time the person shall hold a professional permit to carry weapons issued under the authority of Iowa Code section 724.6.

e. Personnel authorized to have access to chemical control agents shall be trained in their use.

f. The individual shall have been instructed in the use of required fire-fighting equpment and the fire and emergency evacuation plan.

51.9(2) All jailers and jail administrators shall meet and document training requirements as specified by Iowa law enforcement academy training standards as found in Iowa Administrative Code 501—9.3(80B) and 501—9.4(80B).

51.9(3) Rescinded IAB 1/24/90, effective 2/28/90.

51.10 Approved training program. Rescinded IAB 1/24/90, effective 2/28/90.

291—51.11(356,356A) Standard operating procedures manual. Pursuant to the authority of Iowa Code sections 356.5 and 356.36, each municipality shall establish and the facility administrator shall ensure compliance with a standard operating procedures manual requiring at a minimum the following specifications:

51.11(1) *Admission and classification.*

a. No person shall be confined or released from confinement without appropriate process or order of court.

b. With the exception of incidental contact under staff supervision, the following classes of detainees shall be kept separate by architectural design barring conversational and visual contact from each other:

(1) Juveniles and adults. (Pursuant to Iowa Code section 356.3.)

(2) Females from males (exception — alternate jail facilities). (Pursuant to Iowa Code section 356.4.)

c. The following shall be kept separate whenever possible:

(1) Felons from misdemeanants.

(2) Pretrial detainees from sentenced persons.

(3) Witnesses from persons charged with crimes.

d. The following shall be kept physically separated:

(1) Persons of whom violence is reasonably anticipated.

(2) Persons who are a health risk to others.

(3) Persons of whom sexually deviant behavior is reasonably anticipated.

e. Detention of juveniles shall be pursuant to Iowa Code section 232.22.

291—51.16(356,356A) Communication.

51.16(1) *Telephone calls upon request.* Detainees shall be permitted access to their family or an attorney, or both, without unnecessary delay after arrest, at no charge if made within the local calling area, as required by Iowa Code section 804.20.

51.16(2) *Attorneys and ministers.* Attorneys and ministers shall be permitted to visit detainees upon request of the detainee at reasonable hours if security and daily routine are not unduly interrupted.

51.16(3) *General visitation.*

a. All detainees in normal status shall be allowed reasonable visitation.

b. Rules shall specify who, when and how often visitors are allowed.

c. All visitors shall be required to sign a visitor log before being permitted to visit a detainee.

d. A visit may be denied if reasonable suspicion exists that the visit might endanger the security of the facility. A record shall be made of such denial and the reason therefor.

291—51.17(356,356A) Access to the courts. Detainees shall be provided at their request pertinent sections of the Iowa Code or city ordinance pertaining to their offense and access to attorneys pursuant to rule 51.16(356,356A).

291—51.18(356,356A) Discipline and grievance procedures.

51.18(1) No detainee shall be allowed to have authority or disciplinary control over another detainee.

51.18(2) The use of physical force by staff shall be restricted to instances of justifiable self-protection, the protection of others or property, the prevention of escapes or the suppression of disorder, and then only to the degree necessary to overcome resistance; corporal punishment is forbidden.

51.18(3) In the event of any death or injury due to physical force requiring medical care a report shall be sent to the state inspection unit within twenty-four hours. Any other injuries reported to the facility staff will be documented and retained within a central file at the facility.

51.18(4) The following information shall be made available to all detainees and explained to any detainee unable to read the English language:

a. A set of rules (including sanctions) and regulations pertaining to the conduct of persons in custody shall be posted in a conspicuous place.

b. What services are available to them.

51.18(5) Deprivation of clothing, bedding, or hygienic supplies shall not be used as discipline or punishment. These items may be withheld from any detainee whom staff reasonably believes would destroy such items or use them as weapons, self-injury or escape.

291—51.19(356,356A) Records. The following records shall be maintained by the facility administrator for two years unless a different period is specified.

1. Facility calendar. This record shall list the date and time of admission; authority for admission; name, address, age, and sex of detainee; date and time of release and the information required by Iowa Code section 356.6.

2. Visitor registration. This record shall contain the name and address of the person visiting; name of person visited; the date, time and duration of the visit.

3. Facility inspection records. Jail inspection records shall contain the following and be maintained for a minimum period of two years:

Fire marshal's certificates.

Written reports received from all persons doing official inspections of the facility.

4. Medical history intake form. Notation of injury upon admission shall be included.

5. Records of medical care.

6. Injury reports. Copies of all peace officer reports of investigations relating to injuries within the facility shall be maintained by the administrator for a period of five years.

7. Disciplinary records.

8. Property receipts. Property receipts as required by Iowa Code section 804.19 shall be completed and distributed as required.

9. Fire and disaster evacuation plan.

10. Records of staff training.

11. Disposition of medication. A record shall be kept of the disposition of prescribed medication not taken by a detainee.

12. Supervisory checks. A record shall be made of all required supervisory checks of detainees.

13. Incident reports: (a) use of force; (b) suicide/suicide attempts.

These rules are intended to implement Iowa Code Supplement section 80B.11A and Iowa Code sections 356.36 and 356.43.

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CHAPTER 14
HOMELESS SHELTER ASSISTANCE PROGRAM

524—14.1(220) General. The homeless shelter assistance program provides grants for the construction, rehabilitation or expansion of group shelter facilities serving the homeless. Grant requests will be submitted by eligible applicants, and funding decisions will be made by the authority board of directors after application review and recommendations by authority staff. Upon board approval of a grant request, the authority and the applicant will enter into a contract for the grant to ensure program compliance. The authority shall coordinate funding under the program with related funding programs administered by the department of economic development.

524—14.2(220) Eligible applicants. Cities, counties, nonprofit organizations, and joint ventures of the same are eligible for funds under the homeless shelter assistance program. Ineligible applicants include for-profit organizations and facilities operating in violation of law.

524—14.3(220) Eligible activities. Rehabilitation (including repairs and remodeling) of existing facilities, expansion of existing facilities, and construction of new facilities (including the acquisition of existing structures and the conversion to group shelters), services for the homeless, and operations of homeless assistance shelters are eligible activities for funding under the homeless shelter assistance program. Ineligible activities for funding include, but are not limited to, religious instruction and refinancing.

524—14.4(220) Application procedure. The authority will solicit requests for written proposals (RFPs) from eligible applicants. Applicants will be given 45 days in which to respond to the RFP. Applications will be reviewed by the authority staff and recommendations for approval or denial will be made to the authority's board of directors. The authority staff may consult with local or state agencies or groups with an expertise in the area of homeless shelters before making final funding recommendations.

524—14.5(220) Application review criteria. The application must be in the form prescribed by the authority and shall include, but not be limited to, the amount of funds requested, the need for the funds, the amount and source of the local match, and estimated number of persons to be served by the shelter. Application review criteria include local match, experience of the applicant, needs assessment, availability of support systems, financial viability of the shelter, coordination and integration with other programs, and comprehensiveness of local housing programs. Priorities for program funding include rehabilitation and expansion of existing facilities; serving geographic areas demonstrating the greatest need; coordination with other programs and agencies, and integration of homeless shelters into a comprehensive program of housing assistance at the community level.

524—14.6(220) Maximum grant award. The form of assistance will be a grant limited to a maximum of $50,000 unless there are not adequate applications to utilize available funds.

524—14.7(220) Contracts. Upon selection of a project(s) for funding, the authority will issue a contract. In the absence of special circumstances in which there is a legal incapacity on the part of the applicant to accept funds for eligible activities, the contract shall be between the authority and the applicant.

The contract will include, but not be limited to, all terms and conditions necessary for the authority to ensure that funds are properly received, accounted for and audited, that project activities are completed, and that the grantee is in compliance with applicable law.

These rules are intended to implement Iowa Code section 220.100(2)"*a*," and 1989 Iowa Acts, chapters 308 and 314.

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b. Percent of private financial participation—10 points.

c. Percent of financial participation through other housing assistance programs including, but not limited to, the federal Low Income Housing Tax Credit—20 points.

d. Total percent of local commitment—10 points.

e. Ratio of housing units for very low- and lower-income families compared to total units in the project—20 points.

f. Ratio of housing units for low- and moderate-income families, including handicapped, compared to total units in the project—10 points.

g. Magnitude of local need including, but not limited to, vacancy rates and ratio of subsidized housing to nonsubsidized housing—20 points.

h. Authority contribution per low- and moderate-income family benefited—10 points.

i. Likelihood of repayment to the authority—10 points.

j. Term in years, interest rate and security for authority assistance—20 points.

k. Extent to which housing support services will be provided to low- and moderate-income families—5 points.

l. Applicant's experience with low- and moderate-income housing programs—5 points.

m. Applicant's ability to monitor and report results of the project, including monitoring and reporting of job creation or other favorable economic impact—10 points.

524—15.14(220) Financial assistance awards.

15.14(1) *Form of awards.* The authority may consider providing financial assistance in a variety of forms including:

a. Grants

b. Forgivable loans

c. Interest subsidies

d. Equity-type investments

e. Loan guarantees or insurance

f. Loans

g. Other assistance as approved by the authority

h. Combinations of *"a"* through *"g."*

15.14(2) *Amount and location of awards.* No single project shall receive more than the lesser of $400,000 or 25 percent of the funds available from the housing assistance fund program at any given time. No more than 25 percent of the funds available from the housing assistance fund program at any given time shall be for projects located in the same city or county unless no other project qualifies for funding.

15.14(3) *Negotiation of awards.* The authority reserves the right to negotiate the form, amount, terms and conditions of any award offered to an eligible applicant. The authority shall also determine the mechanism, timing, documentation for and other factors relating to the distribution of awarded funds.

15.14(4) *Verification of data.* Applications which rate high enough to be funded will be reviewed to verify representations made in the applications. Such verification may include independent research and site visits. In cases where misrepresentations, inaccuracies, omissions, or errors are found, the authority may reject the application or rerate the application.

524—15.15(220) Contracts and agreements. Upon selection of an application for funding, the authority will prepare a contract or agreement that may include certifications and assurances, promissory notes, mortgages and other security instruments, title guaranty requirements, servicing requirements, and other items to be executed by the applicant and other parties participating in the project.

15.15(1) Certain projects may require that permits or clearances be obtained from state or federal agencies prior to proceeding with the project. Awards may be conditioned upon

the timely completion of such requirements.

15.15(2) All contracts and agreements for financial assistance under these rules will require one or more audits of project expenditures in accord with this rule and subrule 15.16(4). Audits may be required periodically or on a one-time basis as determined by the authority. Recipients shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor approved by the authority.

15.15(3) Amendments to contracts and agreements. Any substantive change to a funded project will be considered an amendment. Substantive changes would include time extensions, budget revisions, and significant alterations of contract or agreement activities that will change the scope, location, objectives, or scale of the approved project.

All amendments must be requested in writing and no amendment will be valid until approved in writing by the authority. The project, as amended, must rate high enough to be funded under the funding cycle.

524—15.16(220) Administrative requirements.

15.16(1) *Local contribution.* Local contribution is defined in and shall be determined in accord with rule 524—1.9(220).

15.16(2) *Financial management standards.* All recipients shall comply with applicable law, regulations and rules in managing project funds.

15.16(3) *Allowable costs.* The authority will determine allowable costs and shall be responsible for clarifications.

15.16(4) *Audit requirements.* Recipients that are local governments which receive more than $100,000 in federal financial assistance in any fiscal year may be required to comply with the provisions of the Single Audit Act of 1984 (P.L. 98-502) and OMB Circular A-128, "Audits of State and Local Governments," for that fiscal year. In addition, recipients receiving between $25,000 and $100,000 in assistance may choose to comply with the Single Audit Act. In such cases, the local government must have an annual audit of all its financial statements. The Act should be consulted for additional compliance requirements.

Recipients which determine that the Single Audit Act of 1984 does not apply to their situation shall have audits prepared in accordance with state laws and regulations. All audits shall commence and be completed within the periods specified in the contract.

Variations of these requirements shall only be allowed with prior written approval from the authority. Copies of the audit report shall be transmitted to the authority and to other agencies as required.

15.16(5) *Program income.* Program income, as determined by the authority, shall be committed to the project.

15.16(6) *Request for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by the authority.

15.16(7) *Record keeping and retention.* Financial records, support documents, statistical records, and all other records pertinent to the program shall be retained by the recipient in accordance with the following:

a. Records for any displaced person shall be retained for three years after that person has received final payment;

b. Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records, whichever is later;

c. The authority shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of assistance under these rules.

15.16(8) *Performance reports and review.* Recipients shall submit performance reports to the authority as required. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with other program requirements.

The authority may perform any reviews or field inspections it deems necessary to ensure program compliance, including review of performance reports. When problems of compliance are noted, the authority may require remedial actions to be taken. Failure to take remedial action may result in the authority's seeking all available equitable or legal relief.

15.16(9) *Closeouts.* Upon completion of the project, recipients will initiate closeout in accordance with procedures specified by the authority in the contract.

15.16(10) *Compliance with federal and state laws and regulations.* All recipients shall comply with all applicable law and implementing regulations, including these rules. Recipients shall also comply with all provisions of the Iowa Code governing activities performed under this program.

15.16(11) *Remedies for noncompliance.* If the authority finds that a recipient is not in compliance with its requirements under this program, the authority may exercise all legal and equitable remedies to ensure compliance or recover program funds. Reasons for a finding of noncompliance include, but are not limited to, the recipient's use of program funds for activities not described in the application, the recipient's failure to complete approved activities in a timely manner, the recipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's lack of ability and capacity to carry out the approved project in an efficient and timely manner.

15.16(12) *Servicing.* The authority may assign the servicing of any project funded under this program. The authority may also require a servicer be in place at the time an award is made or a contract is entered into.

These rules are intended to implement Iowa Code sections 15.283 to 15.287, 220.5, 220.10, 220.40, and 220.100.

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utility from establishing a sliding scale of rates and charges or from making provision for the automatic adjustment of rates and charges for public utility service, provided that a schedule showing such sliding scale or automatic adjustment of rates and charges is first filed with the board. Such adjustment factors that result from the sliding scale shall be printed on the customer's bill.

e. Reserved.

f. Delivery of notification.

(1) The notice, as it appears in 7.4(1)*"c"* or as approved by the board in accordance with 7.4(1)*"d,"* shall be mailed or delivered to all affected customers pursuant to the timing requirements of 7.4(1)*"b."*

(2) Rate-regulated utilities. Notice of all proposed increases may be mailed to all affected customers. The notice may be mailed with a regularly scheduled mailing of the utility. Notice, except for proposed nonrecurring service charge increases, shall be conspicuously marked, "Notice of proposed rate increase," on the notice itself. If a separate mailing is utilized by a utility for customer notification except for proposed nonrecurring service charge increases, the outside of the mailing shall also be conspicuously marked, "Notice of proposed rate increase."

(3) Utilities not subject to rate regulation. Notice of all increases may be mailed to all affected customers. The notice may be mailed with a regularly scheduled mailing of the utility. Notice of all increases, except nonrecurring service charge increases, shall be conspicuously marked, "Notice of rate increase," on the notice itself. If a separate mailing is utilized by a utility for customer notification of an increase, except a nonrecurring service charge increase, the outside of the mailing shall also be conspicuously marked, "Notice of rate increase." This subparagraph does not apply to municipal utilities.

(4) Failure of the postal service to deliver the notice to any customers shall not invalidate or delay a proposed rate increase proceeding.

(5) After the date the first notice is mailed or delivered to any affected customer and until such rates are resolved in proceedings before the board, any person who requests service and is affected by the proposed increase in rates shall receive a notice specified in rule 7.4(1)*"b"* not later than 60 days after the date of commencement of service to the customer.

(6) Approved notice will be required for each filing proposing an increase that is not directly identifiable with a previous customer notification.

(7) This subrule shall not apply to telephone utilities proposing to increase rates for only interexchange services, excluding EAS and intrastate access services.

7.4(2) Rescinded, effective October 16, 1985.

7.4(3) *Applications filed in accordance with the provisions of Iowa Code section 476.7.*

a. Any rate regulated public utility filing an application with the board requesting a determination of the reasonableness of its rates, charges, schedules, service or regulations shall submit at the time the application is filed, factual evidence and written argument offered in support of its filing and provided that the public utility is not a rural electric cooperative, it shall also submit affidavits containing testimonial evidence, in support of its filing for a general rate increase. All such testimony and exhibits shall be given or presented by competent witnesses, under oath or affirmation, at the proceeding ordered by the board as a result of the application, and the proceeding itself shall be governed by the applicable provisions of 7.1(476), 7.2(476) and 7.3(476).

b. Rescinded, effective 1/12/83.

c. All of the foregoing requirements shall likewise apply in the event the board shall, on its own motion, initiate a formal proceeding to determine the reasonableness of a public utility's rates, charges, schedules, service or regulations.

7.4(4) *Tariffs to be filed.* A rate-regulated public utility shall not make effective any new or changed rate, charge, schedule, or regulation until it has been approved by the board and the board has determined an effective date, except as provided in Iowa Code section 476.6,

subsections 11 and 13. If the proposed new or changed rate, charge, schedule, or regulation is neither rejected nor approved by the board, the board will docket the tariff filing as a formal proceeding within 30 days after the filing date. The filing is not a contested case proceeding under the Iowa administrative procedure Act unless and until the board dockets it as a formal proceeding. No person will be permitted to participate in the filing prior to docketing, except that the consumer advocate and any customer affected by the filing, except as limited by subrules 22.12(1) and 22.13(1), may submit within 20 days after the filing date a written objection to the filing and a written request that the board docket the filing, which request the board may grant in its discretion. Such written objections and requests for docketing shall set forth specific grounds relied upon in making the objection or request.

7.4(5) *Letter of transmittal.* Three copies of all tariffs and all additional, original, or revised sheets of tariffs and the accompanying letter of transmittal shall be filed with the board and shall include or be accompanied with such information as is necessary to explain the nature, effect, and purpose of the tariff or additional, original, or revised sheets submitted for filing. Such information shall include, when applicable:

a. The amount of the aggregate annual increase or decrease proposed.

b. The names of communities affected.

c. The number and classification of customers affected.

d. A summary of the reasons for filing and such other information as may be necessary to support the proposed changes.

7.4(6) *Evidence.* Unless otherwise authorized by the board in writing prior to filing, a utility must when proposing changes in tariffs or rate schedules, which changes relate to a general increase in revenue, prepare and submit with its proposed tariff the following evidence in addition to the information required in 7.4(11). The board shall act on requests for waivers not later than 14 days after filing of those requests. If no action is taken on a request for waiver, it shall be deemed denied.

a. Factors relating to value. A statement showing the original cost of the items of plant and facilities, for the beginning and end of the last available calendar year, any other factors relating to the value of the items of plant and facilities the utility deems pertinent to the board's consideration, together with information setting forth budgeting accounts for the construction of scheduled improvements.

b. Comparative operating data. Information covering the latest available calendar year immediately preceding the filing date of the application.

(1) Operating revenue and expenses by primary account.

(2) Balance sheet at beginning and end of year.

c. Test year and pro forma income statements. Schedules setting forth revenues, expenses, net operating income of the last available calendar year, the adjustment of unusual items and by adjustment to reflect operations for a full year under existing and proposed rates.

d. Additional evidence for rural electric cooperatives. In addition to the foregoing evidence, a rural electric cooperative shall file schedules setting forth utility long-term debt and debt costs, accrued utility operating margins and other components of patronage capital, the cooperative's plan to refund utility patronage credits, the ratio of utility long-term debt to retained utility operating margins, the times interest earned ratio, the debt service coverage, authorized utility construction programs, utility operating revenues from base rates, and utility operating revenues from power cost adjustment clauses.

e. Additional evidence for investor-owned utilities. In addition to the foregoing evidence, an investor-owned utility shall file, at the same time the proposed increase is filed, the following information. For the purposes of these rules, "year of filing" means the calendar year in which the filing is made. Unless otherwise specified in these rules, the information required shall be based upon the calendar year immediately preceding the year of filing.

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**See Utilities Division, IAB 7/30/86

CHAPTER 8
CIVIL PENALTIES

[Prior to 10/8/86, Commerce Commission(250)]

199—8.1(476) Civil penalty for willful violation. The board may assess a penalty against a public utility upon finding that the utility willfully violated a provision of Iowa Code chapter 476, a board rule, or a provision of an order lawfully issued by the board.

A willful violation exists where the evidence shows that the utility intentionally or knowingly violated a board rule, a provision of an order lawfully issued by the board in a proceeding involving the same utility, or a provision of Iowa Code chapter 476.

This rule is intended to implement Iowa Code sections 476.51 and 476.20.

199—8.2(476) Procedure. A request for imposition of civil penalities must be made within 180 days of the date the party filing the request knew or should have known of the alleged violation. The request shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The request shall be in writing and must be delivered by United State Postal Service or personal service. The 180-day limit is tolled by commencing an informal complaint proceeding in accordance with Iowa Administrative Code 199—Chapter 6.

8.2(1) *Request by nonboard party.* As a part of a request for a formal proceeding in accordance with Iowa Administrative Code 199—6.5(476) or as part of any other contested case proceeding, the consumer advocate or any other person may request the board to impose civil penalties against a utility for a willful violation of a provision of Iowa Code chapter 476, a board rule, or an order lawfully issued by the board in a proceeding involving the same utility.

In a complaint proceeding, the request for imposition of civil penalties must appear on the face of a request for formal proceeding filed in accordance with the provisions of Iowa Administrative Code 199—Chapter 6. Upon receiving approval from the board, a party may amend its request for a formal proceeding to request the board to impose civil penalties at any time prior to the close of the submission of evidence. In any other contested case proceeding, the request must be made by written motion prior to the close of the submission of evidence.

8.2(2) *Board request.* On its own motion, the board may raise the issue of imposing civil penalties against a utility for a willful violation of Iowa Code chapter 476, a board rule, or a provision of an order lawfully issued by the board in a proceeding involving the same utility, as part of a contested case proceeding with adequate notice or by commencing a formal complaint proceeding in accordance with the provisions of Iowa Administrative Code 199—Chapter 6.

8.2(3) *Hearing.* If necessary, a hearing shall be held in accordance with the provisions of Iowa Administrative Code 199—Chapter 6 where there is an issue of adjudicative fact. The utility may waive its right to a hearing. A separate hearing on an adjudicative fact is not required if the same issue of adjudicative fact has been fully litigated by the identical parties with adequate notice as part of a contested case proceeding.

This rule is intended to implement Iowa Code sections 476.51 and 476.20.

199—8.3(476) Penalties assessed. The board, in its discretion, may levy penalties of not more than $100 per violation or $1000 per day of a continuing violation, whichever is greater.

In determining the amount of penalty to be imposed for a willful violation, the board may consider the following factors in exercising its statutory discretion to impose civil penalties up to the maximum amount:

1. Gravity of the offense;
2. The utility's prior record of Code, rule, and order violations;
3. The actual or potential harm or injury to an individual or the public resulting from the violation.

This rule is intended to implement Iowa Code sections 476.51 and 476.20.

"Grade of service" means the number of parties served on a telephone line such as one-party, two-party, four-party, etc.

"Held order for regrade" means an application for regrade of service not filled within 30 days of the date which the customer desires regraded service, provided preconditions have been met.

"Held order for service" means an application for establishment of service not filled within 30 days of the date the prospective customer desires service, provided preconditions have been met.

"Inactive account" refers to a customer whose service has been permanently disconnected and whose account has not been settled either by payment or refund.

"Interexchange service" is the provision of intrastate telecommunications services and facilities between local exchanges, and does not include EAS.

"Interexchange utility" means a utility, a resale carrier or other entity that provides intrastate telecommunications services and facilities between exchanges within Iowa, without regard to how such traffic is carried. A local exchange utility that provides exchange service may also be considered an interexchange utility.

"InterLATA toll service" means toll service that originates and terminates between local access transport areas.

"IntraLATA toll service" means toll service that originates and terminates within the same local access transport area.

"Intrastate access services" are services of telephone utilities which provide the capability to deliver intrastate telecommunications services which originate from end-users to interexchange utilities and the capability to deliver intrastate telecommunications services from interexchange utilities to end-users.

"Local exchange utility" means a telephone utility that provides local service under tariff filed with the board. The utility may also provide other services and facilities such as access services.

"Local service" means telephone service furnished between customers or users located within an exchange area.

"Message" means a completed telephone call by a customer or user.

"Message rate service" means service for which the customer charges are based on message units depending in part upon the number of originated local or extended area service messages.

"Multiparty service" means service provided to more than one customer on a single circuit to the central office.

"New inside station wiring" means wiring, in whole or in part, installed on a premise beyond the demarcation point by a telephone utility or other supplier on and after transition date.

"Official company station equipment" means telephone sets, subscriber carriers, teletypewriters, radio equipment, facsimile equipment, key systems, PBX's and other terminal equipment installed by the telephone utility and used exclusively by the telephone utility for the transacting of company business.

"Other supplier" means the customer or any entity other than the telephone utility providing, repairing, or maintaining terminal equipment or new inside station wiring or repairing or maintaining existing inside station wiring.

"Outside plant" means the telephone equipment and facilities installed on, along, or under streets, alleys, highways, and private rights of way between customer locations, central offices or the central office and customer location.

"Percentage of fill" means the ratio of circuits and equipment in use to the total available multiplied by 100.

"Premises" means the space occupied by an individual customer in a building, in adjoining buildings occupied entirely by that customer, or on contiguous property occupied by the customer separated only by a public thoroughfare, a railroad right of way, or a natural barrier.

"Protector" means a utility-owned electrical device located in the central office, at a customer's premises or anywhere along any telephone facilities which protects both the telephone utility's and the customer's property and facilities from over-voltage and over-current by shunting such excessive voltage and currents to ground.

is notified the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

g. All residential customers shall be permitted to have a last date for timely payment changeable for cause in writing; such as, but not limited to, fifteen (15) days following the approximate date each month upon which income is received by the person responsible for payment.

h. Maximum payment required for initial network access shall comply with the total derived in accord with these rules and specified in the filed tariff.

(1) An applicant for network access, who under the tariff credit rules is required to make a deposit to guarantee payment of bills, may be required to pay the service charges and deposit prior to access. An applicant not required to make a deposit shall not be billed a service charge earlier than the first regular monthly bill.

(2) The amounts required must comply with 22.4(2), 22.4(5) and 22.4(7).

i. Maximum payments required by an active account or inactive account, for restoration of service of the same class and location as existed prior to disconnection, shall be the total of charges derived for reconnection and must comply with 22.4(2), 22.4(5) and 22.4(7). Only charges specified in the filed tariff shall be applied.

j. The utility may initiate collection efforts with the issuance of a final bill when the termination of service is at the customer's request. For all other bills no collection effort other than rendering of the bill shall be undertaken until the delinquency date.

22.4(4) *Customer complaints.*

a. Complaints concerning the charges, practices, facilities, or service of the utility shall be investigated promptly and thoroughly. The utility shall keep a record of such complaint showing the name and address of the complainant, the date and nature of the complaint, its disposition, and all other pertinent facts dealing with the complaint, which will enable the utility to review and analyze its procedure and actions. The records maintained by the utility under this rule shall be available for inspection by the board or its staff upon request.

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

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

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

22.4(5) *Refusal or disconnection of service.* Notice of a pending disconnection shall be rendered and transmission 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 five (5) 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. This notice shall include a toll-free or collect number where a utility representative qualified to provide additional information about the disconnection can be reached. 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 22.4(5) *"a", "b", "c", "d"* and *"e"*, 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's use 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 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 board, the requirements of municipal ordinances or law pertaining to the service.

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

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 22.4(7), provided that the utility has made a reasonable attempt to effect collection and:

(1) Has provided the customer with 5 days' prior written notice with respect to an unpaid bill and 12 days' prior written notice with respect to an unpaid deposit, as required by this rule; disconnection may take place prior to the expiration of the five-day unpaid bill notice period if the utility determines, from verifiable data, that usage during the five-day notice period is so abnormally high that a risk of irreparable revenue loss is created.

(2) Is prepared to reconnect the same day if disconnection is scheduled for a weekend, holiday or after 2 p.m.

(3) In the event of a dispute concerning the bill, the telephone company may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill. Following payment of the undisputed amount, efforts to resolve the complaint, using complaint procedures in the company's tariff, shall continue and for not less than 45 days after the rendering of the disputed bill, the service shall not be disconnected for nonpayment of the disputed amount. The 45 days may be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board.

22.4(6) *Medical emergency.* Notwithstanding any other provision of these rules, a telephone utility shall postpone the disconnection of service to a residential customer for a reasonable time, not in excess of 30 days, if the customer produces verification from a physician, or a public health or social services official, which states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer's family or any permanent resident of the premises where service is rendered. This written verification shall identify the medical emergency and specify the circumstances. Initial verification may be by telephone if written verification is forwarded to the utility within five days.

22.4(7) *Insufficient reasons for refusal, suspension or discontinuance of service.* The following shall not constitute sufficient cause for refusal, suspension or discontinuance 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 terminal equipment, new inside station wiring or other 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. Permitting another occupant of the premises access to the telephone utility service when that other occupant owed an uncollectible bill for service rendered at a different location.

f. Failure to pay for yellow page advertising.

g. Use of an auxiliary directory cover.

22.11(4) *Amortization of existing telephone utility cable within or between two or more buildings on the same premise.* That portion of existing outside plant which represents the undepreciated investment of the utility in telephone utility cable within or between two or more buildings on the same premises shall be amortized over the remaining life of the amortization period established by subrule 22.11(3), commencing from the effective date of these rules. Each telephone utility shall transfer the dollar amount which is to be amortized from the outside plant account 242.1 to the inside station wiring account 233 on the utility's transition date. Existing users of telephone utility cable within or between two or more buildings on the same premises on the transition date shall not be denied use in the future equal to their use on the transition date, unless that user requests a decrease in service after the transition date. Existing telephone utility cable within or between buildings on the same premise, upon expiration of the amortization period for the respective subaccounts, shall be excluded from the utility's regulated books of account.

22.11(5) *Construction by user limitation.* A user shall not be allowed to construct inside station wiring from a demarcation point or between two or more buildings on the same premises to obtain service from an exchange other than that by which they would normally be served, excluding users being provided adjacent exchange service or foreign exchange service as provided in a company's tariff. Existing inside wiring obtaining local exchange service within another exchange boundary shall be disconnected by the user within ten days after receipt of written notification from the local exchange company.

22.11(6) *Standards applicable to existing and new inside station wiring.* The following technical standards must be complied with:

a. Intrasystem wiring in customer-provided PBX and key telephone systems shall be in compliance with applicable registration standards promulgated by the federal communications commission.

b. For use with telephone transmission service where only nonbutton or single button telephone stations and associated ancillary devices are utilized, new inside station wiring shall be in compliance with 47 CFR Part 68.

c. All existing and new inside station wiring must comply with applicable national, state or local building and electrical codes, including, National Electrical Code, NFPA No. 70-1978 (Article 800, Communications Circuits); and accepted good engineering practice in the communication industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and safety of persons and property.

d. Telephone utilities shall generally endeavor to answer any questions concerning the installation, repair, and maintenance of new inside station wiring and the repair and maintenance of existing inside station wiring. Upon request, telephone utilities shall distribute to their customers or other interested parties, explanatory printed materials on new inside station wiring, including an explanation of how compliance with the above standards can be accomplished.

199—22.12(476) Contents of tariff filings proposing rates.

22.12(1) *Construction of rule.* This rule shall be construed in a manner consistent with its purpose to expedite informed consideration of tariff filings proposing rates by assuring the availability of relevant information on a standardized basis. Unless a waiver is granted prior to filing, this rule shall apply to all tariff filings by rate-regulated telephone utilities proposing rates, except tariff filings of interexchange carriers not providing basic local service proposing new or changed intraLATA rates certified by an officer or employee with personal knowledge to be the same as the rates charged for the same deregulated services in the competitive interLATA market. These intraLATA tariff filings shall not be subject to the 20-day objection or request for docketing period in subrule 7.4(4) and shall be approved and made effective, subject to investigation or complaint, on an expedited basis by the board upon filing.

22.12(2) *Cost studies to be filed.* Tariff filings proposing rates shall be accompanied by applicable cost studies performed in accordance with 22.13(476). These shall be accompanied by all workpapers used.

22.12(3) *Specification of cost methodologies.* By September 1, 1982, all telephone utilities shall file cost study methods, consistent with 22.13(476).

a. This filing will include definitions which permit the assignment of tariffs to a cost study method, formulae or documentation for computer programs and applicable parameters, definitions, unit costs, and specific and common costs allocation factors.

b. Subsequent filings must be consistent with a filed method and contain an explanation as to how the cost study method used conforms with the filed definitions, unless an application is made to amend or revise the method on file.

22.12(4) Rescinded, effective June 10, 1987.

199—22.13(476) Methodology for determining costs to serve.

22.13(1) *Construction of rule.* This rule shall be construed in a manner consistent with its purpose to provide information on costs of supplying specific telephone services and on the relative contributions of general telephone service offerings to the rates of return to the telephone utilities. Unless a waiver is granted prior to filing, this rule shall require periodic fully distributed cost (FDC) studies to be prepared and submitted to the board and shall require individual tariff filings to be supported by cost studies except tariff filings of interexchange carriers not providing basic local service proposing new or changed intraLATA rates certified by an officer or employee with personal knowledge to be the same as the rates charged for the same deregulated services in the competitive interLATA market. These intraLATA tariff filings shall not be subject to the 20-day objection or request for docketing period in subrule 7.4(4) and shall be approved and made effective, subject to investigation or complaint, on an expedited basis by the board upon filing.

22.13(2) *Fully distributed cost studies.* As used in this chapter, a FDC study operates to estimate the costs to serve customer classes.

a. In a FDC analysis, the totality of all investment and operating costs for all services offered during a specified test period are first determined. In addition, the total volume of each service provided during the test period is determined from the utility's records. Direct costs which can be identified for a particular category of service are segmented and attributed to the relevant services. The remaining common and joint costs are allocated among the services according to quantitative determinations as to test period direct investment in each service or test period relative use which each service made of the facilities, personnel, and operations supported by such costs. Revenues are identified, segmented and attributed to the relevant services. At the conclusion of the process, it should be possible not only to compute a rate of return for each service, but also to estimate unit costs for each of the services offered during the test period, which can be used as a basis for assessing relative revenue requirement contributions for each service which would have satisfied the utility's total revenue requirement—including cost of capital. The rates for each service shall be computed so as to have contributed an equal rate of return on investment.

b. Service category cost studies shall be made a part of any cost study. The test period direct costs, common and joint costs, investments and revenues shall be identified and attributed to each of the categories.

Categories and subcategories of service to be studied include, but are not limited to, the following:

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CHAPTER 64
CHILD DEVELOPMENT COORDINATING COUNCIL

281—64.1(256A,279) Purpose. These rules structure the child development coordinating council, whose purpose is to promote the provision of services to at-risk three- and four-year-old children and public school child development programs for at-risk three-, four-, and five-year-old children. These rules also set forth the procedures and conditions under which state funds shall be made available to assist local child development programs for at-risk children.

281—64.2(256A,279) Definitions.

"Applicant" means a public or private nonprofit organization, licensed by the department of human services or approved by the department of education, which applies for the state child development funds.

"Child development grants" means the funds awarded by the council to assist child development programs.

"Council" means the child development coordinating council.

"Department" means the department of education.

"Grantee" means the applicant designated to receive child development grants.

"Low-income family" means a family whose total income is or is projected to be equal to or less than 125 percent of the federally established poverty guidelines.

"Project" means the child development program for which grant funds are requested.

"Public school applicant" means a public school district approved by the department which applies for the state public school child development funds.

"Public school child development grants" means the funds awarded by the council to assist public school child development programs as established in Iowa Code Supplement section 279.51.

"Public school grantee" means the applicant designated to receive public school child development grants.

"Public school project" means the public school child development program for which grant funds are requested.

281—64.3(256A,279) Child development coordinating council. The council members shall be as provided in Iowa Code section 256A.2. The Iowa resident parent shall be chosen by the head start director's association in consultation with the head start parents' association.

281—64.4(256A,279) Procedures.

64.4(1) A quorum shall consist of two-thirds of the members.

64.4(2) When a quorum is present, a position shall pass when approved by a majority of voting members.

64.4(3) The council shall meet at least four times per year and may meet more often at the call of the chair or a majority of voting members.

64.4(4) The chairperson and vice-chair shall be elected by the council for a term of two years.

281—64.5(256A,279) Duties. The duties of the council shall be as provided in Iowa Code section 256A.3 and in Iowa Code Supplement section 279.51.

281—64.6(256A,279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the council shall grant awards to child development programs for at-risk three- and four-year-old children and public school child development programs for at-risk three-, four-, and five-year-old children on a competitive basis.

281—64.7(256A,279) Eligibility.

64.7(1) *Child development grants.* At least 80 percent of the funded available enrollment slots for at-risk three- and four-year-old children shall be directed to serve children in primary eligibility categories as follows:

a. Children reaching three or four years of age on or before September 15 of the contract year; and

b. Members of a low-income family.

64.7(2) *Public school child development grants.* At least 80 percent of the funded available enrollment for at-risk three-, four-, and five-year-old children in public school child development programs shall be directed to serve children in primary eligibility categories as follows:

a. Children reaching three, four, or five years of age on or before September 15 of the contract year; and

b. Members of a low-income family.

281—64.8(256A,279) Secondary eligibility. Up to 20 percent of the available funded child development enrollment slots for at-risk may be filled by children who are three or four years of age on or before September 15 or public school enrollment slots by children who are three, four, or five years of age on or before September 15; are above the income eligibility guidelines provided that they are served on a sliding fee schedule determined at the local level; and are eligible according to one or more of the folloiwng criteria if the child:

1. Is functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional;
2. Was born at biological risk, such as low birth weight (under 1500 grams—approximately three pounds) or with a diagnosed medical disorder, such as spina bifida or Down's syndrome;
3. Was born to a parent who was under the age of 18; or
4. Resides in a household where one or more of the parents or guardian:

Has not completed high school;

Has been identified as a substance abuser;

Has been identified as chronically mentally ill;

Is illiterate;

Is incarcerated; or

Is a child or spouse abuser.

5. Has other special circumstances, such as foster care or being homeless.

The program may include children not at-risk, provided they are at full pay and meet other age requirements.

281—64.9(256A,279) Grant awards procedures. Grants shall be awarded on a competitive basis by the council. The council shall request proposals for child development projects for at-risk three- and four-year-old children and public school projects for at-risk three-, four-, and five-year-old children.

Grants shall be awarded for a 12-month period and may be renewed for a second year.

The following information shall be provided and grants shall be awarded to applicants based on the following criteria:

1. The qualifications of the staff and staff background in child development services.
2. The degree to which the project is or shall be integrated with existing community resources and has the support of the local community.
3. The ability of the project to provide for child care in addition to child development services for families needing full-day child care.
4. A staff-to-children ratio for three- and four-year-old children within the guidelines established by the council but not less than one staff member per eight children. A staff-to-

children ratio for five-year-old public school children not less than one staff member per 12 children.

5. The degree to which the project involves and works with the parents and includes home visits, optional parental instruction on parenting and tutoring skills, and experiential education.

6. The manner in which health, medical, dental and nutrition services are incorporated into the project.

7. The degree to which the project complements existing programs and services for at-risk three- and four-year-old children and at-risk three-, four-, and five-year-old public school children available in the area, including other day care services, services provided through the school district, and services available through area education agencies.

8. The degree to which the project can be monitored and evaluated to determine its ability to meet its goals.

9. The provision of transportation or other auxiliary services that may be necessary for families to participate in the project.

10. The provision of staff training and development, and staff compensation sufficient to ensure continuity.

281—64.10(256A,279) Application process. The council shall announce through public notice the opening of an application period.

281—64.11(256A,279) Request for proposals. Applications for the child development grants and public school grants shall be distributed by the department upon request. The request for proposals shall require applicants to provide the following information:

1. Applicant identification (applicant's name and address).
2. Project summary.
3. Program goals, objectives, timelines, who is responsible, and evaluation.
4. Documentation of assurances from community support including cooperating agencies.
5. Project budget (administrative costs not to exceed 10 percent of total award).
6. Project management.
7. A plan for evaluation.

The request for proposal for public school grants for at-risk three-, four-, and five-year-old children shall document all day, everyday kindergarten to serve at-risk five-year-old children, which may be a part-day combination of three- to five-year-old at-risk children.

Proposals not containing the specified information or not received by the specified date may not be considered.

All applications shall be submitted in accordance with instructions in the requests for proposals. The proposals shall be submitted to the department.

281—64.12(256A,279) Grant process.

64.12(1) An applicant shall make formal response using forms issued and procedures established by the council.

64.12(2) A rating team shall review and rank the proposals and shall be composed of persons with expertise in child development programs and fiscal management experience.

64.12(3) The council shall have the final discretion to award funds.

64.12(4) The council shall notify successful applicants and shall provide to each of them a contract for signature. This contract shall be signed by an official with authority to bind the applicant and shall be returned to the council prior to the award of any funds under this program.

281—64.13(256A,279) Award contracts. Administrative costs under these programs shall be limited to 10 percent of the total award.

281—64.14(256A,279) Notification of applicants. Applicants shall be notified within 45 days following the due date for receipt of proposals as to whether their request shall be funded. Funds for grants approved by the council shall be awarded through a contract entered into by the department and the applicant.

281—64.15(256A,279) Grantee responsibilities. The grantee shall maintain records which include but are not limited to:

1. Information on children and families served.
2. Direct services provided to children.
3. Record of expenditures.
4. Other appropriate information specified by the council necessary to the overall evaluation.

Grantees shall provide quarterly reports that include information detailing progress toward goals and objectives, expenditures and services provided on forms provided for those reports. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee until the time that the report is received. No new awards shall be made for continuation programs where there are delinquent reports from prior grants.

281—64.16(256A,279) Withdrawal of contract offer. If the applicant and the department are unable to successfully negotiate a contract, the council may withdraw the award offer.

281—64.17(256A,279) Evaluation. The grantee shall cooperate with the council and provide requested information to determine how well the goals and objectives of the project are being met.

281—64.18(256A,279) Contract revisions. The grantee shall immediately inform the department of any revisions in the project budget. The department and the grantee may negotiate a revision to the contract to allow for expansion or modification of services but shall not increase the total amount of the grant. The council shall approve revised contracts if the revision is in excess of 10 percent of a line item.

281—64.19(256A,279) Termination for convenience. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties shall agree upon the termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible.

281—64.20(256A,279) Termination for cause. The contract may be terminated in whole or in part at any time before the date of completion, whenever it is determined by the council that the grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the department of the reasons for the termination and the effective date. The grantee shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

The department shall administer the child development grants and public school grants contingent upon their availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the child development grants and the public school grants, the contracts shall be terminated or renegotiated. The council may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order.

281—64.21(256A,279) Responsibility of grantee at termination. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends money for other than specified budget items approved by the council, the grantee shall return moneys for unapproved expenditures.

281—64.22(256A,279) Appeals. Any agency or public school aggrieved by a final decision regarding a grant award may appeal the decision by notifying the director of the department in writing within ten days of the date of the decision. Appeals shall include the name and address of the agency or public school, a copy of the decision, and a short and plain statement of the grounds for appeal, which shall be limited to the following:

1. The decision process was conducted in violation of statutory or regulatory authority;
2. The decision violates state or federal law, policy, or rule; or
3. The decision process involved a conflict of interest.

Within 14 days of mailing the letter of appeal, an agency or public school shall submit all written documentation, evidence, or argument in support of its appeal. The director shall notify the council of the appeal and shall provide the council an opportunity to defend its decision with written documentation, evidence, or argument, which shall be submitted within 24 days following the council's initial decision.

The director shall issue a decision on the appeal within a reasonable time.

These rules are intended to implement Iowa Code Supplement chapter 256A and section 279.51.

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CHAPTER 65
INNOVATIVE PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

281—65.1(279) Purpose. These rules set forth procedures and conditions under which state funds shall be granted to public schools which provide innovative in-school programming.

281—65.2(279) Definitions.

"Applicant" means a public school that applies for the early elementary at-risk funds.

"Department" means the department of education.

"Early elementary grades" means programs found in kindergarten through grade three.

"Early elementary grants" means the funds awarded by the department to assist at-risk early elementary school programs.

"Grantee" means the applicant designated to receive early elementary school grants.

"Low-income family" means a family who meets the current income eligibility guidelines for free and reduced price meals in a local school.

"Project" means the early education school program for which grant funds are requested.

281—65.3(279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the department shall grant awards to applicants for early elementary grants on a competitive basis to those schools with a high percentage of low-income families. A priority shall be given to school programs which integrate at-risk children with the rest of the school population.

281—65.4(279) Eligibility. The available funds shall be directed to serve children in primary eligibility categories as follows:

1. Children enrolled in the early elementary grades; and
2. Members of a low-income family.

281—65.5(279) Secondary eligibility. The available funds shall be directed to serve children in secondary eligibility categories as follows:

1. Functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional;
2. Born at biological risk, such as low birth weight (under 1500 grams—approximately three pounds) or with a diagnosed medical disorder, such as spina bifida or Down's syndrome;
3. Born to a parent who was under the age of 18; or
4. Residing in a household where one or more of the parents or guardian:

- Has not completed high school;
- Has been identified as a substance abuser;
- Has been identified as chronically mentally ill;
- Is incarcerated;
- Is illiterate; or
- Is a child or spouse abuser.

5. Having other special circumstances, such as foster care or being homeless.

281—65.6(279) Grant awards procedures. The following information shall be provided and grants shall be awarded to applicants based on the following criteria:

1. Integration of at-risk children with the rest of the school population.
2. Limited class size.
3. Limited pupil-teacher ratios.
4. Provision of parental involvement.
5. Demonstration of community support.

6. Utilization of services provided by other community agencies.
7. Provision of appropriate guidance counseling services.
8. Use of teachers with an early childhood endorsement.
9. Innovation and comprehension in program design.

281—65.7(279) Application process. The department shall announce through public notice the opening of an application period.

281—65.8(279) Request for proposals. Applications for the early elementary grants shall be on forms provided by the department upon request. The applicants shall provide the following information:

1. Applicant identification (applicant's name and address).
2. Project summary.
3. Program goals, activity objectives, timelines, person(s) responsible for the activity, and evidence of completion of the activity.
4. Documentation of assurances of community support from cooperating agencies.
5. Documentation of services provided by other community agencies.
6. Project budget (administrative costs not to exceed 10 percent of total award).
7. Project management.
8. A plan for program evaluation including, but not limited to, measurement of student outcomes.

Proposals not containing the specified information or not received by the specified date may not be considered.

281—65.9(279) Grant process.

65.9(1) An applicant shall make formal response using forms issued and procedures established by the department.

65.9(2) A rating team comprised of persons with expertise in early elementary school programs, understanding of the at-risk population, and fiscal management shall review and rank the proposals.

65.9(3) The department shall have the final discretion to award funds.

281—65.10(279) Award contracts. Administrative costs shall be limited to 10 percent of the total award.

281—65.11(279) Notification of applicants. Applicants shall be notified of the department's decision within 45 days of the deadline for applications. Successful applicants will be requested to have an official with vested authority sign a contract with the department.

281—65.12(279) Grantee responsibilities. The grantee shall maintain records which include, but are not limited to:

1. Information on children served,
2. Direct services provided to children,
3. Record of expenditures,
4. Overall program goals, and
5. Other appropriate information specified by the department necessary to the overall evaluation.

Grantees shall complete a year-end report on forms provided by the department documenting the above information. No new awards shall be made for continuation of programs where there are delinquent reports from prior grants.

281—65.13(279) Withdrawal of contract offer. If the applicant and the department are unable to successfully negotiate a contract, the department may withdraw the award offer.

281—65.14(279) Evaluation. The grantee shall cooperate with the department and provide requested information to determine how well the goals and objectives of the project are being met.

281—65.15(279) Contract revisions. The grantee shall obtain the approval of the department for any revisions in the project budget, in excess of 10 percent of a line item provided the revisions do not increase the total amount of the grant.

281—65.16(279) Termination for convenience. The contract may be terminated, in whole or in part, upon agreement of both parties. The parties shall agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

281—65.17(279) Termination for cause. The contract may be terminated, in whole or in part, at any time before the date of completion, whenever it is determined by the department that the grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the department of the reasons for the termination and the effective date. The grantee shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

The department shall administer the early elementary school grants contingent upon their availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the early elementary school grants, the contracts shall be terminated or renegotiated. The department may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order.

281—65.18(279) Responsibility of grantee at termination. Within 45 days of the effective date of termination, the grantee shall supply the department with a financial statement detailing all program expenditures up to the effective date of the termination. The grantee shall be solely responsible for all expenditures after the effective date of termination.

281—65.19(279) Appeals. Any public school aggrieved by a final decision regarding a grant award may appeal the decision by notifying the director of the department in writing within ten days of the date of the decision. Appeals shall include the name and address of the school, a copy of the decision, and a short and plain statement of the grounds for appeal, which shall be limited to the following:

1. The decision process was conducted in violation of statutory or regulatory authority;
2. The decision violates state or federal law, policy, or rule;
3. The decision process involved a conflict of interest.

Within 14 days of mailing the letter of appeal, a school shall submit all written documentation, evidence, or argument in support of its appeal. The director shall notify the department of the appeal and shall provide the department an opportunity to defend its decision with written documentation, evidence, or argument, which shall be submitted within 24 days following the department's initial decision.

The director shall issue a decision on the appeal within a reasonable time.

These rules are intended to implement Iowa Code Supplement section 279.51.

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CHAPTER 71
OVERPAYMENT RECOVERY SECTION

481—71.1(10A) Definitions.

"Active case" means that a household is receiving human service assistance.

"Allotment reduction" means an amount withheld from a financial or food stamp assistance benefit. Specifically, grant reduction refers to the Aid to Dependent Children program and benefit reduction refers to the Food Stamp program.

"Closed case" means that a household is no longer receiving a particular human service program benefit.

"Debtor" means a current or former recipient, or an authorized representative, of human service assistance (usually the head of the household) who has been determined by the department of human services (hereafter known as DHS) to be responsible for the repayment of a particular overpayment.

"Demand letter for overissuance (Form FP-2322-0)" means the letter sent informing the debtor that an overpayment in food stamp benefits has occurred. It identifies the amount overpaid, the causes of the overpayment, and the different options the debtor has to repay the overpayment. This form is voluntarily completed by the debtor. Failure to complete and return this form may result in further collection actions.

"Economic assistance fraud bureau" means the economic assistance fraud bureau of the department of inspections and appeals.

"Human service assistance" means any program that the DHS administers which confers a financial, medical, or food stamp assistance benefit.

"Overpayment" means the dollar amount of human service assistance by program, received by or on behalf of a person, in excess of that allowed by law, rules, or regulations for any given month(s).

"Recovery" means the repayment of an overpayment, directly from the debtor, by allotment reduction, or both.

"Referral form" means the overpayment/recovery information input (Form PA-2228-0) completed by DHS. The form tells the program, the amount, the dates, and the reason for the overpayment. It also lists information on the debtor for identification purposes.

"Repayment agreement" means the agreement to repay (Form PA-3164-0) sent to a debtor to voluntarily complete and return. The form tells the amount and program(s) overpaid and gives the debtor a choice of repayment methods. Failure to return this form may result in further collection actions.

481—71.2(10A) Referral process. The recovery process begins when the referral form is received from DHS. The referral specifies which human service program(s) is overpaid.

481—71.3(10A) Records. The recovery section maintains a record for each overpayment which has occurred for a debtor. The record is filed under the debtor's name. This information is also listed in the Iowa Administrative Code, 441—11.2(217,421).

481—71.4(10A) Review. The recovery section reviews the record to determine whether a referral for suspected fraud will be made to the economic assistance fraud bureau. The referral criteria include all client error overpayments and overpayments over $1000; they may also include multiple client error overpayments or DHS request for investigation.

DHS completes an overpayment/recovery supplemental information (Form PA-2229-0) for a referral for fraud investigation. No further recovery action will be taken until the economic assistance fraud bureau completes the investigative process. If no referral is made for fraud investigation, the repayment process begins.

481—71.5(10A) Repayment process. Payments are made in cash or by allotment reduction. The amount of allotment reduction is different for agency and client error. Iowa Administrative Code 441—46.5(239), "Source of recoupment," explains the amounts. Methods of collection may include but are not limited to the following:

71.5(1) *Active cases.* When an overpayment is made in the food stamp or ADC program, a demand letter of overissuance is sent to the debtor. Form 470-0338 is sent for food stamp overissuances; Form 470-2616 is send for ADC overissuances.

a. An ADC overpayment is collected by grant reduction or cash payment.

b. A food stamp overpayment is collected by the following methods:

(1) Agency error—A reasonable amount and rate of payment are determined by the debtor and are reviewed by the recovery section. Payment is made in cash, food stamps, or benefit reduction.

(2) Client error—Payment is made in cash, food stamps, or benefit reduction. If the debtor chooses not to make payment in cash or food stamps, the benefit reduction amount is determined by DHS. If a debtor chooses cash payment, the amount cannot be less than the benefit reduction amount. The debtor may choose to repay more than the minimum required for benefit reduction.

c. The other human service assistance overpayments are collected by cash payments from the debtor. The agreement to repay (Form PA-3164-0) is sent to the debtor along with a cover letter explaining the overpayment. A reasonable amount and rate of payment are determined by the debtor and are reviewed by the recovery section when the form is received.

71.5(2) *Closed cases.*

a. The repayment agreement form for any human service assistance overpayment(s) is sent to the debtor.

b. A demand letter for overissuance (Form 470-0338) for food stamps and a demand letter for overissuance of ADC (Form 470-2616) overpayment(s) are sent to the debtor.

481—71.6(10A) Further collection action. If complete repayment has not been received by the above methods, further collection action may be taken. This action includes, but is not limited to the following:

1. Claims below $2000, small claims court action.
2. Claims of $2000 or above, referral to the attorney general for district court action.
3. State income tax refund in accordance with Iowa Administrative Code 441—Chapter 11.
4. Debtor's estate or bankruptcy proceedings.
5. From sponsors in special alien cases under Iowa Administrative Code 441—subrule 46.5(4).

The recovery section may use one or more of the above actions listed for any overpayment that has occurred.

481—71.7(10A) Appeal rights. If a notice of adverse action is received by the debtor and the debtor wishes to contest the overpayment claim, a request is submitted to DHS. The repayment process does not begin until completion of the appeal process outlined in the Iowa Administrative Code 481—Chapter 10, "Contested Case Hearings."

481—71.8(10A) Data processing systems matches. The recovery section compares information with other data processing systems to identify the location, resources, or income of a debtor. Part or all of a system is used. The recovery section uses, but is not limited to, the following systems:

1. Social security,
2. Department of employment services,
3. Department of revenue and finance,
4. Chilton credit services,
5. Department of transportation (drivers license and motor vehicle registration), and
6. Department of human services.

481—71.9(10A) Confidentiality. The record is confidential in accordance with DHS rules 441—Chapter 9, "Confidentiality and Records of the Department." Any request for information should be sent to DHS.

These rules are intended to implement Iowa Code sections 10A.105, 10A.402(5), 17A.3(1)*"b,"* and 22.11.

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NATURAL RESOURCE COMMISSION[571]

[Prior to 12/31/86, see Conservation Commission(290), renamed Natural Resource Commission[571] under the "umbrella" of Department of Natural Resources by 1986 Iowa Acts, chapter 1245]

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CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

571—8.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 8, Iowa Administrative Code.

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CHAPTER 9
STATE MIGRATORY WATERFOWL, TROUT AND HABITAT STAMP DESIGN CONTESTS

571—9.1(110,110B) Design contests. The department will accept proposals from nonprofit, Iowa-based organizations wishing to take over the manner in which the designs for the waterfowl, habitat, and trout stamps are developed, and the marketing and sales of those designs in any medium to generate funds for department projects in Iowa.

571—9.2(110,110B) Selection of promoter. The director will recommend the proposal(s) determined to have the best impact on Iowa conservation projects, the quality of wildlife art, and the functioning ability of the organization which submits the proposal. The commission will select the organization to provide each stamp design. Multiyear contracts are desired.

571—9.3(110,110B) Stamp design-related proceeds. The selected organization is required to spend the proceeds from the sale of stamp design materials, less the cost of production and advertising, on department projects, approved by the director in consultation with the selected organization. The profits may be used to match department grant funds available to these organizations.

571—9.4(110,110B) Design. The design for the stamps shall be provided to the department by September 1 of each year for use on the production of the stamps. The organization also will provide artist proofs, numbers one through five, of the design to the department when the print edition becomes available.

571—9.5(110,110B) Commissioned design. In the event that no responsible organization provides an acceptable proposal for the design and marketing of one or more of the stamps, the director shall seek proposals from artists for a commissioned stamp design. The director shall evaluate the proposals and select one, with the approval of the commission, to design one or more stamps.

571—9.6(110,110B) Financial records. Organizations selected to design and market a stamp shall maintain adequate financial records to determine the amount of proceeds to be allocated to department projects. These records shall be open to inspection and audit by representatives of the department and state auditor.

571—9.7(110,110B) Title to property. The title to any property acquired with stamp design-related profits shall be vested with the state, or with another governmental entity if approved by the natural resource commission.

These rules are intended to implement Iowa Code sections 110.3 and 110.6 and chapter 110B.

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CHAPTER 22
WILDLIFE HABITAT ON PRIVATE LANDS PROMOTION PROGRAM

[Prior to 12/31/86, Conservation Commission(290) ch 22]

571—22.1(107,110) Purpose. The purpose of these rules is to designate procedures by which revenues from the sale of wildlife habitat stamps and income tax checkoff funds will be used to assist landowners in establishing wildlife habitat on private lands.

571—22.2(107,110) Authority. Iowa Code section 110.3 authorizes the expenditure of wildlife habitat stamp funds for "the development and enhancement of wildlife lands and habitat areas." Iowa Code section 107.16 authorizes an income tax checkoff for habitat development for game and nongame wildlife. The natural resource commission, hereinafter referred to as the commission, acting through its director, will enter into agreements with landowners and conservation groups to fulfill the requirements of the law.

571—22.3(107,110) Project scope. This program will provide cost-sharing assistance to landowners from habitat stamp and tax checkoff revenues. Tax checkoff funds will be used to establish farmstead and feedlot shelterbelts, and habitat stamp funds will be used to provide temporary winter habitat plots throughout the state. Declines in wildlife populations in northern Iowa have been caused in part by the loss of secure food and shelter against winter storms. Shelterbelts will also provide significant energy savings to rural homes. Shelterbelts and habitat plots will demonstrate the value of winter habitat to wildlife in intensively farmed regions of the state.

571—22.4(107,110) Availability of funds. Habitat stamp funds are dependent on stamp sales. Tax checkoff funds depend on voluntary contributions from Iowa taxpayers. The amount of moneys available at any time will be determined by revenues received by the department and by matching contributions from conservation groups. Final stamp sales for each calendar year will be determined by July 1 of the following year. Tax checkoff funds will be available by January 31 of the following calendar year.

22.4(1) *Allotments for this program.* Funds available for assisting landowners shall be in the department's budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

22.4(2) *Matching funds.* To maximize the amount of wildlife habitat actually established, the department may accept contributions from any governmental or private conservation group to help establish shelterbelts or winter habitat demonstration areas. Department funds may also be used to match other funding sources or incentive programs.

571—22.5(110) Winter habitat areas. This rule delineates eligibility and procedures for establishing temporary winter cover and food plots.

22.5(1) *Eligibility.* The program is available statewide.

To be eligible for cost assistance, individual landowners must enter into a written agreement with the department specifying the obligations of both parties.

22.5(2) *Applications for assistance.* Applications will be accepted only from those eligible as noted above.

a. Applications must be submitted on forms furnished by the department.

b. Applications and contracts must be received by April 15 to provide adequate time for site inspection and plot design. The application period may be extended indefinitely, or until all available funds have been committed. Landowners will be contacted within 30 days as to their acceptance or rejection.

22.5(3) *Project review and selection.*

a. Projects will be reviewed by the department wildlife biologist, who will then recommend that the commission enter into agreements with the successful applicants.

b. Rescinded IAB 1/24/90, effective 2/28/90.

c. Winter habitat areas will be selected on the basis of site suitability, the availability of other winter cover, and the availability of nesting cover to determine those projects with the greatest chance of benefiting wildlife populations.

d. Rescinded IAB 1/24/90, effective 2/28/90.

22.5(4) *Contract agreements.* The director is authorized to enter into agreements with landowners to carry out the purposes of this program.

a. Agreement forms will be provided by the department. They shall explicitly state the terms of the agreement including, but not limited to, plot size, configuration, crop types, ground preparation, and weed control and cultivation practices. Terms of the agreement and copies of the contract will be available from the department for examination.

b. Cost-sharing assistance will not be provided unless an agreement has been signed by both parties.

c. Contracts may be amended by mutual agreement of both parties.

22.5(5) *Specifications.* Winter habitat plots must conform to the following guidelines to be eligible for cost assistance:

a. Individual winter habitat plots must be at least three acres if they are located next to suitable winter cover; five acres if other winter cover is lacking or inadequate. Larger plots may be specified by the department wildlife biologist.

b. Individual winter habitat plots will be designed by the department wildlife biologist to fit individual habitat situations.

c. One, or a combination of the following practices, will be allowed:

(1) Standing corn left throughout the winter.

(2) Standing corn in combination with grain sorghum left throughout the winter.

(3) Forage sorghum and grain sorghum left throughout the winter.

(4) Forage sorghum in combination with standing corn left throughout the winter.

d. Landowners must follow site preparation, seeding and cultivation practices similar to that used in normal agricultural production.

e. Winter habitat plots must produce a crop similar to that in fields under normal crop production practices.

f. No grazing, mechanical disturbance, or harvesting will be permitted until after March 15 of the final contract year unless specified in the design.

22.5(6) *Cost-share rates.* The department will provide cost-sharing assistance for winter habitat plots at the following rates, except when a lesser amount is negotiated with a landowner.

a. Up to $55 per acre for standing corn planted on annual set-aside acres.

b. Up to $70 per acre for standing corn left on agricultural ground.

c. Up to $30 per acre for planting forage sorghum and grain sorghum.

d. Up to $50 per acre for planting forage sorghum and corn.

22.5(7) *Reimbursements.* Cost assistance payments will be made after March 15 after inspection by the department wildlife biologist.

Reimbursement shall not be paid unless all terms of the contracts have been met.

571—22.6(107,110) Shelterbelts. This rule delineates eligibility and procedures for establishing shelterbelts for winter wildlife habitat.

22.6(1) *Eligibility.* The program is available statewide.

a. To be eligible for cost assistance, landowners must enter into a written agreement with the department specifying the obligations of both parties.

b. Rescinded IAB 1/24/90, effective 2/28/90.

c. Assistance for replacement of trees or shrubs suffering normal mortality in a shelterbelt previously cost-shared by the department will be available in any county currently or previously eligible subject to conditions in subrule 22.6(6), paragraph *"c."*

22.6(2) *Application for assistance.* Applications will be accepted only from those eligible as noted above.

a. Applications must be submitted on forms furnished by the department.

b. Applications must be submitted by February 15. The application period may be extended until all available funds have been committed.

22.6(3) *Project review and selection.* Project applications will be reviewed separately for each county to determine the projects which will be eligible for cost assistance.

a. Projects will be reviewed by the department wildlife biologist and the soil conservation service district conservationist for each county, who will then recommend that the commission enter into agreements with the successful applicants.

b. Projects will be selected on the basis of site suitability, location within the county, and the availability of nearby wildlife habitat to determine those projects with the greatest chance of benefiting wildlife populations.

c. Rescinded IAB 1/24/90, effective 2/28/90.

d. Priority for rating will be given in the following order:

(1) Establishment of new shelterbelts or enlargement of existing shelterbelts in which department funds are used to supplement other funding sources.

(2) Establishment of new shelterbelts or enlargement of existing shelterbelts using only department funding.

(3) Renovations of cost-shared shelterbelts which meet the criteria of subrule 22.6(5), paragraph *"b."*

(4) Enlargements of previously cost-shared shelterbelts above minimum specifications, subject to limitations in subrule 22.6(5), paragraph *"c,"* subparagraphs (1) to (4).

22.6(4) *Contract agreements.* The director is authorized to enter into agreements with landowners in order to carry out the purposes of this program.

a. Agreement forms will be provided by the department. They shall explicitly state the terms of the agreement, including but not limited to, requirements for shelterbelt size, configuration, species composition of trees, ground preparation, weed control and management in subsequent years. Terms of the agreement and copies of the contract will be available from the department for examination.

b. Cost-sharing assistance will not be provided unless an agreement has been signed by both parties prior to the inception of the project.

c. Contract periods will not be approved for any term less than ten years in duration.

d. Contracts may be amended by mutual agreement of both parties.

22.6(5) *Specifications and guidelines.* Shelterbelts must conform to the following specifications to be eligible for cost-share assistance.

a. New shelterbelts must meet at least the following minimum guidelines:

(1) Eight rows of planting stock with at least 100 feet per row in an L-shaped shelterbelt, 150 feet per row in a unidirectional block.

(2) Two rows of shrubs or trees windward, followed by a minimum 50-foot snowcatch leeward of the first two rows. The snowcatch may be used to plant nesting cover, food plots, Christmas tree plantations or may be cropped.

(3) Two rows of shrubs leeward of the snowcatch, followed by four rows of dense conifers.

(4) Additional rows of dense shrubs may be planted interior to conifers for screening. See subrule 22.6(5), paragraph *"c,"* subparagraphs (1) to (4) for restrictions on additional rows.

(5) Species of conifers, shrubs, and deciduous trees which may be grown in shelterbelts will be designated by the department, as well as size of stock and conditions of culture.

(6) Shelterbelts must be at least 50 feet from an occupied residence.

b. Renovations or improvements of existing shelterbelts not previously cost-shared must meet at least minimum specifications for new shelterbelts outlined in paragraph *"a"* of this subrule.

c. Maximum specifications for which cost-sharing will be allowed are as follows:

(1) Fourteen rows of planting stock with a maximum of 400 feet per unidirectional row.

(2) For each additional row over eight, one row must be planted with an approved conifer.

(3) Snowcatch requirement is dropped for shelterbelts of at least ten rows and meeting all other requirements in subrule 22.6(5), paragraph *"a,"* subparagraphs (1) to (6) and paragraph *"c,"* subparagraph (2).

(4) In a fourteen-row shelterbelt, one row of deciduous trees may be black walnut for eventual harvest.

d. Planning and design for newly established shelterbelts, renovations, and enlargements, and replacement of trees in a previously cost-shared shelterbelt, and deviations from the listed specifications, must be approved by the department's wildlife biologist and may require consultation with the department's district forester and U.S. Department of Agriculture Soil Conservation Service (SCS) district conservationist.

e. Planting sites should be prepared with seedbed conditions the same as for corn. Sod planting or other exceptions may be allowed only by the department wildlife biologist, and may require consultation with the district forester and SCS district conservationist.

f. The following maintenance requirements are in effect for the contract period:

(1) All competing vegetation must be controlled within three feet of each tree and shrub for the first three years of the contract. Control may be by chemicals, mulching, or mechanical means.

(2) Plantings must be protected from livestock, poultry, and rodents by repellents, fencing, trapping, or other effective means.

(3) Cooperators must use whatever means possible to protect plantings from herbicide drift from adjacent fields.

22.6(6) *Cost-sharing rates.* The department will provide cost-sharing assistance during the first year of the contract to establish new shelterbelts or renovate existing shelterbelts to bring them to minimum standards for size, composition, and configuration.

a. New establishments and enlargements. During the initial establishment year for new shelterbelts and enlargements of existing shelterbelts, the department will pay 75 percent of the cost of establishment, not to exceed $1600 per eight-row planting.

(1) Additional rows over the minimum will be cost-shared at the same rate with a ceiling limit of $200 per additional row.

(2) Total rows cost-shared will not exceed 14.

b. Upon mutual agreement of the cooperator and the department, tree planting by the department or its designee may be substituted for all or part of the cost-sharing assistance. Standardized rates for labor and machinery operation will be used to calculate the value of the tree planting operation when determining cost-share payments.

c. Renovations and restorations. Upon recommendation by department wildlife biologists, cost-sharing of tree replacement is permissible where age, disease, drought, insect, or mammal damage has reduced the effectiveness of existing shelterbelts.

(1) Cost-sharing for these reasons will be at 50 percent of planting stock costs not to exceed $1000. All minimum specifications must be met.

(2) If renovation is needed due to cooperator neglect, no cost-sharing will be allowed.

d. Limitations to total cost-share assistance do not preclude use of cost-sharing funds from other governmental entities or private conservation groups to defray cost to the landowner. Where more than one cost-sharing entity is involved, the total cost-share to the landowner cannot exceed 100 percent of the cost of establishment, enlargement, or renovation.

e. If funds are limited, cooperators are limited to one department cost-shared shelterbelt within a three-year period, except for renovations as listed in subrule 22.6(6), paragraph *"c."*

f. Three years following establishment of an eight-row shelterbelt, cost-sharing to enlarge the shelterbelt will be available subject to the following limitations:

(1) Established rows must exhibit reasonable growth rates and good care by the cooperator.

(2) Added rows will be considered a new planting under guidelines existing at that time.

(3) Such enlargements are subject to priorities established in subrule 22.6(3), paragraph *"d,"* subparagraphs (1) to (4).

22.6(7) *Reimbursements.* Cooperators shall submit billings for reimbursements on forms provided by the department.

a. Billings shall be submitted prior to September 1 each year.

b. Billings shall include documentation of costs incurred for planting stock.

c. Reimbursements will not be made unless the landowner has fulfilled obligations as specified in the contract.

d. Billings will be approved or disapproved by the wildlife biologist after inspection of the project.

571—22.7(107,110) Cost reimbursement. Whenever a landowner has been found to be in violation of a contract specified in this rule, the department may cancel the contract and the landowner shall reimburse the state for the full amount of any cost-share payments received. The requirement and procedure for recovering the cost-share payments shall be explained in the contract.

These rules are intended to implement Iowa Code sections 110.3 and 107.16.

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*Effective date of rule 22.7 delayed seventy days by the administrative rules review committee at its August 21, 1986, meeting.

CHAPTER 23
WILDLIFE HABITAT PROMOTION WITH LOCAL ENTITIES PROGRAM

[Prior to 12/31/86, Conservation Commission(290)]

571—23.1(110) Purpose and definitions. The purpose of this rule is to designate procedures for allotments of wildlife habitat stamp revenues to local entities. These funds must be used specifically for the acquisition of whole or partial interests in land from willing sellers for use as wildlife habitats, and the development and enhancement of wildlife lands and habitat areas. The department of natural resources will administer the stamp funds for the purposes as stated in the law at both the state and local levels. The following definitions apply in these rules:

"Commission" means the natural resource commission.

"Department" means the department of natural resources.

"Director" means the director of the department or a designee.

571—23.2(110) Availability of funds. Habitat stamp funds are dependent on stamp sales. The amount of monies available at any time will be determined by revenues received by the department. Final stamp sales for each calendar year will be determined by July 1 of the following year.

23.2(1) *Local share.* Funds available for local entities shall be specified in the department's budget in accordance with legislative appropriations. At least fifty percent of the stamp revenues will be apportioned to local entities. Funds will be made available during a fiscal year of July 1 to June 30.

23.2(2) *Distribution.* After deducting five percent to be held for contingencies, the remaining local share will be available on a semiannual basis each year.

571—23.3(110) Eligibility. Only those public agencies authorized by law to spend funds for wildlife habitat shall be eligible to participate in this program.

571—23.4(110) Project limitations. Because of administrative costs, no application for assistance totaling less than $3,000 (total project cost—$4,000) will be considered.

This rule is intended to implement the provisions of Iowa Code section 110.3.

571—23.5(110) Eligibility for cost-sharing assistance. No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the commission, prior to its initiation. Only the following types of project expenditures will be eligible for cost-sharing assistance.

23.5(1) *Acquisition projects.* Lands or rights thereto to be acquired in fee or by any other instrument shall be appraised by a competent appraiser and the appraisal approved by the department staff. The appraisal requirement may be waived when the staff determines that it is impractical for a specific project. Cost sharing will not be approved for more than 75 percent of the approved appraised value. Acquisition projects are eligible for either cost sharing by direct payments as described in subrule 23.12(7) or by reimbursement to local entities.

When a county receives or will receive financial income directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action, 75 percent of that income will be transferred to the department unless the grantee has demonstrated and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee must recommend, and the director and commission must approve, plans for the expenditure of income. In the absence of acceptable wildlife habitat development or acquisition plans, the county will transfer 75 percent of income received to the department as it is received. The department will credit that income to the county apportionment of the wildlife habitat stamp fund as described in 23.2(1). The schedule of those reimbursements from a county to the state will be included in the project agreement.

CHAPTER 33
RESOURCE ENHANCEMENT AND PROTECTION PROGRAM: COUNTY, CITY AND PRIVATE OPEN SPACES GRANT PROGRAMS

Part 1
GENERAL PROVISIONS

571—33.1(455A) Purpose. The purpose of these rules is to define procedures for the administration of the private cost-sharing funds within the open spaces account, the county conservation account, and the city park and open spaces account of the resource enhancement and protection fund.

571—33.2(455A) Resource enhancement policy. The resource enhancement and protection program and its various elements shall constitute a long-term integrated effort to wisely use and protect Iowa's natural resources through the acquisition and management of public lands, the upgrading of public park and preserve facilities; environmental education, monitoring, and research; and other environmentally sound means. Expenditure of funds from the county conservation account, the city park and open spaces account and the private cost-sharing portion of the open spaces account shall be in accord with this policy.

571—33.3(455A) Definitions.

"County resource enhancement committee" means the county resource enhancement committee created in 1989 Iowa Acts, chapter 236, section 7 [Iowa Code Supplement section 455A.20].

"Department" means the department of natural resources created in Iowa Code section 455A.2.

"Director" means the director of the department of natural resources.

"Natural resource commission" means the natural resource commission of the department created in Iowa Code section 455A.5.

"Open spaces" means those natural or cultural resource areas that contain natural vegetation, fish, wildlife, or have historic, scenic, recreation and education value. Examples of open spaces in cities and towns include, but are not limited to, parks, riverfronts and town squares. In rural areas, open spaces include, but are not limited to, such areas as woodlands, prairies, marshlands, river corridors, lake shores, parks and wildlife areas.

571—33.4(455A) Restrictions. Funds allocated to cities and counties under this chapter shall not be used for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, and other group or organized sport facilities.

571—33.5(455A) Grant applications, general procedures.

33.5(1) Any project submitted from a city or county for grant consideration must first have been reviewed and commented on by the county resource enhancement committee from the county in which the project is located. Application must include documentation of that review and a summary of any comments made by the committee.

33.5(2) Applications for all grant programs shall be made on forms provided by the department. Five copies shall be submitted by deadlines as specified in subsequent rules of this chapter or as otherwise published by the department.

33.5(3) Applications shall provide sufficient detail as to clearly describe the scope of the project. Any application which is not complete at the time of project review and scoring, or for which additional pertinent information has been requested and not received shall not be considered for funding.

33.5(4) Application deadlines shall be as specified in this rule with the exception that the director may, at such time as final adoption of these rules is assured, and with a minimum of 60 days' notice to potential applicants, schedule special project reviews as needed to initiate the programs.

33.5(5) Joint applications are permitted. One entity must serve as the primary applicant. Joint projects sponsored by entities competing for funds from different REAP accounts, e.g., a joint city/county project, are allowable. Applications must clearly spell out the respective shares of project costs to be derived from various REAP accounts if the project is approved for funding. Any cooperative agreement between joint applicants must be provided as a part of the application.

571—33.6(455A) Appraisals. Appraisal reports must be approved or disapproved in writing by the director. Grants may include incidental costs associated with the acquisition, including, but not limited to, costs for appraisals, abstracts, prorated taxes, deed tax stamps, recording fees and any necessary surveys and fencing.

571—33.7(455A) Groundwater hazard statements. Grantees must obtain a properly completed groundwater hazard statement on all proposed acquisitions before the acquisition is completed. The statement must be filed with the department and county recorder pursuant to Iowa Code section 558.69. Prior to the acquisition of any property that has an abandoned or unused well, hazardous waste disposal site, solid waste disposal site, or underground storage tank the grantee must file with the department a plan that details how these conditions will be managed to best protect the environment. This plan must be approved in writing by the director before the land is acquired.

571—33.8(455A) Rating systems not used. During any funding cycle when total grant requests are less than the allotment available, the rating system need not be applied. All applications will be reviewed by the appropriate committee for eligibility to ensure they meet minimum scoring requirements and to ensure consistency with program policy and purposes.

571—33.9(455A) Applications not selected for grants. All applications for projects considered eligible but not scoring high enough to be awarded a grant immediately will be retained by the department until two months prior to the next regular submittal date during which time they may be funded. If not approved for funding by that time, they will be returned to the applicant. The applicant may resubmit the project for scoring and consideration during the next application cycle.

571—33.10(455A) Similar development projects. An application for a development project grant may include development on more than one area if that development is of a like type (e.g., tree and shrub plantings).

571—33.11(455A) Commission review and approval. The director will present the recommendations of the appropriate project review and selection committee in recommended funding order to the natural resource commission at its next meeting following the ranking of projects for funding. The commission may approve or disapprove funding for any project on the list. The commission may change the order of the list. Reasons for change or rejection of any recommended project must be included in the motion to change the order of the list or reject any project.

571—33.12(455A) Timely commencement and completion of projects. Grant recipients are expected to commence and complete projects in a timely and expeditious manner. A project period commensurate with the work to be accomplished will be established and included in the project agreement. Project sponsors may receive up to ninety percent of approved grant funds at the start of the project period. Failure to initiate the project or to complete it in a timely manner may be cause for termination of the project, return of unused grant funds at the time of termination, and cancellation of the grant by the department.

571—33.13(455A) Waivers of retroactivity. Normally grants for acquisitions or developments completed prior to application scoring will not be approved. However, an applicant may make written request for a waiver of retroactivity to allow project elements to be considered for grant assistance. Waivers will be granted in writing by the director and receipt of a waiver does not assure funding, but only assures that the project will be considered for funding along with all other applications. Waiver of retroactivity provisions will be assumed to exist for any project initiated after July 1, 1989, until the first cycle of application scoring and grant allocations have been completed. For subsequent cycles, waivers must be requested and issued in writing.

571—33.14(455A) Project amendments. Projects for which grants have been approved may be amended, if funds are available, to increase or decrease project scope or to increase or decrease project costs and grant amount. All amendments must be approved by the appropriate project review and selection committee and by the director. Amendments which result in an increase in the cost of the project in excess of $25,000 or 25 percent of the approved cost, whichever is greater, or which involve a change in the project purpose also must be approved by the commission.

571—33.15(455A) Payments. Ninety percent of approved grant amounts may be paid to project sponsors when requested, but not earlier than start up of the project. Ten percent of the grant total shall be withheld by the department pending successful completion and final inspection, or until any irregularities discovered as a result of a final site inspection have been resolved.

571—33.16(455A) Record keeping and retention. Grant recipients shall keep adequate records relating to the administration of a project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office. All records shall be retained in accordance with state laws.

571—33.17(455A) Penalties. Whenever any property, real or personal, acquired or developed with resource enhancement and protection funds passes from the control of the grantee or is used for purposes other than the approved project purpose, it will be considered an unlawful use of the funds. If a grantee desires to use the approved funds for a purpose other than the approved project purpose that is an approved use of funds under the provisions of Iowa Code chapter 455A and these rules, the grantee shall seek an amendment to the project purpose by following the provisions of 33.14(455A). The department shall notify the grantee of any such violation.

33.17(1) *Remedy.* Funds used without authorization, for purposes other than the approved project purpose, or unlawfully must be returned to the department for deposit in the account of the resource enhancement and protection fund from which they were originally apportioned. In the case of diversion of property acquired with resource enhancement and protection fund assistance, property of equal value at current market prices and with similar open space benefits may be acquired with local, nongrant funds to replace it. Such replacement must be approved by the appropriate review and selection committee and the director. In the case of diversion of personal property, the grantee shall remit to the department funds in the amount of the original purchase price of the property. The grantee shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided in this subrule are in addition to others provided by law.

33.17(2) *Land disposal.* Whenever the department, and, if a city or county, the grantee, determine that land acquired or developed with resource enhancement and protection fund assistance is no longer of value for the program purposes, or that the grantee can show good cause why the land should no longer be used in accord with the approved project purpose; the land may be disposed of with the director's approval and the proceeds therefrom used

to acquire or develop an area of equal value, or all grant funds shall be returned to the state for inclusion in the account from which the grant was originally made. If land acquired through the private grant program is determined to be no longer of interest by the state, the proposed dispersal of the property shall be reviewed by the grantee, and the grantee shall have the first right of refusal on an option to take title to the property in question.

33.17(3) *Ineligibility.* Whenever the director determines that a grantee is in violation of this rule, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

571—33.18(455A) Annual reporting. Grantees shall provide a written report to the department by the August 15 immediately following the end of each state fiscal year on June 30 of the status of all currently active grants of the grantee. The report shall clearly identify the status of all land acquisitions, fund raising relevant to the approved projects, and identify problems that may cause a delay in completing the project within the approved project period. Grants are considered active until the director notifies the grantee that the grant has been closed.

571—33.19(455A) Property tax reimbursement. Political subdivisions of the state shall be reimbursed for property tax dollars lost to open space acquisitions made under the private cost-sharing program specified in part 4 of these rules based on the reimbursement formula provided for in Iowa Code section 111E.4.

571—33.20(455A) Public hearing. Any project in excess of $2 million must be the subject of a public hearing in the area of the state affected by the project before funds can be obligated to the project.

571—33.21(455A) Conflict of interest. If a project is submitted to a review and selection committee by a city, conservation board or private conservation interests, one of whose members or employees is on the review and selection committee, that individual shall not participate in discussion on and shall not vote on that particular project.

33.22 to **33.29** Reserved.

Part 2
COUNTY GRANTS

571—33.30(455A) County conservation account. All funds allocated to counties under this program may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment; except as restricted by 33.4(455A).

33.30(1) *Allocation of funds.* The first $350,000 in the resource enhancement and protection fund is allocated annually to the conservation education board and 1 percent of the revenues to the fund are allocated to the administration fund. Twenty percent of funds remaining after that allocation shall be allocated to the county conservation account. That 20 percent shall be distributed to counties as follows:

a. Thirty percent equally to each county

b. Thirty percent based on county population

c. Forty percent on a competitive grant basis

In determining the amount to be allocated to each county based on population, the department will use the most current census data available from the department of economic development.

33.30(2) *Expenditure guidelines.* All expenditures shall be in accord with the policy stated in 33.2(455A) and subject to the restrictions stated in 33.4(455A). Expenditure of funds for personnel costs from 33.30(1)*"a"* and *"b"* is allowable, but only when personnel are clearly directed toward the purpose and policy of the resource enhancement and protection program. No personnel costs are allowable under 33.30(1)*"c"* grant program.

Up to 20 percent of a total project's cost under 33.30(1)*"c"* may be used to cover costs of engineering and design work or other consultant fees directly associated with the project.

33.30(3) *Project planning and review committee.* The makeup of this committee is as follows: two representatives of the department appointed by the director; two county conservation board directors appointed by the director of the department with input from the Iowa Association of County Conservation Boards; one member selected every three years by a majority vote of the director's appointees. The members shall select a chairperson at the first meeting during each calendar year. Terms of appointment to the committee shall be on a three-year staggered term basis.

33.30(4) *Project selection criteria.* Under the competitive grants program, a project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. Criteria and scoring systems must be distributed to all counties at least 90 days prior to project application deadline. Criteria will be reviewed at least annually to determine if amendments are needed. Criteria and weight factor(s) shall include, but are not limited to, the following:

Public demand or need (2)
Project uniqueness (2)
Quality of site or project, or both (3)
Urgency of proposed action (2)
Multiple benefits to be provided (2)
(this includes multiple recreational benefits, environmental quality benefits, and other similar benefits)
Conformance with local, regional and state plans (1)
Economic benefits to local, regional or state area (1)
Geographic distribution (1)

33.30(5) *Availability of funds.* Those funds allocated on a per capita basis and those awarded in the competitive grant program shall be allocated only to counties dedicating property tax revenue at least equal to 22¢ per $1000 of the assessed value of the county's taxable property to conservation purposes. Annual certification from the county treasurer of each county shall be made on forms provided by the department. The certification shall include information on total assessed value of taxable property in the county; budget of the county conservation board, including a distinction of that which is derived from sources other than property taxes; a schedule of expenditures and staffing. A copy of this certification must be filed with the director. Resource enhancement and protection program funds received shall not reduce or replace county tax revenues appropriated for county conservation purposes.

a. The term, "county conservation purposes" includes and is limited to the following activities and responsibilities:

(1) Operation and maintenance of real property and equipment under the jurisdiction and control of the county conservation board, and utilized by the public for museums, parks, preserves, parkways, playgrounds, recreational centers, county forests, county wildlife areas, establishment and maintenance of natural parks, multipurpose trails, rest room facilities, shelter houses and picnic facilities and other county conservation and recreational purposes as provided in Iowa Code section 111A.4.

(2) The acquisition and development of real estate utilized for purposes authorized by Iowa Code chapter 111A. The cost of planning, engineering or architectural services directly related to acquisition and development is allowable as a county conservation purpose.

(3) The county conservation board's share of joint operations of facilities and programs as described in Iowa Code section 111A.7. The cost of the county's weed control program, as required by Iowa Code chapter 317, may specifically be included as a county conservation purpose if the county conservation board director or a member of the county conservation board staff is appointed county weed commissioner by the board of supervisors, and is given full authority to plan and accomplish an environmentally sound vegetative management program.

(4) The administration of the county conservation program including and limited to the expenses of board members, salary and expenses of the county conservation board director, and related clerical, technical and support costs charged directly to the county conservation board's budget.

(5) Any reimbursement from the county conservation board's budget for the actual expense of county-owned equipment, use of county equipment operators, supplies, and materials of the county, or the reasonable value of county real estate made available for the use of the county conservation board as provided by Iowa Code section 111A.7. Such reimbursements shall be supported by daily time and activity records detailing the hourly charge for equipment and operator use, the specific quantities and cost of materials used, or a fee appraisal prepared by an independent fee appraiser and approved by the director.

(6) No other costs, including indirect costs as computed for purposes of federal grant programs or distribution of general county overhead, are allowable as a county conservation purpose.

b. Reserved.

33.30(6) *Certification procedures.* To qualify for per capita funds and to establish eligibility for competitive grants in fiscal year 1990 (Fiscal Year 1989–1990), the county treasurer shall submit a certification as described to the department by January 15, 1990. In subsequent fiscal years, the certification shall be submitted by the first day of October.

When submitting the first certification under this rule for fiscal years 1990, 1991, and 1992, counties shall choose one of the following three options:

a. The certification may be based entirely on the approved budget for county conservation purposes for the current fiscal year.

b. The certification may be based on the average of the approved budget for the current fiscal year and the actual expenditures for the previous fiscal year.

c. The certification may be based on the average of the approved budget for the current fiscal year and the actual expenditures for the previous two fiscal years.

For the fiscal year 1993, and subsequent certifications, the certification shall be based on actual expenditures during the previous year.

In the event that a county is certified and subsequently fails to submit a certification or if the property tax support for county conservation purposes falls below 22¢ per $1000 of the assessed value of taxable property, the county may reestablish certification upon documentation that actual expenditures for conservation purposes during the previous fiscal year equaled at least 22¢ per $1000 of the assessed value of taxable property.

Submission of the certification by October 1 of any year will qualify the county for any per capita funds held in reserve for that county for the past two fiscal years, and establish eligibility for participation in the competitive grant program. The certification will remain in effect through September 30 of the following year.

Counties failing to meet this requirement as of July 1, 1989, shall have until June 30, 1992, to certify that they meet the property tax levy requirement. Per capita funds that would have been allocated to the county for fiscal years 1990, 1991, and 1992 will be held by the department in the county conservation account of the resource enhancement and protection fund in the county's name until June 30, 1992.

If a county fails to increase its levy for county conservation purposes to qualify for the per capita distribution within two years, that amount will be returned to the county conservation account and apportioned to the per county, per capita, and competitive grant programs as needed. The director shall recommend to the commission for approval or disapproval how these funds are to be allocated between the three programs.

The annual certifications shall be submitted by the county treasurer to the department on forms provided by the department. The levy of property taxes for county conservation board purposes shall be calculated in the following manner. First, the actual expenditures for all county conservation purposes for the fiscal year shall be determined. Next, the total of all receipts derived from county conservation activities and all grants or donations received from whatever source for county conservation purposes shall be determined. In the event receipts from other grants result from billings permitted in one fiscal year but actually received by the county in the following fiscal year, they may, for purposes of REAP certification, be credited as a receipt during the fiscal year in which they were applied for. The total of all receipts and grants shall then be subtracted from the total expenditures. This result shall then be divided by the total taxable value of all county property to determine the amount per thousand utilized to support county conservation purposes.

Transfers of property tax receipts to the reserve established under Iowa Code section 111A.6 shall be included in the fiscal year the transfers occur for purposes of the calculation of the certified levy. As a part of the annual report on expenditures, the county conservation board director shall include an accounting of receipts and expenditures from the reserve account.

Expenditures and receipts reflected in the special resource enhancement account created as provided in 1989 Iowa Acts, chapter 236, shall not be included in the calculation of the certified levy.

If a dispute arises over the appropriateness of a county expenditure as a county conservation purpose or the accuracy and correctness of the certified levy by the county treasurer, the director shall notify the state auditor and request a recommendation be included in the next audit report. Upon receipt of the audit report, the director shall make a final determination and adjust subsequent distributions to the county or request reimbursement from the county as necessary.

The county conservation board director shall report to the director annually the expenditures from the special resource enhancement account and the county conservation reserve account established under Iowa Code chapter 111A.6. This report shall be submitted by October 1 of each year for the preceding fiscal year on forms provided by the department. Expenditures shall be reported in the following categories:

1. Land acquisition and related costs such as appraisals and surveys describing the parcels acquired,
2. Facility development or renovation describing each facility and the related cost of development or renovation,
3. The purchase of equipment for conservation purposes, describing each piece of equipment and the intended use or benefit,
4. The purchase of supplies and materials, describing the cost, quantity, intended use, and
5. Staff hired either partially or fully and the general responsibilities and duties assigned.

33.30(7) *Fund distribution schedule.* Funds from the county resource account which are distributed on a per capita and per county basis shall be distributed by the department to each eligible county quarterly.

33.30(8) *Special account.* Each county board of supervisors shall create a special resource enhancement account in the office of the county treasurer and the county treasurer shall credit all resource enhancement and protection funds from the state to that account.

REAP funds received by the county shall not be used to fund any program or activity that was funded in prior years by other county revenues. Expansion of previously funded programs is permitted. Each county board director, as part of the report regarding the special

resource enhancement and reserve accounts, shall certify that county expenditures of REAP funds supported only programs and activities not funded in prior years by county revenues other than REAP funds. For purposes of this certification by the director, expenditures from special resource enhancement account for land acquisition shall be viewed as a new program and not a continuation of previous land acquisition programs. Expenditures from the special resource enhancement account for routine maintenance of facilities must involve only facilities previously constructed or otherwise acquired with REAP funds. REAP funds may be used for renovation, expansion or upgrading of facilities regardless of the source of funding for the original facilities, except as prohibited by rule 33.4(455A). Likewise, expenditures from the special resource enhancement account for equipment, supplies, materials, or staff salaries must directly relate to the establishment or expansion of programs or activities with REAP funds, and such programs or activities shall not have been previously funded with other county revenues.

Failure to adequately report expenditures from the special resource enhancement account or to provide the certification as previously described regarding these expenditures will result in the county losing its eligibility to receive per capita and competitive grants from the REAP program for a period of one to three years. A county which loses its eligibility under this section may reestablish its eligibility by certifying that the county tax dollars dedicated to county conservation purposes during the previous fiscal year were at least 22¢ per $1000 of assessed taxable property.

33.30(9) *Grant application schedule.* Applications for grants shall be reviewed and selected for funding during March and September of each year. Applications must be received in acceptable form by the department by the close of business on the last business day of August for consideration at the September review and the last business day of February for the March review. Upon a 60-day written notice to counties, the department may schedule additional selection periods to expedite the distribution of these funds.

33.31 to 33.39 Reserved.

Part 3
CITY GRANTS

571—33.40(455A) Competitive grants to cities. Fifteen precent of available funds in the resource enhancement and protection fund (after the $350,000 annual allocation to the conservation education board and 1 percent of revenues to the fund are allocated to the administration fund) shall be allocated annually to the city park and open spaces grant account. That 15 percent shall be divided into three portions according to the percent of the state's urban population in each category, with each portion available on a competitive basis to cities falling within one of the following three size categories:

Cities of less than 2,000
Cities between 2,000 and 25,000
Cities larger than 25,000

Funds shall be initially apportioned to each category as per this rule. If at the time of project review and scoring there are funds available in any category which exceed the requests for grants in that category, those funds may, at the director's discretion, be transferred to another category where requests exceed the funds available.

33.40(1) *Eligible projects.* Grants for up to 100 percent of project costs made to cities may be used for the acquisition, establishment and maintenance of natural parks, preserves and open spaces.

Grants may include expenditures for multipurpose trails, rest room facilities, shelter houses and picnic facilities, museums, parks, preserves, parkways, city forests, city wildlife areas as well as other open space oriented acquisition and development projects, subject to the restrictions in rule 33.4(455A).

33.40(2) *Eligible sponsors.* Any incorporated city or town in the state may make application for a grant.

33.40(3) *Grant ceilings.* Incorporated cities and towns are eligible to receive annual grants from the resource enhancement and protection fund in accordance with the following schedule:

Population	Maximum
0 — 1,000	$ 50,000
1,000 — 5,000	75,000
5,001 — 10,000	100,000
10,001 — 25,000	125,000
25,001 — 50,000	150,000
50,001 — 75,000	200,000
over 75,000	300,000

The grant ceiling may be waived upon approval by the director if (1) the project is regional in nature or is projected to serve a minimum of 100,000 people; or (2) the project cannot be staged over a multiyear period so that a separate grant application might be submitted each year.

33.40(4) *Review and selection committee.* The director shall appoint a five-member review and selection committee to evaluate project applications. This committee shall include one member representing each of the three size classes of cities (e.g., one from a city of less than 2,000, one from a city of 2,000 to 25,000, and one from a city of over 25,000). The director shall request a list of candidates from the Iowa league of municipalities. The remaining two members of the committee shall be a representative of the department and an at-large member. The committee shall elect its own chairperson from its members. Members shall serve three-year staggered terms.

33.40(5) *Criteria for project evaluation.* Criteria and weight factors to be used in scoring projects shall include, but are not limited to, the following:

1. Quailty of site or project, or both (3)
2. Direct recreation benefits (2)
3. Local need (2)
4. Number of people served (2)
5. Relationship to state and local plans (2)
6. Relationship to Iowa open space protection program (3)

Up to 2 bonus and 3 penalty points may also be assigned based on prior grants, the size and number of grants already underway or approved within the applicant's community, or performance on past projects.

33.40(6) *Grant application schedule.* Applications for municipal grants shall be received and selected for funding during March and September each year. Applications must be received in acceptable form by the department by the close of business on the 15th day of August for consideration at the September review and the 15th day of February for the March review. Upon a 60-day written notice to cities, the department may schedule additional selection periods to expedite the distribution of these funds.

33.41 to **33.49** Reserved.

Part 4
PRIVATE GRANTS

571—33.50(455A) Private cost-sharing program. At least 10 percent of the funds placed in the open spaces account shall be made available for cost-sharing with private entities for cost-sharing at a maximum level of 75 percent.

33.50(1) *Protection defined.* Protection is defined as the purchase of all or a portion of the rights associated with ownership of real property so as to ensure that open space values associated with that property are protected in perpetuity. Protection methods, in order of preference include, but are not limited to, fee title acquisition, purchase of easements, or other mechanisms that provide long-term assurance of open space protection. Title for acquired properties shall be vested in the state of Iowa.

33.50(2) *Eligibility to participate.* Any trust, foundation, incorporated conservation organization, private individual, corporation or group able to provide funds or interest in land sufficient to equal at least 25 percent of a proposed protection project may submit or cause to have submitted a project for funding consideration.

33.50(3) *Grant amount.* The department will provide grants for up to 75 percent of the appraised cost of the land plus incidental acquisition costs. Costs in excess of these must be borne by the grantee.

33.50(4) *Project review and selection committee.* The director shall appoint a committee to review and score projects. The committee shall include the following: Three persons representing the private sector selected from a pool of potential names as submitted by the various private eligible groups; the chief of the planning bureau from the department (chairperson); administrator of the parks, recreation and preserves division of the department; and the administrator of the fish and wildlife division of the department. The director shall request a list of candidates for the private sector members from groups eligible to participate in this program.

The committee will report to the director the order in which proposed projects were ranked using criteria as specified in 33.50(5).

33.50(5) *Criteria.* The following criteria and their respective weights () as defined and described in the 1988 Iowa open spaces protection plan shall be used by the committee, along with other criteria which are determined by the committee to be relevant.

1. Level of significance (3)
2. Resource representation (3)
3. Level of threat (3)
4. Relationship to existing public land (3)
5. Rare or unique species or communities (2)
6. Public benefits (2)
7. Tourism and economic development potential (1)
8. Geographic distribution (1)
9. Multiple use potential (1)
10. Available funds relative to project costs (1)

33.50(6) *Department rejection of applications.* The director may remove from consideration by the project review and selection committee any application for funding the acquisition of property that the department determines is not in the state's best interest for the department to manage.

33.50(7) *Certification of availability of funds.* Applicants must certify at the time of application that sufficient funds, land, letter of credit, or other acceptable financial instrument are available from private sources to cover the private share of the project.

33.50(8) *Project submission.* Applications will be received and scored twice annually in July and February. The director may call special meetings of the committee at other times for purposes of considering projects for cost-sharing. Projects must be received by the department by the close of business on the 15th day of January and July each year. Projects may be reviewed and scored at any time, with a minimum of 60 days' notice to potential applicants, with the first deadline occurring on January 15, 1990. Projects will be reviewed and scored in July and February in future years.

33.50(9) *Acquisition responsibilities and process.* The grantee is responsible for obtaining an appraisal that is approvable by the department and for obtaining the director's written approval of that appraisal.

The grantee is responsible for negotiating an option to purchase the property with the seller. If the option contains any requirements for action by the department or restrictions on the use of the land, those requirements or restrictions must be approved by the director and the commission before they are incorporated into the option.

The grantee is responsible for closing the transaction, recording the transaction with the appropriate county recorder, and providing the department with a copy of the deed naming the department as owner and a title vesting certificate. The commission may, under special conditions, allow title to be vested in the name of a city or county. Necessary assurances may include the placement of special conditions on that title, the existence of an approved, long-term management agreement or other measures as deemed appropriate by the commission. The department may provide assistance at the request of the grantee, or at the director's recommendation.

These rules are intended to implement Iowa Code Supplement chapter 455A.

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By January 31 of each year, commencing January 31, 1980, all accredited sponsors shall submit a report in writing to the board disclosing the educational programs provided for Iowa licensees during the preceding calendar year including dates, titles and hours of instruction provided each licensee in a form approved by the board.

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 30 days prior to said hearing. The decision of the board after such hearing shall be final.

40.64(2) Accreditation for sponsors shall be terminated four years from the date of approval. By January 31, one year previous to the date of termination, each sponsor shall be required to reapply for approval. The application shall include those items listed under rule 40.64(1).

40.64(3) Rescinded, effective August 12, 1981.

40.64(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.

40.64(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 $40 per day for each day actually spent in travel and monitoring of the program.

This rule is intended to implement Iowa Code section 258A.2.

645—40.65(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 20 days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within 60 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 40.47(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.

645—40.66(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 Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075, or to any other address as may be designated on the form.

40.66(1) The board relies upon each individual licensee's integrity in certifying to 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.

40.66(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.

645—40.67(258A) Attendance record. The board shall monitor licensee attendance at approved programs by random inquiries of accredited sponsors.

645—40.68(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 attendance record shall include the licensee's certificate of license number.

This rule is intended to implement Iowa Code section 258A.2.

The report shall be sent to the Iowa Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075.

645—40.69(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.

645—40.70(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:

40.70(1) Submit written application for reinstatement to the board upon forms provided by the board; and

40.70(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 18 by the number of years a certificate of exemption shall have been in effect for the applicant. Hours need not exceed 90 hours for reinstatement, if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview with the 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.

645—40.71(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 as a licensed chiropractor 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.

645—40.72(258A) Physical disability, illness or exemption of continuing education. The board may, in individual cases involving physical disability, illness or for other just cause determined by the board, 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 or other just cause determined by the board 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.

645—40.73(258A) Reinstatement of lapsed license. Application for reinstatement of a lapsed license may not preclude disciplinary actions by the board as provided in this chapter.

40.73(1) A licensee who allows a license to lapse by failing to renew such license within 60 days of renewal date may be reinstated as follows:

a. Submit a completed application for reinstatement of a license to practice chiropractic.

b. Pay the renewal fee(s).

c. Have a personal interview with the board at the board's request.

d. Provide evidence of completion of 18 hours of continuing education for each lapsed year. Hours need not exceed 90 hours if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview.

(1) The board may grant an extension of time of up to one year to allow compliance with continuing education requirements for reinstatement.

(2) An exemption from the required reporting of continuing education for the purpose of reinstatement of an active practitioner may be granted by the board in accordance with rule 40.72(258A).

40.73(2) The board may require a licensee applying for reinstatement to successfully complete the state examination when, through a personal interview, the board finds reason to doubt the licensee's ability to practice with reasonable skill and safety.

These rules are intended to implement Iowa Code sections 147.32, 147.76 and 258A.2.

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CHAPTER 49
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The board of chiropractic examiners hereby adopts 645—Chapter 10, "Public Records and Fair Information Practices" as Chapter 49, with the following amendments.

645—49.1(17A,22) Definitions. As used in this chapter:
"Board" means the board of chiropractic examiners.

645—49.14(17A,22) Personally identifiable information.
49.14(5) *Licensure records.* These records contain information about the licensee including any or all of the following: transcripts, collected pursuant to Iowa Code section 147.19; application for licensure by examination, collected pursuant to Iowa Code sections 147.29 to 147.43; application for temporary certificate, collected pursuant to Iowa Code section 151.12; birth certificates, collected pursuant to Iowa Code section 147.3; references, collected pursuant to Iowa Code section 147.3; past felony record, collected pursuant to Iowa Code section 147.3; high school graduation or equivalency records, collected pursuant to Iowa Code section 147.29; examination scores, collected pursuant to Iowa Code section 247.34; continuing education records, collected pursuant to Iowa Code section 258A.2. In the case of licensure by endorsement, the board collects verification of licensure by another board pursuant to Iowa Code section 147.47. This information is stored on paper or microfilm only.
These rules are intended to implement Iowa Code section 22.11.
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PHARMACY EXAMINERS BOARD[657]

[Prior to 2/10/88, see Pharmacy Examiners, Board of [620], renamed Pharmacy Examiners Board[657] under the "umbrella" of Public Health Department by 1986 Iowa Acts, ch 1245]

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CHAPTER 8
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[Prior to 2/10/88, see Pharmacy Examiners[620], Ch 6]

657—8.1(155A) Authorized person. For the purpose of Iowa Code section 147.107, judgmental functions which cannot be delegated to staff assistants shall include, but not be limited to, the following:

8.1(1) Read and interpret the prescription of a duly licensed medical practitioner, whether transmitted to the pharmacist by writing or orally.

8.1(2) Ensure the accuracy of the ingredients when measured or compounded as specified by the medical practitioner.

8.1(3) Ensure adequate label directions as are necessary to assure the patient's understanding of the prescriber's intentions.

8.1(4) Ensure the validity of written or oral prescriptions as to their source of origin.

This rule is intended to implement Iowa Code sections 147.107, 155A.13 and 155A.15.

657—8.2(155A,204) Prescription information and transfer.

8.2(1) All prescriptions shall be dated and numbered at the time of initial filling and dated and initialed at the time of each refilling.

8.2(2) The original prescription, whether transmitted orally or in writing, must be retained by the pharmacy filling the prescription.

8.2(3) A pharmacist may refill a copy of a prescription for drug products other than those classified as controlled substances according to the following procedure:

a. The pharmacist issuing a written or oral copy of a prescription shall cancel the original prescription by recording on its face the date the copy is issued, the name of the pharmacy to whom issued, and the signature of the pharmacist issuing the copy.

b. The written or oral copy issued shall be an exact duplicate of the original prescription except that it shall also include the issuing pharmacy's prescription or serial number, the name of the pharmacy issuing the copy and the number of authorized refills remaining available to the patient.

c. The pharmacist receiving the oral copy of a prescription must exercise reasonable diligence in determining the validity of the copy.

d. The pharmacist receiving the written copy of a prescription must contact the issuing pharmacy to determine the validity of the copy.

e. A prescription meeting all the requirements of 8.2(3)*"b"* shall be treated by the receiving pharmacy as a new prescription.

f. Copies of nonrefillable prescriptions shall be marked "For Information Purposes Only" and shall not be filled without prescriber authorization.

8.2(4) The transfer of original prescription information for a controlled substance listed in schedules III, IV or V of the Iowa uniform controlled substances Act, Iowa Code chapter 204, for the purpose of refill dispensing is permissible between pharmacies on a one-time basis subject to the following procedures:

a. Transfer is communicated directly between two licensed pharmacists and the transferring pharmacist records the following information:

(1) Write the word "VOID" on the face of the invalidated prescription.

(2) Record on the reverse side of the invalidated prescription the name, address and Drug Enforcement Administration registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information.

(3) Record the date of the transfer and the name of the pharmacist transferring the information.

b. The pharmacist receiving the transferred prescription information shall reduce to writing the following:

(1) Write the word "transfer" on the face of the transferred prescription.
(2) Provide all information required to be on a prescription pursuant to Iowa Code section 155A.27.
(3) Date of issuance of the original prescription.
(4) Original number of refills authorized on original prescription.
(5) Date of original dispensing.
(6) Number of valid refills remaining and date of last refill.
(7) Pharmacy's name, address, DEA registration number and original prescription or serial number from which the prescription information was transferred.
(8) DEA registration number of the prescriber.
(9) Name of transferor pharmacist.

c. Both the original and transferred prescription must be maintained for a period of two years from the date of the last refill.

d. Pharmacies electronically accessing the same prescription record must satisfy all information requirements of a manual mode for prescription transferral, however, if those systems that access the same prescription records have the capability of canceling the original prescription, then all of the requirements of this rule are deemed to have been met.

657—8.3(203A) Prepackaging.

8.3(1) *Control record.* Pharmacies may prepackage and label drugs in convenient quantities for subsequent prescription labeling and dispensing. Such drugs shall be prepackaged by or under the direct supervision of a pharmacist. The supervising pharmacist shall prepare and maintain a packaging control record containing the following information:

a. Date.
b. Identification of drug.
(1) Name.
(2) Dosage form.
(3) Manufacturer.
(4) Manufacturer's lot number.
(5) Strength.
(6) Expiration date (if any).
c. Container specification.
d. Copy of the label.
e. Initials of the packager.
f. Initials of the supervising pharmacist.
g. Quantity per container.
h. Internal control number or date.

8.3(2) *Label information.* Each prepackaged container shall bear a label containing the following information:

a. Name.
b. Strength.
c. Internal control number or date.
d. Expiration date (if any).
e. Auxiliary labels, as needed.

657—8.4(203A) Bulk compounding.

8.4(1) *Control record.* Pharmacies may compound drugs in bulk quantities for subsequent prescription labeling and dispensing. Such drugs shall be compounded by or under the direct supervision of a pharmacist. For each drug product compounded in bulk quantities, a master formula record shall be prepared containing the following information:

a. Name of the product.
b. Specimen or copy of label.

tinuing education are equivalent to one CEU. The board of pharmacy examiners will require 3.0 CEU each renewal period.

8.7(3) *Continuing education program attendance certificate.*

a. An approved provider will be required to make available to individual pharmacists certificates that prove attendance and participation in a continuing education program.

The certificate will carry the following information:

1. Pharmacist's full name
2. Pharmacist's registration number
3. Number of contact hours for program attended
4. Date and place of continuing education program
5. Name of the program provider.

b. Pharmacists must retain certificates in their own personal files for four years.

8.7(4) *Continuing education program topics.* The rules will not address program subject matter, but the board of pharmacy examiners reserves the right to address this topic at some future date.

8.7(5) *New license holders registered by examination.* After the initial license is issued, the new license holder is exempt from meeting CE requirements for the first license renewal. Regardless of when license is first issued, the new license holder will be required to obtain 30 contact hours (3.0 CEU) of CE credits prior to the second renewal.

8.7(6) *Reporting continuing education credits:*

a. Pharmacists are required to submit documentation on the renewal application form that the continuing education requirements prescribed by the board have been met. Documentation will include the total number of credits accumulated for the renewal period and a listing of the individual programs attended, dates of participation, credits awarded and approved providers.

b. The board may require pharmacists to submit the program attendance certificates for the programs stated on the renewal application.

c. Failure to receive the renewal application shall not relieve the pharmacist of the responsibility of meeting continuing education requirements.

8.7(7) *License status.*

a. Active license. Active license status applies to those who have met Iowa requirements for continuing education or to those who are actively engaged in the practice of pharmacy in a state outside of Iowa and who have met the continuing education requirements of that state. Iowa registrants actively practicing in a state which does not have continuing education requirements must meet Iowa continuing education requirements. Pharmacists meeting the continuing education requirements of another state must provide documentation on the renewal application of their license status in that state.

b. Inactive license. Failure of a pharmacist to comply with the continuing education requirements during the renewal period will result in the issuance of a renewal card marked "inactive" upon submission of renewal application and fee. An inactive pharmacist who wishes to become active must complete one month internship for each year the pharmacist was on inactive status or obtain one and one-half times the number of continuing education credits required under 8.7(2) for each renewal period they were inactive. Internship will be in a pharmacy approved by the board. The pharmacist will be issued a temporary "intern" card specifying the condition of internship.

8.7(8) *Relicensure examination.* Nothing in the above requirements would preclude the board from requiring an applicant for renewal to submit to a relicensure examination.

8.7(9) *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 and signed by the licensee and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements for physical disability or illness may be granted by the board for any

period of time not to exceed one renewal period. 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 method as may be prescribed by the board.

8.7(10) *New license holders registered by reciprocity.* After the initial license is issued, the new license holder by reciprocity will be required to obtain 30 contact hours (3.0 CEU) of CE credits prior to the first renewal period.

This rule is intended to implement Iowa Code sections 147.10, 258A.2 and 258A.6.

657—8.8(155A) Prescription pickup locations. A licensed pharmacist shall not participate in any arrangement or agreement whereby prescriptions may be left at, picked up from, accepted by, or delivered to any place of business not licensed as a pharmacy. This shall apply to the prescription order blank and to the completed prescription medication container. Provided, however, that nothing in this rule shall prohibit a licensed pharmacist or a licensed pharmacy, by means of its employee or by use of a common carrier, from picking up prescriptions or delivering prescriptions at the office or home of the prescriber, at the residence of the patient, or at the hospital or medical care facility in which a patient is confined.

This rule is intended to implement Iowa Code sections 155A.13 and 155A.15.

657—8.9(155A,203A) Unit dose dispensing systems.

8.9(1) *Definitions.*

a. Single unit package. A single unit package is one which contains one discrete pharmaceutical dosage form.

b. Unit dose package. A unit dose package is one which contains that particular dose of a drug ordered for the patient for one administration time. A unit dose package is not always a single unit package.

c. Unit of issue package. A unit of issue package is one which provides multiple units/doses attached to each other but separated in a card or specifically designed container.

d. Unit dose dispensing systems. Unit dose dispensing systems are those drug distribution systems determined by the board to be pharmacy based and which involve single unit, unit dose, or unit of issue packaging in a manner which helps reduce or remove traditional drug stocks from patient care areas and enables the selection and distribution of drugs to be pharmacy based and controlled.

8.9(2) *Packaging requirements.* Packaging for all nonsterile drugs stored and dispensed in single unit, unit dose, or unit of issue packages shall:

a. Preserve and protect the identity and integrity of the drug from the point of packaging to the point of patient administration.

b. When packaged by the manufacturer or distributor, be in accordance with federal Food and Drug Administration (FDA) requirements.

c. When in single unit and unit dose packages prepackaged by the pharmacy for use beyond 24 hours, be in accordance with board subrule 8.3(1).

d. When in containers used for packaging, be clean and free of extraneous matter when the dosage unit(s) are placed into the package.

8.9(3) *Labeling requirements.*

a. Labeling for single unit or unit dose packaging shall comply with the following:

(1) Doses packaged by the manufacturer or distributor shall be properly labeled according to federal Food and Drug Administration (FDA) requirements.

(2) Doses packaged by the pharmacy shall be properly labeled according to subrule 8.3(2) if used beyond a 24-hour period.

b. Labeling for unit of issue packages shall contain the following information:

(1) Name, strength, and expiration date of drug when the packages are utilized for floor stock in an institutional setting.

(2) Name and room or bed number of patient, name of prescribing practitioner, name and strength of drug, directions for use, and name and address of the dispensing pharmacy, when

d. The name of the prescribing practitioner;
e. The date the prescription is dispensed;
f. The directions or instructions for use, including precautions to be observed;
g. Unless otherwise directed by the prescriber, the label shall bear the brand name, or if there is no brand name, the generic name of the drug dispensed, the strength of the drug, and the quantity dispensed. Under no circumstances shall the label bear the name of any product other than the one dispensed.

8.14(2) The requirements of subrule 8.14(1) do not apply to unit dose dispensing systems, rule 8.9 (155A,203A), IV infusion products, rule 8.12 (155A,203A), and patient med paks, rule 8.13 (155A,203A).

657—8.15(155A) Records. When a pharmacist exercises the drug product selection prerogative pursuant to Iowa Code section 155A.32, the following information shall be noted:

8.15(1) Dispensing instructions by the prescriber or prescriber's agent shall be noted on the file copy of a prescription drug order which is orally communicated to the pharmacist.

8.15(2) The name, strength, and either the manufacturer's or distributor's name or the National Drug Code (NDC) of the actual drug product dispensed shall be placed on the file copy of the prescription drug order whether it is issued orally or in writing by the prescriber. This information shall also be indicated on the prescription in those instances where a generically equivalent drug is dispensed from a different manufacturer or distributor than was previously dispensed. This information may be placed upon patient medication records if such records are used to record refill information.

657—8.16(155A) Patient medication record system.

8.16(1) After January 1, 1988, a patient medication record system shall be maintained in all pharmacies. The record system shall be devised to contain the information which the pharmacist in charge believes necessary to give the patient the best professional advice and drug information.

8.16(2) Information in the patient medication record shall be deemed to be confidential and may be released to other than the patient or prescribers only on written release of the patient.

Rules 8.14(155A) to 8.16(155A) are intended to implement Iowa Code sections 155A.28, 155A.32, and 155A.35.

657—8.17(155A) Pharmacist temporary absence. In the case of the temporary absence of the pharmacist, hospital pharmacies excepted, the pharmacy must display a card or sign, in letters not less than 1¾ inches high, which reads "PHARMACIST TEMPORARILY ABSENT. NO PRESCRIPTIONS WILL BE FILLED UNTIL THE PHARMACIST RETURNS."

This rule is intended to implement Iowa Code section 155A.13.

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◊Two ARC's.

uniform mechanical code as adopted as part of the state building code.

l. Add at the end of the first paragraph of section 503.10:

Provisions of the duct requirements of the uniform mechanical code as adopted as part of the state building code shall be used if different from these standards.

m. Delete section 601.1 and replace with the following:

601.1 General. The requirements contained in this chapter are applicable only to buildings containing less than one hundred thousand cubic feet of enclosed heated or cooled space and three stories or less in height. The provisions of this chapter are limited to residential buildings, which have more than two dwelling units, that are heated only or heated and mechanically cooled and to other buildings that are heated only. Buildings constructed in accordance with this chapter are deemed to comply with this code.

One- and two-family dwellings must comply with the Home Heating Index requirements of amendment *"i"* above.

n. Add to RS-8 in Section 701.1:

IES pamphlets EMS-1, EMS-2, and EMS-3 are included as part of this standard.

Rules 16.100(103A) to 16.800 are intended to implement Iowa Code sections 103A.7 and 103A.9.

16.801 to 16.899 Reserved.

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CHAPTER 17
CRIME VICTIM REPARATION

[Prior to 4/20/88, see Public Safety Department, 680—Ch 17]

Program transferred to the Department of Justice—Attorney General[61], Ch 9, IAB 9/20/89. See 1989 Iowa Acts, House File 700.

CHAPTER 18
DISPOSITION OF AMMUNITION AND FIREARMS

Rescinded IAB 8/14/85, effective 7/26/85

*Effective date of IAB amendments to [O.P.P. 5.600 to 5.629] Division VI (16.600 to 16.629) delayed seventy days by the administrative rules review committee.

†Inadvertently dropped out from 1/7/81 IAC Supplement replacement pages

**Effective date (1/1/89) of 16.120(2)[3802 "h" only] delayed until adjournment of the 1988 Session of the General Assembly by the Administrative Rules Review Committee at its December 13, 1988 meeting

Any claim for refund lawfully filed shall be paid by the department within 90 days after the department's receipt of the claim. The department must have placed the claimant's payment in the mail within this 90-day period.

c. See rule 14.3(422,423) for guidance in determining the date upon which a sale of farm machinery or equipment has occurred. Concerning periodic payments under a lease, the gross receipts of which are subject to sales tax, the following is an example of how payments under this sort of lease are to be treated when the lease extends throughout the periods of taxability, refund and exemption.

EXAMPLE: A farmer signs a lease on May 1, 1984, to rent a combine for a four-year period. The farmer takes delivery of the combine on June 1, 1984; each monthly lease payment is due upon the first day of the month for the 48 months beginning in July of 1984. The payments due for the period beginning June 1, 1984, and ending June 30, 1985, would be subject to tax with no right of refund. The payment due for the period July 1985 to June 1987 would be subject to a tax but would be refundable. Payments due for the period beginning July 1, 1987, would be exempt.

18.44(5) and **18.44(6)** Rescinded, IAB 9/7/88, effective 10/12/88.

This rule is intended to implement Iowa Code subsections 422.43(3) and 422.45(26) and Iowa Code chapter 422, Division IV.

701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid. The sale or rental of computers, industrial machinery and equipment, including pollution control equipment, used in manufacturing, in research and development, or in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise is, under certain circumstances, exempt from tax and under other circumstances, is subject to refund of sales or use tax paid. The sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products is also exempt from tax; see subrule 18.45(8). For purposes of the organization of this rule items that may be exempt or subject to refund of tax are referred to as specified property unless the context of the rule indicates otherwise. See subrule 18.45(1) for definition of what constitutes specified property. Also, for purposes of organization of this rule the rule refers only to an exemption from tax but the tax paid may be refundable as is discussed in subrule 18.45(6).

18.45(1) *Definitions.* The following words are defined for the purposes of this rule in the manner set out below.

"Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a "commercial enterprise." The term "professions" means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term "occupations" means the principal business of an individual. Included within the meaning of "occupations" is the business of farming. A professional corporation which carries on any business which is a "profession" or "occupation" is not a commercial enterprise.

"Computer" means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are: terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of "computer" is point-of-sale equipment. For a characterization of "point-of-sale equipment" see subrule 71.1(7).

Also included within the meaning of the word is any software consisting of an operating or executive program upon which the basic operating procedures of a computer are recorded and which serves as an interface with an application program. Excluded from the meaning of the word is any software consisting of an application program purchased separately from a computer.

"Directly used." Property is "directly used" only if it is used to initiate, sustain, or terminate the transformation of any activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

"Financial institution" is a bank incorporated under Iowa Code chapter 524 or federal law; a savings and loan association incorporated under Iowa Code chapter 534 or federal law; a credit union organized under Iowa Code chapter 533 or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

"Industrial machinery and equipment" means machinery and equipment used by a manufacturer in a manufacturing establishment. Machinery is any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result. The word includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The word also includes all devices used or required to control, regulate or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be "machinery." See *Deere Manufacturing Co. v. Zeiner,* 247 Iowa 1264 78 N.W.2d 527 (1956). Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are: tables on which property is assembled on an assembly line and chairs used by assembly line workers.

"Insurance company" means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 519, or 520 or authorized to do business in Iowa as an insurer. An insurance company must have fifty or more persons employed in Iowa, excluding licensed insurance agents. Excluded from the definition of "insurance company" are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

"Manufacturer" means any person, firm, or corporation who purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; quarrying; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transporation for hire; mining; and the activities of restaurateurs, hospitals, and medical doctors are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982).

"Pollution control equipment" means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution. The term does not include any apparatus used to eliminate "noise pollution." Liquid, solid, and gaseous wastes are included within the meaning of the word "pollution."

"Processing" means an operation or series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. See rule 18.29(422,423).

"Processing or storage of data or information." Not only a computer, but machinery or equipment may be used in the processing or storage of data or information. All computers store and process information. However, only if the "final output" for a user or consumer is stored or processed data will the computer be subject to refund or exemption of tax.

"Recycling" means any process by which waste, or materials which would otherwise become waste, are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. "Recycling" does not include any form of energy recovery.

"Replacement parts." Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives. Replacement parts which only keep machinery, equipment, or computers in their ordinarily efficient operating condition are not eligible for exemption. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for exemption from tax. However, the person claiming the exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

"Research and development" means experimental or laboratory activity which has as its ultimate goal the development of new products, processes of manufacturing, refining, purifying, combining of different materials, or meat packing. The ultimate goal of research and development must be that of adding value to products. The term "research and development" does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical, or similar projects. Machinery, equipment, and computers are used "directly" in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

"Specified property" means property that is a computer or industrial machinery and equipment including pollution control equipment and depreciable replacement parts for that property.

18.45(2) *Requirements.* The sale or rental of specified property is exempt from tax if:

a. The property is real property within the scope of Iowa Code section 427A.1(1)*"e"* or *"j"* and subject to taxation as real property (however, see subrules 18.45(4) and 18.45(8); and

b. The property is directly and primarily used in one of the following:

1. By a manufacturer in processing tangible personal property; or

2. In research and development of new products or processes of manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purposes of adding value to products; or

3. In processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

c. To qualify for refund or exemption, a computer may be taxable as either commercial or industrial real estate. Machinery and equipment must be taxable as industrial real estate only to be similarly qualified. Research and development machinery and equipment that is not taxable as industrial real estate does not qualify for refund or exemption. See subrules

71.1(5) and 71.1(6) for characterizations of "commercial" and "industrial" real estate. However, see subrule 18.45(4) for an exception to the requirement that certain property be taxable as real property.

d. The following are examples of machinery which is not directly used in manufacturing:

1. Machinery used exclusively for the efficient use of other machinery. Examples are: air cooling, air conditioning, and exhaust systems.

2. Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained or repaired.

3. Machinery used by administrative, accounting, and personnel departments.

4. Machinery used by plant security, fire prevention, first aid, and hospital stations.

5. Machinery used in plant cleaning, disposal of scrap and waste, plant communications, lighting, safety, or heating.

e. The following is an example of property directly used in research and development: Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a "steam cleaner" for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director's secretary. The computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

f. The following is an example of property used in processing or storage of information or data: a health insurance company has three (3) computers. Computer A is used to monitor the temperature within the insurance company's building. The computer transmits messages to the building's heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefit paid out for various classes of insured. The "final output" of Computer A is neither stored nor processed information. The final output of Computer B is stored information. The final output of Computer C is processed information. The sale, lease, or use of Computers B and C would qualify for exemption or refund.

g. The following is an example of property not used in manufacturing: a manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in manufacturing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.45(3) *Exceptions.* The following specified property is not exempt:

a. Property assessed by the department of revenue and finance pursuant to Iowa Code chapters 428, 433, 434 and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to as well as owned by the company is assessed by the department. See 701—chapters 71 and 77.

b. Hand tools.

c. Point-of-sale equipment. See subrule 71.1(7).

18.45(4) *Inclusions.* Property exempt from taxation for property tax purposes under the provisions of Iowa Code chapters 404 and 427B relating to urban revitalization property and industrial machinery receiving partial exemption by ordinance is also eligible for exemption

from sales and use taxes even though the property is not subject to taxation as real property. Urban revitalization property and industrial machinery receiving partial exemption by ordinance are discussed in rules 80.8(404) and 80.6(427B), respectively. This property must meet the other requirements in subrule 18.45(2) in order to be exempt from sales and use taxes.

18.45(5) *Lessor purchases of specified property.* The analysis contained in rule 18.44(422, 423) regarding lessor purchases of farm machinery and equipment is applicable to explain that same problem regarding specified property. See subrule 18.44(3) for analysis.

18.45(6) *Rights of refund and exemption.* Sales and service tax paid on purchases or rentals of specified property exempt under this rule except that paid by nonprofit health service corporations governed by Iowa Code chapter 514 is eligible for refund if the purchase or the rental period occurred during the period July 1, 1985, and ending June 30, 1987. Purchases and leases by certain persons who have entered into agreements under Iowa Code chapter 280B will be exempt from tax during the same period (see the following paragraph). The gross receipts from sales and service tax paid on all purchases or rental of specified property exempt under this rule occurring on or after July 1, 1987, will be exempt from tax. See subrule 18.44(4) which explains how to determine when a sale occurs and, for a long-term lease, how to decide which payments are taxable, which are taxable subject to refund, and which are exempt.

The sale or rental of specified property which occurs during the period beginning July 1, 1985, and ending June 30, 1987, is exempt from tax if the purchaser or renter is an industry which has entered into an agreement under Iowa Code chapter 280B prior to the sale or lease. See subrules 42.2(7)*"a"*(4) and 42.2(7)*"a"*(7) for definitions of the words 280B "agreement" and "industry" respectively. It is not necessary to utilize the specified property in connection with any 280B agreements to qualify its purchase or lease for exemption from tax. Exemption is allowed if prior to the sale or lease, the purchaser or lessor has entered into an agreement under chapter 280B.

18.45(7) *Designing or installing new industrial machinery or equipment.* On and after July 1, 1985, the gross receipts from the services of designing or installing new industrial machinery or equipment shall be exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to refund or exemption under this rule. In addition, the machinery or equipment must be "new." For purposes of this subrule, "new" means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A "computer" is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.45(8) *Property used in recycling or reprocessing of waste products.* On and after July 1, 1989, the gross receipts from the sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products shall be exempt from tax. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an endloader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. See 18.45(8)*"c."* The sale of a bin for storage ordinarily would not be exempt from tax, storage without more not being a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing.

For example, machinery, equipment, or a computer need not meet the requirements of 18.45(2)*"a"* concerning specified property being real property for the exemption to apply.

Furthermore, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution, or commercial enterprise. For instance, a person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarly used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.45(1) for the definition of "directly used" which is applicable to this subrule. The examples of machinery not directly used in manufacturing set out in 18.45(2)*"d"* should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.45(2)*"d"*"4") is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an "integral part" of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of "processing." Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material in which it will be used in manufacturing or in the form of a product which will be sold for use other than as a raw material in manufacturing. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, and crates and other waste wood into wood chips. After grinding, the wood chips are sold and transported to purchasers to various sites where the chips are dumped on and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in reprocessing because, at the time the chips are placed in the truck, they are in the form in which they will be sold for use other than as a raw material in manufacturing.

This rule is intended to implement Iowa Code sections 422.45(26), 422.45(27) as amended by 1989 Iowa Acts, chapter 272, 422.45(29), and 422.47A.

701—18.46(422,423) Automotive fluids. The gross receipts from the sales of certain automotive fluids are exempt from tax. To be considered exempt, the sale must possess the following characteristics: (1) the sale must be to a retailer who will install the automotive fluid in or apply the automotive fluid to a motor vehicle; and (2) the installation or application must be done while the retailer is providing a taxable enumerated service (e.g., automobile lubrication); or (3) the automotive fluid must be installed in or applied to a motor vehicle

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◊Two ARCs

CHAPTER 125
REVIEW OF AGENCY ACTION

[Prior to 12/17/86, Revenue and Department[730]]

701—125.1(441) Decisions final. Decisions of the commission shall be considered final agency action for purposes of appeal. Any person aggrieved by an action of the commission may appeal to the district court as provided by law. Results of examinations are not decisions of the commission and are not appealable directly to court. If a person feels aggrieved on the results of an examination or course, the person may petition in accordance with rule 124.3(441).

701—125.2(441) Grievence and appeal procedures. Prior to appealing to district court any aggrieved person may petition the commission in writing to reconsider an action of the commission. In addition, the commission will accept grievances which have been filed based on any area in which the commission has jurisdiction.

A petition or grievance must be filed with the commission within thirty (30) days of the decision or action leading to the grievance. The petition must state the reasons for reconsideration of a commission action and a grievance must contain the facts leading to the grievance and a statement showing the commission has jurisdiction.

The chairperson of the commission shall appoint a grievance committe comprised of three (3) members of the commission to review petitions and grievances, meet with the affected parties if necessary, and recommend in writing to the commission as a whole a proposed resolution of the matter. The commission will consider the recommendation of the grievance committee at its next meeting and inform the affected parties of its decision in writing within ten (10) days. The date of the written reply by the commission shall constitute final agency action for purposes of appeal.

This rule is intended to implement Iowa Code section 441.8.

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CHAPTERS 126 to 149
Reserved

CHAPTER 150
OFFSET OF DEBTS OWED STATE AGENCIES

701—150.1(421) Definitions. For purposes of this chapter, the following definitions shall govern:

"Debtor" means any person owing a debt to the state of Iowa or any state agency.

"Department" means the Iowa department of revenue and finance or the director of the Iowa department of revenue and finance and the director's representative.

"Director" is the director of revenue and finance.

"Liability" or *"debt"* means any liquidated sum due and owing to the state of Iowa or any state agency which has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a person's liability to a state agency shall be at least $50.

"Offset" shall mean to set off or compensate a state agency which has a legal claim against a person or entity where there exists a person's valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a person's claim on a state agency shall be at least $50.

"Person" or *"entity"* means individual, corporation, business trust, estate, trust, partnership or association, or any other legal entity, but does not include a state agency.

"State agency" or *"agency"* means a board, commission, department, including the department of revenue and finance, or other administrative office or unit of the state of Iowa. "State agency" does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

701—150.2(421) Scope and purpose.

150.2(1) The purpose of these rules is to establish a procedure by which state agencies can cooperate in identifying debtors who owe liabilities to those state agencies and to establish a procedure for offsetting debtors' claims against state agencies with liabilities or debts which those debtors owe the state agencies.

150.2(2) Agencies may collect debts under the provisions of Iowa Code subsection 421.17(29) through the preaudit offset system. Departments utilizing the income tax refund offset system under the provisions of Iowa Code subsection 421.17(21), which allows for the recovery of child support, foster care, and public assistance payments; Iowa Code subsection 421.17(23), which allows for the recovery of guaranteed student or parental loans; and Iowa Code subsection 421.17(25), which allows for the recovery of criminal fines, civil penalties, surcharges, and court costs, may also utilize this offset system to collect debts due. Any state agency exempt from the provisions of Iowa Code section 421.39, and making payments, shall be subject to these rules.

150.2(3) Inclusions in and exclusions from setoff. This offset system may be used to collect any debt described in rule 150.1(421). However, some claims against the state or state agencies on behalf of certain persons are made from funds exempt from collection and are thus unavailable for offset. A consolidated listing of payment sources unavailable for offset is available from the department of revenue and finance's financial management division.

701—150.3(421) Participation guidelines. Those state agencies qualified under rule 150.2(421) to use this chapter's offset provisions should utilize those provisions when it is cost effective to do so. Final determination regarding whether or not it will be cost effective to offset any debt owed will be at the discretion of the director. Generally, it will not be cost effective to offset a debt if the total anticipated collection cost will exceed the amount of the claim that

could reasonably be expected to be realized as a result of those collection costs. The cost effectiveness criteria which the director applies will not be the same for every agency. Circumstances differ among agencies. The following nonexclusive examples are intended to provide guidance in determining the cost effectiveness. These examples represent instances in which it might not be cost effective to offset debts.

EXAMPLE A: A debtor has ceased operations for an extended period of time.

EXAMPLE B: A business has changed its form (e.g., from a sole proprietorship to a partnership or corporation).

EXAMPLE C: A debt has been placed with a private collection firm and it appears likely that the firm will collect the debt.

EXAMPLE D: The age or health of a debtor is such that it is unlikely that the debtor will be receiving any payments from the state or a state agency.

EXAMPLE E: The debtor is a foreign student who has left the country.

EXAMPLE F: The debtor is a person in bankruptcy.

EXAMPLE G: By statute or federal regulations certain agencies cannot write off debts. If the debt of one of these agencies has been owing for a substantial amount of time, it may be reasonable to assume that referral would not be cost effective (e.g., the debtor had changed its name or address or for some other reason would be impossible to locate).

701—150.4(421) Duties of the agency. The agency seeking offset shall have the following duties regarding the department and debtors.

150.4(1) *Notification to the department.* The agencies must provide a list of debtors to the department of revenue and finance. This list must be in a format and type prescribed by the department and include only information relevant to the identification of the person owing.

The director shall not process a claim under the provisions of Iowa Code section 421.17(29) until notification is received from the state agency that the debt has been established through notice and opportunity to be heard. The agency shall provide along with each liability file a written statement to the director declaring the debt to have occurred.

150.4(2) *Change in status of debt.* A state agency which has provided a liability file to the department of revenue and finance must notify the department immediately of any change in the status of a debt to the state. This notification shall be made no later than 30 calendar days from the occurrence of the change. Change in status may come from payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

150.4(3) *Semiannual certification of file.* Each agency maintaining a liability file will be required to certify the file to the department semiannually. This certification will be made in a manner prescribed by the director. Debtors not certified in the manner prescribed will be removed from the liability file.

150.4(4) *Notification to debtor.* The agency shall send notification to the debtor within ten calendar days from the date the agency was notified by the department of a potential offset. This notification shall include:

a. The agency's right to the payment in question.

b. The agency's right to recover the payment through this offset procedure.

c. The basis of the agency's case in regard to the debt.

d. The right of the debtor to request the split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.

e. The debtor's right to appeal the offset and the procedure to follow in that appeal.

f. The agency or division and a phone number for the person owing to contact in the case of questions.

The department may require a copy of this notice be sent to it. Once the offset has been

completed, the agency shall notify the debtor of the action taken along with the balance, if any, still due to the agency. It is the responsibility of the agency to make payment to the person owing the state any payment offset by the department to which the state is not entitled, in accordance with established procedures.

701—150.5(421) Duties of the department—performance of the offset. The department will develop procedures for administering each offset program request on an individual basis. Procedures will vary in order to achieve the greatest efficiency in administering each offset.

Before issuing an authorized payment to a person or entity, the department will match against a debt listing provided by the state agencies participating in this offset program. The department will notify the state agency of the person's or entity's name, address, identifying number, and amount of the entitled payment.

The department shall hold the payment which offsets the liquidated sum due and payable for a period not to exceed 45 days awaiting notification from the agency as to the amount required to satisfy the person's or entity's debt to the state. If notification is not made to the department by the state agency within 45 days, the amount of the payment shall be released to the person or entity.

The offset will be made by the department only after the state agency has notified the debtor as prescribed in subrule 150.4(4). The department shall then refund any balance amount due from the state to the person or entity.

701—150.6(421) Multiple claims—priority of payment. In the case of multiple claims to payments filed under Iowa Code section 421.17, subsections 21, 23, 25, and 29, priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit under subsection 21. Next priority shall be given to claims filed by the college aid commission under subsection 23. Next priority shall be given to claims filed by the office of investigations under subsection 21. Next priority shall be given to claims filed by a clerk of the district court under subsection 25. Last priority shall be given to claims filed under subsection 29.

The order of priority for offset against multiple claims by more than one state agency shall be determined by the date the liability was listed with the department. Subsequent entries of claims by state agencies shall be offset in order of the date the listing was made with the department.

701—150.7(421) Payments of offset amounts. Payments to the agency requesting the offset shall be made by the department on the 25th day of each month.

701—150.8(421) Reimbursement for offsetting liabilities. Costs incurred by the department in administering the offset program will be charged to the state department requesting offset. The costs will be deducted from the gross proceeds collected through offset and may include direct expenses such as salaries, supplies, equipment, and system modification and development costs; or indirect costs such as space, security, or utility costs. If the above-described procedure is prohibited by paramount state or federal law, the director shall allow reimbursement in a manner which conforms to the paramount law.

701—150.9(421) Confidentiality of information. Information shared between state agencies shall be deemed confidential and shall be disclosed only to the extent that sufficient information is given that is relevant to the identification of persons liable to or claimants of state agencies. The information is to be used for the purpose of offset only.

These rules are intended to implement Iowa Code sections 421.17, 422.16, 422.20, and 422.72.

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SECRETARY OF STATE[721]

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CHAPTER 23
VOTER REGISTRATION IN STATE OFFICES

721—23.1(48) Registration forms displayed. All offices maintained by state agencies shall prominently display a supply of the registration forms provided in Iowa Code section 48.3.

721—23.2(48) Definition. As used in this chapter:

"Office" means the principal place in a location in which a state agency does business with the public.

721—23.3(48) Registration opportunity offered. The officers and employees of all state agencies shall offer each person doing business in that office the opportunity to register, unless the officer or employee is reasonably certain that a person doing business in the office has already been offered a registration form within the previous 12-month period. The officer or employee shall offer the opportunity to register by either of the following methods:

a. The officer or employee shall offer the opportunity to register by asking the following question: "Are you registered to vote at your current address?" If the response is negative the officer or employee shall ask: "Would you like to register?"

b. The officer or employee may offer the opportunity to register by some other method that has been submitted to the state commissioner of elections in writing and has been approved by the state commissioner of elections.

721—23.4(48) Forms submitted to county commissioners. Completed registration forms shall be mailed or delivered to the county auditor of the registrant's residence at least every other working day. Records shall be kept of the number of registration forms completed in the office.

721—23.5(48) Quarterly reports. Each department shall compile the records of the number of registrations from its various offices. On the first working day of January, April, July and October, each state department shall report to the secretary of state the total number of registrations completed by the department on the following form:

IOWA AGENCY VOTER REGISTRATION
QUARTERLY REPORT

Department name: _____

Reporting period (check one): _____ January — March
_____ April — June
_____ July — September
_____ October — December

Number of registrations mailed from your department during quarter: _____

Approximate number of registration cards taken from your office during quarter: _____

_____ Signature of person reporting

_____ Print name and title

_____ Date of report

_____ Address

( ) _____ Telephone number

These rules implement Iowa Code section 48.20.

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CHAPTER 24
UNOFFICIAL CANVASS OF VOTES

721—24.1(47) Unofficial canvass. The state commissioner of elections, in cooperation with the county commissioners of elections, shall conduct an unofficial canvass of election results after the closing of the polls on the day of a general election. The unofficial canvass shall report election results for national offices, statewide offices, the office of state representative, the office of state senator, and other offices or public measures at the discretion of the state commissioner. The purpose of the unofficial canvass is to provide the public with a convenient source of general election results before the official canvass.

721—24.2(47) Duties of the county commissioner of elections. The county commissioner of elections shall provide election results to the state commissioner after all precincts have reported election results to the county commissioner, and before the closing of the office as provided in Iowa Code section 50.11. If the county commissioner determines that all precincts will not report election results, the county commissioner shall report the most complete results available before the closing of the office as provided in Iowa Code section 50.11. The county commissioner shall specify the number of precincts included in the report to the state commissioner.

721—24.3(47) Duties of the state commissioner of elections.

24.3(1) Before the general election, the state commissioner of elections shall provide a form and instructions for reporting unofficial election results.

24.3(2) The state commissioner shall tabulate unofficial election results, as the results are received from the county commissioners of elections, and shall make available to the public periodic reports of the results.

These rules are intended to implement Iowa Code section 47.1.

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CHAPTERS 25 to 29
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30.5(3) In the event that a filing fee overpayment is made, the amount in excess of the correct filing fee shall be returned to the filing party. No adjustment is required if the amount of overpayment is one dollar or less.

30.5(4) Payment must be made at the time of request for information concerning federal tax liens on file with the office of the secretary of state and any request for copies of such filed tax liens.

721—30.6(570A) Forms for verified lien statements and request for information (VLS-1).

30.6(1) The form to be used for filing verified lien statements, pursuant to Iowa Code section 570A.4, shall conform to the following standards in order to qualify as a standard form.

a. A VLS-1 form shall be eight inches wide and shall not exceed thirteen inches in length. The form shall have all information printed on one side. All verified lien statement forms shall consist of three copies interleaved with carbon paper, or equivalent: an alphabetical, numerical and evidence of filing copy.

b. The debtor block shall be in the upper left-hand corner.

c. The lienholder block shall be immediately to the right of the debtor block.

d. The filing officer block shall be in the upper right-hand corner.

e. The first day payment due block shall be directly below the lienholder block.

f. The last day product furnished block shall be directly below the lienholder block.

g. The form must have a box to check off showing that the lien attaches to crops, livestock, or both.

30.6(2) Forms that do not conform to the above standards but which otherwise conform to the requirements of law shall be filed as nonstandard forms.

30.6(3) Forms that conform to the above standards and which are accompanied by an additional page or pages shall be filed as nonstandard forms.

721—30.7(570A) Forms and fees for request for information (VLS-1). The form to be used for requesting information pursuant to Iowa Code section 570A.4 shall conform to the same standards as set forth in subrule 30.6(1). In addition there will be a one dollar fee for copies of financing and verified lien statement produced in response to a request.

These rules are intended to implement Iowa Code chapters 17A, 491, 496A, 497, 498, 499, 504, 504A, 554 article IX and 570A.

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CHAPTERS 31 to 39
Reserved

DIVISION IV
CORPORATIONS

CHAPTER 40
CORPORATIONS

[Prior to 7/13/88, see Secretary of State(750), Ch 2]

721—40.1(490,499,504A) Filing of documents. Documents pertaining to profit corporations, nonprofit corporations, and cooperative associations shall be delivered for filing to the office of Secretary of State, Hoover State Office Building, Des Moines, Iowa 50319.

40.1(1) A copy of a signature, however made, is acceptable with regard to documents delivered to the secretary of state for filing pursuant to Iowa Code Supplement chapter 490.

40.1(2) A document delivered to the secretary of state for filing pursuant to the Iowa business corporation Act, Iowa Code Supplement chapter 490, may be delivered by telecopier to (515) 242-5953.

40.1(3) A document delivered by telecopier may be delivered at any time of day. The date and time of receipt printed on the document by the telecopier constitutes the date and time endorsement required by Iowa Code Supplement section 490.125(2).

40.1(4) A document delivered by telecopier shall be printed on paper measuring 8½" by 11", unless a copy of a larger document, reduced to 8½" by 11" paper, is acceptable to the filing party. The document received by the secretary of state via telecopier shall constitute the copy that is filed and returned to the corporation pursuant to Iowa Code Supplement section 490.125(2).

40.1(5) A document delivered by telecopier shall be accompanied by a cover sheet that provides the name, address, and telephone number of the filing party, and instructions as to the manner by which the filing fee will be paid. The filing fee may be billed to an account maintained by the filing party pursuant to rule 721—2.3(17A). The filing fee may be paid by any other means authorized by the secretary of state.

40.1(6) If a telecopier is used to deliver a document that is subject to the multiple copy requirement of Iowa Code Supplement section 490.130, the additional copy or copies shall be delivered by telecopier contemporaneously with the copy of the document to be filed.

40.1(7) A document delivered by telecopier for filing may be rejected if the print quality of the document is deemed by agency personnel to be unacceptable for microfilming purposes. The secretary of state will notify the filing party by telephone or regular mail of the rejection of a document pursuant to this subrule. The secretary of state will accept for filing the original copy of the document, effective on the date of the transmission by telecopier, if the original document is received in the office of the secretary of state within ten days of date of the notification of the rejection.

This rule is intended to implement Iowa Code Supplement chapter 490.

721—40.2(490) Reinstatement of corporations.

40.2(1) A corporation subject to Iowa Code Supplement chapter 490 whose certificate of incorporation was canceled pursuant to Iowa Code section 496A.130 after December 30, 1981, and before December 31, 1989, may apply to the secretary of state for reinstatement pursuant to Iowa Code Supplement section 490.1422 until December 31,1991.

40.2(2) A corporation whose certificate of incorporation was canceled pursuant to Iowa Code section 496A.130 after December 30, 1979, and before December 31, 1981, may apply to the secretary of state for reinstatement pursuant to Iowa Code Supplement section 490.1422 at any time within ten years of the date of the issuance of the certificate of cancellation.

40.2(3) A corporation whose corporate rights have been canceled and forfeited in the manner provided in Iowa Code section 496.9 or a corporation that has a right to renew pursuant to Iowa Code sections 491.25 to 491.28 prior to December 31, 1989, may apply to the secretary of state for reinstatement pursuant to Iowa Code Supplement section 490.1422 until December 31, 1991.

This rule is intended to implement Iowa Code Supplement section 490.1422.

721—40.3(73GA,ch288,504A,545) Names distinguishable upon corporate records.

40.3(1) Except as provided in these rules, a name is considered distinguishable upon the records of the secretary of state if it contains one or more different letters or numerals, or if it contains a different sequence of letters or numerals. A single space used to divide a sequence of letters or numerals into separate words is considered to be a letter for the purpose of this subrule. Differences between singular and plural forms of words are distinguishable. Differences between numerals, Roman numerals, and words representing numerals are distinguishable. The following characters are considered as letters for the purpose of this subrule: $ (dollar sign); + (plus sign); % (percent sign); ¢ (cent sign).

40.3(2) The following words and abbreviations, when positioned as the last word or abbreviation in the corporate name, are not considered in determining whether a name is distinguishable upon the records of the secretary of state:

1. Corporation
2. Company
3. Incorporated
4. Limited
5. Corp.
6. Co.
7. Inc.
8. Ltd.

37	Paper and stationery
38	Prints and publications
39	Clothing
40	Fancy goods, furnishings and notions
41	Canes, parasols and umbrellas
42	Knitted, netted and textile fabrics, and substitutes thereof
43	Thread and yarn
44	Dental, medical and surgical appliances
45	Soft drinks and carbonated waters
46	Foods and ingredients of foods
47	Wines
48	Malt beverages and liquors
49	Distilled alcoholic liquors
50	Merchandise not otherwise classified
51	Cosmetics and toilet preparations
52	Detergents and soaps

Class	Title	SERVICES
100	Miscellaneous	
101	Advertising and business	
102	Insurance and financial	
103	Construction and repair	
104	Communication	
105	Transportation and storage	
106	Material treatment	
107	Education and entertainment	

40.6(2) *Assistance in applications.* The secretary of state cannot give legal advice as to the nature and extent of the protection afforded by law nor advise as to the registrability of a specific mark except as questions may arise in connection with pending applications.

40.6(3) *Incomplete or defective applications.* An application will not be filed unless the application and accompanying facsimiles or specimens are in proper form, comply with the statutory requirements and are accompanied by the statutory fee. Specimens which are metal need not be submitted, a facsimile being preferable in order to avoid filing problems. Documents not filed will be retuned with a statement of the reasons therefor.

40.6(4) *Registration dates.* The registration date is the date on which the mark is actually posted in the registration indices of the office of the secretary of state, after the application has been examined and found acceptable.

40.6(5) *Form of application.* The application shall be on a current form supplied by the secretary of state, be completed in the English language and plainly written or typed. If the mark or any part thereof is not in the English language, it must be accompanied by a sworn translation.

40.6(6) *Withdrawal of application.* Prior to actual registration of the mark, the applicant, by written request, may withdraw the application.

40.6(7) *Plurality of goods in single application.* A single application may recite a plurality of goods, or a plurality of services, comprised in a single class, provided the particular identification of each of the goods or services be stated and the mark is used or has been actually used on or in connection with all of the goods or in connection with all of the services specified.

40.6(8) *Single class in one application.* A single application to register a mark for both goods and services or for goods or services in different classes will be rejected. Applications must be restricted to goods or services comprised in a single class.

40.6(9) *Conflicts.* Whenever application is made for registration of a mark or trade name which so resembles a mark registered in this state or a mark previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive, a conflict shall be declared to exist and registration denied.

40.6(10) *Conflicts between applications.* Conflicts between pending applications will be resolved on the basis of the claimed date of first use. The secretary of state may require affidavits and other proof of first use.

40.6(11) *Record change on automatic transfer.* In the event of mergers or consolidations of corporations, a certified copy of such documents may be accepted to transfer ownership of marks.

If the name of the owner of record of a mark is changed, and request for a change of the records is made, then written proof of such change can be made by sworn affidavit showing the manner or mode by which the change of ownership was made.

40.6(12) *Change of address.* If the resgistered owner of a mark changes the address set forth on the registration, then written notice of such change of address must be given to the secretary of state. Such notice must clearly identify the mark or marks involved and must request that the change of address be noted on the records of the registration on file.

These rules are intended to implement Iowa Code chapters 491, 496A, 499, 504A and 548.

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CHAPTER 41
FORMS OF ANNUAL AGRICULTURAL REPORTS
Rescinded IAB 5/31/89, effective 7/19/89

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